

## Roman Law Tradition in Croatia: Marko Petrak's Legacy

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*Bonus homo de bono thesauro cordis sui profert bonum.  
Lucas 6:45*

On the 17th of January 2022, on a bleak winter day, Marko Petrak left this world. This sudden and extremely shocking event was devastating to many – his family and numerous friends and colleagues throughout the world. It is sadly often so when great men depart. His many good works, in personal and professional life, do live on. It is so only with good men.

In the professional context, it could be said that Marko Petrak was a great legal mind, in the sense that he viewed historical and contemporary phenomena around us through the legal lenses, and understood them completely in their legal capacity. He was a meticulous and systematic scientist with a rare gift to comprehend and appreciate both the universal context and particularities of specific cases, coupled with an incredibly forceful working energy and conscientiousness. As he always said, since the best way to determine whether a law is good is practice, and since long practice constitutes tradition, he naturally in his work dealt mostly with legal history, more precisely Roman law and Roman legal tradition as the most perfect example of (living) private legal tradition. His love for classical antiquity, by his personal admission imbued by his father, a great Croatian poet, was developed fairly early, since he attended a high school with classical programme (a stronger emphasis on Latin and Greek) in Zagreb, where he was born. He continued his education at the Faculty of Law of the University of Zagreb, an institution that later became the centre of his professional life. He obtained a law degree and followed the academic career at the same Faculty. He became a full professor, or *ordinarius*, in 2011, and for many years, until his sudden and premature death, he chaired the Department of Roman Law. During his student days, in parallel, he also studied philosophy at the Faculty of Humanities of the University of Zagreb, within which he completed the course of the ancient Greek, later obtaining a degree in philosophy. Throughout his career he always sought to further and perfect his knowledge, for example, participating in the well-known seminar at the CEDANT (*Centro di studi e ricerche*

*sui diritti antichi*) in Pavia, and in his later years he even studied theology (but unfortunately, his premature death prevented him from completing it). All of this was reflected in his work – for example, when analysing certain philosophical issues associated with law (especially regarding the influence of Greek philosophy on Roman law), in the analysis of canon law and concordatary law in Croatia, or in the last years of his life when he intensively dealt with Byzantine law (*ius graeco-romanum*).

Right after the graduation from the Faculty of Law he enrolled in the postgraduate class, finishing it in 1997 with the master thesis “*Error in substantia* in Roman and in the Contemporary Contract Law” (in Croatian language). Already here the important aspects of his scientific work were announced. Essentially, he provided a relevant analysis of both the Roman system of *error in substantia* and its contemporary relevance, which is methodologically indeed a rare feat attempted by many but achieved by the rare. Reason for that may lie in his approach, very thorough in the analysis of both areas, coupled with something that may be dubbed a complete scientific honesty, where links between Roman and contemporary law are appreciated when they exist, but if they do not exist or are not as relevant, this is openly admitted. His deep knowledge and understanding of the ancient Roman law was attested in his doctoral thesis titled “Original Structure and Function of *Vindicatio* in Roman Law” (in Croatian language) in 2003. There he argued for the augural (belonging to the *ius augurale*) origins of the act of *vindicatio*, whereby the confronting parties would proclaim ritual claims of authority over the object of dispute as the basis for legal protection<sup>1</sup>. With this he exhibited an exceptional scientific ability to deal with some of the most obscure and disputed matters of Roman law, closely associated even with matters of anthropology and linguistics, on a basis of an informed and able analysis.

