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The Evolution of the Property Concept in Roman Law

Ionuţ Ciutacu

Lecturer PhD, "Dimitrie Cantemir", Christian University of Bucharest, Faculty of Juridical and Administrative Sciences, Bucharest, Romania, ionutciutacu@yahoo.com

ABSTRACT: In primitive times, people used things from the environment to satisfy their basic needs. Initially, things were used to satisfy elementary needs. Later, the production of the three social divisions of labor contributed to the development of society and to the increase of the role those certain categories of objects had in everyday life. Along with this, people became aware of the importance of regulating the control they exercised over these things and the necessity of enshrining the right of ownership. In Roman law, the institution of property crystallized after a long process. This process began in the very Ancient Era, when movable property came under the scope of private property, and land came under the scope of collective property, continued in the Classical Era, when private property manifested itself in several forms, and completed in the Post-Classical Era, with their unification.

KEYWORDS: the collective property of the *gens, the quiritary property, dominium ex iure quiritium, rem in bonis habere, possessio vel usufructus,* peregrine ownership, *proprietas*

The Need to Enshrine the Right of Property

In the Primitive Era, people sought to obtain the things necessary to satisfy their primary needs. Practicing certain activities for a long time helped them to understand that those things could be used for other purposes. This fact determined the emergence of new occupations, contributed to increasing the role that things had in the economy and helped people to become aware of the idea of control that they can exercise over them, dominion that manifests itself in the form of property rights.

Among all the peoples of antiquity, the Romans played an important role in the evolution of law. They included property in the category of real rights and considered that this right establishes the greatest power that a person can exercise over a thing (Cătuneanu 1927, 201). The study of the concept of Roman property is of great importance, because Roman Law has lived a millennial life, which allows us to thoroughly study the emergence and evolution of this legal concept, as well as the creation of the most effective models for regulating the control over things that enter a person's patrimony.

In the mentality of the ancient Romans, property was exercised over *res corporales* (Longinescu 1922, 45); initially, they were identified only with movable goods, because only they could be held by hand; later, the production of the first social division of labor, which divided society into shepherds and farmers, and the accumulated experience on the legal level determined the expansion of the scope of *res corporales* also on immovable property. This was also observed by the jurisconsult Gaius, who affirmed that corporeal goods are those that can be touched, such as a fund, a slave, a garment, a piece of gold or silver (*corporales haec sunt, quae tangi possunt, uelut fundus, homo, uestis, aurum, argentum*) (Girard 1890, 193). Even under these conditions, it is curious that the Romans continued to confuse the property right with its object. Fortunately, however, the subsequent evolution of legal ideas determined the inclusion of property in the sphere of subjective rights.

During the existence of Rome, the inhabitants of the Eternal City knew several forms of ownership. Thus, in the Pre-State Era, they knew the primitive forms of property: the collective property of the gens and the family property. In Ancient times, they knew the quiritary property and the collective property of the state. In the Classical Era, they knew the quiritary property, the praetorian property, *possessio vel usufructus* and the peregrine ownership. In the Post-

Classical Era, they knew a unique form of property *(dominium),* resulting from the completion of the process of unification of the forms of private property.

Property Forms in the Pre-State Era

In the Pre-State Era, Romans knew two forms of property: the collective property of the gens and the family property. Both forms of ownership were exercised over the land. Their existence was due to the fact that the Romans were in the process of transitioning from gentis to political organization and that the first social division of labor had recently occurred, and this fact had not allowed them to consecrate private ownership of the land.

The collective property of the gens was a form of primitive property that consisted in the control exercised over the land. The existence of this form of property was attested by Varro and Dionis from Halicarnassus (Molcut 2011, 119). Varro wrote several works. One of them, entitled *De lingua latina,* conveys the information that the entire territory of Rome was divided between the three founding tribes: the Latins, the Sabines and the Etruscans. And Dionis of Halicarnassus mentions the existence of this form of property. In his opinion, the land of Rome would have been divided into 30 lots, one for each of the 30 curias. It would seem that the two historians gave us contradictory information. In reality, the two texts do not contradict each other, because they show us the evolution of legal ideas from two different periods.

