Artículo de investigación

The Evolution of Studies on Limited Real Rights in Relation to Property in Roman Law (Republican, Classical and Imperial Period)

Развитие учения об ограниченных вещных правах на недвижимость в римской юриспруденции республиканского, классического и имперского периодов

La evolución de los estudios sobre los derechos reales limitados en relación con la propiedad en el derecho romano (período republicano, clásico e imperial)

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Abstract

The article **examines** the formation and development of studies on limited rights to another's property (rights to things belonging to other people) in ancient Roman law. The authors of the article **analyze** the Russian and foreign doctrines, as well as the legal heritage of ancient (archaic) law, the Institutiones and Digests, which partially contain works of classical Roman lawyers of the republican period, the principality era and the late Roman Empire surviving to this day. The authors discuss the formation of scientific theories justifying the construction of limited real rights to property. The article emphasizes that limited real rights in Roman law developed together with such complex socio-economic processes as the formation of small and large landed property and urbanization. Theories on limited real rights to property were influenced by civil law and praetorian law that had been forming as separate systems for a long time but then were unified. The scientific novelty of this article consists in the fact that the authors tried

Аннотация

В статье исследован вопрос становления и развития учения о праве ограниченного пользования чужими недвижимыми вещами (праве на чужие вещи) в юриспруденции Древнего Рима. Авторами публикации **анализируются** отечественная и зарубежная доктрина, юридические памятники древнего (архаического) права, Институции, Дигесты, в которых содержаться сохранившиеся до нашего времени фрагменты сочинений римских юристов республиканского периода, классических римских юристов эпохи принципата и поздней Римской Империи. Авторы рассуждают о формировании научных теорий, обосновывающих конструкции ограниченных вещных прав на недвижимое имущество. В статье подчеркивается, что в античном Риме развитие учения об ограниченных вещных правах проходило параллельно с такими сложными социально-экономическими процессами как образование мелкой и

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highlighting elements of the scientific theory developed by republican and classical lawyers and addressing such an important part of civil law as limited real rights to property. The authors proved the scientific relevance of books on civil law, whose fragments have survived to the present day and whose content can be analyzed in conformity with Justinian's codification. In this regard, they emphasized that Roman lawyers worked on such scientific issues as the content of limited real rights to property, ways of their formation, termination and protection.

Keywords: Real rights, property, servitude, superficies, emphyteusis, usufruct.

крупной земельной собственности, процессом урбанизации, а так же складывалось под влиянием существовавших долгое время в качестве отдельных систем, (а затем и объединившихся) цивильного и преторского права. Научная новизна представленной публикации заключается в том, что ее авторами предпринята попытка выделить элементы научной теории в изложении взглядов республиканских и классических юристов на такую важнейшую часть гражданского права, как ограниченные вещные права на недвижимое имущество. В работе сделан вывод о научном характере книг по цивильному праву, фрагменты которых дошли до настоящих дней и о содержании которых можно судить из анализа Кодификации Юстиниана. В этой связи подчеркивается, что римскими юристами были научно проработаны такие вопросы как содержание ограниченных вещных прав на недвижимость, способы их возникновения, прекращения и защиты.

Ключевые слова: Вещные права, собственность, сервитут, суперфиций, эмфитевзис, пользование.

Resumen. El artículo examina la formación y el desarrollo de estudios sobre derechos limitados a la propiedad de otra persona (derechos a cosas que pertenecen a otras personas) en la antigua ley romana. Los autores del artículo analizan las doctrinas rusas y extranjeras, así como el patrimonio legal de la ley antigua (arcaica), las Institutiones y Digests, que contienen parcialmente obras de abogados romanos clásicos del período republicano, la era del principado y la era romana tardía. Imperio sobreviviendo hasta nuestros días. Los autores discuten la formación de teorías científicas que justifiquen la construcción de derechos reales limitados a la propiedad. El artículo enfatiza que los derechos reales limitados en la ley romana se desarrollaron junto con procesos socioeconómicos tan complejos como la formación de propiedades y urbanización de tierras grandes y pequeñas. Las teorías sobre los derechos reales limitados a la propiedad fueron influenciadas por la ley civil y la ley pretoriana que se habían estado formando como sistemas separados durante mucho tiempo pero luego se unificaron. La novedad científica de este artículo consiste en el hecho de que los autores intentaron destacar elementos de la teoría científica desarrollada por abogados republicanos y clásicos y abordar una parte tan importante del derecho civil como los derechos reales limitados a la propiedad. Los autores demostraron la relevancia científica de los libros sobre derecho civil, cuyos fragmentos han sobrevivido hasta nuestros días y cuyo contenido puede analizarse de conformidad con la codificación de Justiniano. En este sentido, enfatizaron que los abogados romanos trabajaron en cuestiones científicas como el contenido de los derechos reales limitados a la propiedad, las formas de su formación, terminación y protección.

