

## THE CONCEPT OF PROPERTY IN ROMAN CIVIL LAW AND ITS EVOLUTION

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### **Abstract**

The article examines property rights as a central institution of any legal system, with a particular focus on their formation and development in Roman law. It is emphasized that it was in Rome that property rights took on their classical form, which laid the foundations for the further development of private law relations in Europe and remained relevant for modern legal systems. The author considers the key theoretical and practical aspects of property rights: their economic and social nature, the powers of the owner, the distinction between ownership (*dominium*) and possession (*possessio*), as well as the system of protection. Considerable attention is paid to the analysis of Roman legal constructs that made it possible to distinguish full ownership from its limited forms, in particular through the institution of usufruct and the category of *nuda proprietas*. The evolution of property rights from archaic forms of collective land ownership to complex constructions of the classical period is traced. Quirite property as a full right of Roman citizens is considered separately, as well as the praetorian and peregrine forms that arose in response to social and economic needs. It is shown that Roman law was distinguished by its pragmatism: it not only established legal doctrines, but also created mechanisms for regulating actual relations, ensuring the stability of property circulation. An important contribution was the development of a system of primary and derivative methods of acquiring property, including the unique institution of acquisitive prescription (*usucapio*), which combined legal logic with economic expediency. The article also highlights the post-classical unification of property rights carried out by Justinian, which eliminated the division between quiritary and praetorian property and brought Roman law closer to the modern understanding of *proprietas*. It is emphasized that even in its classical form, *dominium* was not absolute: in practice, it was limited by easements, state intervention, or family institutions such as *peculium*. In the 19th century, Roman law underwent a kind of "reinvention": lawyers adapted ancient concepts to the needs of bourgeois society, forming the image of absolute property rights enshrined in the leading European codifications – the French Civil Code and the German Civil Code. The influence of this tradition can also be traced in modern Ukrainian legislation, where the institutions of ownership, use, disposal, acquisitive prescription, and property claims have retained a direct connection with Roman sources.

**Keywords:** property rights; Roman law; *dominium*; *possessio*; ownership.

### **1. Introduction**

Property law is one of the oldest and simultaneously most complex institutions of private law, as it directly defines the nature of socio-economic relations within any society. Through property law, the foundations for the possession, use, and disposal of material goods are established, alongside the mechanisms for their legal protection and transfer. Historically, the institution of property has played a fundamental role in the formation of civilizations, as the ownership of land, assets, or other resources determined

the structure of social organisation, the distribution of power, the tax burden, and even political stability. It is therefore unsurprising that Aristotle referred to property as the “natural condition of man,” while Roman jurists regarded it as the “basis of private law.” Modern civil codes across virtually all European countries continue to build upon the concept of property developed in antiquity, underscoring the exceptional relevance of investigating its historical development (Bondarenko, 2020).

Roman law occupies a distinctive place in the history of law, as it was within its framework that the most refined concept of property rights emerged, serving as a prototype for subsequent European codifications. Unlike many ancient legal systems, in which property was collective or dependent upon the ruler’s will, Roman law gradually consolidated the idea of private property as an individual and exclusive right of the citizen. Roman jurists not only articulated a doctrinal definition of dominium, but also elaborated a comprehensive system of rights – *usus*, *fructus*, *abusus* – and devised legal mechanisms for protection against any infringement. Simultaneously, Roman legal thought demonstrated flexibility and pragmatism: alongside *quiritary* property, *praetorian* and *peregrine* forms existed, allowing the legal system to accommodate the economic needs of a vast empire and integrate foreigners and newly acquired territories into the legal framework (Ciutacu, 2023).

The historical trajectory of property law indicates that it has always been the subject of active scholarly debate. From the glossators and commentators of medieval Europe, the Roman institution of property has been continually reinterpreted, experiencing a “second reception” during the codification movements of the nineteenth century. The French Code Napoléon and the German BGB not only reproduced fundamental Roman principles but also endowed them with a more individualistic character, responding to the challenges of the industrial age. In the Ukrainian legal system, which belongs to the Continental legal family, the influence of Roman law is directly observable: the Constitution of Ukraine (1996) and the 2003 Civil Code (2003) enshrine the classical triad of owner’s rights and differentiate between primary and derivative modes of acquiring property. At the same time, contemporary challenges – globalisation, environmental limitations, and the emergence of digital assets – once again raise questions regarding the balance between the absoluteness of property rights and public interest.

