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The Notion of the Good from the Perspective of the Roman Law

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Abstract: The present study analyzes the notion of property or owner, according to the vision of the Roman law, which includes the determination of things that can be the objects of property. The power that a man can have over these objects, both in terms of the duration of time and the degree of possession of them and the ways in which ownership can be acquired or lost, is another side of the analysis. The individuals who are able to acquire, transfer or lose their ownership are highlighted separately.

Keywords: assets; heritage; Roman law; natural person

1. Introduction

From immemorial times, the human condition has been associated with the idea of ownership. Any entity, whether it is a natural person or a legal entity, supports the desire to appropriate the goods. Sciences such as philosophy, morality, economics, sociology, politics and law have developed numerous theories centered on the idea of property. From the perspective of the mentioned sciences, the majority approaches property as a relationship between the individual and the good that forms the object of the property right, recalling here both the consumerist and utilitarian vision that it confers on the individual, but also its very negation. The content of the present

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analysis detaches itself from any theoretical propaganda intended to direct us towards the conceptualization of property and the domain of goods. Therefore, the discourse remains in the legal sphere of the concept of ownership and the exercise of this right, with an emphasis on the legal relationship between civil assets and their acquisition in the church heritage, in the context of the existence of specific provisions that derogate from the rules of the substantial civil law.

2. The Notion of Property in Roman Law

The notion of goods and persons has been known since the Roman period. This connection reveals to us the natural evolution of the person who humanly relates to his existence but also to what the Romans would later call patrimony, a notion that related to the person but also to his position in society, a state that was closely related to the person and his goods or things. If we speak of a distinction between person and good without any doubt, it is easy to understand at the same time the connection between them. The goods are related to the person as we cannot talk about a right without a holder of it. As previously mentioned, the notion of good is related to the notion of patrimony. The Law of the XII Tables tells us about this notion of patrimony, the importance of which will increase as soon as the execution of obligations on the person will be replaced by the execution of obligations on his assets. In the Romanian legal terminology, goods were designated by the word *res*, which, however, was also used to designate things in general (Molcut, 2011, p. 107). The thing (*res*) was the equivalent of everything in nature, but the word (*res*) designated only those things to which a legal relationship refers, that is, what we call goods today. Considering goods as a subdivision of things, the Romans classified things and not goods, starting from the fair idea that the division of things also includes that of goods and that in fact almost anything can become, under certain conditions, a good (Bob, 2019, p. 121). The term *res* has undergone considerable changes over a long period of time, its use changing along with the evolution of the society but also with the economic relations within the community.

The term patrimony, although known by the Romans, was not defined, but the evolutionary process can be traced starting from a number of terms such as *familia, pecunia, hereditas*, words that had another meaning at that time. The word *pecunia* denoted the cattle the person owned, and the word *familia* was used for the slaves he owned. As a notion, the concept of heritage appears in the classical era, its meaning being similar to the modern one, i.e. of legal universality. We can say that in the

modern law, by patrimony, as it is interpreted, we mean the totality of rights, debts and obligations susceptible of a pecuniary value.

Along with the evolution of the Roman society, the term patrimony at the time of the Emperor Justinian was designated by the word *substantia*. The elements of patrimony, in the sense that the Romans gave it in the classical law, are real rights and personal rights.

The famous Roman jurist Gaius makes a division of things (*res*), in his work Institutions, a division also preserved by Justinian in his Institutions, which refers to the law of goods (*res/-ei*). The term good used by the jurists of the time is ambiguous, having different meanings. Most of the time, the term refers to what is in the universe starting from the physical objects (chair, plow), to intangible concepts (rights, obligations). Another great jurist of the Ancient Rome, Ulpian states that *res* essentially encompasses both legal relations and rights of the person. Going further with the idea, he claims that freedom could also be considered a thing, not just any kind but an inestimable thing. So, first of all, *res* refers to any economic asset.

3. Classification of Assets in the Roman Law

As previously noted, Gaius was making a division or classification of things by showing that they can first be divided according to whether or not they can be part of the person's patrimony. The natural division in this situation therefore refers to the main division of things into *res in patrimonio* (patrimonial things), which have the possibility of making up the object of the private property, and *res extra patrimonio* (things outside the patrimony), which either by destination or by their nature, are not susceptible to appropriation.

A separate situation is represented by the assets that, due to their destination, could not be part of a person's private property, such as cemeteries, temples or fortress walls (*res divini iuris*). Some things, although belonging to no one, could still be owned (*res nullius,* such as wild animals or some abandoned property). Taken from Gaius, we also find this division in Justinian's Institutions.