Palabras clave: Derechos reales, propiedad, servidumbre, superficies, enfiteusis, usufructo.

Introduction

The categorical and substantive framework of civil law has been and still is of great interest to scholars. To this date, a significant number of monographs and legal periodicals have been published, which examine the current exercise of subjective rights of possession, use and disposal of immovable property (Medvedev, et al., 2016). This remark relates both to real rights in general and specific types of real rights, including limited ones. Nowadays, there is hardly any state whose civil legislation does not embody the ideas of private property based on legal concepts of

limited real rights, which certainly follow property and help a person (non-owner) to realize their property interests in certain cases due to the limited use of another's immovable things.

Limited real rights in relation to property entered the civil legislation of many countries due to the adoption of Roman civil law. It was Roman lawyers who developed two legal concepts that limited the owner's rights over a thing, including the so-called law of neighboring tenements and non-possessory rights to use another's property by non-owners.

Initially, the owner's legal domination over immovable property could be restricted in two main directions. First of all, the owner's right in relation to real estate can be limited in the interests of neighbors. In particular, these restrictions comprise different rules for site development in conformity with certain distances between buildings located on the adjacent land plots. These rules relate to the height of the structures erected, minimum distance from the border, flow of water to the adjacent areas, etc. Many experts believe that the law of neighboring tenements is a legal restriction on property rights. In addition to the direct restrictions of the owner's rights, civil law utilizes another institute that allows others to interfere in the sphere of private interests of property owners. This institute is called limited real rights.

Limited real rights are subjective rights to someone else's property. In some cases, the subjects of such rights acquire the opportunity to use another person's material benefits (things) in their own interests. At the same time, the owner of the thing burdened with another's right is obliged to put up with this completely unprofitable position.

The doctrine of real rights is the cornerstone of not only the Russian but also foreign law. It is believed that foundations of the above-mentioned doctrine were laid in Roman private law. The grounds for scientific works are fragments of Roman legal manuscripts that have survived to this day, including the Institutiones of Gaius (*Institutiones*) and the Digests (*Digesta (Pandectae)),* which were part of *Corpus iuris civilis* written by Emperor Justinian.
Roman law comprises the following types of rights to another's property:

- Easement (*servitutes praediorum, servitutes urbanorum, servitutes personarum*);
- Right of superficies (*superficies*);
- Perpetual lease (*emphyteusis*);
- Lien (*fiducia, pignus, hypotheca*).

In this article, we do not specifically study the right of lien since the pledge of real property does not imply the pledgee's limited use of the charged property. Therefore, the issues of real estate mortgage are not considered within the framework of this article.

Representatives of the modern civil jurisprudence are still debating over the doctrine of real rights and the theory of limited rights in ancient Rome. Some of them believe that these concepts were introduced in the ancient world, while others claim that they were developed much later (although influenced by the ideas on real rights developed by Roman lawyers). For example, E.A. Sukhanov (2017, p. 13) believes that the doctrine of real rights appeared only at the turn of the 18th and 19th centuries and became an integral part of the German law of pandects, while "Roman private law comprised more casuistical rules". In the past, even the founders of the German law of pandects indicated this fact. While describing *jura in rem* in Roman law, the creator of the so-called "conceptual jurisprudence" Georg Friedrich Puchta (1874, p. 370) noted that "... lawyers meant all types of rights under the name of real rights (*dingliche Rechte*) except for obligations, therefore the concept of real rights has lost its significance for the system of rights".

Thus, it is still relevant to consider the consistent views of Roman lawyers regarding real rights and their certain types, including the rights to other people's things.

Methods

While working on this article, we used the following methods of scientific cognition: the historical (historical-legal) method, the dialectical method, as well as the methods of formal logic and systematic analysis. The general methodological basis of this article is the universal dialectical method used to analyze different (opposing) scientific concepts substantiating the evolution of studies on real rights. Relying on the rules of dialectics, we managed to analyze the specific development of limited real rights in civil and praetor law.