Despite substantial research in the field of Roman law, several aspects remain insufficiently explored. In Ukrainian civil scholarship, studies tend to describe property law in general terms, without focusing on its internal evolution or its interrelation with the practical needs of society. Moreover, the lack of analytical works dedicated to intermediate and derivative forms of property (*praetorian* property, *usufruct*, *nuda proprietas*) complicates the understanding of how the division of owner’s rights occurred and which doctrinal solutions were proposed by Roman jurists to maintain stability in property circulation (Domingo, 2017). The transformation of property concepts in the post-classical period, particularly during Justinian’s reforms, when the unification of *proprietas* was finalised, has also not been fully analysed.

An additional issue is that in contemporary Ukrainian legal scholarship, the reception of Roman institutions is often considered fragmentarily, without systematic comparison with current legislation. This results in historical material being presented in isolation, without revealing its practical value for the improvement of the national legal system. In this context, there is a clear need for research that combines historical-legal and comparative methods, allowing the continuity of Roman ideas from antiquity to the present to be traced.

The theoretical foundation of this study relies on the classical works of M.A. Millner, A.R. Kiralfi (Millner & Kiralfi, n.d.), O.A. Pidopryhory, E.O. Kharitonova (2009), as well as contemporary research on the history of property law and its reception within Continental legal systems. A key methodological approach is the combination of historical-genetic analysis (tracing the development of property across different periods of Roman history)

with the comparative-legal method (juxtaposing ancient concepts with provisions of the Civil Code of Ukraine and European codifications from the nineteenth to twenty-first centuries). This allows not only for the reconstruction of chronology but also for an assessment of profound doctrinal changes that have influenced the modern concept of private property.

The aim of this article is to conduct a comprehensive study of property law in Roman law and to identify its system-forming principles that remain relevant to contemporary civil law systems, including the Ukrainian legal framework. The objectives of the study are, first, to analyse the evolution of property forms from archaic communal ownership to Justinian's unified *proprietas*; second, to examine the relationship between *dominium* and *possessio* as two interconnected but distinct categories; third, to investigate mechanisms of limitation on property rights in Roman law (*servitutes*, state intervention, *peculium*) and their influence on contemporary models of owner rights; and fourth, to conduct a comparative analysis of the reception of Roman institutions in the Civil Code of Ukraine, including acquisitive prescription, vindictory, and negatory actions. The scholarly novelty of the work lies in systematising the evolution of property forms, offering a new reading of the relationship between legal right and fact in the categories of *dominium* and *possessio*, and demonstrating the continuity between Roman and modern civil law constructions.

This article will be of interest not only to scholars of legal history but also to practising lawyers, lecturers, and law students, as it provides a deeper understanding of the nature of property law, which remains a central element of any legal system. The analysis of Roman legal constructs enhances comprehension of why contemporary legislation appears as it does and the doctrinal solutions that underlie it. For Ukrainian legal scholarship, the work is valuable in showing how ideas formulated over two millennia ago continue to influence modern law-making and judicial practice, while also highlighting directions for further modernisation of civil legislation.

## **2. Origins and social nature of property rights**

Property law, in any legal system, is traditionally regarded as a central institution of private law, as it determines not only the economic foundations of society but also the orientation of contractual obligations, inheritance relations, family law, and the law of obligations. Property ensures the stability of civil circulation, creates conditions for individual autonomy and entrepreneurial initiative, and serves as an important indicator of the overall development of the legal system. It is therefore no coincidence that the category of property became the "starting point" from which Roman private law developed other legal institutions, establishing a coherent and highly logical system (Hordiienko, 2023).

