FORMS OF PROPERTY IN ROMAN LAW

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Abstract

The exceptional vitality of the Roman legal system is explained both by the creation of the legal alphabet, taken over in later societies, and also by the fact that any society that was founded on private property and the exchange economy found all the concepts, principles and the legal institutions necessary to regulate these social relations.

Thus, the legal institution of property is included among the concepts that make the connection between the past and the present of the rules of law.

The appearance of the Roman state is placed in the 6th century BC, when King Servius Tullius institutes a series of reforms that ensure the transition from gentile society to the one organized in the state: social reform and administrative reform.

In the pre-state era, legal texts attest to the existence of the collective property of land, as well as family property. With the emergence of the state, the Romans exercised collective property of the state as well as private property, called quiritary property, the Quirites being the ancient citizens of Rome.

In the classical era, alongside the quiritary property, which survives the old era of Roman law, new forms of property appear: praetorian property, provincial property and peregrine property.

In post-classical law, we witness a process of unification of property, perfected in the time of Emperor Justinian, a process that results in the merging of all forms of property into a single form, called dominium.

Keywords: *roman law, quiritary property, praetorian property, provincial property, peregrine property.*

1. Introduction

This study aims to provide a historical perspective on the forms of property in Roman law considering the fact that the understanding of contemporary legal institutions cannot be separated from knowing their origin and evolution. As specialized literature provided „it no longer seems sufficient to us to follow up the emergence and evolution of an institution going all the way back to Justinian. We have to go even further, nowadays being able to display the manner in which Roman regulation was received in civil codifications. The student will thus come to perceive the institutions in an evolutionary way (as well as the way in which they were taken over from a generation to another), this study bringing him to the threshold of positive law"[1].

2. Paper content

Several communities with common military and economic interests lived in the center of the Italian Peninsula (Latium), in the 8th century BC. Over time, among these communities, thanks to the conquered wars, Rome, a fortress located on the hills in the south of River Tiber became more important.

At the beginnings, the inhabitants of Rome were organized in gentes. The gens were a primitive social formation based on kinship, bringing together those descending from a common ancestor. The members of a gens jointly owned the land, had common religious holidays and common traditions and defended each other in case of danger. An elected leader was at the head of the gens, *called magister gentis*, assisted in the exercise of the duties by a council of the elders of the gens, called senate.

There were 300 gentes in ancient Rome, divided into 30 curiae and 3 tribes, called founding tribes: the Latins, the Sabines and the Etruscans. Over time, once with the development of the agriculture, some families became rich and began to appropriate significant parts of the common lands; the members of these wealthy families took the name of patricians (patricii).

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[1] V. Hanga, M.D. Bocşan, *Curs de drept privat roman*, Universul Juridic Publishing House, Bucharest, 2006, p. 11.

Along with the formation of gentile aristocracy made up of patricians, the pleb is also formed, made up of those members of some gentes who came down, becoming semi-dependent persons. Later on, foreigners who came to Rome and placed themselves under the protection of a gens (guests and clients), as well as slaves freed by their masters, also joined the pleb.

The patricians tried to consolidate their dominant position, both towards clients and slaves, and towards the plebeians, the latter being more and more dissatisfied with the position of inferiority. The patricians were engaged in agriculture and shepherding, and the plebeians were primitive craftsmen. Despite the fact that both social categories were involved in the economic life of the city, the entire social leadership of Rome belonged to the patricians, the plebeians being forced to respect the decisions made by the patricians, although they did not participate in their adoption. For these reasons, the plebeians will go to war against the patricians to obtain political equality, a conflict that will hasten the disintegration of the gentes and lead to the foundation of the Roman state.

Therefore, in order to end the conflict between the Patricians and the Plebeians, in the middle of the 6th century BC, King Servius Tullius established two reforms which laid the foundations of the Roman state: social reform and administrative reform.

By means of the social reform, King Tullius divided the entire population of Rome, without taking into account the distinction between plebeians and patricians, in 5 social categories, on the criterion of wealth. The classes were delimited in descending order of citizens' wealth, starting with the knights and ending with the proletarians. In their turn, these social categories were divided into centuries, which were military and voting formations, each century expressing a vote. From the political point of view, the 193 centuries thus formatted designated the cooptation of rich plebeians in the decision-making bodies.

