

## SYNERGY OF THE LAW SYSTEMS AS FOUNDATION FOR THE FUTURE OF EUROPE

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**Summary.** The referendum of May 2016 in the UK and the strengthening of a group of eurosceptics and nationalists in many European countries raises questions about the future of Europe and the European Union. The law is one of the areas of European integration. Already since the 70s of the twentieth century, the discussion about whether it should be unification or just the synergy of existing legal systems was undertaken. Eventually, the second concept won. The undoubted influence on this was made by the history of law, particularly the Roman law and medieval *ius commune*. At that time, the legal systems based on multiculturalism of law were created. Currently, there is the importance of a study conducted by comparative scholars developing various legal problems. They tend to build the foundations for the process of synergy of European law.

**Key words:** comparative law, European legal culture, Roman law, private law, synergy of law

### 1. INTRODUCTION

The term Europe is primarily a term belongs to a geographical language and it means one of the seven continents. It stretches from the Urals to the Atlantic Ocean. Certain disputes concern the determination of the boundary line in the Caucasus Mountains, which according to some belong to our continent, according to others to Asia.

But it is not geographical issues that is the biggest problem with the definition of what Europe is. It is much more difficult to clarify its cultural significance. In this area, there is the most issues to be discussed. From a political point of view, today's Europe is divided into a block of countries belonging to the European Union and militarily strong Russia and a group of states to some extent independent. It should be pointed here to Norway, the Balkan countries and the post-soviet countries (Ukraine and Belarus). There is also one neutral state – Switzerland. From the religious point of view, the Christianity is the largest religion on the European continent – approx. 70-75%, then, there is Islam – approx. 7% and next, there are Judaism and other religions. Approximately 18% of Europeans do not declare affiliation to any religion. These data show that Europe is a multicultural continent.

A legal system is an important element of the cultural identity of the state or of the nation. It reflects the value system, the religion, the way of organizing the state and even the climate. From this point of view, you can see quite a large variety of legal systems in Europe, and even in the European Union itself. It is generally accepted that there are: a system of continental law based on Roman law and the Anglo-Saxon legal system, which is applicable in the UK. In addition to these two systems, there are clearly isolated system of Scandinavian law, developed very well by S. Sagan and his research group<sup>1</sup>, the system of Russian law, which still has its influence in Ukraine and Belarus. Furthermore, there can still find some remnants of socialist law in the countries belonging before 1990 to the so-called socialistic bloc. In Scotland, there is the mixed system, which is a combination of Anglo-Saxon legal system with the continental law built on the foundations of Roman law. Also in the area of private law, typical to the continental law system, it should be noted the existing, clearly separate subsystems such as: the French law (*code civil des Français* of 1804), the German law (*Bürgerliche Gesetzbuch* of 1896), the Austrian law (*Allgemeine Bürgerliche Gesetzbuch* of 1811), the Italian law (*codice civile* of 1942) and the Spanish law (*código civil* of 1889).

In this perspective, it is difficult to speak about the cultural unity in Europe, in any cultural area, including in the area of law. We should rather talk about the multiculturalism of the legal systems. This multiculturalism can be for some a nuisance and an obstacle to the unification of Europe and for other, it may be the added value-which allows to build European unity thanks to multiculturalism understood as an essential feature specific to Europe.

The object of this study is to show the diversity of the legal heritage of the past with the implementation of the conclusions for the present and for the future of our Continent. The unity through the diversity of legal systems has been built in the past, among others, in ancient Rome and in the Middle Ages. Hence, these two systems will be presented in the following paragraphs. In the last point of this study, a possible solution for the future of European integration in the field of law will be shown. The aim of the study is to show possible ways of creating a new system of European law, of which the majority of the inhabitants of our continent will identify with. This objective is even more important now when the diversity of legal systems is often quite negatively evaluated and it is perceived as a factor inhibiting European integration.

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<sup>1</sup> See: S. Sagan, V. Serzhanova, D. Wapińska, *Historyczne akty ustrojowe i obowiązująca konstytucja Norwegii*, "Studia Prawnicze KUL" 2 (2013), pp. 59–69.