Roman jurists devoted exceptional attention to the theoretical conceptualisation of property, and this attention was not merely academic but deeply pragmatic. The concept of *dominium* emerged at the intersection of the socio-economic conditions of the era, legal technique, and practical needs. In early Rome, land was the primary means of production, and control over it determined a citizen's social status, political rights, and military obligations. Consequently, the institution of property acquired not only economic but also socio-political significance, distinguishing it from many other legal categories. Property did not merely regulate relations between individuals—it became an essential instrument for structuring society, defining boundaries between Roman citizens, clients, slaves, and foreigners.

Contemporary scholars (Millner & Kiralfi, n.d.) emphasise that property is primarily a social phenomenon. It reflects actual relations of possession, use, and disposal of material goods that exist independently of legal formalisation. Property law merely confers formal certainty upon these relations, transforming factual control into a legally recognised entitlement that is protected against the encroachments of others. In other

words, property law serves as the “legal shell” of economic relations, rendering them generally binding and enforceable.

A distinctive feature of the Roman approach was that jurists considered property not as a relation between persons (as is common in modern sociological schools) but as a relation of a person to a thing. *Dominium*, in their understanding, is an absolute and exclusive right over a thing that does not require reference to other subjects to substantiate it. This approach was of fundamental importance, as it enabled a clear distinction between property rights and obligations, which are inherently relative and presuppose the existence of a specific creditor and debtor. It is precisely thanks to this conceptual framework that the Romans were able to construct an exceptionally precise dogmatics of private law, which continues to underpin European civil law methodology to this day (Long, 1875).

Understanding the social nature of property is impossible without considering its evolution in the earliest periods. Initially, property was collective: land belonged to the gens, and all members had an equal right to use it. Individual property, in the modern sense, emerged later, alongside economic development and the need to secure the fruits of labour for a specific household (*familia*). The transition from collective to familial property (*heredium*) marked a crucial stage in the formation of private property, as it generated the need for legal regulation of the division and inheritance of assets. In the Law of the Twelve Tables, the earliest codification of Roman law, one can already observe an attempt to establish legal mechanisms for the protection of private property and procedures for its transfer.

Property in Rome was always closely connected with power relations. The *pater familias* exercised nearly absolute authority over the members of his household and slaves, which extended to property rights. All family property legally belonged to him, even if others in the household made actual use of it. This model demonstrates the initial character of Roman property, when rights were not yet separated from social hierarchy. Over time, with the development of civil circulation, the institution of property gradually became detached from purely patriarchal and sacred elements, acquiring a more secular and formalised character suitable for regulating market and monetary relations (Johnston, 2015).

The social function of property, although not theoretically articulated by the Romans as in modern legal systems, was manifested in practice. The state had the authority to requisition property for public purposes (e.g., grain for the army), to impose public servitudes ensuring access to water or roads, and to control the allocation of public land (*ager publicus*). This indicates that even in the classical period, the absoluteness of *dominium* was relative: it always coexisted with public limitations and the need to account for communal interests.

Thus, the origins of the Roman institution of property reflect a complex interplay of economic, social, and political factors. Property served simultaneously as a means of individual autonomy and an instrument of social organisation. It is precisely this dual significance—private and public—that rendered it a central institution around which the entire system of Roman private law was constructed. Today, the analysis of the social nature of property allows for a deeper understanding of Roman jurists’ logic and explains why their decisions continue to influence contemporary doctrines of civil law (McGinley, 1927).

### **3. Dominium and owner’s rights: The *quiritary* model**

Traditionally, it has been held that the Roman owner possessed several fundamental entitlements: the right of possession (*corpus*), the right to use the thing (*usus*), the right to dispose of it (*abusus*), the right to receive its fruits and profits (*fructus*), and the right to legal protection against any encroachments. The aggregation of these rights formed the classical conception of full ownership. Roman jurists referred to this as *dominium*,

occasionally using the term *proprietas*. Although the latter was employed less frequently, it was generally synonymous. In certain contexts, however, *proprietas* was applied in a narrower sense to denote so-called “bare ownership” (*nuda proprietas*), referring to the residual right retained by the owner after the establishment of a usufruct (*usufructus*). A usufruct conferred upon another person the right to use the property and enjoy its fruits, but did not entail the right to alienate it. This demonstrates the flexibility of Roman legal constructions: they allowed a clear distinction between full ownership and its limited forms, laying the foundations for modern models of the fragmentation of owner’s rights (Pidopryhora & Kharitonov, 2009).