Within the administrative reform, Servius Tullius divided the territory of Rome into administrative and territorial divisions (districts), called tribes. Tullius divided Rome into 4 urban tribes and 17 rural tribes. In this way, the capacity of citizen of Rome was no longer linked to the belonging to a gens, but to the district in which the citizen lived.

After the implementation of the two reforms, the two criteria based on which the distinction can be made between pre-state gentile society and the one organized in the state are met, namely: social stratification criterion and territorial criterion.

Despite the fact that, by means of the reforms implemented by Servius Tullius, the plebeians gained access to the comitia centuriata, the conflicts with patricians continued, due to the discriminations to which the plebeians were subject. Therefore, in economic terms, all lands conquered from the enemies became the property of the state with the title of *ager publicus*[2] and then, the right to use was transferred only to the patricians. The plebeians did not have access to such lands. Over time, the patricians' right of use turned into a real private property, going up to the formation of latifundia in the last centuries of the Republic.

This incursion into the past supports the understanding of the first forms of dominion[3], existent in the pre-state age. We call it dominion because, as the doctrine stated, „at least until the Law of the Twelve Tables, we cannot refer to „property" in the legal conceptual meaning, but of a dominion over assets. The existence of a public dominion over the lands in the gentile arrangement created a community of economic interests between the members of the society, and the rules of social conduct were sufficient for their protection"[4].

Therefore, **in the pre-state area**, the Romans knew the following forms of dominion:

- At the time of the founding of Rome, estimated around 753 BC, the Romans knew as form of individual dominion *only* **the ownership over certain movable assets of the family.**

Private property, which was called *dominium ex iure quiritium*, was carried over certain movable assets of the family (slaves, cattle, household items). The proof of the fact that, at that time, there was only ownership over certain movable property, is the fact that *mancipation,* the way of transferring the ownership right over mancipi property was used only with regard to movable property, which could be „grabbed by hand"

[2] C. Ene-Dinu, *Istoria statului și a dreptului românesc*, revised and supplemented ed., Universul Juridic Publishing House, Bucharest, 2023, p. 23.

[3] For more about public property in administrative law, see E.E. Ștefan, *Drept administrativ Partea a II-a, Curs universitar*, IVth ed., revised and updated, Universul Juridic Publishing House, Bucharest, 2022, pp. 246-276; E.E. Ștefan, *Drept administrativ Partea I, Curs universitar*, IIIrd ed., revised, supplemented and updated, Universul Juridic Publishing House, Bucharest, 2019, pp. 16-27. Also, see on discrimination E.E. Ștefan, *Opinions on the right to nondiscrimination*, in CKS e-Book 2015, pp. 540-544, available online at *http://cks.univnt.ro/cks_2015/CKS_2015_Articles.html*, Public law section, visited on 31.03.2023.

[4] V. Hanga, M.D. Bocşan, *Curs de drept privat roman, op. cit.*, p. 166.

and brought before witnesses and weigher. Furthermore, *in iure cessio* required bringing before the magistrate the asset that was to be transferred. The mechanism of these acts supports the fact that, in the pre-state age, only movable property was likely to fall under the scope of the private ownership[5].

We hereby recall that patrimonial assets, namely the assets likely to fall under the scope of a private patrimony, were divided, according to the value they assigned at that time, in *res mancipi* and *res nec mancipi*. The category of *mancipi assets* included agricultural funds, slaves and animals that served to carry out the main activity of Rome inhabitants, agriculture. On the contrary, *nec mancipi assets* were considered less important by the Romans and included fruits of the earth, animals that did not serve for work, metals used as a mean of exchange, etc.

- Another form of dominion in pre-state age is the **collective property of the gens.** As we have shown above, at that time, the land of Rome was in the collective property[6] of the gens, and its existence is attested by ancient Latin and Greek authors. Varro states that the land of Rome was originally divided between the three founding tribes, and Dionysius of Halicarnassus says that the division was made between the curiae[7].

- Along with the collective property of the gens, Roman society of the pre-state age also knew **family property**. This form of **land** property belonging to the family was called by Romans *heredium* (inheritance) and consisted of a small piece of land (half a hectare), which included the garden and the house[8]. Therefore, ancient authors stated that Romulus had assigned to each family two acres of land, to serve as house and garden. The other lands were in collective ownership.

