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“HUMAN RIGHTS IN FOCUS”

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THE ROMAN CONCEPT OF THE RIGHTS OF THE MAN OBSERVED THROUGH THE PRISM OF CONTEMPORARY HUMAN RIGHTS

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*„Humani vero iuris conditio semper in infinitum
decurrit et nihil est in eo, quod stare perpetuo possit”
Human rights are constantly and continuously changing, so there
is nothing in them that could endure permanently. (C.J. 1,17,2,18)¹*

Abstract: The subject of this paper is a comparative presentation of basic civil and human rights in the long period of the Roman Empire, throughout different eras of duration. The goal of the research is to analyze legal, historical and scientific texts, and by using analytical, deductive, comparative and historical scientific methods, to determine whether the civil rights of some layers of society in ancient Rome, from different periods of the development of the Roman state, influenced the emergence and interpretation of the modern term and the concept of human rights. From Roman citizens (cives), and a wide range of associated rights, through other classes of free society (peregrines, clients and Latins), all the way to slaves, in the sense of “things that speak” (Instrumentum vocale), and not human beings, Roman law defined the social status of its citizens and determined their position on the social ladder. In the paper, the authors will try to find the correlation and origins of the rights of the men defined in the ancient period and human rights created

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¹ Stojčević, D., & Romac, A., (1971). *Dicta et regulae iuris*, Beograd, Savremena administracija. p. 169

after the Second World War, defined in the General Declaration on Human Rights adopted by the United Nations General Assembly in 1948. Defining and protecting basic human rights is an “eternal topic” that, due to the danger of abuse and misinterpretation, deserves to determine the origin and roots of such an important issue.

Keywords: human rights, Roman law, slaves, right to life, right to freedom

1. Introduction

The history of human civilization can be viewed from different perspectives and presented through the evolution and comparison of various parameters. One of these aspects is certainly human rights, whose development has progressed in parallel with the development of the awareness of the human being as an individual, a subject of rights and obligations, a social being, *zoom politikon* as defined by ancient philosophers. Modern legal theory holds that: “human rights are considered guarantee rights of an individual to protection from the state, rights that belong to them based on their existence as a human being, rights that remain enforceable in any case and that the state can not restrict” (Kurtović, 2015:236). The roots of contemporary understanding of human rights can be found in ancient law and philosophy. Keeping in mind the Roman’s tendency to adopt knowledge, skills and innovations from other people, the questions arise regarding the substantive relationships between Greek philanthropy (Gr. *Philantrophia*) and Latin humanity (Lat. *Humanitas*), and whether humanity is merely reception and result of philanthropy (Bauman, 212:6), laying the foundation for modern understanding of human rights and fundamental freedom. Setting aside the views of Greek philosophers, the root and origin of the modern understanding of fundamental human rights may need to be sought in social differentiation and classes during different periods of the development of the Roman state. From free Roman citizens, with all the associated rights that today, in the XII century, belong to every human being through the centuries-long struggle of the disenfranchised up to the present day, one can observe the evolution the concept of inalienable rights belonging to each individual, upon which modern civilization rests

and which are *condition sine qua non* for any society that declares itself a democratic society of equals.

2. Social position and population differentiation in different periods of the Roman state

2.1. *The age of kings*

At the time of the founding of the city of Rome, the entire legal, as well as social structure, was based on different beliefs and convictions. On universal human rights in this period, which are today defined by the most important legal acts (constitutions, laws, declarations and conventions), we can discuss only conditionally, as primitive foundations and basis for the later emergence and development of ideas about human rights. In this period, the remnants of the tribal, gentile organization were still strong, so that the entire structure of government was inherited from the pre-state period: *rex* (king), assembly and senate. Society was in the so-called “military democracy”, tribal relations were slowly disappearing, classes were emerging, and slavery was in its infancy, marginalized and had a patriarchal form. In internal political life, the conflict between patricians and plebeians dominated.

