**JOURNAL OF SECURITY AND SUSTAINABILITY ISSUES**
ISSN 2029-7017 print/ISSN 2029-7025 online
2023 Volume 13
https://doi.org/10.47459/jssi.2023.13.30

# WHAT DO WE OWE TO ROMANS? THE ROMAN SHIFT OF THE PARADIGM OF THINKING ABOUT LAW IN THE CONTEXT EUROPEAN LEGAL CULTURE

**Jędrzej Maksymilian Kondek**

*University of Justice, 50 Wiśniowa Street, 02-520 Warsaw, Poland*

*E-mail: jedrzej.kondek@swws.edu.pl*

*Received 25 March 2023; accepted 2 July 2023; published 30 July 2023*

**Abstract**. This study shall present the consequences of the paradigm shift in thinking about law that took place in Ancient Rome (primarily, but not exclusively, in the early republic). It will present what distinguished the Roman concept of law from the concept of law present in other ancient laws, and what is still a living heritage of Roman thought, even if we do not realize it on a daily basis. Roman law will be compared with other laws of the European cultural circle, and therefore, apart from ancient Greece, the so-called Eastern despotias and the state (states) of the Jews. However, it is more about ideas than specific solutions. Therefore, in the comparative material will be also included the Muslim law, although it was created after the promulgation of the Justinian Code, considered the final stage in the formation of ancient Roman law. The Muslim law is however - in a sense - an heir of Middle Eastern legislation and expresses an alternative to Roman way of thinking about law. The aim is to show not only what distinguishes Roman law from the laws that precede it or its contemporaries, but what distinguishes Roman law from other possible ways of looking at laws in general. As a research hypothesis is presented the statement that the fundamental for the development of European legal culture were not so much specific Roman normative solutions, but a change in the paradigm of thinking about law: its secularization, understood as a break with divine origin or the sanctioning of law, and its professionalization, understood as the development of a specific category professional people dealing with the analysis and interpretation of law. At the end it is presented an open question why the secularization of the law happened only in Rome and why it ever happened there although in all other analyzed legal systems the connection between law and religion was never surpassed which this did not prevent the formation of a precise and sublime law, as was the case of the Islamic world.

**Keywords:** Roman law; Civil law tradition; Greek law; Middle East law, Legal history

**Reference** to this paper should be made as follows: Kondek, J.M. 2023. What do we owe to Romans? The Roman shift of the paradigm of thinking about law in the context European legal culture. *Journal of Security and Sustainability Issues*, 13, 273-288. https://doi.org/10.47459/jssi.2023.13.30

**JEL Classifications:** K10

## 1. Introduction

Roman law is a concept deeply symbolic in European culture. It is perceived, alongside Greek philosophy and Christianity, as one of the three pillars of our civilization (W Bojarski, *Korzenie cywilizacji zachodniej*, [in:] *Honeste vivere. Księga pamiątkowa ku czci Profesora Władysława Bojarskiego*, E. Gajda, A. Sokala (ed.), Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika 2001, *passim*). It has also permanently entered culture as a literary motif. In literature, it has served either as a symbol of just and ideal law or as an embodiment of tyranny and oppression, but always as a symbol of law. Even for non-lawyers (or perhaps especially for them), it serves as the foundation of contemporary European law. In other words, the obvious answer to the titular question is: Romans gave us a legal system that forms the basis of our legislation and, more broadly, the foundation of European legal culture (cfr.: M. Kuryłowicz, *Od totalitaryzmu do humanitaryzmu. Literackie wizje prawa rzymskiego*, „Zeszyty Prawnicze UKSW" 2011, no 1, pp. 13-36). Numerous Latin paremias express this idea, which, although not always accurate, are commonly regarded as norms of Roman law. On

the other hand, there is an increasing tendency to question both the reliance of modern private law on Roman law and the relevance of teaching Roman law (cfr. eg. W. Dajczak, *Problem „ponadczasowości" zasad prawa rzymskiego. Uwagi w dyskusji o „nowej europejskiej kulturze prawnej"*, „Zeszyty Prawnicze UKSW" 2005, no 2, pp. 7-21 or M. Jońca, *Przedmiot irrelewantny, konwencjonalne kłamstwo et caetrera…*, „Zeszyty Prawnicze UKSW" 2009, no 2, pp, 341-362).

Considering the above remarks, what could be the subject of this study? It will not analyze specific concepts, legal constructions, or institutions that, having originated in Roman times, have survived until the present day. Undoubtedly, this Roman heritage is still alive. Contemporary law, especially continental civil law, draws abundantly from this heritage, and the claim that studying Roman law is of no importance to the present is certainly incorrect. However, such analyses would go beyond the scope of both articles and monographs.

In this study, I would like to focus on something more general. It concerns presenting the consequences of a paradigm shift in legal thinking that occurred in the Roman state (primarily, although not exclusively, in the Early Republic). This study will present what distinguished the Roman concept of law from the conceptions of law found in other ancient legal systems and what constitutes the living legacy of Roman thought even if we are not aware of it in our daily lives.

Therefore, the goal of this article is to show what sets Roman law apart from other ancient legal systems. I have chosen to compare it with other legal systems within the broader European cultural sphere, including not only ancient Greece but also the Middle East (the Fertile Crescent), with eastern despotisms and the Jewish state(s). European culture, after all, originates from civilizations that emerged in this region. Additionally, the various legal systems developed in this area undoubtedly influenced one another, although not all of these influences are readily apparent to us. For example, it should be pointed out that even Greek influences on Roman law - otherwise probably unquestionable - or at least their scope, are unclear, for example during the creation of the Laws of the Twelve Tables (cfr. more: W. Wołodkiewicz, *Greckie wpływy na powstanie Ustawy XII Tablic*, „Prawo Kanoniczne" 1994, no. 3-4, pp. 39-45). However, this analysis is more concerned with ideas than with specific solutions. Hence, Islamic law will also be included as comparative material. Although it emerged after the promulgation of the Justinian Code, which is considered the final stage of the development of ancient Roman law, it can be seen, to some extent, as an inheritor of the legal systems of the Middle East and an alternative way of thinking about law in contrast to the Roman perspective. The aim is to demonstrate not only what distinguishes Roman law from preceding or contemporary legal systems but also what sets Roman law apart from all other possible ways of perceiving law in general. This study excludes the normative systems of other civilizations that existed before or contemporaneously with the Roman state, such as China, India, or pre-Columbian America.

As a research hypothesis, should be proposed that the fundamental aspects for the development of European legal culture were not so much specific Roman normative solutions but rather a paradigm shift in legal thinking: its secularization, understood as a break from divine origin or sanctioning of law, and its professionalization, understood as the education of a specific category of professionals engaged in the analysis and interpretation of law.

The objective of this work determines the adopted method. This study does not have an analytical character but rather a synthetic one. It employs a method that can be described as historical legal comparativism. J. Gordley points to the close connection between the history of law and comparative law research, and the need to use the achievements of both disciplines at the same time. See: J. Gordley, *Comparative Law and Legal History* [in:], *The Oxford Handbook to Comparative Law*, ed. M. Reinmann, R. Zimmermann, Oxford: Oxford University Press 2008, pp. 754-773). In this study will be analysed various legal systems from the Mediterranean region that did not necessarily exist contemporaneously with one another. Therefore, on the one hand, a comparison of different legal systems will be made, similar to the comparative method, in search of identical or divergent phenomena. On the other hand, this method is historical, as it involves not only comparing legal systems that emerged centuries or millennia ago (This does not mean that only dead legal systems were analyzed. Apart

from the Roman law in San Marino or South Africa, the "living" system is Islamic law) but also (and perhaps primarily) comparing normative systems that never coexisted (e.g., archaic Roman law with Islamic law). This method will allow us to demonstrate both the similarities between these systems and the qualitative differences that the Romans introduced in terms of perceiving and applying law.

## 2. Sacral character of law

When analyzing ancient laws, it is important to note their sacral character. This refers to the connection between the law and divine sanction and authority. This sanction not only serves as a warning against violating the law but also guarantees the substantive quality of a specific normative system. As noted by the Victorian historian Sir Henry Maine, "There is no body of system of recorded law, literally from China to Peru, which when it first emerges into notice, is not seen to be entangled with religious ritual and observance" (Cited after R. Parker, *Law and Religion* [in:] *The Cambridge Companion to Ancient Greek Law*, ed. M. Gagarin, D. Cohen (ed.), Cambridge: Cambridge University Press 2005, p. 80). The association between law and the sacred can take two distinct forms.

According to the first approach that emerges chronologically first, the legislator is a human being, but they act with divine authorization. This includes societies or political systems characterized by what Eric Voegelin called the "cosmological order." By establishing a political order and laws, humans seek to replicate the divine creation of the cosmos, with the political order reflecting a stable and unchanging cosmic order (cfr. E. Voegelin, *Izrael i objawienie*, Warszawa: Teologia Polityczna 2014, pp. 44-58. Similary and independently from E. Voegelin – K. Sójka-Zielińska, *Historia prawa*, Warszawa: Wydawnictwo LexisNexis 2015, p. 22).