Using the historical method, we considered the main stages of the development of real rights in ancient Rome. The historical method allowed us to study the sources of Roman private law that have survived to this day and preserved the views

of Roman lawyers from different periods on proprietary legal concepts and mainly limited real rights in someone else's property.

The structure of this article and the general line of research imply the use of the formal-logical method (classification, analysis), which allowed to critically examine sources of Roman private law, connections among socio-economic processes that took place in ancient Rome and forming independent institutes of proprietary law.

Results

I. Formation of limited real rights in the early Roman Republic

Like the right of ownership, limited real rights have gone the same path of long development. This fact is undeniable since many experts believe that limited real rights follow the right of ownership, i.e. they are derived from this right. At the same time, no one would argue that the right of ownership as an absolute subjective right appeared long before its legal and scientific substantiation. Therefore, we have determined two generally accepted facts:

- Limited real rights are separate types (kinds) of real rights;
- Limited real rights are derivatives of real rights.

First of all, we should note that rights to other people's property were formed and developed alongside other complex processes in ancient Rome, i.e. the establishment of private land ownership and the fragmentation of large land holdings into smaller plots during the times of the Roman Republic (between the end of the 6th and the 1st centuries BC). According to some historical sources, the right of ownership and servitudes, known as the earliest type of subjective rights to other people's immovable things, had already been formed in the early Roman Republic by the time the Twelve Tables were written. The literature of that time referred to such rights as "Quirite" property or the property of Roman citizens (*populus Romanus Quiritium*). Many experts agree that the Twelve Tables recorded the possible direct use of a neighboring land plot and protection of the owner's benefits (the oldest land servitudes) in the middle of the 5th century BC (Buckland, 1963, p. 262; Bannon, 2009, p. 14). Thus, S.A. Muromtsev (1883, pp.134-137) mentioned that rustic servitudes and, above all, servitudes for water and the right of a path were well-known and widely used at the time the Twelve Tables were published.

The Twelve Tables also cover some aspects of the law of neighboring tenements, the so-called "legal servitudes". For instance, the owner of a land plot had to take measures to ensure that trees were cut at a certain height so that the shadow they casted would not harm the adjacent land plot. In addition, the Twelve Tables set strict requirements for acceptable distances between buildings under construction, fences, the neighbor's right to gather fruits (acorns) falling down onto someone else's land property, etc.

A typical feature that distinguishes between the property of the early Roman Republic and the property *(proprietas)* of the early Roman Empire was the strong influence of tribal and communal institutes. Back then, the owner did not enjoy the level of control over things typical of real rights in the classical period. In all probability, it was the main reason the Quirite right used the general term *mancipium* (later *dominium*) which indicated the person's domination over a thing instead of classical *proprietas* (property) (Ramsay, 1863, p. 257).

Accompanied by the decaying communal ownership of land and years-long struggles for agrarian reforms, the formation of private property rights to land plots was a long process and ended only at the turn of the 2nd and 1st centuries BC.

While analyzing the early agrarian history of Rome, legal scholars discovered that public land *(ager publicus)* had preserved in Roman law for a rather long period. V.A. Krasnokutskii aptly noted that "starting with the formation of the Roman state, its further history revolved around the state-owned land" (Krasnokutskii et al., 2010, p. 235). G. Pukhta (1974, pp. 17-18) explained *ager publicus* by the fact that "according to ancient laws, an individual was closely connected with the whole, while a public entity denied a private one. If a citizen could have allocated and converted a part of the land and soil owned by the state to private ownership, it would have contradicted the above-mentioned principle".

Plots of public land were provided for pasture or for rent, as well as allocated for hereditary use. However, it is impossible to say that emphyteusis characterized by all the features of proprietary law emerged in the period of the early Roman Republic since sources claim that superficies and emphyteusis were formed as independent limited

real rights much later during the period of praetorian and imperial rights.

The formation and legal confirmation of limited real rights in property are associated with the emergence of small- and medium-sized land tenure as the result of the agrarian reforms implemented by Tiberius Sempronius Gracchus, Gaius Sempronius Gracchus and Spurius Thorius. In the course of these reforms, several tens of thousands of small households appeared in the territory of Italy. Such a great amount of small plots caused certain difficulties, including the inability of their owners to fully use the land and enjoy their benefits without affecting the interests of their neighbors. The situation was worsened by natural and weather conditions, in particular, the complex relief of the Apennine Peninsula. Due to the mountainous terrain and lack of land plots suitable for lowland farming, landowners could not often get access to water sources, wells, pastures and roads.