4. Correlation between Goods and Heritage

The notion of patrimony in the Roman law, although it did not have a clear definition, was nevertheless perceived as a notion that defined the totality of a person's rights and liabilities that could pecuniarily be evaluated. Gaius makes a distinction from which it follows that patrimony consists of the right of property, but also of real and personal rights. Personal rights could be part of the asset as receivables or of an eventual liability as liabilities (Hanga, 1996, p. 162). We can notice an evolution of the notion, which over time comes to conceptually detach itself from the personality of the individual, the Romanians suggesting that the patrimony represented only the ratio between assets and liabilities, but which remains in connection with the person.

Most voices claim that heritage is a legal universality based on a set of rights and obligations. Ownership can only be understood by referring to the patrimony of the person belonging to it in a legal sense. According to the Civil Code, the notion of patrimony defines all the rights and liabilities that can be valued in money and belong to a person. As we can see, assets are not included in the definition of patrimony, since according to the Civil Code, the patrimonial rights are considered assets. Equity is composed of an asset and a liability, the two elements representing the sum of a person's rights and obligations. This patrimony can be transferred in its entirety to another natural person only at the time of death of the owner, through succession. In this way, the heirs will collect all of the assets, which includes both the patrimonial rights and all of his debts.

From an economic perspective, the notion of patrimony means a person's wealth, but only in relation to the mass of goods, without taking into account his debts. Heritage is seen as a set of goods that satisfy the need for immediate consumption, consumption that serves the material needs of the person.

According to the two visions, we notice two clear differences between the legal and the economic notion of the patrimony. The first stipulates that, in the legal sense, patrimony also includes debts, thus giving the possibility of the existence of a negative patrimony when the liabilities exceed the assets. The second distinction emphasizes the fact that the economic patrimony includes only the present assets and not the future ones, an essential component of the patrimony in the legal sense. Thus, a distinction must be made between the economic notion of patrimony, which should not be confused with the legal one (Stoica, 2021, p. 50).

Although most of the theories issued regarding heritage admit that it is a legal universality consisting of all rights and obligations, there is still no consensus in

defining the basis of universality. The founders of one of the theories, (the personalist theory), Aubrey and Rau claim that heritage is directly derived from personality or that it would be an emanation of personality, an aptitude of the person in relation to the external objects. By synthesizing this theory, some characteristics emerge such as the fact that only individuals can have a patrimony, or that any person has a patrimony, this one being unitary and indivisible, cannot be separated from the person who possesses it (Ștefănescu, 1999, pp. 104-105). There have also been critics who have argued that the error would be to equate the human person with the legal personality. The capacity of use of the person determines the existence of the patrimony, and the patrimony is only the emanation of the personality.

Another theory that appeared at the beginning of the 20th century in Germany, which was later taken over by the French school, argued that the unity of the rights and obligations constituted as a universality would not depend on belonging to a person, but on the purpose or affectation that the holder gave to them. This theory supported by the German jurists admitted the existence of patrimonies determined exclusively by the purpose for which they were created, but detached from the person. A person can have several assets depending on how many activities they perform, they being independent of each other. There is a separation of the two notions of person or personality and patrimony, thus being able to state unequivocally that the patrimony is independent of the personality.

Affection patrimony can be transmitted between the living, with universal title, both the asset and the patrimonial liability going to the person in question. This theory of the patrimony of affectation is in opposition to the theory of the patrimony of personality, therefore the modern theory of patrimony represents a fusion of the two theories that support a single patrimony, but which is divided into masses of goods with different affectation and a separate legal regime. According to the modern theory, heritage is a legal universality that belongs to a person, which can be divided into masses of assets, having the quality of being unique but not unitary.

5. Conclusions

Regarding the goods as a subdivision of things, the Romans classified things and not goods, because they considered that the division of things also includes that of goods and that in fact, almost anything can become a good under certain conditions. In the ancient times, only material things, i.e. corporeal things, were considered goods. Along with the evolution of the society and law, especially the Romanian one, this

notion of property also included rights, since according to the Romanian law, the right of property is confused with the thing as an object, that is why the Romanian jurists have established two categories of goods: the intangible goods that included all the rights, with the exception of the property rights, and another category, of the tangible goods, which, in addition to the material goods, also includes the property rights over the things. This theory, as formulated above, places the property right in a different category from the other real rights. Making an analysis, without taking into account the Roman concept, we can distinguish between the property right and its object, that the former is revealed to us as an incorporeal good and the thing remains a corporeal good.

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