This is evident in the legal systems of Mesopotamia. The oldest collections of laws were issued by the rulers of Sumer. The first known lawgiver was Urukagina, the ruler of Lagash, who acted around 2355 BCE. The first known code of laws also comes from Sumer and is the work of King Ur-Nammu (around 2100 BCE), who also held the title of king of Sumer and Akkad. Another significant code from the end of the 20th century BCE is the Code of Lipit-Ishtar, issued by the ruler of Isin, Nippur, Ur, Uruk, and Eridu (On the oldest codes see: M. Kuryłowicz*, Prawa antyczne. Wykłady z historii najstarszych praw świata*, Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej 2006, pp. 68-71, C. Kunderewicz, *Najstarsze prawa świata. Zbiór studiów*, Łódź: Wydawnictwo Uniwersytetu Łódzkiego 1990, passim). However, the most famous is the Babylonian code, known as the Code of Hammurabi (early 18th century BCE), which is the most complete surviving Mesopotamian code.

It is observed that in these legal systems, it is humans and not deities who are the source of law (E. Sienkiewicz, *Religijne czy świeckie (polityczne) pochodzenie prawa w Mezopotamii (?)*, „Studia Koszalińsko-Kołobrzeskie" 2019, no. 2, pp. 357-359). However, this does not imply independence between law and religion. The characteristic feature of these legal codes from the region is the theological justification included in their introductions, while their epilogues contain catalogues of divine punishments for those who violate the law or defy the will of the legislator (W. Bojarski, *Czy homo religiosus,* p. 7-12, *idem*, *Invocatio Dei w starożytnych zbiorach prawa* [in:] *Religia i prawo karne w starożytnym Rzymie*, ed. A. Dębiński, M. Kuryłowicz, Lublin: Wydawnictwo Katolickiego Uniwersytetu Lubelskiego 1998, pp. 12-13; cfr. also M. Kuryłowicz, *Prawa*, p. 69). In the introduction to his Code, Hammurabi presents himself as a legislator acting with the authorization of the god Marduk. Hammurabi states, "And so when Marduk urged me to direct the people of the land to adopt correct behaviour, I made the land speak of justice and truth and improve the welfare of the people" (*Hammurabi's Laws*, Text, Translation and Glossary, M. E. J. Richardson, London, Bloomsbury Publishing, 2004, P22, p. 41) This seems to contradict a bas-relief on the stele containing the code, where Hammurabi appears to be receiving the code from the hands of the god Shamash (In such way the relief is understood by M. Kuryłowicz, *Kilka uwag o postępowaniu sądowym w Kodeksie Hammurabiego*, „Studia Iuridica Lublinensia", 2011, vol. 19, pp. 158). However, this bas-relief can be interpreted in different ways. It may represent the king offering his code to the god, or he may be receiving investiture from Shamash authorizing him to undertake legislative work (this is the interpretation of R. Westbrook, *Ancient Near Eastern Law* [in:] *The Oxford International Encyclopedia*

*of Legal History*, ed. S.N. Katz, v. 1, Oxford: Oxford University Press 2009, p. 168). Although the sanctions prescribed in the Code for various behaviors have a secular character, any alteration, repeal, or forgery of the provisions in the Code is prohibited under the threat of terrifying divine punishments. Earlier legislation was similarly justified: Ur-Nammu invokes the power of the god Nanna in his code, while Lipit-Ishtar appeals to Anu, Enlil, and Ninisina (C. Kunderewicz, *Najstarsze*, pp. 11-16, 35-40). Therefore, the law is not a creation of the god but of humans who participate in the divine. Thus, enacted law is not divine law but human law, yet its establishment, modification, or abrogation requires the permission of the god. By establishing laws, the ruler acts as if authorized by their god.

The connection between law and religion is also evident in ancient Egypt, partly because the highest lawmaker - the pharaoh - was also recognized as a god. The Egyptians believed that law was given to humans by the gods at the time of creation, and the gods were responsible for it (N.J. van Blerk, *The emergence of law in ancient Egypt: The role of Maat*, Fundamina (Pretoria) vol.24 no.1, 2018, pp. 69-88, N.van Blerk, *The Ancient Egyptians' "Religious World. The Foundation of Egyptian Law*, "Journal of Semitics", 2019, no. 1, pp. 1-20). The pharaoh's role was to maintain and promote *maat*, ensuring that everything in the universe operated in accordance with its principles. The pharaoh, as the lawmaker, had the task of guarding *maat*, which encompassed order, harmony, justice, and morality, and was personified by the goddess Maat. The pharaoh ruled based on the principles of *maat* (. G. Manning. *Demotic law* [in:] *A history of Ancient Near Eastern Law,* ed. R. Westbrook, Leiden-Boston: Brill 2003, p. 826). This reflects the connection between Egyptian law and the religious sphere, and judges were referred to as priests of Maat (N.J. van Blerk, *Evaluation of Justice in Law from an Ancient Egyptian Perspective*, "African Journal of Democracy & Governance / Revue africaine de la démocratie & de la Gouvernance", Vol. 6, Nos 2 & 3, 2019, pp. 29-44). It is also worth noting that the criminal law of Horemheb (1319-1292 BCE) was inscribed on a stele in the temple of Amun in Karnak (M. Kuryłowicz, *Prawa*, p. 39). It is also speculated that the late Hermopolis Code, dating from the 3rd century BCE but possibly containing much older norms, was compiled as a priestly collection (*ibidem*, pp. 49-50). The religious character of law was also evident in references to legal issues (primarily inheritance) in the "Letters to the Dead," where the living sought assistance from the deceased in matters important to them (R. Jasnow, *Old Kingdom and the First Intermediate Period* [in:] *A history of Ancient Near Eastern Law,* ed. R. Westbrook, Leiden-Boston: Brill 2003, pp. 132-133).

The Egyptian concept brings us closer to the second concept of the relationship between law and religion, according to which - historically later but commonly associated with the religious nature of law - law represents the will of a deity revealed to humans. Therefore, law is not the work of humans but of the deity. In this view, human lawmakers are merely mediums through which divine ordinances are transmitted to humans. This approach is characteristic of ancient Jewish law and Islamic law. Such law, as it directly originates from a deity, is eternal and universal (P. Kubiak, *Najcięższe przestępstwa szariatu ('hudud ') w świetle uwag zawartych w klasycznym podręczniku 'Umdat al-Salik' al-Misriego*, „Zeszyty Prawnicze UKSW" 2019, no. 3, pp. 158). The task of earthly authority is merely to guard the observance of this law and its immutability, and violating the law is synonymous with sin (P. Gallo, *Introduzione al diritto comparato*, vol. 1, *Grandi sistemi giuridici*, Torino: G. Giappichelli Editore 2001, p. 457). This often leads to the identification of religious observance with lawfulness, and orthodoxy is replaced by orthopraxy. In other words, a good Jew or a good Muslim is one who observes, respectively, the norms of Mosaic law or Sharia law, regardless of their individual relationship with a personal God.

Among Middle East laws only the Hittite law seems different (W. Bojarski, *Czy homo religiosus? Geneza religijna kodeksów praw antycznych*, „Acta Universitati Nicolai Copernici", 1999, no. 330, p. 7). It should be noted, however, that in the case of Hittite law, the argumentum ex silentio is not (as it never is) decisive. The lack of religious references in the known Hittite codes means that their authors did not see the need to include them, and not necessarily that they perceived the law in secular terms. We do not know what the Hittite legislators and those who applied this law thought.

Jewish law (Halakhah) derives directly from the commandments given to Moses by God on Mount Sinai or Horeb (P. Gallo, *Introduzione*, p. 457), and more broadly, from the Five Books of Moses (Genesis, Exodus,

Leviticus, Numbers, and Deuteronomy, collectively known as the Torah or simply the Law in Jewish tradition) (E. Lipiński, *Prawo bliskowschodnie w starożytności. Wprowadzenie historyczne*, Lublin: Wydawnictwo Kautolickiego Uniwersytetu Lubelskiego 2009, pp. 311-312, M. Kuryłowicz, *Prawa*, p. 69). Therefore, this law is a law revealed by God, not a human creation (M. Kuryłowicz, *Prawa*, p. 69). It encompasses both the relationship between God and humans and the relationships among humans (M. Kępa, *Analiza porównawcza kultur prawnych judaizmu i chrześcijaństwa*, „Acta Erasmiana" 2018, vol. 16, p. 28). Despite these fundamental differences, similarities can be observed in practice between Jewish law (at least in ancient times) and Mesopotamian or Egyptian law, particularly in the area that interests us: in both cases, the law was sanctioned by divine authority, and the judge became an oracle of God as a result (D. Nowicka, S. Nowicki, *Prawo boskie i prawo ludzkie. Sądownictwo starożytnego Izraela na tle praktyki mezopotamskiej*, „Scripta Biblica et Orientalia" 2009, no. 1, pp. 149-161).