Regarding social structure, in the era of kings, the most significant social difference existed between the free population and slaves. Patricians and plebeians fell into the category of free population, and besides slaves, patrons (from *pater* - father) and clients (from the verb *cluere* - to obey, to be obedient) crystallized as a social class. Their mutual relationship was marked by mutual rights and obligations, a relationship of protection, dependence and gratitude. Namely, patrons were the wealthier layer of the population who provided protection to clients, while clients showed them the highest possible degree of respect. The patron gave gifts of money and food to clients, represented them in court and protected them, while clients expressed their gratitude by cheering for the patron in public places, collecting ransom for the patron if he fell into debt slavery, and paying his fines. The position of a patron in society depended on the number of clients.

The difference between patricians and plebeians originated in the earliest period of Rome's history. Patricians belonged to the tribal organization and thus had many rights that were not available to plebeians: the right to participate in the assembly's work, participation in government, and the right to use common forests. Since both patricians and plebeians participated together in wars, after the war, the largest part of the spoils went to the patricians, although it was formally stipulated that they share the war spoils (Malenica, 1993: 10-11), which generated discontent among the plebs and was the cause of frequent rebellions by plebeians and the struggle to equalize their position with that of patricians, who were in a more favorable economic and political position.

Although plebeians were deprived of many rights, primarily political ones, they were certainly in a much more favorable position than slaves. Namely, a slave was considered the property of his owner, equated with things, but things that speak (Lat. *instrumentum vocale*). “Some people are subjects of law, and others are objects - slaves” (Šarkić, 2023: 12-13). Talking about any rights of slaves in this period of Roman kings is pointless. “The slave was in the unlimited power of the master, who had over them *ius vitae ac necis* - the right of life and death.” (Jocić, 1990:89).

Law in the era of kings was oral and customary, therefore unwritten. The first Roman law for which there are historical traces is the Law of the Twelve Tables. Although not preserved in its original form, the text of the tables has been reconstructed based on quotes from lawyers, orators, writers and grammarians, as well as interpretations of historians, legal literature and that which does not have a legal character. What is characteristic for this period is religion, to which the Romans throughout their long history attached great importance. Since the law was not written, it can be indirectly concluded that there were no universal rules or legal framework that would obligate all citizens who lived in Rome. Therefore, we can not talk about respect for human rights in this period of the development of the Roman state, however, a nucleus is emerging from which the foundations of modern democracy would be born and the law whose institutes we still use today would develop.

2.2. *The age of Republic*

Similar to the period of kings, the age of the republic is characterized by the existence of certain rights for specific categories of the population, but not the existence of human rights as we know them today. During this period of Roman history, from the city-state, *polis*, which Rome was initially, an empire emerged that dominated the Mediterranean. Patriarchal slavery transformed into classical slavery, and the closed domestic economy was replaced by a commodity-monetary economy. Slaves represented the main workforce on whose exploitation the economy of the entire state rested. The law, thanks to the work of assemblies and praetors, approached its peak, which it would reach in the next period, the Principate. After the Punic Wars, Rome became an empire that ruled the Apennine Peninsula, Egypt, the Balkan Peninsula, Greece, and Asia Minor.

The social structure during the republic was divided into four groups of the Roman population: Romans, Latins, peregrines, and slaves. Each of these social groups was heterogeneous, so within the circle of free Roman population (Lat. *cives Romani*) were: nobles (*nobilitas*, from Lat. *nobilis* - noble), members of the new aristocracy, born from the old, tribal aristocracy; equestrians (from Lat. *equus* - horse), a layer of wealthy citizens whose origin comes from patricians; plebeians (Lat. *plebs*, from *pleo* - multitude), part of the old Roman population, deprived in relation to patricians; and peasants as the poorest class. “The social strata of nobles and equestrians differ in that the power of nobles was based on tradition, while the power of equestrians rested on wealth that opened the way for them to the highest authority.” (Deretić, 2011: 476) The status of Roman citizenship carried particular privileges and rights. For Roman citizens, *ius civile* legal system applied, based on the most important and oldest Roman legal document – the Law of the Twelve Tables.” A Roman citizen had to meet certain conditions regarding three statuses (*tria capita*): *status libertatis* (to be free, not a slave), *status civitatis* (to have all the rights provided by *ius civile*, which initially did not belong to Latins and peregrines) and, finally, *status familiae* (to have a certain position in the family).” (Bujuklić, 2007: 199) Besides the listed ones, the status of Roman citizenship also carried other human rights such as: the right to trade (*ius commercii*), the right to

inherit, right to make contracts and finally, *ius conubii*, the right to marry, but exclusively with another Roman citizen during the Roman republic.