Family property was another form of property that existed in the Pre-State Era. And this one had the land as its object. Roman legal texts designated it by the term *heredium,* which would translate as a place of house and garden. This form of ownership represents the first control exercised over some immovable property that had gone out of the scope of the collective property of the gens. However, the place of house and garden did not fall under the scope of private property, because *heredium* was not considered *res mancipi* (Georgescu 1936, 325). The place of house and garden was considered as a form of co-ownership, proof that the jurisconsult Paul said about it that it represents, rather, the continuation of an existing property than an actual inheritance (*in suis heredibus evidentius apparet continuationem dominii eo rem perducere, ut nulla videatur hereditas fuisse, quasi olim hi domini essent, qui etiam vivo patre quodammodo domini existimantur. Unde etiam filius familias appellatur sicut pater familias, sola nota hac adiecta, per quam distinguitur genitor ab eo qui genitus sit. Itaque post mortem patris non hereditatem percipere videntur, sed magis liberam bonorum administrationem consequuntur. Hac ex causa licet non sint heredes instituti, domini sunt: nec obstat, quod licet eos exheredare, quod et occidere licebat*) (Krueger and Mommsen 1872, 374). This situation lasted until the era of the Law of the Twelve Tables, when the indivision could cease by filing an action to exit the indivision (*haec actio familiae erciscundae proficiscitur e Lege XII Tabularum*) (Girard 1890, 13-14).

Forms of Property in Ancient Times

In the Ancient Era of Law, the Romans knew two types of property: the collective property of the state and the quiritary property. The collective property of the Roman state included the things that were used by all the inhabitants of the state, the lands that entered the *ager publicus,* the treasury and the public slaves.

The quiritary property was the private property exercised by Roman citizens (*quirites*). Quiritary property was exercised by persons who enjoyed *ius commercii* and who had full legal capacity (*patres familiae*). It represented one of the powers that the *pater familias* exercised over things. The Romans included the right of quiritarian property in the category of real rights and designated it with the expression *dominium ex iure quiritium.* Initially, it had only corporeal things as its object, proof that the owner said *"haec res mea est ex iure quiritium"* (Tomulescu 1973, 173). Starting with the era of the Law of the Twelve Tables, when society developed, and

the effects of the first social division of labor became more and more visible, the quiritary property also extended to immovable things (*usus auctoritas fundi biennium est, ceterarum rerum omnium annuus est usus*) (Girard 1924, 274). Against the background of the Roman expansionist policy specific to the end of the Ancient Era, it was also exercised on *ager italicus* (the lands located in Italy), but especially on the lands in the provinces that enjoyed the fiction of *ius italicum* (Hamangiu and Nicolau 2022, 293). This measure contributed to the colonization of the provinces and to the romanization process.

The quiritary property is the first form of Roman property that resembles the private property known to contemporaries. It has a perpetual, exclusive and absolute character (Axente 2020, 251).

Forms of Property in the Classical Era

Roman legal texts from the Classical Era mentioned the existence of four types of property: quiritary property, praetorian property, *possessio vel usufructus* and peregrine ownership.

The quiritary property survived the old era. Even though society developed in the Classical Era, this form of private property continued to be accessible only to Roman citizens and became anachronistic, as it did not allow legal protection of things owned by provincials and pilgrims. This justified the jurisconsult Gaius to state that "someone is either an owner or is not considered an owner" *(aut enim ex iure Quiritium unusquisque dominus erat aut non intellegebatur dominus)* (Popescu 1982, 133). Under these conditions, the ancient Roman conception regarding the exercise of quiritary property was likely to create social instability. In order to prevent such consequences, the praetor and jurisconsults contributed to the flexibility of the forms of ownership of things.

Praetorian property is the possession in good faith exercised by the *accipiens* over a *res manicipi* acquired through *traditio*. This form of ownership was designated by the expression *rem in bonis habere* and appeared towards the end of the Ancient Era, when trade had taken off. It has its origins in the sale by the state of prisoners of war to private individuals. There were many prisoners of war, and the transfer of property to them was done, for easy-to-understand reasons, by simple material remittance or by means of gestures that symbolized handing over the work. Due to the advantages, it presented, this practice also began to be used between individuals, although they were obliged to resort to civil law acts, which, through their excessive formalism, were likely to block commercial transactions (Axente 2022, 242).