Similarly, Islamic law (Sharia) is a law given by God and based on the commands of the Quran (J. Danecki, *Podstawowe wiadomości o Islamie*, Warszawa: Dialog 2011, p. 204, J.M. Otto [in:] *Sharia and National Law*, ed. J.M. Otto, Cairo: The American University in Cairo Press, 2010, p. 23). urthermore, the law has always coexisted with God (M. Sadowski, *Powstanie i rozwój islamskiej doktryny prawa (VII – IX w.)*, „Przegląd Prawa i Administracji",2003 no. 55, pp. 6). It is noted that the Quran contains legal norms alongside norms of a religious, moral, or hygienic nature (P. Gallo, *Introduzione*, p. 469). However, it appears that all these norms have a legal character, but the scope of the law encompasses different areas of human activity compared to European law, where legal matters are exclusively regulated from the perspective of the state or society (K. Zweigert, H. Kötz, *An Introduction to Comparative Law*, Oxford: Oxford University Press 1998, p. 305; Ch. Mallat uses here a term *nomocracy* - Ch. Mallat, *Comparative Law and the Islamic (Middle Eastern) Legal Culture* [in:] *The Oxford Handbook of Comparative Law*, ed. M. Reinmann, R. Zimmermann, Oxford: Oxford University Press 2008, pp. 612). This results in the holistic nature of Islamic law (cfr. M Jodko, *Islam a gospodarka*, „Studia Ekonomiczne" 2013, no. 145, p. 58), although in fact this holism is rather postulative than real. In certain matters, this scope is broader and includes personal issues that are neutral from the perspective of authority or the community, while in other matters, it is narrower (A. Hourani*, Historia Arabów*, Gdańsk: Marabut 1995, p. 167). Islamic law is a form of applied religion, and a strict distinction between legal and religious norms is impossible (M. Sadowski, *Powstanie,* pp. 4-5, J. Danecki, *Podstawowe*, p. 148). As a consequence of its divine origin, these norms are immutable (K. Zweigert, H. Kötz, *An Introduction*, p. 304), and the interpretation of the law serves to properly apply them to changing conditions and life requirements that were not known at the time of the revelation of the Quran (P. Gallo, *Introduzione*, pp. 469-470).

Islamic law (in the Sunni version) derives from four interrelated sources. First and foremost is the Quran, followed by the Sunnah, which consists of hadiths narrating the life and behaviour of Muhammad. The third source is analogical reasoning (*qiyas*), and finally, there is ijma, which refers to the consensus of qualified scholars (A. Hourani, *Historia*, p. 78, M. Sadowski, *Powstanie*, pp. 18-28). The interpretation of the law was entrusted to the scholars, known as ulema or alims. The ulema were knowledgeable in religious matters (experts in the Quran and hadiths) as well as legal scholars, basing their thinking on the principles of legal reasoning (*usul al-fiqh*) and disciplined reasoning (*ijtihad*) (. Hourani, *Historia*, pp. 78-79, M. Sadowski, *Powstanie ...* p. 18). It is through this reasoning that the Sharia, a collection of legal provisions, is formed (cfr. more: J.M. Otto [in:] *Sharia*, pp. 24-26). Additionally, there exists *fiqh*, which is the theoretical study of the obligations and rights of Muslims (J. Danecki, *Podstawowe* p. 205). The necessity to interpret the norms derived from the Quran led to the establishment of the four main legal schools in Islam: Hanafi, Maliki, Hanbali, and Shafi'i in Sunni Islam (K. Zweigert, H. Kötz, *An Introduction*, p. 304, A. Hourani, *Historia*, p. 140-165), and Ja'fari in Shia Islam (J. Danecki, *Podstawowe*, p. 209-216, Ch. Mallat, *Comparative*, p. 613).

In both the discussed cases of Jewish and Islamic law, they encompass both divine law and human law, thus addressing not only the relationship between humans and God but also the relationships among people (J. Berman, *Comparative Law and Religion* [in:] *The Oxford Handbook of Comparative Law,* ed. M. Reinmann, R. Zimmermann, Oxford: Oxford University Press 2008, p. 746).

Therefore, in both Jewish and Islamic law, adherence to the law is synonymous with fulfilling the will of God and even with worship itself. This can be attributed to the shift in the relationship between God and humanity in general. Instead of cosmic order, the focus is on the relationship between humans (or a group of people) and God. Relating this transformation to the realm of law, it should be noted that it results in the law no longer expressing cosmic order as it did before but rather regulating the relationship between divinity and humans, or rather, the functioning of society in relation to divinity (E. Voegelin, *Izrael*, p. 203-212ff).

The revealed nature of the law makes it impossible to change its content, which must be adapted to changing times through interpretation. It is characteristic that the methods of interpretation in both Hebrew and Islamic law have reached a high level of subtlety and precision. However, since such interpretation involves dealing with the word of God, the roles of religious leaders (I deliberately do not use the word clergy, because neither in current Judaism nor in the Muslim religion (at least in Sunniism) there is no clergy in the Catholic sense of the word) and legal interpreters converge and even merge. Both rabbis and ulema are largely legal experts: scholars of the law ( J.M. Otto [in:] *Sharia*, p. 23). This relationship is most notably manifested in the Islamic Republic of Iran, where the political system is described as *velayat-e faqih* (Arabic: *wilayat al-faqih*), which can be translated as "the rule of the jurisprudent" (more about this idea cfr.. M. Stolarczyk, *Iran. Państwo i religia*, Warszawa: Dialog 2015, pp. 102-126) Titles such as hodżatoleslam, ayatollah, and grand ayatollah also largely represent academic degrees in the field of Islamic law.

We know little about ancient Greek law (Hellenic law) during its archaic and classical periods, except for the fairly well-known legal proceedings (at least in Athens) and the law code of Gortyn (M. Gagarin, *Ancient Greek Law* [in:] *The Oxford Handbook of European Legal History*, ed. H. Pihlajamäki, M.D. Dubber, M. Godfrey, Oxford: Oxford University Press 2018, p. 145). It can be assumed that even in Greece, law had a religious character at its origins, although it is unknown in which of the mentioned aspects. The first designations for law or norms, such as themis and dike, refer to the names of goddesses, and a separate concept of human law (nomos) appears in the 7th century with Hesiod. However, nomoi are probably not independent from divine law (M. Maciejewski, *Doktrynalne ujęcia relacji prawo naturalne – prawo stanowione od starożytności do czasów oświecenia*, „Krakowskie Studia z Historii Państwa i Prawa" 2015, vol. 8, no. 2, p. 111). In Hesiod, the laws usually appear in the company of Zeus. On the contrary, law was perceived as a value derived from the gods, and justice was seen as achievable only through divine intervention (Z. Papakonstantinou, *Lawmaking and Adjudication in Archaic Greece*, London-New Delhi-New York-Sydney: Bloomsbury 2015, pp. 37-40). Laws were an expression of the will of the gods, either directly or through legislators (K. Sójka-Zielińska, *Pojęcie „prawa nadrzędnego" w kulturze prawnej starożytności* [in:], *Honeste vivere. Księga pamiątkowa ku czci Profesora Władysława Bojarskiego*, ed. E. Gajda, A. Sokala, Toruń 2001, pp. 607). It is worth noting that the lawgiver Lycurgus of Sparta was regarded as a god (M. Kuryłowicz, *Prawa*, p. 134). Similarly, the law code of Gortyn in Crete began with the words "Thus the gods rule!" (M. Kuryłowicz, *Prawa*, p. 153). The law was under the protection of the gods (especially Zeus), and religion was initially the sole and gradually one of the sources of law (M. Dreher, "*Heiliges Recht " and "Heilige Gesetze". Law, Religion and Magic in Ancient Greece* [in:] *Ancient Greek Law in the 21st Century*, ed. P. Perlman, Austin: University of Texas Press 2018, pp. 90-91ff). Written law was the work of humans but was still under divine protection. Written laws were often displayed near temples or sanctuaries to lend them divine authority (M. Gagarin, *Ancient Greek. Law. The Archaic Period* [in:] *The Oxford International Encyclopedia,* , ed. S.N. Katz, v. 1., p. 154). Some legal acts and punishments also had a sacred character (cfr. more broadly R. Parker, *Law*, pp. 68-81). The interpretation of the law was initially in the hands of priests. In Athens, there was a category of exegetai, to whom people turned for the interpretation of laws with religious significance and for advice on proper behavior, possibly based on written and unwritten laws ( D.C. Mirhady, *Religion and Law In Ancient Greece* [in:] *The Oxford International Encyclopaedia…*, ed. S.N. Katz, vol. 5, p. 112). Therefore, it is rightly observed that in archaic Greece, law was regarded as divine and attributed to Zeus ( Z. Papakonstantinou, *Lawmaking*, p. 26). The change only came with the reforms of Solon and the events that followed. However, it is perhaps not a coincidence that the nomothetai, members of the commission tasked with revising the Athenian laws in the late 5th and early 4th centuries BC, were led by the specialist in religious law, Nikomachos (B. Bravo, M. Wecowski, E. Wipszycka, A. Wolicki, *Historia starożytnych Greków*, t. 2, *Okres klasyczny*, Warszawa: Wydawnictwa Uniwersytetu Warszawskiego

2009, p. 377). This secularization of law occurred only in the 6th century BC, not long before the events in Rome, which are the focus of our interest.