The struggle for greater rights and a better position in the period of the republic can best be seen through the struggle of plebeians and the aspiration to achieve the equality with patricians. From 421 BCE, plebeians were elected as quaestors; in 367 BCE, the *Lex Licinia de consaltu* was passed, according to which one of the consuls had to be a plebeian; two years later, in 365 BCE, plebeians became curule aediles; from 356 BCE, censors; from 351 BCE, dictators; and from 350 BCE, plebeians entered the Senate, on equal terms with patricians. From 337 BCE, plebeians became praetors, and the title of the highest priest (*pontifex maximus*) became available to them from 254 BCE. Based on the Hortensian law (*Lex Hortensia*) from 287 BCE, all decisions made by plebeian assemblies became generally binding for all Roman people, thus plebeians officially began to participate in legislative power. Perhaps the greatest significance in the process of equalizing patricians and plebeians was the enactment of the Canuleian law (*Lex Canuleia*) in 445 BCE. It abolished the prohibition, introduced by the Law of the Twelve Tables, which prevented the conclusion of marriage between patricians and plebeians. With the enactment of this law, plebeians also received *ius conubii*, or the right to conclude a valid marriage with patricians.

People close to the Romans, who inhabited neighboring Latium (*Latium Vetus*, old Latium) in the central part of Italy and nearby states, were colloquially called Latins. The position of the Latins was much better compared to other people who lived on the Apennine Peninsula, given their religious, linguistic, and customary closeness to the Romans. The causes of their dissatisfaction lay in the unequal distribution of war spoils, forbidden participation in government and political life, and generally worse position compared to Roman citizens. All this culminated in a rebellion, the so-called Social or Italian War (*Bellum Italicum*) (91-88 BCE). Although the war ended with the defeat of the rebellious people, Rome nevertheless accepted to fulfill the demands of its centuries-old allies and recognized Roman citizenship, which represents another one of the great steps in recognizing civil rights and freedom for the people who fought for them. Roman history, law, and literature remember many Latins who left their mark:

Cicero (*Marcus Tullius Cicero*), Virgil (*Publius Vergilius Maro*), Livy (*Titus Livius*), Horace (*Quintus Horatius Flaccus*), etc.

The population that inhabited the conquered provinces, the Romans called peregrines (*peregrinus*, from *per ager* - from across, from foreign land). One can not speak of an identical position and rights of all peregrines given that their position differed from province to province. With the increase in the number of conquered provinces, the role of peregrines in trade with Rome and other conquered provinces also grew. Since the old *ius civile* applied only to Roman citizens, there was a need for a new law that would regulate the position of non-Roman population, including peregrines. Thus was born *ius gentium*, whose creator was the peregrine praetor. As peregrines were free and enjoyed *status libertatis*, a great contribution to their favorable position and spectrum of rights was made by the recognition of legal subjectivity. Although they were forbidden to marry Roman citizens, there was a common practice for war veterans to remain in the provinces and, as a merit for participating in the war, be granted the privilege of concluding marriage with a peregrine woman, by which she would acquire Roman citizenship.

The position and status of slaves (Lat. *servi*) changed somewhat negatively compared to the age of kings. “Among the sources that inform us about Roman and particularly Judean history in the period of the greatest rise of the Roman Empire, the literary legacy of the prominent Jewish high priest and military leader, then Roman slave, freedman, and finally full-fledged citizen, erudite and historian Josephus Flavius (*Josephus Flavius* (37/38-93 CE) stands out. It provides wealth of diverse data for the history of Rome and Judea. For Flavius, the word slavery is used only to denote the status of people who were not slaves (therefore, for that position which in Roman law was opposite to *status libertatis*), i.e., for people who were under someone else’s power to such an extent that the master had over them *ius vitae as necis* and, in a broader sense, for conquered people who were not turned into slaves, but were given the status of peregrines.” (Daničević, 1997:99) In the first centuries of the republic period, slavery still has a patriarchal form characterized by a more humane attitude towards slaves, where they are viewed as auxiliary labor force within the patriarchal family. Slaves participate in household chores, but do not participate in the