During this historical period, land servitudes *(servitutes praediorum)* were formed under the influence of agrarian reforms. Unfortunately, we do not have any sources that can reliably determine the exact time servitudes were established in Roman law. L. Dorn (1871, pp. 94-95) wrote, "The ancient origin of servitudes is out of the question. We do not know any details of their historical development but the sources that have survived to this day elaborate the doctrine of servitudes. The first rudiments of servitudes could be found in general law. Then Roman law selected a few basic principles and developed an extensive legal institute".
The prominent lawyer of the classical Roman jurisprudence Ulpianus highlighted four ancient rustic servitudes: the right to go on foot or to walk *(iter)*, the right to drive a beast of burden *(actus)*, the right to drive *(via)*, the right to channel water across another's land *(rivus, aquae ductus)*. The Digests provide the relevant comments on the extent of use of other's land plots. In particular, if a citizen used the right to go through another's land, they could not drive their cattle there. If there was servitude for driving livestock, the owner of the dominant land plot could not only drive their cattle through another's territory but also drive a vehicle or go on foot without any livestock (D.8.3.1.).

While studying the nature of servitudes, G. Diosdi (1970, p. 116) concluded that the oldest servitudes – *iter, actus, via and aquae ductus* – emerged as independent rights. They formed soon after or together with the decaying communal ownership of land and were conditioned by insufficiently developed networks of public roads and water mains.

To support the early republican origin of the first land servitudes, we should refer to the possibility of acquiring such servitudes by prescription *(usucapio)*. This method of acquiring servitudes was used in the early Roman Republic but was abolished by Lex Scribonia in 149 BC when servitudes were recognized as intangible things *(res incorporales).*

Thus, numerous agrarian changes, the formation of private land ownership and the high density of small land plots did not give individual owners access to basic benefits intended for the full use of land, including public roads, water bodies, wells, rivers, streams and pastures. These problems could be solved only through the use of favorably located neighboring land plots and the establishment of servitudes on them. As a result, these servitudes were formed in the early Roman Republic.

II. Further development of limited real rights in property: from the late Roman Republic to the fall of the Roman Empire

The further development of land relations conditioned other rustic servitudes, namely the rights of digging water *(aquaehaustus)*, pasturing livestock *(pecoris ad aquam appulsus)*, grazing cattle *(pascendi)* and felling forests *(silvae caeduae)* (D.8.3.1; D.8.3.7; D.8.3.12; I.2.3.2).
The formation of new servitude types was associated with the continued development of small- and medium-sized land tenure whose successful management required natural resources from another's land. For example, there were servitudes for water (irrigation). Water was described as a sign of an ideal household in the treatises of that time. Gaius Terentius Varrō (1963, p. 39) wrote, "One's manor should be built in such a way that a water source is located in its territory or at least as close as possible to it: spring water is the best, otherwise you should choose flowing water". Marcus Porcius Cato's (2008, p. 8) treatise "On Agriculture" offers the following advice on choosing an ideal household: "If possible, it is better to buy a house exposed to the south and positioned at the foot of the mountain. It should be located in a healthy area with many workers, a good water reservoir and a rich city, sea or river nearby…".

Some descriptions of such estates have survived to this day, for instance, the one written by the famous Roman poet Quintus Horatius Flaccus.

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After studying the literary heritage of ancient Rome, I.M. Greaves (1899, pp. 81-83) concluded that Horatius' villa had several sources of fresh water, in particular, the Digentia River, which flew near the hill upon which the villa is built. The poet himself described a deep stream near the house. This creek never dried up, served as a large source of pure water and subsequently received the name *fons Horatii*, in honor of Horatius.

Historical sources also mention the following rustic servitudes: lime burning, sand digging *(servitus arenae fodiendae)*, forest felling for construction purposes *(servitus silvae caeduae)*, lime scorching *(servitus calcis coquendae)*, stone mining for construction needs *(servitus lapidis eximendi)*, servitude for sailing (in a boat) to reach a neighboring estate *(servitus navigandi)*. According to H. Dernburg (1912, p. 208), these servitudes were recognized later in the imperial period.

Besides rustic servitudes, there also were so-called "urban" easements: *servitus protegendi, servitus tigni immittendi, servitus oneris ferendi, stillicidii, fluminis, servitus cloacae, servitus ne luminibus officiator, servitus ne prospectui offendatur, servitus altuis non tollendi*, etc.