## 2. ROMAN LAW AS A PRODUCT OF UNIFICATION

After F. Wieacker<sup>2</sup>, H. Kupiszewski<sup>3</sup> and other Roman law scholars<sup>4</sup>, there is commonly repeated view that the Roman law, alongside with the Christianity and Greek philosophy, is one of the three foundations of European culture. The provisions of Roman law are cited by the modern politicians<sup>5</sup> or judges in the justifications for the decisions. In fiction literature, you can even meet with cases where the symbolism of perfection or human law are given to the Roman law<sup>6</sup>.

What, then, the Roman law is all about? For a passive observer, and even for lawyers – positivists, the Roman law is archaic legal system associated with the Roman state and some solutions may be useful for understanding or for the justification of contemporary and modern legal structures. Sometimes, the fragments of Roman law are cited in the discussion about the ethical issues such as euthanasia, abortion and homosexuality. The texts cited by proponents and opponents of various social phenomena, taken out of context and without understanding the historical process of their formation, lead to misconceptions, including the uselessness of Roman law.

Undoubtedly, the Roman law is a system of law that was in force during the period of state of ancient Rome, which is since the founding of the city in 754 BC to the end of the reign of the Emperor Justinian in 565 AC. The system underwent various stages of development, rightly considered by T. Giaro as the stages of evolution<sup>7</sup>. Furthermore, the Roman law, which today seems to be a single set of laws, in fact, it was established on the basis of merging together several different legal systems, or perhaps more accurately, the mass of legal systems. The best known are the two masses of the Roman law, it

<sup>2</sup> See: F. Wieacker, *Privatrechtsgeschichte der Neuzeit: unter besonderer Berücksichtigung der deutschen Entwicklung*, Vandenhoeck & Ruprecht, Göttingen 1967, pp. 26 and following.

<sup>3</sup> See: H. Kupiszewski, *Prawo rzymskie a współczesność*, Państwowe Wydawnictwo Naukowe, Warszawa 1988, pp. 16 and following.

<sup>4</sup> See: P. Koschaker, *Europa und das römisches Recht*, Verlag C.H. Beck, München 1953, pp. 2 and following; Ch. Dawson, *The making of Europe: An introduction to the history of European unity*, The Catholic University of America Press, Washington 1932, p. 32.

<sup>5</sup> The overview of cases when Polish politicians talked about the Roman Law was made by: W. Wołodkiewicz, "Prawo rzymskie" w wypowiedziach polskich parlamentarzystów, in: Idem, *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*, Woltres Kluwer business, Warszawa 2009, pp. 121–137.

<sup>6</sup> Among the writers, we should mention: L. Aragona and M. Jastruna. See: M. Kuryłowicz, *Symbol prawa ludzkiego. Szkice o prawie rzymskim w utworach Louisa Aragona i Mieczysława Jastruna*, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, Lublin 2008.

<sup>7</sup> See: T. Giaro, *Historia i tradycja prawa rzymskiego*, in: W. Dajczak, T. Giaro, F. Longchamps de Berier, *Prawo rzymskie. U podstaw prawa prywatnego*, Wydawnictwo Naukowe PWN, Warszawa 2009, p. 39.

means: *ius civile* – the former law of Quirites, ancient Roman citizens and the *ius gentium*, understood as the law, which is used by all nations<sup>8</sup>.

On the other hand, in the framework of *ius civile*, there were developed sets of rules of law created by the demotic assemblies (*leges*), plebeian assembly (*plebiscite*), those *magistratus* who had *ius edicendi* (*ius honorarium*), *prudentes*, the Senate (*senatusconsulta*) and by the emperors (*leges*)<sup>9</sup>. The largest contribution to the process of welding different laws into one set was made by the Roman lawyers by applying the principles of interpretation<sup>10</sup> and by the Urban Praetor (*praetor Urbanus*) by the so-called praetor edict, by which the older provisions could be supplemented, corrected or the new solutions for the existence of loopholes in the law could be provided<sup>11</sup>.

The individual groups of legal provisions did not arise at the same time. During the Republican period of time and in the early principate time, *ius civile*, *ius gentium*, *ius honorarium* and achievements of Roman jurisprudence<sup>12</sup> was the most important. The resolution of the Senate was less important that time. From III century AC, this legal heritage was being described as *ius vetus* – it means older law. This term was a reflection of the facts, namely of the dominance of imperial law, known as *ius novum*<sup>13</sup>.