division of profits and yields. After the Punic Wars, slavery takes on its classical form, they are not viewed as human beings, but as things and objects, not subjects of law. They are the subject of cruel exploitation and trade, severely physically punished and mutilated, which often resulted in a fatal outcome. The most common ways of falling into slavery include: capture in war, debt slavery, and birth in a slave family (children of slaves received the status of slave by birth). Slaves from the class *familia rustica* had the hardest position and performed the hardest jobs: work in mines, on land, and ships. A better position was held by slaves from the class *familia urbana* given the skills, knowledge, and abilities they mastered. These were mainly: teachers, doctors, musicians, and entertainers. (Stefanović, 2022: 44). The inhumane treatment of slaves often resulted in rebellions and uprisings, none of which were successful”. The largest and most significant uprising was led by Spartacus (73-71 BCE). This uprising, in particular, represented a great danger for Rome, because a mass of free poor people joined the slaves. In Spartacus’s army lacked unity, and the uprising was suppressed after heavy fighting.” (Stojčević, 1955: 33). However, in the long run, the uprisings indirectly influenced a more favorable position of slaves due to the fear of new uprisings.

2.3. The Principate

The third period in the development of the Roman state – the Principate, is characterized by undemocratic rule, since citizens were excluded from the decision-making process, and all important decisions were made by the princeps. “Respecting seemingly republican forms and preserving republican terminology and magistracies, Augustus introduced a personal known as the Principate or diarchy (two powers unified into one: princeps senatus and the Senate).” (Stojčević, 1955: 65). The politically organized Roman people were called *Civitas*. However, in the period of the Principate, “the civitas disappeared, and a state was born that to this day shows its supremacy over the citizen” (Malenica, Deretić, 2011: 28-29).

The social structure during the Principate differs significantly from the previous period of the republic, and the population is divided into the following social classes: senatorial class, equestrians, officials, urban plebs and slaves.

a) The senatorial class traces its origin from plebeians who suddenly became rich and former nobles, forming a new class of people called “new people” (Lat. *homo novus*), who gained their position in the Senate thanks to Cornelius Sulla (*Lucius Cornelius Sulla*, 138 - 78 BCE) and Caesar (*Gaius Iulius Caesar*, 100 - 44 BCE). In the civil war with equestrians, this class of citizenship emerged as defeated, but they managed to retain part of the influence that was in constant decline. Coming to power, Octavian Augustus (*Gaius Julius Caesar Octavianus Augustus* 63 BCE – 14 CE) enabled the newly enriched population to enter the Senate, introducing a property census of a million sesterces, pushing representatives of old aristocratic families out of the Senate in favor of equestrians. This is the path by which old traditional aristocratic families almost completely disappeared, and in their place came a class of privileged large landowners – latifundists.

b) Equestrians or knights, emerged from the civil war as winners and represented the foundation of the princeps’s power and authority, enjoying his absolute support. The census for their entry into the Senate was 400,000 sesterces. The princeps often appointed them to high positions in the administration to represent a counterbalance to the senatorial class. The composition of equestrians included freed slaves who suddenly became rich, descendants of knights from the republic period, former soldiers, and all those who had enough property to meet the census.

c) Officials in the Principate emerged as a consequence of the bureaucratization of the state apparatus. They were in a more favorable position compared to magistrates from the republic period because they were elected to lifelong service, unlike magistrates who were appointed only to one-year mandates.

d) Freedmen (Lat. *libertus*, plural: *libertini*) appear in significant numbers as a result of freeing a large number of slaves from slavery in this period. The largest number of freedmen remained working on the land of the former master and were converted to *coloni* (Lat. *colonus*), while a smaller part of them managed to become rich thanks to Emperor Claudius (*Tiberius Claudius Nero Germanicus*, 10 BCE - 54 CE). The rank of freedmen mainly included: merchants, craftsmen, shipowners, provincial governors, servants at the princeps’s court, etc.

e) The plebs consisted of the poorest class of the population who lived at the expense of the princeps and the state treasury from which grain was paid daily and distributed free to the plebs. From the same source, the costs of organizing gladiatorial fights and circus performances were paid (Lat. *panem et circenses*, “bread and circuses”). It is estimated that at one period, daily rations of free grain were received by about 200,000 inhabitants. The crisis in the 3rd century that struck the Empire forced many plebs to leave Rome and settle on nearby estates, to later become *coloni*, while one part of them remained in the city and became craftsmen, officials and hired workers.