On the other hand, during his professional life Marko Petrak did not hesitate to search and find traces of the Roman legal tradition in the contemporary, practical law. For example, for many years he published a column *Traditio iuridica* in a journal for legal professionals, *Informator*, where he focused on *regulae iuris* and Latin legal terminology in Roman (and Romano-canonical) legal tradition and their place in contemporary legislation and

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1. Some elements of the main thesis are explained in: PETRAK, *Addicere en droit romain archaïque. Le juge en tant que révélateur de la volonté de Dieu*, 17-27.

judicial practice<sup>2</sup>. This earned him a great and lasting renown among legal practitioners and in the legal public generally. In an associated vein, he also famously argued that *regulae iuris* from the Digest and *ius commune* even had the status of a source of contemporary Croatian law by intermediation of *Corpus Iuris Hungarici*. The first element of this proposition was the fact that the title of the Digest 50, 17, with its fundamental Roman legal principles and rules, represented the primary source of law in the Hungarian legal system from the times of publication of *Corpus Iuris Hungarici* by Iohannes Sambucus in 1581, while other parts of *ius commune* were also later accepted as subsidiary sources in the Lands of Crown of Saint Stephen, to which belonged also parts of modern day Croatia. These rules remained the law in force after 1920 in the parts of Yugoslavia, so-called 'former Hungarian legal area' which also included parts of Croatia. After the World War II these rules could still be applied if they were not derogated by new legislation and were in accordance with the new system. Additionally, because of the acceptance of the legal-political principle of 'the unity of law', individual segments of *Corpus Iuris Hungarici* could still be applied as subsidiary law on the entire state territory until the dissolution of Yugoslavia in 1991. After gaining the independence, the Croatian Parliament enacted in 1991 the Act on the application of legal rules passed before April 6, 1941. This act was considered by Professor Petrak as the legal basis for the application of *ius commune* in contemporary Croatian law. As he argued, according to this act, legal rules that were in force on April 6, 1941 (the day when the Second World War started on the territory of Croatia) were to be applied in the Republic of Croatia in the relations that are not regulated by positive legal order. Thus, in cases of legal lacunas in the contemporary legal system of the Republic of Croatia, legal rules that were used in the territories of Croatia before 6 April 1941, including the title D. 50, 17 and *ius commune*, could be used as legal sources in judicial decisions. The proposed thesis is highly regarded and accepted by practitioners<sup>3</sup>.

On his mother's side Marko Petrak originated from Konavle, an area on the southernmost part of Croatia, near Dubrovnik. This was also a birthplace of Baldo Bogišić, in his time an exceptionally famous lawyer, now mostly known

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2. These columns were collected in two books by the same name: PETRAK, *Traditio Iuridica, I. Regulae iuris*, and PETRAK *Traditio Iuridica, II. Verba iuris*.

3. See e.g. ŽUVELA, *Vlasničkopravni odnosi*, XLVI.

in legal historical circles for having created a civil code for Montenegro in 1888, therein including elements both of Roman legal tradition and of customary Montenegrin law. And indeed Marko Petrak in his work dealt with the work of Bogišić, mostly analysing Roman legal tradition in his work and its interrelationship with Montenegrin customary law<sup>4</sup>. His interest in the legal history of the eastern Adriatic resonated strongly in his latest researches regarding the influence and traces of Byzantine law in Medieval Dalmatia. While previous legal historians focused solely on the city statutes of late Middle Ages, Marko Petrak directed his research on the preceding period of Byzantine rule. He analysed these legal developments regarding several aspects. The earliest was the investigation of the issue and the thesis concerning the foundations of rule on intestate succession *pro anima* in medieval statutes of eastern Adriatic cities, which are traced to the Byzantine law, especially the Novel XII of Constantine VII Porphyrogenetos (enacted between 945 and 954). He concluded that in the areas of Byzantine Dalmatia these original Byzantine solutions on intestate succession *pro anima* were more faithfully and for a longer period followed than in other similar territories. Also, he promoted a new topic in legal research, the liturgical tradition of chanting *laudes* to the ruler in the eight Dalmatian cities which were once under the supreme political authority of Byzantium and the political, legal and religious importance of *laudes imperiales* for the Byzantine *basileus* in Dalmatia<sup>5</sup>. Finally, his originality can be observed in the latest problem he analysed, the issue of the *liber Methodius*, mentioned in chapter 9 of the *The Chronicle of the Presbyter Diocleas (Ljetopis Popa Dukljanina)*, and its relationship to the *Nomocanon of Saint Methodius* (the first adaptation and translation of the Byzantine canon and civil law collections in the Slavonic language), arguing the thesis that it was one and the same book, which would indicate that early contacts of the medieval Croats with the Roman legal tradition were a direct consequence of the missionary work of the Byzantine ‘Apostles to the Slavs’.