Of particular significance is the conceptual distinction in Roman law between ownership (*dominium*) and possession (*possessio*). For the Romans, ownership represented an abstract, legal right, existing independently of actual control over the object. Possession, by contrast, was a factual condition, consisting in the actual control of an object by a person. Consequently, Ulpian emphasised that “ownership has nothing to do with possession.” Possession did not create ownership, nor did its loss automatically result in the loss of ownership. To acquire possession, two elements were required: *corpus* (physical control over the thing) and *animus* (the intention to treat the object as one’s own). Possession could be lawful or unlawful, yet in either case it was protected by the praetor through specific interdicts. Nevertheless, this protection was relative and always subordinated to *dominium*, that is, full ownership (Long, 1875).

This duality between right and fact became one of the most profound ideas in Roman private law. It held not only theoretical significance but also practical utility: it ensured the stability of property circulation, permitted a distinction between lawful and unlawful possession, and laid the groundwork for modern understandings of ownership and possession in civil law systems.

The evolution of Roman property law was closely intertwined with the development of Roman society itself, which progressed from insular kin-based structures to a sprawling state with vast territories and complex economic relations. In the earliest period, property took primitive forms and reflected the collective character of life. Initially, kinship-based property (*gens*) predominated, grounded in the communal control of land by the family group. Individual members did not hold absolute rights to a parcel, as the land belonged to the entire community. With economic development, this model gave way to familial property (*heredium*), encompassing the house and garden plot. Yet even in this form, it did not correspond to private property in the modern sense; rather, it constituted a form of co-ownership, subject to termination by a judicial action, as codified in the Law of the Twelve Tables (Anghel, 2021).

Already in the archaic period, one can observe a differentiation between collective property, belonging to the state (notably *ager publicus*—public lands, the treasury, and even slaves), and private property—the *quiritary* ownership (*dominium ex iure Quiritium*), which remained a privilege of Roman citizens. This early distinction between communal and individualised property rights laid the doctrinal groundwork for the comprehensive system of Roman private law, allowing the state to reconcile collective interests with the legal recognition of individual entitlements.

#### **4. Evolution and differentiation of property forms: From *quiritary* to praetorian ownership**

The classical period (1st–3rd centuries CE) marked an era of considerable complexity and sophistication in Roman legal constructs. It was during this time that multiple forms of ownership emerged and coexisted, reflecting the pragmatism and adaptability of Roman law. Central to this system was *quiritary* ownership (*dominium ex iure Quiritium*), regarded as the full and absolute right of Roman citizens, particularly the *pater familias* possessing *ius commercii*. Initially, this form of ownership extended only to movable property and land within Italy, but it gradually encompassed broader

categories of property. Quiritary ownership was considered exclusive, inalienable without the owner's consent, and perpetual in duration.

However, the excessive formalism of civil law generated practical difficulties. For instance, the transfer of *res mancipi* (land, slaves, or draft animals) required adherence to complex archaic rites, such as *mancipatio*. Transfers conducted merely through *traditio* did not confer quiritary ownership. In such cases, the praetor provided factual protection to the transferee, giving rise to a new form of ownership—praetorian ownership (*in bonis habere*). This enabled the holder to use the property and seek legal remedies to protect it, even though quiritary ownership remained with the alienator. Over time, such ownership could evolve into full ownership through the institution of acquisitive prescription (*usucapio*), representing a significant step away from formalism and recognising the primacy of factual relations over archaic rituals (Pidopryhora & Kharitonov, 2009).