### 3. Secularization of law in Rome

The origins of Roman law are poorly known to us, and the sources for the period up to the 5th century BCE are uncertain. However, it is presumed that even in ancient, monarchical, and early republican Rome, law had a sacred character. It is noted that the word i*us* comes from *Juppiter pater*, which in turn comes from the Sanskrit (D)yaus pitar, which means "Father of Heaven" and is the supreme deity of Hinduism. See also (P. Gallo, Introduzione, p. 52, cfr. H. Kupiszewski, *Prawo rzymskie a współczesność*, Bielsko-Biała: Od.Nowa 2013, p. 32). Undoubtedly, this sacralization of law occurred according to the first of the models mentioned earlier, as we are familiar with the names of the original legislators, said to be Romulus and the kings who followed him. It is not important for us to determine to what extent these were real individuals or purely mythical. What matters is that the lawmakers were people and not divinely revealed. The influence of the religious sphere on the public sphere in Rome extended beyond the mere legitimation of the law. It primarily legitimized the state itself, the institutions within it, and even the entire hierarchical social structure (on the connections between religion and politics in Rome cfr. C. Goldberg, *Priests and Politicians: rex sacrorum and flamen Dialis in Middle Republican* Politics, "Phoenix" 2015, nr 3-4, p. 334-351). This was achieved through the so-called auspices, a formalized means of contact and communication between the ruler (official) and the deity (Jupiter), securing its favor. Performing auspices was not a right but an obligation, and their possession was a prerequisite for power (imperium). The loss of auspices, or at least the assumption of power by individuals without them, would signify the downfall of the state (more about the auspices cfr. M Humm, *The Curiate Law and the Religious Nature of the Power of Roman Magistrates* [in:] *Law and Religion in the Roman Republic*, ed. O. Tellegen-Couperus, Leiden-Boston: Brill 2012, p. 57-84, A. Ziółkowski, *Historia Rzymu*, Poznań: Wydawnictwo Poznańskiego Towarzystwa Przyjaciół 2008, p. 104-105. and. E. Loska, *Uwagi na temat procedur 'obnuntiatio',* „Zeszyty Prawnicze UKSW" 2011, nr 11, p. 195-196). It should be noted that the essence of auspices was not divination in the traditional sense but determining the appropriate days for undertaking specific actions.

An expression of the initial sacralization of law was the exclusive entrusted interpretation of the law to priests, specifically the college of pontiffs headed by the Pontifex Maximus and, to a lesser extent, other priests (W. Litewski, *Jurysprudencja rzymska*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego 2000, p. 16-19). They were knowledgeable about the law and the formulas required for legal actions (cautiones). They also held a monopoly on translating the law and were familiar with the formulas of complaints in the legislative process (legis actiones) and ancient court judgments (R. Taubenschlag, *Rzymskie prawo prywatne*, Warszawa: Państwowe Wydawnictwo Naukowe 1969, p. 30-31, R. Taubenschlag*, Rzymskie prawo prywatne na tle praw antycznych*, Warszawa: Państwowe Wydawnictwo Naukowe 1955, p. 38*,* W. Wołodkiewicz, M. Zabłocka, *Prawo rzymskie. Instytucje*, Warszawa: Wydawnictwo C.H. Beck 2014, p. 51, A. Tarwacka, *O początkach prawa i wszystkich urzędów. 2 Tytuł 1 Księgi Digestów. Tekst – tłumaczenie – komentarz*, „Zeszyty Prawnicze UKSW" 2003, nr 1, p. 226).. It is suggested that this could have been due to the religious or divine nature of the law (O. Robleda, *Introduzione allo studio del diritto private romano*, Roma : Università Gregoriana Editore 1979, p. 102-105). It should be noted, however, that such an important role of priests in the sphere of law could also result from the fact that in the primitive society they belonged to the group of the best educated people[1]. For this reason, the first phase of Roman jurisprudence development is referred to as pontifical jurisprudence. As important as the interpretation of the law was for the Romans, the determination of dierum fasti and dierum nefasti, that is, the days on which legal proceedings were permissible or prohibited, was equally significant. The pontiffs possessed knowledge of when dies fasti occurred and guarded it diligently. It should be noted that the aforementioned idea, according to which there are days on which legal proceedings should not be conducted, corresponds to the results of auspices in public life, which may indicate a connection between these two concepts.

However, in the mid-5th century BCE, a shift occurred in this matter. It was associated with the emancipation of the plebeians, although it is not excluded that the development of foreign contacts by Rome, leading to the

[1] I thank Prof. P. Niczyporuk for this remark

knowledge of other religions and cultures, also played a role ( P. Gallo, *Introduzione*, p. 53), although considering this aspect as exclusive, without taking into account the purely political interests of the plebeians, I consider too idealistic and anachronistic view . One of their demands was the disclosure of the law and the deprivation of the exclusive competence of the college of pontiffs to interpret it (M. Kuryłowicz, A. Wiliński, Rzymskie prawo prywatne, Warszawa: Wolters Kluwer Polska 2016, p. 37). The pontifical office was reserved for patricians, who - at least in the plebeians' opinion - used their knowledge of the law and the court calendar against them. One well-known result of the plebeians' revolt was the promulgation of the Laws of the Twelve Tables in 451-450 BCE. It was conceived as a collection of laws governing Roman citizens. Its promulgation and subsequent public display on tablets, from which its later name derives, marked the beginning of breaking the legal monopoly of the college of pontiffs. However, issuing and publicizing the text of the laws on the Twelve Tables did not deprive them of the competence to creatively interpret the Law (M. Zabłocka, *U źródeł współczesnego prawodawstwa* [in:] *Z dziejów kultury prawnej. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w dziewięćdziesięciolecie urodzin*, Warszawa: Wydawnictwo Liber 2004, p. 79). In essence, this was only the beginning, not the end, of the process of secularizing the law (A. Ziółkowski, *Historia*, p. 115 and W. Rozwadowski, *Nauczanie prawa w państwie rzymskim,* „Czasopismo Prawno-Historyczne" 2003, nr 1,pp. 10-11), whose subsequent stages included the publication of complaint formulas and the court calendar by Cnaeus Flavius around 300 BCE (later known as ius Flavianum), as well as the commencement around 280 BCE of providing public legal advice by the first plebeian Pontifex Maximus, Tiberius Coruncanius, probably in 304 BCE (A. Tarwacka, *O początkach*, p. 226, W. Rozwadowski, *Nauczanie*, p. 12). This led to the desacralization of the law, which became a fully secular institution (cfr. .W Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa: Wydawnictwo Naukowe PWN 2018, p. 64).

Of course, this process did not proceed uniformly or unidirectionally. The sacred character of the law may have manifested itself very late. Generally, it is accepted that an early characteristic of criminal law is its religious nature, making punishment a means of appeasing the deity or restoring cosmic order (W. Bojarski, *Kara śmierci w prawach państw antycznych* [in:] ed. H. Kowalski, M. Kuryłowicz, *Kara śmierci w starożytnym Rzymie*, Lublin: Wydawnictwo Katolickiego Uniwersytetu Lubelskiego 1996, p.11). Such a character can also be attributed to poenae cullei, which was the punishment of drowning after being sewn into a sack, and it represented a "combination of religious, magical, and penal elements" (M. Jońca, *Poena cullei. kara czy rytuał?*, „Zeszyty Prawnicze UKSW" 2005, nr 1, p. 83-99l cfr. also A. Dębiński, *Poena cullei w rzymskim prawie karnym*, „Prawo Kanoniczne" 1994, nr 3-4, p. 133-136). However, this punishment only appeared in Roman law around 207 BCE, long after the breaking of the legal monopoly of the priests (M. Jońca, *Poena*, p. 87; A. Dębiński, *Poena*, pp. 136ff speaks for a much earlier introduction of this penalty).

The concept of law as a human institution, which first emerged in ancient Rome, is a lasting legacy of that legal culture, which fully passed into later European legal culture. It enabled the integration of different peoples within the same state organism (cfr. W. Bojarski, Korzenie, p. 637-638). From that moment on, compliance with the law was no longer synonymous with adhering to a specific religion or acknowledging oneself as a subject to a deity. Therefore, when Saint Paul opposed the adherence to the Mosaic law by Christians (eg. Galatians 3,5-29), he simultaneously called on them to obey the authorities, including, among other things, compliance with Roman law (Romans 13, 1-7). It should be noted however that B. Sitek believes that when Saint Paul condemned the "Law" in the letter to the Romans, he meant not only the Mosaic Law (or "Torah", or "Law"), but also Roman law: (B. Sitek, *O prawnych aspektach listu św. Pawła do Rzymian* [in:] *Honeste vivere. Księga pamiątkowa ku czci Profesora Władysława Bojarskiego*, ed. E. Gajda, A. Sokala, Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika 2001, p. 203-205 i 211), but in that case the Apostle of the Gentiles would be in contradiction in calling both to liberate himself from Roman law and to obey it. However, this issue goes far beyond the scope of this study.