The formation of *servitutes praediorum urbanorum* is associated not only with the usual rustic housing development but also with the growth of the urban population. The period between the 2nd and 1st centuries BC was marked by the most rapid growth of construction when different types of crafts were actively developed and the Romans began to use new building technologies, including concrete or baked bricks. Most urban servitudes were directly related to the common ownership of certain real estate objects, i.e. common walls, fences, roofs, etc. Due to dense development and multi-storey construction (six-storey residential buildings were erected in Rome in the 1st century BC), it became impossible to conduct certain types of construction work without affecting the interests of neighbors. Sometimes constructed buildings could not be kept in proper conditions without servitudes, especially in the absence of borders, which were a mandatory attribute of rustic constructions.

The establishment of the main urban servitudes proves this fact. The position of overlapping on the walls of a neighboring building, the installation of ebbs for the drainage of rainwater, the construction of a sewage system through another's land plots and buildings were the main ways of solving the problems of closely located buildings and narrow streets.

Dense development also caused other problems. They were associated with the lack of natural lighting and the violation of rights and interests of neighbors due to the economic use of such buildings. For instance, Ulpian indicated the possibility of establishing such servitude as the release of smoke from a cheese factory into the upper structures of *servitus fumi immittendi* (D.8.5.8.5). In this context, we can talk about reasons behind the so-called negative urban servitudes that prohibited neighbors to perform certain actions and, therefore, violate each other's interests while using their property.

In addition to restrained urban conditions, the development of handicrafts played an important role in the formation of positive and negative urban servitudes. For example, the rapid development of crafts began in the period from the 2nd to the 1st centuries BC in Italy. A large number of small workshops appeared in Italian cities where free artisans, freedmen and slaves worked. Textile, metallurgical, ceramic and leather crafts, as well as the manufacturing of building materials, became widespread.

Scholars highlight the formation of large handicraft centers with a specific type of production during this period (Pozzuoli, Capua, Arretium, Minturno, etc.). The location of workshops within the city stipulated certain rules for their construction (outside the dwellings zone) or use of the lower floors of residential buildings for the corresponding purposes. The release of smoke, steam and soot, as well as other negative effects on the neighboring property, were not allowed.

Historians dated the formation of special "production zones" in cities to the later stages of the Roman history (between the 1st and the 2nd centuries AD) (Kuzishchina, 1994, p. 291). Therefore, the placement of workshops next to living quarters was a common practice for that time (like the cheese factory mentioned by Ulpian).

Considering the reasons behind the formation of urban servitudes (in particular, negative ones), we should note that the Romans used master plans for urban development, which provided for certain zoning (the division of city areas into residential, industrial, public, commercial, etc.). In addition to master plans, there were various construction statutes. They contained many restrictions in construction and aimed to protect

public interests and the interests of neighbors. In restrained urban conditions, the inevitable deviation from their rules could be carried out with the help of negative servitude: when the owner of some building or dwelling could permit the neighbor's activities on their territory and, therefore, had to bear their negative impact.

Such concepts as *ususfructus, usus and habitatio* entered rustic and urban servitudes of Roman law much later. They also grant limited real rights to use someone else's property. The essential difference is that these rights are established not in favor of some property but in favor of a particular person. These rights were called personal servitudes *(servitutes personarum)* in legal studies and acquired an independent status during the adoption of Roman law. Besides direct links to an individual, these rights to other people's immovable things differed from the praedial servitudes by the fact that they were formed under a will (legate) or by virtue of family and marriage relations, they were temporary (usually for life) and divisible unlike other types of servitudes.

We can assume that superficies was formed during the golden age of praetor law *(jus honorarium)*. Long-term land lease existed in the Roman Republic long before the appearance of the largest landowners. Over time, the right to long-term leasehold acquired certain features of real rights, unlike regular lease. In the imperial period, the praetor provided superficies with a specific way to protect their rights – *Interdictum de superficiebus.*

Superficies is a hereditary and alienable real right to use a building erected on another's land plot. The building itself belonged to the owner of the land plot. At the same time, the superficiary *(superficiarius)* received a limited real right to use this building and its land which could be passed to the heirs.
In comparison to other limited real rights in property, emphyteusis was formed much later – in the imperial period. This real right originated in the Roman Republic and even earlier periods. Many historians believe that the birthplace of emphyteusis was ancient Greece (Novitskii, 2000, p. 110). However, the lease of that time (even if hereditary) was obligatory and was associated with long-term rental of public land *(agri vectigales)*. Later the practice of leasing out imperial lands on a hereditary basis became widespread in the Roman provinces and was conditioned by the need to reclaim large areas of land in the conquered territories of the Middle East and North Africa.