To understand the process of creating a uniform system of Roman law, it should be noted that there was not enough developed technology of legislative, which would compel the individual bodies to agree new legislation to earlier, nor there was the constitution, and thus the concept of compliance with it all acts<sup>14</sup>. This situation is even more complicated by the fact that the Roman law was not applied the derogation of the earlier legal provisions. The rule was rather that the former law fell into oblivion – *desuetudo*.

<sup>8</sup> G. 1.1: “[...] Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile [...]”.

<sup>9</sup> Such a catalogue of sources of Roman law in the middle of the II century AC was given by Gaius, 1.2: “Constant autem iura populi Romani ex legibus, plebiscitis, senatus consultis, constitutionibus principum, edictis eorum, qui ius edicendi habent, responsis prudentium”.

<sup>10</sup> See: J. Williams, *Interpretation in Roman Law*, “Law Magazine and Law Review” 5th ser., 15 (1889), p. 223.

<sup>11</sup> D. 1.1.7.1 (Papin. l. sec. definit.): “Ius praetorium est, quod praetores introduxerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam. Quod et honorarium dicitur ad honorem praetorum sic nominatum”.

<sup>12</sup> See: W. Litewski, *Jurisprudencja rzymska*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2000, pp. 45 and following.

<sup>13</sup> H. Kupiszewski, *Prawo rzymskie*, p. 22–23; M. Bretoni, *Tecniche e ideologie dei giuristi romani*, Edizioni Scientifiche Italiane, Napoli 1984, pp. 34 and following.

<sup>14</sup> In Poland, the law-making techniques are governed by the legal rules. Currently, it is the Regulation of the Prime Ministers of 5th November 2015 amending the Regulation on “Principles of Legislative Technique” (“Journal of Laws” of 2015, item 1812). This Regulation entered into force on 1 March 2016.

The works of anastomosis of different sets of legal provisions was completed by Justinian. Before that, they began to collect the current legal provisions. As a result, there were some private collections, for example: *Fragmenta Vaticana*, the Gregorian Code and its complement – the Hermogenian Code and the official collections such as the Theodosian Code of 438. The work aimed to organize the Roman law, undertaken since III century, did not bring the expected effect. Justinian in the constitution *Deo auctore* 1 stated that the legislation is confusing and exceeds the capacity of human understanding<sup>15</sup>. Hence, he appointed a committee composed of practitioners and professors of contemporary universities in Beirut and Constantinople. The members of the commission were called the compilers. The commission was equipped with very wide powers to interfere in the preserved text, including its change for practice<sup>16</sup>. The result of the work of compilers were the Justinian Code of 529 containing the constitutions of the Emperor, ranging from the constitution issued by the Emperor Hadrian, Digest (529) which is a collection of fragments of the classical period lawyers' texts useful for the practice of law and the Institutions (530) – a textbook for law students of the first year of law.

In the Romance doctrine, there was the concept of timelessness of the Roman law. W. Dajczak indicates that timeless are primarily those principles which have been discovered and developed in the legal practice of ancient Rome. Thus, today, there are some reference to those principles *expressis verbis* or *implicite* in different jurisdictions. They are considered to be still valid. The rules of Roman law were even located on the columns surrounding the Supreme Court in Warsaw<sup>17</sup>. According to W. Dajczak, the timelessness of these principles stems from subordination of *rationes decidendi* to the nature of material objects which are original to terms of positive law, and to values building a community<sup>18</sup>. I think that we should also add here the connection, by Romans, especially by *prudentes*, of the specific legal provisions with the rules of economics, which by their nature are timeless and independent from.

Today, the researchers search for the elements of Roman law, mainly in civil or perhaps more broadly, in private law, broadly understood, thanks to

<sup>15</sup> Cont. Deo auctore 1: "[...] omnem legum tramitem, qui ab urbe Roma condita et Romuleis descendit temporibus, ita esse confusum, ut in infinitum extendatur et nullius humanae naturae capacitate concludatur [...]".