From then on, none of the legal systems that later prevailed in the European cultural sphere, including canon (ecclesiastical) law, relied on divine sanction but had a purely human (secular) character. Higher-order law, i.e., divine, eternal, or natural law, exists (for those who recognize its existence) in a completely different scope and nature, as a standard of just or righteous law and not as a set of norms under the sanction of state authority, as

was the case with Halakha and currently with Islamic law (as for the Catholic understanding of the relationship of statutory law to laws of a different order. cfr. F. Daguet, *Myśl polityczna św. Tomasza z* Akwinu, Warszawa: Teologia Polityczna 2021, s. 393-426; It should be noted, however, that the relationship between the divine *Nomos* and the human *nomoi* in such a way that human laws should be based on divine law appears already in Heraclitus (E. Voegelin, *Świat polis*, Warszawa: Teologia Polityczna 2013, p. 504-505).

**4. Development of jurisprudence**

The secularization and publicization of law, and thus the partial dissemination of its knowledge, led to the breaking of the pontiffs' monopoly on its interpretation. There arose a need for the translation and teaching of law, which consequently led to the emergence of a group of people who engaged in this on a permanent and, ultimately, professional basis (W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo*, p.64-66, M. Kuryłowicz, *Prawa,* p. 188-190).

No other legal system developed a distinct group of people dedicated to the law. We have no knowledge of a separate group of lawyers in Sumerian, Akkadian, Babylonian, or Egyptian societies, although sources have revealed a rich collection of professions practiced among these peoples (R.Westbrook, *Introduction. The Character of Ancient Near East Law* [in:] *A History of Ancient Near East Law*, ed. R. Westbrook, Leiden-Boston: Brill 2003, p. 20). Similarly, in ancient Greece, no group of lawyers emerged. The representation of parties in court was entrusted to logographers, i.e., paid authors of court speeches whose competence was to express opinions and persuade judges, rather than interpret the law (M. Kuryłowicz, *Prawa*, p. 130-131, M. Talamanca, L. Capogrossi Colognesi, G. Finazzi, *Elementi di diritto privato romano*, Milano: Giuffré Editore 2013, p. XVI-XVII). It is noted that these speakers had no legal training or education; instead, they acquired their knowledge through practice. Despite the absence of "professional" lawyers, they were practically the only experts on the law (more about logographers, cfr. . J. Rominkiewicz, *Logografowie ateńscy* [in:] *Studia Historycznoprawne*, ed. A. Konieczny, „Acta Univeristatis Wratisliaviensis. Prawo"2004, nr. 290, p. 7-24). The ancient Greeks, in essence, did not leave behind scientific works on law, except perhaps for Plato's Laws, of which only fragments can be considered legal studies, and even those were conducted by a philosopher rather than a lawyer (E. Voegelin, *Platon*, Warszawa 2015, p. 334-335). Moreover, there were no works analyzing the essence or origin of specific legal institutions, nor were there legal schools (H.J. Wolff, *Greek Legal History—Its Functions and Potentialities*, "Washington University Law Review" 1975, vol. 2, p. 398-401). On the other hand, in Judaism and Islamic culture, legal experts (rabbis, ulema, Shiite scholars) also perform religious functions (leaders of religious communities, prayer leaders) or enjoy religious authority, even if they do not have the status of clergy in the Catholic sense (cfr. Ch. Mallat, *Comparative*, p. 611). It is worth noting that Islamic culture has developed a highly developed science of law, which, however, consists of explaining the revelation contained in the Quran and the Sunnah (more about Islamic jurisprudence cfr. B. Prochwicz-Studnicka, Usul al-fiqh. Czym są klasyczne sunnickie „korzenie/ podstawy wiedzy o prawie"?, „Czasopismo Prawno-Historyczne" 2013, z. 1, p. 11-48).

Meanwhile, in Rome, a group of people knowledgeable about the law emerged who did not perform any religious functions. Initially, this group did not have a professional character, and they were even officially prohibited from receiving compensation for their services. However, ways were gradually found to circumvent this prohibition. They also did not hold public offices; judges and praetors usually did not have legal education (W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo*, p. 49). However, the latter were surrounded by a council of professional jurists who, as M. Kuryłowicz notes, ensured a "high level of scientific knowledge of the applied (praetorian) law" (M. Kuryłowicz, *Aequitas i iustitia w rzymskiej praktyce prawnej*, „Annales Universitati Mariae Curie-Skłodowska",2019, vol. 64, no. 1, p. 184).

Jurists not only drafted legal acts (*cavere*) and assisted in legal proceedings (*agere*), but above all, they provided legal advice (*respondere*) by interpreting the law (W. Litewski, *Jurysprudencja*, p. 45-52, W. Wołodkiewicz, *Ius et lex w rzymskiej tradycji prawnej* [in:] W. Wołodkiewicz, *Czy prawo rzymskie przestało istnieć*, Kraków: Zakamycze 2003, pp. 235-237). The role played by legal scholars in Rome is evidenced primarily by granting some of them ius respondendi ex auctoritate principis, which effectively made their opinions a source of law

equal to imperial constitutions (cfr. Ed. B.J. Kowalczyk, *Twórcza interpretacja prawa – wybitne osiągnięcie jurysprudencji rzymskieji wyzwanie dla współczesnych sędziów*, „Gdańskie Studia Prawnicze" 2017, vol. 38, p. 747-755).

Furthermore, it was in Rome that the demand for treating jurisprudence as a scientific discipline emerged, as expressed in the Ciceronian postulate to " *ius civile in artem redigere*" (see more O. Tellegen-Couperus, J.W. Tellegen, *Artes Urbanae: Roman Law and Rhetoric* [in:] *New Frontiers. Law and Society in the Roman World*, ed. P.J. de Plessis, Edinburgh: Edinburgh University Press 2013, pp. 31-49). It should be noted, however, that legal knowledge took the form of *iuris prudentia*, which refers more to practical expertise rather than theoretical *iuris scientia* (M. Kuryłowicz, *Aequitas*, p. 185). Although this distinction is not entirely clear, as Ulpian writes, "*iuris prudentia est [...] iusti atque iniusti scientia*" (D, 1,1,10,2). It seems paradoxical that although this process had its origins in the secularization and emancipation of law from the guardianship of the pontiffs, Ulpian called legal knowledge the "knowledge of divine and human affairs" (D, 1,1,10,2: *iuris prudentia est divinarum atque humanarum rerum notitia*) and referred to legal experts as priests (*sacerdotes*) (D. 1,1,1,1; cfr M. Kuryłowicz, *Sacerdotes iustitiae*, [in:] *Ecclesia et Status. Księga jubileuszowa z okazji 40-lecia pracy naukowej profesora Józefa Krukowskiego*, Lublin: Wydawnictwo Katolickiego Uniwersytetu Lubelskiego 2004, p. 699–713). However, this opinion does not indicate that jurists replaced priests in their role. Ulpian does not mention any supernatural or cultic elements. It is not an acknowledgment of the religious character of the law but rather an indication that the place of priests is occupied by what we might call "secular specialists" (cfr. P. Sadowski, *Filozofia prawa w życiu i nauczaniu Ulpiana*, „Zeszyty Prawnicze UKSW 2008, no. 1, p. 99-100). According to Ulpian, an expert lawyer is a secular priest of a godless religion (at least without a personal god).

Undoubtedly, the view expressed by Ulpian is connected with the influence of philosophy on Roman law. As H. Kupiszewski aptly pointed out, the Greeks created a philosophy of law, but it did not have an impact on Greek law (. The Romans did not develop a philosophy of law, but they made it the basis of legal reasoning H. Kupiszewski, *Humanitas a prawo rzymskie*, „Prawo Kanoniczne" 1977, nr 1-2, p. 280). It is characteristic that Ulpian's definition of jurisprudence is identical to the definition of philosophy proposed by Chrysippus and adopted by Cicero (*scientia rerum divinarum et humanarum)* (*Ibidem*, p. 280-281). It is also worth noting that it is precisely within the philosophical realm, specifically within the concept of *aequitas*, that similarities and even influences on Islamic law can be found, in the form of the doctrine of *istihsan*, which in turn is based on natural law, superior to enacted law. However, unlike in Rome, it had religious and not philosophical foundations. Cfr. more broadly: *Rzymska aequitas a muzułmański istihsan*, „Czasopismo Prawno-Historyczne" 2010, no. 2, pp. 281-291). Similarly, references from Roman law to Mosaic law are possible where Roman law was open to extra-legal influences (cf. M. Zabłocka, *Kilka uwag o mniej znanych „wartościach" prawa rzymskiego* [in:] *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*, Białystok-Katowice: Wydawnictwo Uniwersytetu w Białymstoku 2010, pp. 123-136).