Emphyteusis was gradually developing in Italy and eventually became an independent real right that could be alienated and inherited. Moreover, the practice of burdening not only imperial but also private land plots began to establish. The emphyteuta's main obligations included the timely payment of rent and the rational use of land. It is believed that the issue of emphyteusis as an independent real right was resolved under Emperor Zeno who extended proprietary legal protection to this type of rights in the 4th century AD.

III. The doctrine of limited real rights in property and activities of Roman lawyers of the republican, classical and imperial periods

Unfortunately, the written monuments of the Roman legal system that have survived to this day do not let us determine whether scientifically developed approaches to the content of limited real rights existed in the pre-classical Roman law or the main activities of republican lawyers were practical consultations, according to I.A. Pokrovskii (1907, p. 85). Pomponius wrote about lawyers of the republican period in the first book of the Digests. The most renowned jurists are as follows: Publius Mucius Scaevola, Quintus Mucius Scaevola, Aquilius Gallus and Sextus Aelius Paetus Catus who wrote a comment to the Twelve Tables – Tripertita (D.1.2.2.2.38; D.1.2.2.2.39).

Presumably, limited real rights did not receive a proper dogmatic interpretation in the early republican period when the Twelve Tables were adopted. However, we cannot assert the same thing about lawyers in the golden age of the Roman Republic since practical work and counseling in the Roman jurisprudence of the 3rd and 2nd centuries BC were closely connected with scientific activities in conformity with some historical sources. In this regard, we can mention the 18-volume treatise of Quintus Mucius Scolaevol "On Civil Law", scientific works of Servius Sulpicius Rufus, etc. Most of the above-mentioned works have not survived to this day or preserved only as fragments and separate quotes given by other authors. The Digests include a reference made by the famous classical lawyer Ulpian in relation to republican lawyers Aquilius Gallus and Servius Rufus dwelling upon the nature of easements (D.8.5.6.2). The Digests comprise many fragments with comments about the nature of usufruct provided by Scaevola's student – Tryphoninus.

Civil law was scientifically substantiated throughout the activity of the so-called classical lawyers who, as is commonly believed, "... fundamentally overcame the primitive viewpoint on the law as a combination of separate principles (incidents) and considered legal relations from the philosophical perspective using sophisticated logical methods and place the ancient jurisprudence on a scientific basis" (Kuzishchina, 1994, p. 59). Indeed, the classical Roman jurisprudence had a great impact on the further development of legal ideas and remained relevant for many centuries to come. This situation is proved by *Corpus iuris civilis* that became the quintessence of the Roman legal thought and reflected the essence of Roman private law at different stages of its development. Regarding *jura in re aliena*, we can say that these rights received sufficient dogmatic substantiation in the Roman jurisprudence. Such a conclusion can be drawn based on the results of the scientific analysis of the surviving legal documents of ancient Rome and above all, the Institutiones and Digesta.

To name a few lawyers of the classical period, we should start with Gaius, the author of the well-known Institutiones. His Institutiones contain a lot of information about servitude and usufruct. Gaius' legal formulas were also included in the Digests 7 and 8, which are devoted to usufruct and servitude. After analyzing Gaius' works, we can conclude that there were various legal schools in the classical period and Gaius even mentioned *"... diuersae scholae auctores existimant ..."* "followers of another legal school" (Gai. 2.37). Gaius probably meant the Proculean and Sabinian schools of law that were formed in the early classical period and also studied the rights to other people's immovable things. We can consider the content of the legal treatises of that time only by the surviving excerpts and fragments that the Tribonian Commission put in the relevant books of the Digests.
First of all, these are quotes of such famous classical lawyers as Iavolenus, Labeō, Ulpianus, Paulus and Papinianus. In addition to many formulas that reveal the essence of servitude and usufruct, the Digests indicate the essence of such rights as superficies and emphyteusis but the latter quotes are few in numbers. The Digests include quite a lot of comments of another prominent lawyer of the classical era – Pomponius.