Fittingly, then, Marko Petrak was one of the founders and later a general secretary of the *Croatian Association of Byzantine Studies* and national representative with the *International Association of Byzantine Studies*. He also

4. This work is mostly in Croatian, some results of this work in English may be found in his article PETRAK, *The principle "alterum non laedere" in Bogišić's codification (art. 998)*, 217-228.

5. Analysis published in English as PETRAK, *Nobile hoc Romani Imperii monumentum: Laudes imperiales in Byzantine Dalmatia*, 263-278.

dealt extensively with canon law, in general terms and regarding its contemporary relevance in Croatia, together with the issue of concordatarian law (*ius concordatarium*), or treaty law between the Holy See and Croatia. He was a long-time member of *Croatian Canon Law Society* (*Consociatio Canonistica Croatica*), participating regularly in its annual conferences and publishing on different topics dealing with the ties of Roman law (or secular law generally) and canon law. After more than 50 years of broken scientific ties, due to the previous communist regime, he initiated the renewed scholarly interest in the relationships between Roman law, canon law and *ius commune* in Croatia, for which he received the special recognition award by the *Croatian Canon Law Society* in 2015. He started the collaboration between the scholars of Roman law and canon law and introduced other Croatian Romanists to the *Croatian Canon Law Society*. His interest in the position of Catholic Church and its law included the present day regulation and the role of canon law as a source of law in the Croatian legal system on the basis of concordatarian law. On the basis of the provisions of the four international treaties between the Holy See and the Republic of Croatia, he concluded that *Codex Iuris Canonici* has, in its totality, become a relevant source of law in the Croatian legal system. Besides the articles in which he explained these views<sup>6</sup>, he published in 2020 a university text-book *Katolička Crkva, vjerske zajednice i hrvatski pravni sustav* (*Catholic Church, Religious Communities and Croatian Legal System*)<sup>7</sup>, in co-authorship with Frane Staničić, in which the position of religious communities in the Republic of Croatia, with an emphasis on the Catholic Church, is elaborately studied and explained. This book received a prestigious national award of the *Foundation dr. Jadranko Crnić* for a book relevant for the advancing of legal profession in 2020. Book in English by the same authors dealing with the matter (*Religion and Law in Croatia*), to be published by Wolters Kluwer, is forthcoming. His interest in the religious matters was reflected in his private life as well, since he was one of the founders and a leading member of the *Society for the Promotion of Traditional Latin Mass "Benedictus"* in Croatia (a national chapter of the *International "Una Voce" Federation*). Finally, it can be also mentioned that he contributed in the preparation of encyclopedias of *The Institute of Lexicography "Miroslav Krleža"*, specifically to the *Croatian Encyclopedia*, preparing

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6. PETRAK, *Kanonsko pravo i hrvatski pravni sustav, I – II*, 251-286 and 675-708.

7. PETRAK - STANIČIĆ, *Katolička Crkva, vjerske zajednice i hrvatski pravni sustav*.

more than 130 entries, while adding more than 600 entries for the areas of Roman law and canon law in the *Legal Lexicon*.

Marko Petrak held significant positions in many scientific organizations, such as being the member of the advisory board of the *Croatian National and University Library*, and he participated in the editorial boards of a number of book series and scientific journals, such as *Studies in the History of Private Law*, *Legal Roots: The International Journal of Roman Law*, *Forum Prawnicze*, *Akropolis: Journal of Hellenic Studies*, etc. He was a reviewer of the *European Science Foundation* (from 2009) and member of its *College of Expert Reviewers* (from 2016).