The consequence of this process was the emergence of legal education, unknown to other cultural circles under analysis (except Islamic, but there it had a religious character absent in the Roman variant). Initially, this education did not have an organized form, but gradually informal legal schools began to emerge, not in the sense of institutions, but as ways of reasoning and understanding the law (abut the legal education cfr. W. Rozwadowski, *Nauczanie*, passim i W. Litewski, *Jurysprudencja*, p. 53-58, R. Taubenschlag, *Rzymskie*, p. 40-42, W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo*, p 74-75). In the classical period of the development of Roman law, we already have a clearly distinguished group of lawyers, along with recognized authorities and legal textbooks. The need for translation and teaching of law also led to the emergence of the science of law. It is characteristic that it emerged precisely in Rome and not in Greece, the "seeker of wisdom" (P. Gallo, Introduzione, p. 459). In fairness, however, it should be noted that two of the three schools (Constantinopolitan and Beirut) existed in the Greek, linguistically and culturally, East of the Emipire. The peak period of the development of legal education was marked by granting the legal textbook the status of binding law (Justinian's Institutes) and the establishment of legal schools in Rome, Beirut (probably from the 3rd century), and Constantinople (from 425 AD), gradually coming under state control and regulation (W. Rozwadowski, *Nauczanie…*, p. 22-24; more

about the Beirut school cfr. P. Sadowski, *Szkoła prawa w rzymskim i bizantyńskim Bejrucie. Studium prawno-historyczne*, Opole 2019, *passim*). These were, it seems, the first public institutions of legal education in Europe, and perhaps in the world.

The significance of Roman heritage for the continental legal tradition is demonstrated by comparing the civil law and common law systems. It is rightly observed that "today's Anglo-Saxon law shows rather what continental law would look like without the reception of Roman law" (T. Giaro [in:] W. Dajczak, T. Giaro, F. Lonchamps de Bérier, *Prawo…*, p. 97). This statement was made in a normative context, but it is also true in the context of legal education. It is characteristic that in the common law system, the training of legal practitioners remained outside the universities for a long time, within the so-called Inns of Court, and legal dogmatics itself was rather a subject and result of practical analysis than scientific debates (cfr. P. Gallo, *Introduzione…*, vol, 1, .pp 312-313). Law faculties at English universities remained largely unaffected by the interpretation and application of English law. Therefore, it can be presumed that without the reception of Roman legal traditions, legal knowledge in the rest of Europe would have remained a practical skill rather than a subject of scientific study.

**5. Conclusions of the previous considerations**

In summary of the previous considerations, the main achievements of the ancient Romans in the field of legal culture become apparent. It is not the invention of law, as this social institution was known for at least one and a half thousand years *ante urbem conditam* (counting from the time of the Ur-Nammu code). However, it was the Romans who brought about two breakthroughs that shaped our contemporary perception of law.

Firstly, they secularized it, separating enacted law from any connection to religion or the belief in its divine origin. The claim that this occurred already in Sumer is not convincing (E. Sienkiewicz, *Religijne*, pp. 360-361). Although the Sumerian legislations did not refer to religious sanctions for violating specific obligations, the law itself was subject to religious sanctions. On one hand, it was established by the command of a god, and on the other hand, it was guarded by religious sanctions against any alteration or falsification. What happened in Rome led to the severing of the observance of law from adherence to a specific religion, and in the broader perspective, it also paved the way to break the personalized nature of law and its connection to belonging to a specific people or social group (although, admittedly, this occurred only in the 19th century).

Secondly, it was in ancient Rome that a separate professional group emerged, dedicated to teaching, and instructing in law, without necessarily engaging in its application. Neither officials nor judges, whether private or state (during the *cognitio extra ordinem* process), were required to have knowledge of the law. Therefore, a category of people emerged whose livelihood or scholarly interests became associated with the study of law, independently of other social institutions, and primarily, religion.

These processes were not independent of each other but interconnected. It was precisely the secularization of law and the breaking of the legal monopoly of the pontiffs that led to the formation of a group of jurists. Thus, perhaps the most significant consequence of the transformations in Roman law for our times was the invention of lawyers. And it was precisely the development of these two elements: a secular law independent of religion and a separate category of individuals professionally engaged in translating and teaching this law, detached from their other occupations and duties (including religious obligations), that may represent the greatest influence of the Romans on the legal culture of Europe, clearly distinguishing our cultural circle from neighbouring legal traditions.

**6. Summary and conclusions**

The above analysis of the events that took place in Rome clearly demonstrates that an unprecedented event occurred in the broad realm of European and Mediterranean culture. The most important thing is not to establish that secularization of law occurred in Rome, but that it happened only in Rome. Therefore, it cannot be stated that the detachment of Roman law from religious or cultic ties was a natural process. On the contrary, European

legal culture, based on the separation of the spheres of law and religion, represents a state that is not only unprecedented but also one that did not appear anywhere else later, as evidenced by the history of Islamic law. It is necessary, therefore, to search for the causes of this crucial situation for European culture.

It has been explained above that the direct cause of the breaking of the patricians' monopoly on knowledge and interpretation of the law was the emancipation of the plebeians. However, this does not explain the deeper reasons for such a situation. The question remains as to whether the gaining of political positions by the plebs had to result in the secularization of law. The answer to this issue is not unambiguous. In fact, it did not necessarily have to be so. It should be noted that the emancipation of the plebs did not break the connections of the political foundations of the Roman state with religion (or rather, with cult). The Roman belief in the connection between auspices and the prosperity of the Roman state was discussed. Breaking the patricians' monopoly on holding offices and priestly functions did not weaken the significance of auspices for the ideological foundations of the state. Although Cicero himself feared that the decline of the patriciate would lead to the collapse of auspices, the inclusion of plebeians in offices did not undermine the importance of auspices and their connection with the patricians (A. Ziółkowski, *Historia…*, p. 104-105). A similar process could have occurred in the case of law. Plebeians could have gained access to offices and even entered the college of pontiffs without undermining the belief in the religious character of Roman law. However, it turned out differently.

The reasons for the divergence of the paths of law and Roman religion cannot be found in the nature of the latter alone. Roman religiousness focused on the cultic side (placing emphasis on orthopraxy rather than orthodoxy). Cicero, who was sceptical about many strictly religious matters (cfr. A. Nawrocka, *Religia i wróżbiarstwo w koncepcji Cycerona*, „Saeculum Christianum",:1995 no. 2, pp. 7-21, A. Chlewicka, *Teologia polityczna Cycerona*, „Symbolae Philologorum Posnaniensium Graecae et Latinae", vol. XXV, no. 1, 2015, pp.. 33–54), considered religion, especially auspices, as the support of the state (H. Kowalski, *Auspicja w myśli filozoficznej i działalności politycznej Marka Tulliusza Cycerona*, „Annales Universitatis Mariae Curie-Skłodowska. Sectio F", vol. XLIX, no. 5, 1994, pp. 83-84). Thus, Roman religion should support the law, and the law should seek its foundation in religion. This would also correspond, it seems, to the Roman mentality, which was far from recognizing the separation of state and (state) religion but, on the contrary, treated both issues as inseparable.

Practical reasons resulting from social and economic development also do not explain the situation, as evidenced by the development and refinement of Islamic law, which maintained its connection with religion, and in Islamic societies, a class of professional lawyers who were also theologians emerged. A similar process could have occurred in Rome.

Furthermore, the result of the discussed process, which is the unification of diverse peoples adhering to different religions under one law, does not provide an explanation either. Firstly, such a need did not exist at the time when the secularization of law occurred in Rome, i.e., in the 4th-3rd centuries BC, as Roman society was ethnically and religiously homogeneous, and thus there was no need for unification. Furthermore, at least until the time of the Edict of Caracalla, the population under Roman rule used various legal systems (*ius civile*, praetorian law, *ius gentium*), so the consequence of the secularization of law was not its unification and the breaking of personalism (which only occurred in the 19th century AD). Moreover, the *Constitutio Antoniana* did not result in an automatic exit from the use of local laws (cfr. more broadly. G. Kantor, *Local Law in Asia Minor after the Constitutio Antoniniana* [in:] *Citizenship and Empire in Europe 200-1800. The Antonine Constitution after 1800 years*, ed. C. Ando, Stuttgart: Franz Steiner Verlag 2016, pp. 45-59). Therefore, while the direct causes of the secularization of law and the process in which it occurred are known, the question of the deeper causes, why it happened only in Rome and what its specificity was compared to other known legal systems in our cultural circle, remains open.

## References

Berman, H.J. (2008), *Comparative Law and Religion.* In: *The Oxford Handbook of Comparative Law,* M. Reinmann, R. Zimmermann, (eds.), Oxford University Press, Oxford, 739-751.

van Blerk, N.J. (2019), *The Ancient Egyptians' "Religious World". The Foundation of Egyptian Law*, Journal of Semitics, 1: 1-20.

van Blerk, N.J. (2018), *The emergence of law in ancient Egypt: The role of Maat*, Fundamina (Pretoria), 24(1): 69-88.

van Blerk, N.J. (2019), *Evaluation of Justice in Law from an Ancient Egyptian Perspective*, African Journal of Democracy & Governance, 6, (2-3): 29-44.