This is the oldest form of real estate property. This family fund was co-owned by all family members and could not be alienated. Upon the death of the pater familias, the two acres of land were inherited by the *sui heredes*, namely the heirs of the first category, considering that they were just continuing a form of property that they had previously owned together with the pater familias.

At the beginning, family property had indivisible nature, but the Law of the Twelve Tables subsequently created an action called *actio familiae herciscundae*, whereby the heirs could request the exit from the indivision.

In the Ancient Age, after the foundation of the Roman state, the Romans knew two forms of property:

- **Collective property of the state** over the lands conquered from the enemies, as well as over the slaves captured in wars. Sometimes, the state kept part of these lands in its property (*ager publicus*), and what remained served the entire community; over time, the state began to sell these lands to the patricians, for small amounts (to the displeasure of the plebeians).

- **Quiritary property** was, until the end of the Republic, the only form of Roman private property. It was called *dominium ex iure quiritium*, namely „*dominion according to the law of the quirites*" (the quirites were the Roman citizens), therefore, at the beginning, dominion was jointly exercised.

Being regulated by *ius civile*, this form of property was full of solemn formulas, gestures, rituals and symbols, having an inflexible and formalist nature that the Romans knowingly maintained due to the desire to reserve this form of property exclusively for Roman citizens. From another point of view, legal formalism was also explained by the strength of religious beliefs in ancient times and by the low level of development of productive forces. We cannot even speak of a legal phenomenon distinct from the religious one before the expulsion of the kings. Legal acts were rare, celebratory acts, because commodity production and exchange were in their most rudimentary form. The need for certain formalities to give legal value to the conventions did not represent a hindrance in concluding them, because such acts were very rare[9].

Quiritary property had an **exclusive nature**, being exercised only by the Roman citizens, having as scope Roman goods and being transferred by special acts of civil law. Therefore, the peregrini did not have access to *dominium ex iure quiritium,* they benefited from a form of property based on the law of the gentes.

Quiritary property was only carried out over **Roman goods**. After the adoption of the Law of the Twelve Tables , in order to ease commercial relations, nec mancipi goods were also subject to quiritary property.

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[5] For further details, see E. Molcuț, *Drept privat roman. Terminologie juridică romană*, Universul Juridic Publishing House, Bucharest, 2011, p. 120; E. Anghel, *Drept privat roman. Izvoare, procedură civilă, persoane, bunuri*, Universul Juridic Publishing House, Bucharest, 2021, p. 201.

[6] C. Ene-Dinu, *Istoria statului și a dreptului românesc*, revised and supplemented ed., Universul Juridic Publishing House, Bucharest, 2023, p. 45.

[7] E. Molcuț, *Drept roman*, Press Mihaela SRL Publishing House, Bucharest, 2002, p. 114.

[8] V. Al. Georgescu, *Originea și evoluția generală a proprietății în dreptul roman*, Cernăuți, 1936, p. 325.

[9] V. Hanga, M.D. Bocşan, *Curs de drept privat roman*, Universul Juridic Publishing House, Bucharest, 2006, p. 21.

As regards lands, quiritary property could be exercised only over the soil located in Rome and Italy, *not over provincial soil*. Provincial soil was owned by the state (or the Emperor) and was commissioned (not transferred) to certain persons, in order to be cultivated and they paid in return a tax called *stipendium*, if the land belonged to the people or *tributum*, if it belonged to the Emperor. These lands could become subject to the quiritary property if, exceptionally, the Emperor granted by means of a decision the *ius italicum* to the provincial fund.

Quiritary property could be alienated only by procedures specific to civil law: *mancipatio* or *in iure cessio*. At the beginning, mancipation, a solemn act, was the only way of transferring quiritary property over mancipi goods. Over time, the Romans accepted that less valuable goods (*res nec mancipi*) could be transferred by an act under the law of the gens, called *tradition*, which no longer required solemn forms, but the simple material remittance of the good from the seller to the buyer.

In case a mancipi good was transferred by tradition, the quiritary property was not handed over, therefore the seller remained the dominus, according to the civil law. Notwithstanding, the praetor consolidated this right and ruled that if the mancipi good handed over by tradition was owned for 1 year (if it was movable property) or 2 years (if it was immovable property), then the possessor could become the owner by long term adverse possession, if all required conditions in this respect were met. Until the consolidation of this right, the possessor exercised a praetorian property right (**bonitary ownership**) which was legally protected by public action and public exception.