f) Peregrines, together with all free citizens, received Roman citizenship through Caracalla’s edict (*Constitutio Antoniniana* - 212 CE), thereby peregrines ceased to exist as a social category.

g) Slaves, however, still exist and form the backbone of the economy which rests on their labor and exploitation. Although there are no longer as many wars and expansionist campaigns, which were the most significant source of slaves, there are more and more who acquire the status of slave by birth from slave parents. The trend of freeing slaves continues and as freedmen, one part of them acquires wealth. The status of slaves in the Principate becomes increasingly favorable thanks to the humane attitude advocated by a new religion, increasingly popular initially among the inhabitants of the provinces, and later in Rome itself – Christianity. The influence of Christianity on the improved position of slaves particularly comes to the fore in the next, last period – the Dominate.

Human rights in the period of the Principate were mostly based on selective protection and promotion, not on universal recognition for all strata of the population. The origin of this selectivity stemmed from various factors, such as status, gender, origin, and class.

2.4. The Dominate

The Dominate era is characterized by the autocratic and absolute power of the emperor, which was reflected in the rights and freedoms of the population in the Roman Empire. In the period of the Dominate, a special system of rule is introduced – the tetrarchy (Greek *τετραρχία* - rule of four), the rule of four emperors – two Augusti and their two assistants, Caesars. The Emperor, according to the belief of the Romans, drew his

power from divine right, which is why they addressed him with the title – *Dominus et Deus* (Lord and God), after which this form of rule got its name.

In the period of the Dominate, the division of society was based on different political, economic, and legal status of the population. Based on this criterion, the population was divided into two large groups: higher class (*honestiores*) and lower class (*humiliores*). Members of the higher class, large landowners, state officials in high state functions, and members of the wealthy senatorial class, were called magnates, enjoying their enormous economic and judicial privileges. The senatorial title became hereditary and was acquired by birth i.e., by origin, however, the emperor awarded the non-hereditary title of *patricius* to the most prominent officials and the largest landowners. In this way, the number of senators drastically increased. In practice, they did not perform the senatorial function, but held that title honorarily and enjoyed the benefits that the title carried: lower taxes or exemption from paying taxes, autonomous collection, etc. On the other hand, the lower layer of society - *humiliores* did not have such privileges and consisted of: lower state officials (*officiales*), members of city councils - curials (*curiales*) and decurions (*decuriones*) who organized tax collection in their area and were responsible to the state for it. Beneath them were even lower social classes, organized in associations in which membership was forced and hereditary: merchants, craftsmen (bakers, butchers, shipbuilders, blacksmiths, masons, carpenters, etc.).

Coloni were the lowest social stratum of citizens, initially free, and later bound to the land. They were recruited from the ranks of former soldiers, freed slaves, and small free landowners. Coming to power, Diocletian introduced a special form of tax in kind and the main income in the state treasury – annona, which burdened the coloni the most. He based the tax system on *capitatio-iugatio*, whose two main elements were the poll tax and land tax. The tax was determined based on two criteria: the size and fertility of the land parcel (*iugum*) and the economic strength of the person, the taxpayer (*caput* - head). Owners of large land estates – latifundists, gave land estates to coloni for rent which was paid in money or in kind. The interest of the state was for the land to be cultivated, which achieved a double effect. On one hand, rent was paid, and on the other, tax

from which the state had additional benefit. This system *capitatio-iugatio* was retained even in the Middle Ages. From 332 CE and the enactment of Emperor Constantine’s constitution, *coloni* were bound to the land and could not leave it. Although *coloni* were considered free people (*ingenuus*) and had the right to conclude marriage (*ius conubii*) and the right to trade (*ius commercii*), in practice they were viewed as slaves of the land (*servus ipsius terrae*).