Bojarski, W. (1999), *Czy homo religiosus? Geneza religijna kodeksów praw antycznych*, Acta Universitati Nicolai Copernici, 330: 7-12.

Bojarski, W. (1998), *Invocatio Dei w starożytnych zbiorach prawa [Invocatio Dei in ancient collections of law],* In:, *Religia i prawo karne w starożytnym Rzymie [Religion and criminal law in ancient Rome]*, A. Dębiński, M. Kuryłowsicz, (eds.), Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, Lublin, 11-18.

Bojarski, W. (1996), *Kara śmierci w prawach państw antycznych [The death penalty in the laws of ancient countries],* In*: Kara śmierci w starożytnym Rzymie [The death penalty in ancient Rome]*, H. Kowalski, M. Kuryłowicz, (eds.), Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, Lublin, 9-22.

Bojarski, W. (2001), *Korzenie cywilizacji zachodniej [Roots of Western Civilization]*, In: *Honeste vivere. Księga pamiątkowa ku czci Profesora Władysława Bojarskiego [Honest vivere. Commemorative book in honor of Professor Władysław Bojarski]*, E. Gajda, A. Sokala, (eds.), Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń, 633-639.

Bravo, B., Wecowski, M., Wipszycka, E., Wolicki, A. (2009), *Historia starożytnych Greków*, t. 2, *Okres klasyczny [History of the Ancient Greeks, Vol. 2, Classical Period]*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa.

Chlewicka, A. (2015), *Teologia polityczna Cycerona [Cicero's political theology]*, Symbolae Philologorum Posnaniensium Graecae et Latinae, 25(1): 33-54.

Daguet, F. (2021), *Myśl polityczna św. Tomasza z* Akwinu *[The political thought of St. Thomas Aquinas]*, Teologia Polityczna, Warszawa.

Dajczak, W. (2005), *Problem „ponadczasowości" zasad prawa rzymskiego. Uwagi w dyskusji o „nowej europejskiej kulturze prawnej" [The problem of the "timelessness" of the principles of Roman law. Comments in the discussion on the "new European legal culture"]*, Zeszyty Prawnicze UKSW, 2: 7-22.

Dajczak, W., Giaro, T., Longchamps de Berier, F. (2018), *Prawo rzymskie. U podstaw prawa prywatnego [Roman law. The basis of private law]*, Wydawnictwo Naukowe PWN, Warszawa.

Danecki, J. (2011), *Podstawowe wiadomości o Islamie [Basic information about Islam]*, Dialog, Warszawa.

Dębiński, A. (1994), *Poena cullei w rzymskim prawie karnym [Poena cullei in Roman criminal law]*, Prawo Kanoniczne, 3-4: 133-146.

Dreher, M. (2018), *"Heiliges Recht" and "Heilige Gesetze". Law, Religion and Magic in Ancient Greece,* In: *Ancient Greek Law in the 21st Century*, P. Perlman, (ed.), University of Texas Press, Austin, 85-103.

Gagarin, M. (2018), *Ancient Greek Law,* In: *The Oxford Handbook of European Legal History*, H. Pihlajamäki, M.D. Dubber, M. Godfrey, (eds.), Oxford University Press, Oxford, 143-216.

Gallo, P. (2001), *Introduzione al diritto comparato*, vol. 1, *Grandi sistemi giuridici [Introduction to Comparative Law, Vol. 1, Major legal systems]*, G. Giappichelli Editore, Torino.

Goldberg, C. (2015), *Priests and Politicians: rex sacrorum and flamen Dialis in Middle Republican* Politics, Phoenix, 3-4: 334-351.

Gordley, J. (2008), *Comparative Law and Legal History,* In: *The Oxford Handbook to Comparative Law*, M. Reimann, R. Zimmermann, (eds.), Oxford, 753-773.

Hezjod, (1952), *Prace i dnie [Works and days]*, Ossolineum, Wrocław.

Hourani, A. (1995)*, Historia Arabów [History of the Arabs]*, Marabut, Gdańsk.

Humm, M. (2012), *The Curiate Law and the Religious Nature of the Power of Roman Magistrates,* In: *Law and Religion in the Roman*

*Republic*, O. Tellegen-Couperus, (ed.), Brill, Leiden-Boston, 57-84.

Jasnow, R. (2003), *Old Kingdom and the First Intermediate Period,* In: *A history of Ancient Near Eastern Law,* R. Westbrook, (ed.), Brill, Leiden-Boston, 132-133.

Jodko, M. (2013), *Islam a gospodarka [Islam and the economy]*, Studia Ekonomiczne, 145: 57-66.

Jońca, M. (2005), *Poena cullei. kara czy rytuał? [Poena cullei. punishment or ritual?]*, Zeszyty Prawnicze UKSW, 1: 83-100.

Jońca, M. (2009), *Przedmiot irrelewantny, konwencjonalne kłamstwo et caetrera… [Irrelevant object, conventional lie et caetera…]*, Zeszyty Prawnicze UKSW, 2: 341-362.

Kantor, G. (2016), *Local Law in Asia Minor after the Constitutio Antoniniana,* In: *Citizenship and Empire in Europe 200-1800. The Antonine Constitution after 1800 years*, C. Ando, (ed.), Franz Steiner Verlag, Stuttgart, 45-59.

Kępa, M. (2018), *Analiza porównawcza kultur prawnych judaizmu i chrześcijaństwa [Comparative analysis of legal cultures of Judaism and Christianity]*, Acta Erasmiana, 16: 26-38.

Kowalczyk, B.J. (2017), *Twórcza interpretacja prawa – wybitne osiągnięcie jurysprudencji rzymskiej i wyzwanie dla współczesnych sędziów [Creative interpretation of law - an outstanding achievement of Roman jurisprudence and a challenge for modern judges]*, Gdańskie Studia Prawnicze, 38: 747-755.

Kowalski, H. (1994), *Auspicja w myśli filozoficznej i działalności politycznej Marka Tulliusza Cycerona [Auspice in the philosophical thought and political activity of Marcus Tullius Cicero]*, Annales Universitatis Mariae Curie-Skłodowska. Sectio F, 49(5): 81-95.

Kubiak, P. (2019), *Najcięższe przestępstwa szariatu (‘hudud’) w świetle uwag zawartych w klasycznym podręczniku ‘Umdat al-Salik’ al-Misriego [The most serious Sharia crimes (‘hudud’) in the light of the remarks contained in al-Misri’s classic textbook ‘Umdat al--Salik’]*, Zeszyty Prawnicze UKSW, 3: 155-184.

Kunderewicz, C. (1990), *Najstarsze prawa świata. Zbiór studiów [The oldest laws of the world. Collection of studies]*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź.

Kupiszewski, H. (1977), *Humanitas a prawo rzymskie [Humanitas and Roman law]*, Prawo Kanoniczne, 1-2: 277-294.

Kupiszewski, H. (2013), *Prawo rzymskie a współczesność [Roman law and the present day]*, Od.Nowa, Bielsko-Biała.

Kuryłowicz, M. (2019), *Aequitas i iustitia w rzymskiej praktyce prawnej [Aequitas and justitia in Roman legal practice]*, Annales Universitati Mariae Curie-Skłodowska, 64(1): 173-188.

Kuryłowicz, M. (2011), *Kilka uwag o postępowaniu sądowym w Kodeksie Hammurabiego [Some remarks on court proceedings in the Code of Hammurabi]*, Studia Iuridica Lublinensia, 19: 159-167.

Kuryłowicz, M. (2011), *Od totalitaryzmu do humanitaryzmu. Literackie wizje prawa rzymskiego [From totalitarianism to humanitarianism. Literary visions of Roman law]*, Zeszyty Prawnicze UKSW; 1: 13-36.

Kuryłowicz, M. (2006), *Prawa antyczne. Wykłady z historii najstarszych praw świata [Ancient laws. Lectures on the history of the world’s oldest laws]*, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin.

Kuryłowicz, M. (2001), *Prawo rzymskie jako fundament europejskiej kultury prawnej [Roman law as the foundation of European legal culture],* Zeszyty Prawnicze UKSW, 1: 9-24.

Kuryłowicz, M. (2004), *Sacerdotes iustitiae*, In: *Ecclesia et Status. Księga jubileuszowa z okazji 40-lecia pracy naukowej profesora Józefa Krukowskiego [Ecclesia et Status. Jubilee book on the occasion of the 40th anniversary of Professor Józef Krukowski’s scientific work]*, A. Dębiński, K. Orzeszyna, M. Sitarz, (eds.), Towarzystwo Naukowe KUL, Lublin, 699-713.

Kuryłowicz, M., Wiliński, A. (2016), *Rzymskie prawo prywatne [Roman private law]*, Wolters Kluwer Polska, Warszawa.