The expansion of the empire prompted the development of additional ownership forms. Foreigners (*peregrini*), who participated actively in trade, could not acquire quiritary ownership. A distinct legal regime—peregrine ownership—was therefore established to protect property transactions between non-citizens. Another form, *possessio vel usufructus*, allowed the use of provincial lands in exchange for taxation. Formally, land in the provinces belonged to the state or emperor, yet local inhabitants were permitted to possess and bequeath it, effectively exercising the rights of ownership. These legal adaptations demonstrate the exceptional pragmatism of Roman law, which created new categories not for theoretical perfection, but to facilitate economic transactions and governance across vast territories.

By the end of the classical period, quiritary ownership had diminished in significance, as its restrictions, availability only to citizens, and requirement to observe obsolete formalities no longer aligned with the dynamic development of society. In the post-classical era, particularly under Justinian's reforms, ownership law was definitively unified. The emperor abolished the distinction between *res mancipi* and *res nec mancipi*, removing the necessity for complex acts of *mancipatio*. All forms were consolidated under the single concept of *proprietas*, eliminating the division between quiritary and praetorian ownership. Ownership thus became a universal and singular institution, approaching the modern understanding of the category.

Nevertheless, as O.O. Hordiienko observes, even at the height of its sophistication, *dominium* was not an unqualified or unrestricted dominion over property. While theoretically encompassing the rights to use (*ius utendi*), to enjoy the fruits (*ius fruendi*), and to dispose (*ius abutendi*), these powers were often practically limited. Neighbours had rights of servitude, permitting access across property or use of water. The state could intervene in private property without providing compensation for expropriation. Within family life, the authority of the *pater familias* over property was so absolute that mechanisms such as the *peculium*—a property fund available for use by sons or slaves but legally retained by the head of the household—were instituted. This illustrates that, despite the formal concept of absolute ownership, Roman law consistently balanced theory and practice, providing mechanisms to temper rigid rules and accommodate societal needs (Hordiienko, 2023).

Over centuries, Roman law developed a sophisticated system for the acquisition and protection of property rights, laying the groundwork for the subsequent evolution of private law in Europe. The distinction between original and derivative modes of acquisition, as well as the differentiation of civil-law remedies from those arising under the law of nations (*ius gentium*), reflects a gradual transition from a strict, formalised tradition to a more flexible approach suitable for a dynamic commercial society. Roman law thus managed to reconcile the conservatism of ancient institutions with the innovation necessary for expanding economic and inter-state interactions.

The archaic distinction between *res mancipi* and *res nec mancipi* played a

significant role within this system. It emphasised the special importance Romans attached to objects directly related to agriculture and military service, foundational spheres of Roman communal life. The requirement to observe solemn formalities for the transfer of *res mancipi*, such as *mancipatio* or *in iure cessio*, reflected a desire to ensure publicity and legal certainty in dealings with the most valuable assets. Conversely, the simplicity of transferring *res nec mancipi* via *traditio* demonstrated a gradual democratisation of civil transactions, ultimately supplanting excessive formalism and facilitating market relations (Pidopryhora & Kharitonov, 2009).

Original modes of acquisition were particularly significant, as they allowed property rights to be secured independently of the previous owner's consent or actions, reflecting a proto-natural law principle: whoever first acquired a *res nullius* became its lawful owner. Mechanisms such as occupation and accession underscored the close relationship between ownership, factual possession, and economic utility. Specification raised questions regarding the creation of new objects of law and the balance of interests between the material owner and the creator, demonstrating the depth of Roman legal thought. Discovery of treasure illustrated the desire for equitable distribution of unexpected gains, recognising both the finder's merit and the landowner's interest.

Derivative modes reflected a more developed concept of succession. Publicity and state oversight remained central to the transfer of ownership, but over time traditional formalities lost their dominance, giving way to simpler mechanisms suitable for daily transactions. Consequently, *traditio*, as an expression of *ius gentium*, became a universal instrument in international trade, where the rigid Roman formalities could not be applied.