During the Dominate, slaves were still present as labor force, but in significantly fewer numbers compared to earlier periods. “The factual position of slaves changed in parallel with the development and decline of the power of the Roman state and the slave-based mode of production.” (Stojčević, 1988:82). The economy no longer rests on the exploitation of slaves, and their position is identical to the position of *coloni*. The process of freeing slaves and turning them into *coloni* runs in parallel. From Emperor Constantine, slave owners were forbidden to kill their slaves, to separate children and women by sale from their family, i.e., their husbands. The Christian church had great significance in affirming a more humane attitude towards slaves, which with its religious and moral principles influenced their more favorable position.

The urban population in the period of the Dominate has a much better position than the rural population, and from Caracalla’s decree in 212 CE, all free inhabitants of the empire receive Roman citizenship, after which the only division of the population is reduced to free citizens and slaves. The urban population was divided into *decurions*, a higher class of officials who perform duties in city councils, and *humiliores*, a lower layer of merchants and craftsmen, professions that are passed from generation to generation (e.g.: butchers, bakers, blacksmiths...).

3. The Right to Life, Freedom and Property Viewed Through the Prism of Roman Law and the Institute of *patria potestas*

The Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948, in Article 3 provides, among many others, the right to life and the right to freedom as elementary human rights. “Everyone has the right to life, liberty and security of person” (Universal Declaration of Human Rights, article 3). The Constitution

of the Republic of Serbia in Article 24 considers life to be inviolable, and in Article 27 guarantees everyone the right to personal freedom and security (Constitution of RS, articles 24 and 27). The European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on November 4, 1950, in Article 2 states the following: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally.” (EU Convention, Article 2) However, this concept of recognition, freedom, life, and security of the person by the highest domestic and international legal acts, is the product of centuries of evolution and modern legal and philosophical understandings of the most significant values for each individual. In the past, and especially during the period of Roman law, this was not the case, which can be seen through the concept of paternal power (Lat. *patria potestas*). “Often in everyday speech, *patria potestas* is translated and interpreted as ‘paternal power’ or ‘power of the family father’, while its bearer is referred to as *pater familias*, or the father of the family. Such terminological definition is not adequate, because *patria potestas* from the Roman period encompasses so many powers in its scope that it is impossible to subsume them all under one name.” (Stefanović, 2020: 236)

Gaius at the beginning of his famous textbook *Institutiones* (Gaius, *Institutiones*) in the part about status law states the following: “From the perspective of status law, the basic distinction is that people are either free or slaves. Free people are further divided into freeborn (Lat. *ingenui*) and freedmen (Lat. *libertini*). The freeborn are those who were born free; freedmen are those who have been freed from valid slavery.” (Gaj, 1982:34-35) “For Romans, freedom is a thing of inestimable value (*libertas inestimabilis res est*), of all things the dearest (*omnium rerum favorabilior*). For Ulpian, slavery is equal to death (*Ulp. D. 50.17.209*)” (Stanojević, 200: 118) “Freedom is a condition of subjectivity: the position of free people can be different, but recognized freedom within the Roman state always implies some degree of legal protection and certain legal capacity.” (Milošević, 2005:110)

Paternal power (Lat. *patria potestas*) is the power of the family head (Lat. *pater familias*) over his children (Lat. *filiusfamilias*) and descendants, power over their person and property. *Pater familias* has a key

role in the upbringing and education and rising of children. This is not his right but an obligation, and to realize it successfully, he must have property over the children. The circle of persons under paternal power is much wider than children. It includes all those who are housed under the family roof (Lat. *domus*): children from a legitimate marriage, grandchildren, and great-grandchildren. The wife of the pater familias together with the wives of sons also fell under the paternal power of the family head. It should be noted that the power over a woman was designated by another term: *manus*. By entering into a marriage with *manus* (*matrimonium cum manu*), the woman leaves the house of her parents and enters the family of her husband, where she comes under his power if he is a person who lives by his own right (*sui iuris*), or under the power of his pater familias, if the husband is a person who lives by another's right (*alieni iuris*). Daughters and granddaughters of the pater familias who were married *cum manu*, and their children from that marriage, fell under the *manus*, or *patria potestas* of their husbands. Every person who was not *sui iuris* or emancipated, could be simultaneously only under one power. Slaves, who were members of the *familiae*, did not fall under *patria potestas*. Towards slaves, the power of the pater familias was of a different content and was called *dominica potestas*.