Lipiński, E. (2009), *Prawo bliskowschodnie w starożytności. Wprowadzenie historyczne [Near Eastern law in antiquity. Historical introduction]*, Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, Lublin.

Litewski, W. (2000), *Jurysprudencja rzymska [Roman jurisprudence]*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków.

Loska, E., *Uwagi na temat procedur ‘obnuntiatio’ [Notes on obnuntiatio procedures],* Zeszyty Prawnicze UKSW, 11: 195-212.

Maciejewski, M. (2015), *Doktrynalne ujęcia relacji prawo naturalne – prawo stanowione od starożytności do czasów oświecenia [Doc-*

*trinal approaches to the relationship between natural law and law from antiquity to the Enlightenment]*, Krakowskie Studia z Historii Państwa i Prawa, 8(2): 107-132.

Mallat, C. (2008), *Comparative Law and the Islamic (Middle Eastern) Legal Culture,* In: *The Oxford Handbook of Comparative Law*, M. Reinmann, R. Zimmermann, (eds.), Oxford University Press, Oxford, 609-639.

Manning, J.G. (2003), *Demotic law,* In: *A history of Ancient Near Eastern Law,* R. Westbrook, (ed.), Brill, Leiden-Boston, 819-862.

Nawrocka, A. (1995), *Religia i wróżbiarstwo w koncepcji Cycerona [Religion and divination in the concept of Cicero]*, Saeculum Christianum, 2: 7-21.

Nowicka, D., Nowicki, S. (2009), *Prawo boskie i prawo ludzkie. Sądownictwo starożytnego Izraela na tle praktyki mezopotamskiej [Divine law and human law. The judiciary of ancient Israel against the backdrop of Mesopotamian practice]*, Scripta Biblica et Orientalia, 1: 149-161.

Papakonstantinou, Z. (2015), *Lawmaking and Adjudication in Archaic Greece*, Bloomsbury, London-New Dehli-New York-Sydney.

Parker, R. (2005), *Law and Religion,* In: *The Cambridge Companion to Ancient Greek Law*, M. Gagarin, D. Cohen, (eds.), Cambridge University Press, Cambridge, 61-81.

Prochwicz-Studnicka, B. (2013), *Usul al-fiqh. Czym są klasyczne sunnickie „korzenie/podstawy wiedzy o prawie"? [Remove al-fiqh. What are the classic Sunni 'roots/foundations of law'?]*, Czasopismo Prawno-Historyczne, 1: 11-48.

Prochwicz-Studnicka, B., Michta, D. (2010), *Rzymska aequitas a muułmański istihsan [Roman aequitas and Muslim istihsan]*, Czasopismo Prawno-Historyczne, 2: 281-291.

Olis, R. (1979), *Introduzione allo studio del diritto private romano [Introduction to the study of Roman private law]*, Università Gregoriana Editore, Roma.

*The Oxford International Encyclopedia of Legal History, (*2009), S.N. Katz, (ed.), Oxford University Press, Oxford.

Rominkiewicz, J. (2004), *Logografowie ateńscy [Athenian logographers],* In: *Studia Historycznoprawne*, A. Konieczny, (ed.), Acta Univeristatis Wratisliaviensis. Prawo, 290: 7-23.

Rozwadowski, W. (2003), *Nauczanie prawa w państwie rzymskim [The teaching of law in the Roman state],* Czasopismo Prawno-Historyczne, 1: 9-28.

Sadowski, M. (2003), *Powstanie i rozwój islamskiej doktryny prawa (VII – IX w.) [The rise and development of the Islamic doctrine of law (7th–9th centuries)],* Przegląd Prawa i Administracji, 55: 3-31.

Sadowski, P. (2019), *Szkoła prawa w rzymskim i bizantyńskim Bejrucie. Studium prawno-historyczne [Law school in Roman and Byzantine Beirut. Legal and historical study]*, Wydawnictwo Uniwersytetu Opolskiego, Opole.

*Sharia and National Law*, (2010), J.M. Otto, (ed.), The American University in Cairo Press, Cairo.

Sienkiewicz, E. (2019), *Religijne czy świeckie (polityczne) pochodzenie prawa w Mezopotamii (?) [Religious or secular (political) origin of law in Mesopotamia (?)]*, Studia Koszalińsko-Kołobrzeskie, 26: 347-363.

Sitek, B. (2001), *O prawnych aspektach listu św. Pawła do Rzymian [On the legal aspects of St. Paul to the Romans],* In: E. Gajda, A. Sokala, (eds.), *Honeste vivere. Księga pamiątkowa ku czci Profesora Władysława Bojarskiego [Honest vivere. Commemorative book in honor of Professor Władysław Bojarski]*, Wydawnictwo Uniwersytetu Mikołaja Kopernika, Toruń, 195-211.

Sójka-Zielińska, K. (2015), *Historia prawa [History of law]*, Wydawnictwo LexisNexis, Warszawa.

Stolarczyk, M. (2015), *Iran. Państwo i religia [Iran. State and religion]*, Dialog, Warszawa.

Talamanca, M., Capogrossi Colognesi L., Finazzi, G. (2013), *Elementi di diritto privato romano [Elements of Roman private law]*, Giuffré Editore, Milano.

Tarwacka, A. (2003), *O początkach prawa i wszystkich urzędów. 2 Tytuł 1 Księgi Digestów. Tekst – tłumaczenie – komentarz [On the origins of law and all offices. 2 Title 1 of the Book of Digests. Text - translation - commentary]*, Zeszyty Prawnicze UKSW, 1: 197-242.

Taubenschlag, R. (1969), *Rzymskie prawo prywatne [Roman private law]*, Państwowe Wydawnictwo Naukowe, Warszawa.

Taubenschlag, R. (1955)*, Rzymskie prawo prywatne na tle praw antycznych [Roman private law against the background of ancient*

*laws]*, Państwowe Wydawnictwo Naukowe, Warszawa.

Tellegen-Couperus, O., Tellegen, J.W. (2013), *Artes Urbanae: Roman Law and Rhetoric,* In: *New Frontiers. Law and Society in the Roman World*, P.J. de Plessis, (ed.), Edinburgh University Press, Edinburgh, 31-49.

Voegelin, E. (2014), *Izrael i objawienie [Israel and Revelation]*, Teologia Polityczna, Warszawa.

Voegelin, E. (2015), *Platon*, Teologia Polityczna, Warszawa.

Voegelin, E. (2013), *Świat polis [The world of polis]*, Teologia Polityczna, Warszawa.

Westbrook, R. (2003), *Introduction. The Character of Ancient Near East Law,* In: *A History of Ancient Near East Law*, R. Westbrook, (ed.), Brill, Leiden-Boston, 1-88.

Wolff, H.J. (1975), *Greek Legal History—Its Functions and Potentialities*, Washington University Law Review, 2: 395-408.

Wołodkiewicz, W. (2003), *Ius et lex w rzymskiej tradycji prawnej [Ius et lex in the Roman legal tradition],* In: W. Wołodkiewicz, *Czy prawo rzymskie przestało istnieć [Has Roman law ceased to exist?]*, Zakamycze, Kraków.

Wołodkiewicz, W. (1994), *Greckie wpływy na powstanie Ustawy XII Tablic [Greek influences on the creation of the Law of the Twelve Tables]*, Prawo Kanoniczne, 3-4: 39-45.

Wołodkiewicz, W., Zabłocka, M. (2014), *Prawo rzymskie. Instytucje [Roman law. Institutions]*, Wydawnictwo C.H. Beck 2014

Zabłocka, M. (2010), *Kilka uwag o mniej znanych „wartościach" prawa rzymskiego [A few remarks on the lesser-known „values" of Roman law],* In: *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin [Two books on the law and its history. Studies offered to Professor Adam Lityński on the 45th anniversary of his scientific work and the 70th anniversary of his birth]*, Wydawnictwo Uniwersytetu w Białymstoku, Białystok-Katowice, 123-135.

Zabłocka, M. (2004), *U źródeł współczesnego prawodawstwa [At the source of modern legislation],* In: *Z dziejów kultury prawnej. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w dziewięćdziesięciolecie urodzin [From the history of legal culture. Studies offered to Professor Juliusz Bardach on his ninetieth birthday]*, Wydawnictwo Liber, Warszawa, 71-84.

Zabłocka, M., Zabłocki, J. (2000), *Ustawa XII Tablic*, *Tekst -tłumaczenie -objaśnienia [Act of the Twelve Tables, Text - translation - explanations],* Wydawnictwo Liber, Warszawa.

Ziółkowski, A. (2008), *Historia Rzymu [History of Rome]*, Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauk, Poznań.

Zweigert, K., Kötz, H. (1998), *An Introduction to Comparative Law*, Oxford University Press, Oxford.

**Jędrzej Maksymilian KONDEK** is associate professor and director of the Institute of Law Studies at the University of Justice, PL.
**ORCID ID:** 0000-0001-6663-9411