<sup>16</sup> See: B. Sitek, *Założenia metodologiczne pracy kompilatorów Justyniańskich*, in: *Justynian i prawo rzymskie. Refleksje w 1450. rocznicę śmierci cesarza*, ed. K. Szczygalski, Wydawnictwo Prymat Mariusz Śliwowski, Białystok 2015, pp. 15–32.

<sup>17</sup> The selection of legal rules and their elaboration was made by W. Wołodkiewicz (ed.), *Regulae iuris. Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej*, Wydawnictwo C.H. Beck, Warszawa 2006.

<sup>18</sup> W. Dajczak, *Problem "ponadczasowości" zasad prawa rzymskiego. Uwagi w dyskusji o "nowej europejskiej kulturze prawnej"*, „Zeszyty Prawnicze UKSW” 5.2 (2005), p. 14.

the above-mentioned *regulae iuris*<sup>19</sup>. But some similarities to Roman law can also be found in public law, for example in the electoral law, in the municipal law, in the urban system, as well as in the canon law<sup>20</sup>. Some researchers look even for some inspiration for modern solutions in the criminal law derived from Roman law<sup>21</sup>.

### 3. *IUS COMMUNE* AS AN ELEMENT OF THE INTEGRATION OF EUROPE

The medieval period, in historiography, is presented differently, depending on the assumed a priori system of values, ideological assumptions and beliefs of the researcher. Thus, for some, it is a time of backwardness, burning piles and massive abuse of popes and bishops. There is even a term “Dark Ages” which is used in order to describe the Middle Ages. For others, it was a time of slow rebirth of Europe after the fall of the Western Empire in 475 and after the invasions of barbarian peoples. Regardless of these views, it must be assumed that the Middle Ages, it was time to create a new legal system based on the Roman law, the Christian teachings and based on the numerous customs. We can even assume, after H.J. Berman, that the Middle Ages were a time of revolution in the formation of Western legal tradition<sup>22</sup>.

In the first period of the Middle Ages, since X century, Europe slowly rebuild their administrative and state structures with the two main centres concentrated around the Franconian and Germanic culture. The construction of a new socio-political system – feudalism and that had an impact on certain legal solutions. The increase of interest in law in the Middle Ages was connected with the finding in the twelfth century, in the library of the cathedral in Pisa of the manuscript of the Digest, originating VI century and with the publication of Decree of Gratian in 1141<sup>23</sup>. Both of these collections initiated quite

<sup>19</sup> See: M. Bretone, *Diritto e tempo nella tradizione europea*, Laterza, Bari 1994. Also Polish scholars of Roman Law search for the traces of Roman law in the public law, see among others: B. Sitek, P. Krajewski (eds.), *Rzymskie prawo publiczne*, Uniwersytet Warmińsko-Mazurski w Olsztynie, Olsztyn 2006; J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie*, Liber, Warszawa 2011.

<sup>20</sup> See: A. Dębiński, *Kościół i prawo rzymskie*, Wydawnictwo KUL, Lublin 2007, pp. 113 and following.

<sup>21</sup> See: P. Palka, *Sprzedajne nadużycie funkcji publicznej. Studium z prawa karnego*, Uniwersytet Warmińsko-Mazurski w Olsztynie, Olsztyn 2011, pp. 77–97.

<sup>22</sup> See: H.J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition*, Harvard University Press, Cambridge 1985.

<sup>23</sup> See: K. Burczak, *Sacrilegium w “Dekrecie” Gracjana*, Wydawnictwo KUL, Lublin 2010, pp. 17–24; I. Subera, *Historia źródeł i nauki prawa kanonicznego*, Akademia Teologii Katolickiej, Warszawa 1977, p. 84; W.M. Ploch, *Storia del diritto canonico*, vol. II: *Il diritto canonico nella civiltà occidentale 1055-1517*, Massimo, Milano 1963, pp. 441 and following.

intense research on the Roman law and the canon law. In the mainstream of research on Roman law, in the twelfth and thirteenth centuries, the Glossator School was established. They were explaining the meaning of the old Latin legal terms, not necessarily understood by those skilled in Medieval Latin<sup>24</sup>.

Developing trade and the craftsmanship caused that they had to have at their disposal some written law, and this could be only the Roman law. Thus, at the end of the thirteenth century, the School of Commentators was established who have dealt with alignment of the law to the needs of contemporary economics. The comments were main form of work of law.