Furthermore, quiritary property had **absolute nature**: the quiritarian enjoys a full right, which grants him *ius utendi, ius fruendi* and *ius abutendi* without limitation, namely the right to use the property, the right to enjoy its fruits and the right to dispose of it, at his discretion.

Furthermore, the quiritary property had a **perpetual nature**, which is expressed as follows: *„proprietas ad tempus constitui non potest"* ***(property cannot be established until a certain time, but forever).*** Quiritary property could not be lost under the passage of the time, could not be transferred under an extinguishing term or under an extinguishing condition, and could not be revoked.

The Age of the Republic was the time of glory of the Roman state and, similarly, of the Roman law. Thanks to its expansionist policy and a very organized army, Rome conquers city after city so that, in the 1st century AD, it becomes the most powerful state in antiquity.

Due to the economic development of the Roman society, important differences in wealth appear among free citizens. Therefore, a privileged class was the landed aristocracy, made up of rich patricians and plebeians, followed by the knights. The middle class was made up of small landowners, small craftsmen and merchants, and a lower category of free citizens was made up of poor peasants and urban plebeians, in a continuous economic decline. „The struggle for land, led by the poor citizens of Rome against big landowners, runs like a red thread throughout Roman history from the Republican age"[10]. Small agricultural property is maintained, although a great part of the peasantry either enlists in the army or settles in Rome, to live off the state.

Towards the end of the Republic, civil wars broke out between nobles and knights, in the struggle for the exercise of power. The victory of the knights led to the establishment of the monarchy. But the transition of Rome from republic to monarchy was not made suddenly, but gradually, through the military dictatorships, which rooted in the people's consciousness the idea of a single leadership, as the only form of maintaining the Roman state.

In the age of the principality, the differences between the poor and the rich, called in texts *humiliores și honestiores* are accentuated. Latifundia were formed, belonging either to the Emperor or to the Senators, while a great part of ager publicus it is now converted into imperial domains and concessioned to small cultivators.

In the classical age, to the extent of the intensification of slavery, at the same time with the collective property of the state, private property (quiritary property) escalates, but other forms of property are also known:

- **Praetorian property** is the property acknowledged and protected by the praetor, in opposition with the quiritary property, sanctioned by civil law. Along with the development of trade, it was necessary to simplify the conclusion of legal acts, since mancipation required very complicated solemn forms. For the transfer of the property over nec mancipi goods, tradition was used, with simplified form conditions, therefore, in practice,

[10] V. Hanga, M. Jacotă, *Drept privat roman*, Didactică și Pedagogică Publishing House, Bucharest, 1964. See also: E. Molcuț, *Drept privat roman. Terminologie juridică romană*, revised and supplemented ed., Universul Juridic Publishing House, Bucharest, 2011; I.C. Cătuneanu, *Curs elementar de drept roman*, Cartea Românească Publishing House, Cluj Bucharest, 1927; C.St. Tomulescu, *Drept privat roman*, University of Bucharest Printing House, 1973; E. Anghel*, Drept privat roman. Izvoare, procedură civilă, persoane, bunuri*, Universul Juridic Publishing House, Bucharest, 2021.

Romans began to transfer mancipi goods, especially slaves, by means of tradition. However, in this case, according to civil law, the owner of the property remained the seller **(tradens)**, who could file a claim against the possessor.

By being involved in the process of adapting the old civil law to the new realities, the praetor admitted that the tradition could be used for the transfer of mancipi goods, but, in this case, the acquirer does not become a quiritarian owner, as the rigorous requirements of the civil law are not met. He will acquire a new form of property, which the Romans called **in bonis** (the good transferred is in the acquirer's patrimony). Praetorian (bonitary) ownership was based on a *legal fiction*, namely that the term required for the long term adverse possession had expired. In order to legally protect this form of property, the praetor created a praetorian action, called **public action**, granted to the one who acquired ownership over a mancipi good by tradition, being considered by the praetor as the owner by long term adverse possession (the conditions for the long term adverse possession were required to be met, except the term).