Particular attention must be given to *usucapio*—acquisitive prescription—a unique institution in Roman law. It allowed factual possession to mature into full ownership, provided that good faith, lawful grounds, and absence of unlawfulness were present. This approach ensured stability in civil circulation, minimising the risks of endless disputes over title. *Usucapio* combined legal logic with practical expediency, securing for the factual possessor the rights they had already exercised in practice.

The concept of *dominium* in Roman law thus emerged not merely as an abstract legal right, but as a product of the intersection between societal needs and advanced legal thought. The system of actions protecting ownership reinforced the authority of the state as guarantor of legal order, while simultaneously emphasising the importance of private initiative and factual possession. This unique model reconciled formalism with flexibility, tradition with innovation, and laid the foundations for modern property law institutions in civil law systems (Long, 1985).

## **5. Balancing the absoluteness and limitations of dominium**

The nineteenth century witnessed a distinctive “reinvention” of Roman law, which exerted a profound influence on the subsequent development of European legal systems. Whereas in ancient Rome *dominium* was conceived as a synthesis of formal, practical, and doctrinal elements, the medieval tradition significantly transformed it, most notably through the concept of divided *dominium*, wherein ownership was shared among multiple subjects—for example, between a lord and his vassal. This model reflected the feudal structure of society, in which property rights were intrinsically tied to mutual obligations and hierarchical dependencies. Ownership was understood not as an absolute and indivisible right, but as a complex system of rights and duties encompassing different layers of legal subjects.

The transformations of the nineteenth century, driven by the rise of capitalist relations, the increasing role of the bourgeoisie, and the dismantling of feudal hierarchies, necessitated a renewed conceptualisation of ownership. Jurists of the period, particularly Robert Joseph Pothier and his followers, sought not merely to revive the Roman legacy but to adapt it to the demands of a modern society. They artificially constructed an

image of absolute dominium, free from the divisions and limitations characteristic of the medieval era. In such a conception, ownership embodied the ideology of the bourgeois order: private property was proclaimed sacred, indivisible, and inviolable, and the right to it was absolute and exclusive (Bondarenko, 2020).

This doctrinal reconstruction was not merely theoretical but responded to tangible economic and social realities. Industrial development and the emergence of free markets required clear, unified, and systematic legal rules to ensure predictability and stability in transactions. Concurrently, the ideology of the age emphasised individualism and personal liberty, which could only be realised through the entrenchment of absolute property rights. The resulting model diverged sharply from both medieval and even classical practice, yet drew its authority from Roman legal tradition.

The reception of Roman law across European legal systems produced various models of property law, each developing the idea of dominium in different ways. German law, as codified in the Bürgerliches Gesetzbuch (BGB), retains the emphasis on systematic structure and abstraction characteristic of Roman constructions: §903 BGB defines the owner's right as full dominion over a thing while simultaneously recognising numerous limitations, primarily of a public-law nature (environmental protection, urban planning, and cultural heritage conservation). The German model conceives of property not merely as a subjective right but also as a social function (*Sozialbindung des Eigentums*), expressly enshrined in Article 14 of the Basic Law for the Federal Republic of Germany: "Property entails obligations. Its use shall also serve the public good." This concept effectively develops the trend initiated in Roman law through servitudes and public restrictions.

French civil law, as codified in the Code Napoléon (Article 544), proclaims ownership as "the right to use and dispose of things in the most absolute manner," yet contemporary doctrine and practice have substantially moderated this ostensibly "absolute" approach. The French Constitutional Council has repeatedly emphasised that the protection of private property must be reconciled with public order and the common good. Consequently, the French model converges with the German social conception, although formally the code retains the classical triad of ownership powers (Ciutacu, 2023).

In the Anglo-American legal tradition, property is not conceived as a singular, indivisible right (dominium), but rather as a "bundle of rights," which may be held by different persons and transferred independently (including the rights to possess, use, alienate, and derive income from property). This approach reflects greater flexibility and functionality in the legal construct, institutionalising what the Romans managed through derivative forms of ownership, usufruct, servitudes, or the division between dominium and possessio.