According to T. Giaro, the Roman law was not uniformly assimilated across Europe. This author wrote that the reception was fully carried out only in Germany. Quite a big influence the Roman law had on the legal system of medieval France. Rather weak impact of Roman law was recorded in England and Eastern Europe, especially in Poland<sup>25</sup>, where the nobility thought that Roman law could strengthen the royal authority<sup>26</sup>. Still, the Roman law through the provisions of canon law was getting to the different legal regulations. As a result, according to P. Grossi, in medieval Europe, there were different legal systems, which formed a unity<sup>27</sup>.

The textbooks teach that the medieval law which was also called the feudal law, was largely based on the common, unwritten law and that law enjoyed seriousness and appreciation analogous to the written law (*opinio necessitatis*). The common law became the basis of the emerging national legal traditions. Despite the significant differences, there were also many similarities between them. It was also the beginning of the move away from the principle of the personality of the law for the principle of territoriality of the law. This rule was already in force in Europe at the end of the thirteenth century<sup>28</sup>.

In this way, the era of the Middle Ages had three masses of norms – the customary law, the Roman law and the canon law, which infiltrated each other. In this way, *ius commune* of the Middle Ages was formed, which was varied, but at the same time it contained common features and similarities. The interpretation was the cohesive instrument of the whole system of law in medieval Europe. According to P. Grossi, already in the late Middle Ages, the creation

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<sup>24</sup> See: P.G. Stein, *Römisches Recht und Europa: Die Geschichte einer Rechtskultur*, Fischer, Frankfurt am Main 1997, pp. 117 and following.

<sup>25</sup> T. Giaro, *Introduction to the Subject of the Conferences: the Role and Significance of Roman Law in the Legal History of Europe*, in: *Roman Law and European Legal Culture*, eds. A. Dęboński, M. Jońca, Wydawnictwo KUL, Lublin 2008, p. 18.

<sup>26</sup> See: J. Reszczyński, *Sądownictwo i proces w kodyfikacji Macieja Śliwnickiego z 1523 roku. O wpływach prawa rzymskiego i praw obcych na myśl prawną polskiego Odrodzenia*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2007.

<sup>27</sup> P. Grossi, *L'ordine giuridico medioevale*, Laterza, Bari 2011, pp. 223 and following.

<sup>28</sup> See: B. Lesiński, W. Rozwadowski, *Historia prawa*, Państwowe Wydawnictwo Naukowe, Warszawa–Poznań 1985, pp. 204–205.

of the law throughout Europe and its interpretation took place in the context of a common legal culture for the majority of European regions. The evidence of this was in the use of similar legal terms, despite the existence of diversity and particularities. Moreover, the characteristic of this culture was appealing to rational arguments. Hence, there were also particular solutions next to the solution of a general nature<sup>29</sup>. However, *ius commune* was used more as the doctrine than as the law applicable before the courts in different countries of Europe<sup>30</sup>.

#### 4. LAW AS AN ELEMENT OF THE INTEGRATION OF EUROPE *IUS COMMUNE EUROPÆUM*

A very cursory analysis of the process of formation and functioning of the two legal systems, namely: the Roman law and *ius commune*, shows that in fact, in those times, there was no legal monoculture. It should also be noted that even today, in Europe, there is a multiplicity of legal cultures. And this is not only in terms of the division of Europe into the European Union and the rest of the continent. But within the European Union, there is a fairly wide variety of legal systems. Increasingly expanding European integration, slowly also includes the legal systems.

Within the European Union, we can point out to certain areas which are already harmonized, for example: the consumer protection, the areas partially organized, for example: the anti-monopoly law and the areas of law requiring to be organized and harmonized, for example: the criminal law. Besides, the European Union has been interested in the integration of the legal systems of the Member States, especially in the area of private law for a long time. On 11 July 2001, the Commission of the European Communities issued the Communication to the Council and the European Parliament on European Contract Law (COM (2001) 398 of 11.7.2001), the purpose of which was to launch a public consultation on the problems arising from differences between contract laws of the Member States and possible actions in this regard. Then, in 2003, the Commission has developed an action plan (COM (2003) 68 of 12.2.2003), which proposed enhancing the quality and coherence of European contract law. The instrument to achieve this goal was to develop a Common Frame of Reference (CFR) – it means the development of the common rules, uniform terminology and uniform patterns regulations. In its Communication of 11 October 2004 – *European Contract Law and the revision of the acquis: the way forward*, the Commission proposed to remove inconsistencies and fill

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<sup>29</sup> See: P. Grossi, *L'ordine giuridico*, p. 232.