For the last ten years he was the editor-in-chief of the *Zbornik Pravnog fakulteta u Zagrebu* (*Collected Papers of Zagreb Law Faculty*), where his contribution in the field of scientific publishing is most perceptible. This was a natural step as he was earlier the secretary (1995-1999) and the executive editor (2000-2004) of the journal. He invested himself in the development and improvement of *Zbornik*, insisting on the importance of *Zbornik* as the leading Croatian scientific legal journal covering all areas of law.

Professionally, it can also be mentioned that he participated in the negotiations on the accession of the Republic of Croatia to the European Union as a member of working groups *Education and culture* and *Right of establishment and freedom to provide services*. He was also a member of many committees concerning the scientific and university policy questions established by the Ministry of Science, by the University of Zagreb and other institutions. He was also a vice-president of the national *Committee for Ethics in Science and Higher Education*.

His personality made him well known and liked by many. In talks with numerous friends and colleagues home and abroad one will hear only the praise for his friendliness, kindness, his clever humor and wit, a subtle penchant for good-humored irony when commenting past or present political matters, all of which earned him so many friends. And there were indeed surprisingly many, in a vastly differentiated and varied array. His knowledge was vast, sometimes even puzzlingly heterogeneous for the collocutor. He was an erudite indeed, but he never used it to elevate himself or diminish others. He was respectful of others and always ready to help. That readiness can be witnessed by many of us whom he mentored and helped so much in preparing doctoral dissertations, but also hundreds and thousands of students who have so eagerly listened to his lectures in the first year of law school for the

last more than 25 years. Marko Petrak was never dull; he always knew how to make things interesting, intriguing, and with his cheerful spirit he drew students to the Roman law and to other subjects he taught at the Faculty of Law in Zagreb, like *Ius commune – Foundations of European Private Legal Systems, Byzantine Law*, etc., or the classes he held at the University of Dubrovnik within the study program *History of the Adriatic and the Mediterranean*. In the exams he was understanding, and in students' eyes (as well as generally) he will be remembered for his fairness and honesty.

To his family, his wife Marta and his children Nikola (5) and Jelena (1) he dedicated the final masterwork, *opus magnum*, the new, revised and amended edition of the textbook *Rimsko pravo* (Roman law), originally written by Marijan Horvat, in which he followed suit of best European practices of updating and amending major textbooks, which is in these sad circumstances published only posthumously. Still, it will remain the testament of his achievements in Roman law and a constant reminder of his dedication to the discipline.

Marko Petrak was a mentor (even a father figure for some) for a complete generation of Romanists in the whole of Croatia, who are now squarely on their own scientific career paths. Still, he will be greatly missed, both personally and professionally. Sadly, sometimes the greatness of a person may be fully recognised and appreciated only when such a person is no longer among us. It is often so with many great men, and it was indeed a rare chance and an honour to have encountered a man such as Marko Petrak in our lifetimes and to work with him. For he truly was a great man, such that are encountered very rarely. Even more, he was a good man, and those are encountered even more rarely. So, a farewell to a good man, while his good works are here to stay.

**Abstract:** The scope of interests and the original theses proposed in different areas of legal research concerning Roman law and Roman legal tradition make the academical legacy of Marko Petrak genuinely important and valuable for further studies, in Croatia and in wider European terms as well. Here are addressed some of his most notable contributions, his research of the medieval Byzantine legal influences in the territories of Croatia, of the Canon law and ecclesiastical law issues in contemporary context, but also his efforts towards showing the relevancy of Roman law in contemporary Croatian law. In all these scholarly endeavors Marko Petrak showed traits of original thinker, with broad knowledge, for which he was and will be held in great esteem.

**Keywords:** Marko Petrak, Roman law, Roman legal tradition, Canon law, Byzantine Law.



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