Thus, modern European and Anglo-American concepts attest to the enduring legacy of Roman law while simultaneously demonstrating its evolution. Whereas Roman dominium was formally absolute but practically constrained, contemporary legal systems openly recognise the social function of property and permit its "fragmentation" among multiple subjects. This enables a balance between private autonomy and public interests, a concern of particular relevance in the context of urbanisation, the development of environmental law, and the growing prominence of public welfare considerations.

Traces of this influence are evident in contemporary Ukrainian law. The Constitution of Ukraine enshrines the principles of property rights, emphasising their fundamental significance for society. Article 13 declares that land, subsoil, water, and other natural resources belong to the Ukrainian people, while Article 41 guarantees the right of every individual to own, use, and dispose of property (Constitution of Ukraine, 1996). The Constitution affirms the inviolability of private property and the equality of all owners. Particular attention is due to the Civil Code of Ukraine (2003), which systematically codifies property and related rights in its third book. Here, the inheritance of the Roman

model is apparent: the classical triad of ownership powers (possession, use, disposal) is preserved, and original (e.g., acquisition of newly created objects, appropriation of publicly accessible natural gifts, acquisitive prescription) and derivative modes of acquisition (contracts, inheritance, administrative acts) are clearly distinguished. This mirrors the Roman distinction between original and derivative titles, as well as the principles of publicity in legal actions.

The institution of acquisitive prescription (Article 344 of the Civil Code) provides the most illustrative example of the reception of Roman *usucapio*. As in antiquity, it functions to stabilise civil circulation, legitimising long-term good-faith possession and eliminating uncertainty regarding ownership. Similarly, Ukrainian legislators have adopted the Roman vindicatory (Article 387) and negatory (Article 391) actions as principal means of protecting property rights, highlighting the continuity of doctrinal constructions.

Particular attention must also be paid to the limitations on property rights. Unlike classical *dominium*, which was proclaimed absolute, the contemporary Ukrainian model recognises the importance of public interest, environmental, urban-planning, and land-use restrictions. This evolution reflects a shift from the Roman notion of the “sacredness” of private property to a more balanced approach, where ownership rights are aligned with sustainable development and social responsibility. Examples include *servitutes* (Articles 401–417 of the Civil Code) and rights to use another’s property (*emphyteusis*, *superficies*), which are, in essence, modernised Roman institutions.

Overall, analysis of current Ukrainian legislation demonstrates that modern law not only preserves the Roman legacy but also develops it in a manner that strengthens human rights guarantees and harmonises private and public interests. This underscores the practical significance of historical-legal research: understanding the evolution of property in Roman law facilitates a deeper comprehension of the logic underpinning Ukrainian civil-law constructs and may serve as a guide for further modernisation of the Civil Code.

## **6. Roman legacy and its influence on contemporary legal systems**

Roman law has traditionally been regarded as the foundational source of the concept of “absolute” property rights. During the classical period, *dominium ex iure Quiritium* denoted the full and exclusive dominion over a thing, encompassing the right to use it (*ius utendi*), the right to derive its fruits or profits (*ius fruendi*), and the right to dispose of it (*ius abutendi*). In doctrinal discourse, this triad is often interpreted as synonymous with the unrestricted freedom of the owner. Yet, Roman jurists were acutely aware that such dominion could not exist without limitations. The practical application of property law demonstrates that *dominium* was consistently balanced against both public and private interests: neighbours enjoyed rights of servitude, such as passage and access to water; the state retained the authority to confiscate or requisition property; and the *pater familias* constrained the property autonomy of sons and slaves through the institution of *peculium*. In this way, Roman law already contained the embryonic concept of the “social function of property,” which would gain fuller theoretical expression in the twentieth century (Domingo, 2017).

Contemporary property law in Ukraine and across Europe has moved away from the model of entirely unrestricted property rights, instead seeking to reconcile the rights of the owner with broader societal interests. This is particularly evident in environmental law, where a landowner may not exploit their property in a manner that causes harm to the environment (Article 66 of the Constitution of Ukraine establishes the duty not to damage nature). Similarly, urban planning legislation imposes constraints on land development, requiring compliance with zoning regulations and general development plans, thereby echoing the Roman idea of regulating *res mancipi* through public acts.