Upon the expiry of the term of the adverse possession (1 year for movable assets and 2 years for immovable assets), the praetorian owner became quiritarian. Until the fulfillment of this term, two forms of ownership coexisted on the same good: **quiritary property** exercised by the tradens, which remained *dominus ex iure quiritium,* being the owner of an empty right and **praetorian property**, exercised by the acquirer of the good.

- **Provincial property**[11]. As we described above, the lands of the provinces conquered by the Romans became the property of the state under the name of *ager publicus*, then they were distributed for cultivation to individuals who, as a sign of recognition of the state's ownership, paid a land tax called *stipendium* or *tributum*. Although this form of dominion was called *possession* and *beneficial interest*, this right of „use" of the provincials entailed the features of a genuine real right: the land could be transferred between living people by deeds, but also by will and could also be subject to long term adverse possession. In this context, the provincial soil seems to have had *two owners of the ownership right*: the Roman state and the inhabitants of the provinces.
- **Peregrine property.** Originally, foreigners were not welcome in Rome so, unless they were under the protection of Roman citizens, they became slaves. By the time, under the conditions of the development of the exchange economy, the Romans had to show tolerance towards their trading partners. Notwithstanding, the civil law, rigid and exclusive, did not recognize the right of ownership of the peregrini over their property. The praetor's edict is the one that implemented for the peregrini a form of property exercised in accordance with the law of the gentes, but created according to the model of civil actions: in order to file action for the recovery of possession, the fiction that the peregrinus was a Roman citizen was introduced into the formula.

The age of the Dominate begins with the ascension to the throne of Emperor Diocletian, who brings with him the absolute monarchy by divine right. If in the age of the principality, the head of state was considered the first among the citizens, appointed by the senate and acclaimed by the people, in the second phase of the empire, the monarch is *dominus et deus*, above all people, supranatural powers being ascribed to him.

In social terms, we are witnessing a general decay of Roman society. Economic life returns to the practices of primitive, natural economy. The large latifundia (villae), based on the work performed by colonists and slaves, expand, and their owners begin to exercise part of the functions of the state on their domains. Therefore, some of the large landowners had their own army and administration, collected taxes and extended their claims to neighboring territories, being in open conflict with the imperial power.

In this background, in the post-classical age, the property forms analyzed above changed their physiognomy or some even disappeared. Therefore, peregrine property disappeared after the edict of Caracalla of 212, which granted citizenship to all free inhabitants of the empire.

The provincial property also disappeared after the Italian soil was subject to taxes, like the provincial soil, so that all lands were subject to a single ownership right.

The difference between mancipi and nec mancipi goods disappears in the age of Justinian, and tradition becomes the usual way of transferring property. Therefore, the praetorian property merges with the quiritary, forming a unique property, called **dominium**, which could be exercised by any person, beyond the rigors of *ex iure quiritium*.

[11] C. Ene-Dinu, *Istoria statului și a dreptului românesc*, revised and supplemented ed., Universul Juridic Publishing House, Bucharest, 2023, p. 23.

3. Conclusions

It can be said that alongside the important achievements of Roman antiquity - the progress of work tools and methods, the development of crafts, the development of the social division of labor, the progress of the sciences and arts - one no less important can be added: the creation of the Roman legal system, which exercised a decisive influence on the subsequent development of law. This influence is not over, according to the doctrine: the development of the single European law finds its model in Roman law, as a universalist system, able to include and capitalize diversity[12].

„Roman law has its own value, which can be explained by the great inclination our ancestors had for *ars boni et aequi*; it created the legal language and legal categories of universal common law, coordinating for the first time the different legal provisions, raising them to the principles from which they started, grouping them around certain rules. This intrinsic value of Roman law is independent of the solutions given and that is why the persistence of the legal categories drawn up by it is explained, even compared to the diversity and complexity of the issues debated by modern law[13]".

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[12] V. Hanga, M.D. Bocşan, *Curs de drept privat roman*, Universul Juridic Publishing House, Bucharest, 2006, p. 9. E.E. Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ*, Pro Universitaria Publishing House, Bucharest, 2013, pp. 63-64.

[13] C. Stoicescu, apud V. Hanga, M.D. Bocşan, *Curs de drept privat roman*, Universul Juridic Publishing House, Bucharest, 2006, p. 16.