<sup>30</sup> See: T. Giaro, *Roman law*, p. 18.

regulatory gaps in the area of contract law between a trader and a consumer (COM (2004) 651)<sup>31</sup>.

At the end of 2008, the Study Group on a European Civil Code, under the direction of Ch. v Bar, released a draft of common frame of reference (Draft Common Frame of Reference – DCFR)<sup>32</sup>, which included the principles, definitions and model regulations of the European civil law. Proposed solutions refer to both – the commercial agreements and the contracts concluded between the trader and the consumer.

In 2010, the European Commission issued the Green Paper on policy options for progress towards a European Contract Law for consumers and businesses (COM (2010) 348 of 1.7.2010). In this document, the Commission presented the state of work on the unification of the European legal space, and outlined the new challenges faced by the emerging common market. I remember myself, when in the spring of 2011, the Faculty of Law at the University of Warmia and Mazury in Olsztyn, where I was its dean, hosted professor Christian von Bar who was convinced that at the summit in Warsaw, which was held on September 2011, the European Union leaders adopt his project of the Civil Code as applicable throughout the European Union. But it did not happen. Thus, rather, the concept of implementation in the European Union of uniform regulations, especially in the form of codes, was rejected. Therefore, it is worthy to ask – what will the future of the European integration process of law be look like? This question is particularly appropriate in view of Brexit and the growing strength of the Eurosceptics, populists and nationalists.

After the last enlargement, the European Union has currently 28 Member States. The Union's territory includes the area traditionally belonging to the so-called Western Europe and Eastern Europe or how it is claimed by many – Central Europe. So far, the United Kingdom still remains a member of the Community until it completes the process of exit. This summary of the Member States shows that there is a huge diversity in the European Union also in terms of the existing legal systems, including the dogmatist being an important element in any legal culture. Moreover, one cannot fail to notice the influence of Anglo-Saxon law on the European Union legislation, which also determined the departure from the idea of a European code of civil law.

The political decisions of the leaders of the European Union, especially after the referendum of May 2016 in Great Britain, which determined the beginning of the process of leaving the Union by this and the views voiced by the scientific community and the individual countries judges' opinions show

<sup>31</sup> See: B. Sitek, *Unifikować czy synchronizować prawo w Europie? Studium przypadku od prawa rzymskiego do prawa europejskiego*, "Journal of Modern Science" 2 (29) 2016, p. 114.

<sup>32</sup> See: C. von Bar, H. Schulte Nölke (eds.), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)*, Sellier, European Law Publisher, München 2009.

that we should not expect to create a new common codified law. Each Member State, therefore, remains within its own legal culture. However, there is consensus, that thanks to the initiative of the bodies of the EU and based on the implementation of solutions and the development of common rules for the interpretation of the law, it could lead to synergy between these systems. This process, maybe, is not analogous but undoubtedly, it is similar to the one that took place in ancient Rome and in the Middle Ages. Even today, one can point out to a number of areas of more or less uniform legislations. These areas: the antitrust law, the consumer law, the company law and the customs law<sup>33</sup>.

The progresses of integration within private law are going, so far, quite poorly. It is the area of legislation which is heavily explored by comparative lawyers, who in this area see element playing a decisive role in the synergy of legal systems. The numerous examples of comparative research can point out, there are among others: the researches on non-contractual damage<sup>34</sup>, on the concept of things<sup>35</sup>, the ways to transfer ownership<sup>36</sup>, the delay<sup>37</sup> and other problems. In this way, the new, transnational group of lawyers is born, who form the foundation for a new description of the new law and its systematization<sup>38</sup>.