*Servitutes* in contemporary Ukrainian law (Articles 401–417 of the Civil Code) directly

descend from the Roman servitude regimes. They provide that even private property may be encumbered by the rights of third parties, such as rights of passage, access for vehicles, or installation of utilities, and that the owner is legally obliged to tolerate these encumbrances. This clearly demonstrates that the absolutism of property has always been relative and has never excluded consideration for the needs of neighbours or the wider community.

Thus, the modern discourse on the limits of property rights represents a continuation of Roman legal tradition. Whereas in antiquity dominium was formally absolute but practically circumscribed by servitudes, praetorian interdicts, and public interests, today legislation explicitly enshrines the social function of property. The Ukrainian model reflects the broader European approach, according to which property rights are not solely an expression of individual liberty but a legal instrument for harmonising private and public interests. Consequently, the “absoluteness” of property is understood less as an unfettered licence to do whatever one wishes with an object, and more as a guarantee against arbitrary interference by the state, balanced with societal obligations (Hordiienko, 2023).

Furthermore, the Roman legacy extends beyond conceptual frameworks into procedural and protective mechanisms that underpin modern civil law. The tradition of balancing ownership with public and private constraints informs contemporary doctrines of liability, compensation, and regulatory compliance, ensuring that property rights operate within a broader normative context that serves both individual and collective interests. This duality—respecting private autonomy while recognising communal needs—remains a defining feature of property law in Ukraine, Europe, and other civil law jurisdictions, demonstrating the enduring relevance of Roman legal thought in shaping the ethical and functional contours of modern ownership.

## **7. Conclusion**

Roman property law is not merely a historical category but constitutes the foundational framework upon which contemporary legal systems have been constructed. Its significance lies in its exceptional systematic coherence and profound theoretical development, which enabled Roman jurists to formulate universal concepts that continue to retain relevance today. In particular, the distinction between abstract legal ownership (dominium) and factual possession (possessio) provided stability in property transactions and remains one of the most pivotal ideas in private law. The evolution of Roman property—from archaic formalism, as exemplified by dominium ex iure Quiritium, to pragmatic and flexible forms such as praetorian property—demonstrates the adaptability of the system to changing economic and social circumstances. It was precisely this capacity to harmonise conservative traditions with innovative approaches that allowed Roman law to withstand the test of time.

In the nineteenth century, European jurists “rediscovered” and adapted Roman concepts to the needs of emerging capitalist societies, leading to the development of modern codifications that enshrined property rights as indivisible and sacrosanct. This legacy is particularly evident in Ukrainian law, where the fundamental principles, classification of modes of acquisition, and mechanisms for protection—such as the vindicatory action and acquisitive prescription—represent a direct reception of Roman legal ideas. The Roman model of property, therefore, is not merely a historical artefact but a living foundation that continues to shape and regulate contemporary civil law relationships.

The findings of this study demonstrate that Roman property law was not a static construct but a dynamic institution, capable of adapting to socio-economic challenges. The study proposes a novel systematisation of the stages in the evolution of ownership, enabling a more precise tracing of the transition from formalised Quiritary ownership to the universal concept of proprietas. The research establishes that the key

contribution of Roman law was the distinction between legal ownership (*dominium*) and factual possession (*possessio*), which continues to underpin the structure of civil transactions today.

The scholarly novelty of the article lies in the comprehensive comparison of Roman institutions with the provisions of the Civil Code of Ukraine, demonstrating both the direct legal inheritance and the practical relevance of Roman constructions for modern doctrine. The practical significance of the research is evident in its potential application to the improvement of Ukrainian civil legislation, particularly in the modernisation of provisions regarding limitations on property rights, servitudes, emphyteusis, and superficies. The Roman experience of balancing private autonomy with public interests can serve as a foundation for more clearly codifying the social function of property in Ukrainian law, responding to contemporary challenges such as the development of environmental legislation, urban planning regulations, and harmonisation with the European legal framework.

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