In addition to his valuable comments, Pomponius provided information on the development of the Roman schools of law, which allows drawing a parallel between scientific schools and the theory of limited real rights. Furthermore, the content of limited real rights can be judged by the statements of Modestinus, Neratius, etc.

In the imperial period, "the development of the Roman jurisprudence loses its creative character" due to the transition to absolute monarchy (Novitskii, 2000). Creative ideas of the classical Roman period were replaced by other processes, which help us learn about the main achievements of the Roman jurisprudence. Of course, we mean attempts to systematize private law, the main one is undoubtedly Emperor Justinian's codification made in the 6th century AD. There is no more information about the further dogmatic development of the rights to other people's immovable things except for emphyteusis.
On the contrary, we can assert that the process of codifying legislation (there were several types of codification carried out in the imperial period) is not only the systematization of accumulated legal materials but also a serious scientific analysis. In this regard, we should emphasize that commissions on codification excluded outdated and controversial provisions that had accumulated during the long history of *ius privatum* preceding the work on codification. At the very least, we can assess the rights to other people's immovable things relying on the analysis of the sources that entered *Corpus iuris civilis*.

Discussion

There was an integral model of relations connected with the limited use of others' immovable things in Roman law that republican and classical lawyers considered as independent categories of private law. The sources that have come down to us indicate a high level such legal constructs as limited real rights, their systematization, detailed legal justification and interpretation.
Limited real rights in relation to another's property have undergone a long evolutionary path from restrictions on the neighbor's rights, the oldest road and water easements known to the Twelve Tables to regulating numerous types of rustic and urban servitudes, usufructs, superficies and emphyteusis developed by Roman lawyers in the republican and imperial period.

The main common element of limited real rights (except for pledge, certain types of usufruct and *operae servorum vel animalium*) is the limited use of another's property. These limited real rights in property differ from neighboring rights, whose concept is also developed by the Roman jurisprudence. Within its legal framework, the

neighbor's right is not a real right but a restriction of the right of ownership that does not grant the opportunity to use someone else's thing and vice versa, as well as limits such an opportunity of the owner.

The theory of limited real rights was developed in parallel with such complex socio-economic processes as the formation of small and large landed property (latifundium), including the lands of numerous Roman provinces acquired as a result of conquest, as well as the emergence of a special category of land – fiscal or imperial lands. The emergence of this land category contributed to the establishment of emphyteusis as an independent limited real right.

The content of certain limited real rights involving the use of another's land was clarified due to major agrarian changes from the early Roman Republic to the fall of the Roman Empire, as well as the development of large urban settlements.

The gradual development of studies on limited real rights by Roman lawyers is evidenced by the full-fledged and substantiated mechanism for protecting such rights. In particular, we can say that such means (claims) were already formed in the early Roman Republic and then evolved into a system of claims and the Praetor's Edicts. Furthermore, some types of such claims or their consequences can be found in modern legal codes, which is the result of the adoption of Roman private law.

In this regard, we can assess with high confidence that the basic legal concepts and scientific ideas of Roman lawyers in the field of limited real rights influenced the subsequent development of the European legislation on real rights (pandectual and institutional systems), as well as terms and categories in the scientific doctrine of private law in general.

Conclusion

Concluding the study, we need to emphasize that Roman law introduced the main dogmatic concepts regarding the specifics and content of limited real rights in property. Following the ideas of Roman lawyers on the legal nature of servitutes, superficies and emphyteusis, we have comprehended the classical legal approach to real rights in property, which has been preserved in modern jurisprudence. Moreover, we can say that alterations of these rights from *res mancipi* of the Twelve Tables to *jus in re* of the principality era were supported by the evolution of Roman law that embraced lawmaking, practice and scientific interpretation.

The scientific nature of Roman legal ideas on limited real rights is also indicated by the fact that numerous fragments of the Digests not only record certain rules reflecting different types of limited real rights but also comprise critical quotes given by some lawyers in relation to beliefs of other legal schools.

Classical Roman law developed a systematic and dogmatic doctrine of limited real rights, including rights to other people's immovable things. It is mostly confirmed by substantiated and essential differences between the use of someone else's property under a limited real right and the same use conditioned by the right of obligation, for example, under the contract of hire (*rei locatio-conductio*).

It must be regretted that most literary works of prominent old and classical Roman lawyers have not survived to this day and have been partially lost. We believe that this legal heritage would have greatly contributed to the system of modern private law and brought the theory of limited real rights to a completely different quality level.

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