In these conditions, some parties, in bad-faith, took advantage of the fact that *traditio* could not be used to acquire *res mancipi*. According to the norms of the Roman Civil Law, ownership of *res mancipi* was acquired through *mancipatio*. That's why the people who transmitted the things started to use the *rei vindicatio* to challenge in court the use of *traditio* in this hypothesis. Following the initiation of the *rei vindicatio*, the *accipiens* ended up in the unfair situation of being left without the price, but also of being dispossessed of the good acquired in good-faith. To stop this practice, the praetor intervened in favor of the possessor in good faith, to whom he made available two legal procedures: *actio publiciana* şi *exceptio rei venditae et traditae*. Thus, the good-faith possession exercised by the *accipiens* was effectively protected; the thing which had been handed down by *traditio* was considered to be *in bonis* and remained in the possession of the praetorian owner; instead, *tradens,* he remained with the *nudum dominium* according to the Law of the Quirits (*sed postea diuisionem accepit dominium, ut alius possit esse ex iure Quiritium dominus, alius in bonis habere*). If the *tradens* tried to dispossess him of the work through a *rei vindicatio*, the *accipiens* had the possibility of invoking *exceptio rei venditae et traditae* (Appleton 1889, 130). If, however, the *accipiens* had been dispossessed of the work, he could regain his possession with the help of the *actio publiciana*.

Therefore, the praetorian property is not a property in the true sense of the word. It is a possession in good-faith, legally protected, which leads to the acquisition of the right of freehold

ownership if the other conditions necessary for the *usucapio* were met. The jurisconsult Gaius states, in this sense, that *"nam si tibi rem mancipi neque mancipauero neque in iure cessero, sed tantum tradidero, in bonis quidem tuis ea res efficitur, ex iure Quiritium uero mea permanebit, donec tu eam possidendo usucapias: semel enim impleta usucapione proinde pleno iure incipit, id est et in bonis et ex iure Quiritium tua res esse, ac si ea mancipata uel in iure cessa esset"* (Girard, 1890, 197).

Possessio vel usufructus consisted in the use that the free people of the provinces exercised over the land. For practical reasons, the Romans left a large part of the conquered land to the inhabitants of the provinces. In this way, the Roman state obtained a triple advantage: the land did not remain unexploited, social conflicts were prevented, and the free people of the provinces paid a tax (*tributum*) in exchange for the use of the land. The use exercised by the provincials over the land presented the features of a real right. In this way, the matter was in the civil circuit; the provincial owner could sit in court, sell the thing, encumber it with duties and pass it on to the heirs through the will as long as he paid the tax by which he recognized the existence of the property that the Roman state exercised over the land. In the Post-Classical Era, provincial ownership merged with quiritary ownership, as quiritary owners began to pay taxes.

The peregrine ownership was that form of control that the peregrines exercised over movable things and over buildings. It did not have the land as its object, because it was included in the scope of the quiritary or *possessio vel usufructus*. This form of rule was created for practical reasons. The Peregrines were the main trading partners of the Romans; they did not have access to the norms of Civil Law and could not be owners of the quiritary property. As a consequence, the control they exercised over some assets could not be protected with the help of legal acts of Civil Law. In order to ensure order in society and the safety of transactions with the pilgrims, the Romans recognized them a distinct property right, which was protected by an action created according to the model of the *rei vindicatio*. This form of ownership survived until 212, when Caracalla granted Roman citizenship to almost all freemen in the provinces.

Property in the Post-classical Era

In the Post-Classical Era, the process of unification of private property was completed. The unification of the legal regime of property began towards the end of the Classical Era when the peregrine ownership and the *possessio vel usufructus* disappeared, continued in the Post-Classical Era, when the *possessio vel usufructus* merged with the quiritary and was completed in the time of the emperor Justinian, who created a new form of property, *proprietas* (Tudor 1982, 276), resulting from the unification of quiritary and praetorian property.

Conclusions

The Romans had a master mentality. This mentality was perfectly reflected in the way they enshrined the right to private property. The evolution of this concept began in the very old era, when the object of property ownership was movable property, and the land was the object of collective property. The subsequent development of society determined the expansion of the scope of private property and the creation of several forms of private property, which would ensure the exercise of ownership of goods by the different categories of people existing in Roman society. The evolution of the concept of private property ends in the Post-Classical Era, with the completion of the romanization process and the unification of the forms of private property.

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