One might have hoped that the work carried out by the comparative scholars, especially in the area of private law, finally gives the Union, and perhaps Europe the integrated system of law which will respect the heritage of the different legal systems and at the same time be accepted by the majority of European Union's citizens. It does not have to be a modern, coherent and logical model but it should be a practical model and it should be accepted, without leaving the feeling that someone is left outside the system or that someone is humiliated.

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<sup>33</sup> A quite broad development of the foundations of European legal culture, on base of which the new system of law in Europe is built can be pointed out. See: G. Lucchetti, A. Petrucii, *Fondamenti romanistici del diritto europeo. Le obbligazioni e i contratti dalle radici romane al Draft Common Frame of Reference*, vol. I, Pàtron Boglona 2010, pp. 29 and following.

<sup>34</sup> See: M.F. Cursi, *Dalla tipicità della tutela del danno extracontrattuale alle clausole generali di responsabilità*, in: *Fondamenti del diritto europeo. Seminari trentini*, ed. G. Santucci, Jovene, Napoli 2012, pp. 5–91.

<sup>35</sup> See: W. Dajczak, *Il concetto di cosa nel diritto privato. La tradizione romanistica e il problema dell'oggetti della proprietà*, in: *Fondamenti del diritto europeo*, pp. 93–112.

<sup>36</sup> See: P. Groschler, *I modelli di trasferimento della proprietà dal diritto romano al diritto moderno*, in: *Fondamenti del diritto europeo*, pp. 181–200.

<sup>37</sup> See: P. Pichonnaz, *Mora e interpellatio nello sviluppo del diritto privato in Europa*, in: *Fondamenti del diritto europeo*, pp. 201–222.

<sup>38</sup> In the doctrine, we can find out the views about the crisis of the modern doctrine caused, among others, by the exhaustion of research areas and by quickly occurring political changes. The comparative studies are a chance of recovering from this crisis. See: M. von Hoecke, F. Ost, *Legal doctrine in crisis: towards a European legal science*, "Legal Studies" 18.2 (1998), pp. 197–215.

## 5. CONCLUSION

After the referendum of May 2016, the question about the future of the European Union and Europe itself is asked by many people. The history of our continent shows that Europe was always multicultural, also in the area of law. Existing, in the past history, particularly in ancient Rome and in the middle ages, however, did not prevent to create a unified legal culture, which has become a foundation of the modern European legal culture.

Since longer time, within the framework of European Union, the efforts to create a new legal system have been undertaken. Within the various proposals, the project of the European Civil Code prepared by the study group led by prof. Ch. von Bar is worth noting. This concept, however, has not found support among European politicians, nor in the wider group of lawyers who are linked to the more traditional legal culture.

In this perspective, the attention, therefore, should be paid to the studies prepared by comparative scholars who develop various legal issues showing their similarities and differences. In this way, they prepare the field for the process of intensified synergy of existing legal systems in the Union, and perhaps in entire Europe. Thus, the legal system of the future of Europe will not be built *ex nihilo*, but it will flow from the legal traditions and cultures dating back to its roots in the times of ancient Rome and the Middle Ages.

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SYNERGIA SYSTEMÓW PRAWA  
FUNDAMENTEM PRZYSZŁEJ EUROPY

**Streszczenie.** Referendum majowe z 2016 r. w Wielkiej Brytanii oraz wzmocnienie się grupy eurosceptyków i narodowców w wielu państwach europejskich rodzi pytanie o przyszłość Europy i Unii Europejskiej. Jednym z obszarów integracji europejskiej jest prawo. Już od lat 70-tych XX w. podejmowana była dyskusja nad tym, czy ma to być unifikacja czy tylko synergia istniejących systemów prawnych. Ostatecznie zwyciężyła ta druga koncepcja. Niewątpliwie wpływ na to ma historia prawa, zwłaszcza prawa rzymskiego i średniowiecznego *ius commune*. Wówczas to stworzone zostały systemy prawne w oparciu o wielokulturowość prawa. Obecnie duże znaczenie mają badania prowadzone przez komparatystów opracowujących poszczególne problemy prawne. Zmierzają tym samym do zbudowania fundamentów pod proces synergii prawa europejskiego.

**Słowa kluczowe:** prawo porównawcze, europejska kultura prawna, prawo rzymskie, prawo prywatne, synergia prawa