Patria potestas is of an absolute character and lasts throughout life. Pater familias manages the family not on the basis of authority he has as the oldest member of the family, but on the basis of power that the law recognizes over family members and their property.

a) The powers of the pater familias regarding the person of those under his power were as follows:

- Right of life and death (*ius vitae ac necis*) – he could kill a newborn if he suspected that he was not the father;
- Right of sale (*ius vendendi*) - he could sell any person under his power either to another Roman (then the persons fall under the power of the buyer) or to a buyer outside Roman borders (then they become slaves);
- He could sentence them to any punishment except death;
- He could marry them off or give them in marriage to another family without their will.

The power of the *pater familias* was not without supervision. *Pater familias* was exposed to public control, friends, and especially censors. During the Principate, the city prefect allowed subordinate persons to seek protection from unjust actions by the family head, and emperors also intervened with their constitutions. By the end of the classical period, the personal power of the *pater familias* over family members moved within the boundaries of reasonable patriarchal understandings. Over time, the position of persons under paternal power changed in favor of subordinate persons. From the 3rd century, the rejection of newborns was forbidden. The right to sell subordinate persons, through the intervention of classical jurists, was limited to only one case: if the child causes damage by his delict, *pater familias* still had the possibility to hand him over to the injured party, so that the child could compensate for damage through their labour”. The right of the *pater familias* was limited in the first place by a series of threats of sacral penalties which were developed in the pontifical praxis and which are transferred to us as allegedly kings’ laws.” (Mirković, 2015:3). Roman emperors by their decisions increasingly limited the power of the *pater familias*, so Hadrian prescribed exile for a *pater familias* if he kills a child, while Emperor Constantine provided an even stricter, death penalty for child murder. Over time, a rule was introduced that the *pater familias* cannot marry off or give in marriage a subordinate person against his will, i.e., without consent, and from the reign of Augustus, he was added the obligation to give his daughters and granddaughters a mandatory dowry.

b) The powers of the *pater familias* over the property of persons under his power also varied over time. Persons *alieni iuris*, just like slaves, could not have their own property, nor acquire it for themselves, because everything acquired would belong to the *pater familias*. Like the position of slaves, the status of persons under paternal power (Lat. *in patria potestate*) gradually became increasingly favorable. The first step was the recognition for soldiers *alieni iuris* to keep the property acquired during military service, as plunder, for themselves (Lat. *peculium castrense*). That property did not enter the property of the *pater familias* and the son, soldier, could dispose of it as any other owner: to sell it, encumber it, or leave it to his heirs.

The property of a son who has no heirs and dies before the pater familias would belong *ex officio* to the pater familias. Special status had the property (so-called *bona adventicia*) which a person under paternal power inherits from the mother or relatives on the mother's line. During the reign of Emperor Constantine, this property became the property of the child so that the pater familias had over it only the right of management and enjoyment during his life. Justinian included in *bona adventicia* all property that persons *alieni iuris* acquired on any basis. Contrary to the property *bona adventicia*, there was a group of goods called *bona profecticia*, which were not owned by the child, but in his possession. For example, property that the pater familias during his life gifted to the child, and did not revoke the gift before death. Over this property, *alieni iuris* had only the right of enjoyment, and after the death of the pater familias, it was returned to the overall inheritance.

4. Conclusion

It is evident that human rights and freedoms, especially personal and property rights, varied and evolved throughout the existence of the Roman state. Given that we are talking about a society that ties its origin and roots to the archaic period and the primitive community, it is logical that social relations and relationships of social subjects initially had their traditional, patriarchal form. The role of the family head, pater familias in such a society was crucial. His rights, which in some situations are viewed as unlimited and all-powerful (*ius vitae as necis*) correspond to his obligations and responsibility. In such a milieu, it is impossible to talk about human rights and freedoms in today's light of their understanding and awareness of equality of all before the law. Roman society was not anarchic, laws existed, but they were selectively applied to the chosen ones. Today, universal rights and freedoms of citizens, contained in the most significant domestic and international legal acts, have greater significance. Awareness of their mandatory nature and importance has become generally accepted. Although this is just one step in the evolution of civilization, a fragile branch on which democratic society rests and without which it is impossible to imagine a society of equals. History has taught us that totalitarian

regimes choose these values as their first target. It is up to us to defend them.

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