

## LAND PROPERTY RIGHTS THROUGH CENTURIES: A ROMAN IMPRINT\*

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SUMMARY: 1. - The Concept of Land Property in the Main Sources of Roman Law; 2. - The Byzantine Influence on Old Russian Law; 3. - Conclusion.

### 1. - The Concept of Land Property in the Main Sources of Roman Law

#### a) Roman Heritage in the Field of Land Property

According to Mcsweeney, the modern legal science owes to Roman lawmakers not only early methodological concepts but the very language of property, which underlies the way we talk about the relationship between people and things in both common law and civil law systems. Property, along with contract and tort, is one of the fundamental divisions of private law in the common law. He presumes, “The language of property actually comes out of a very specific cultural and historical context. It comes from Roman law and canon law, which together formed the medieval *ius commune*, or common law of Christendom. It was the *ius commune*, the ancestor of the civil law systems that dominates continental Europe today that gave English its words possession and property”<sup>1</sup>.

Oestereich credits Romans with invention of real property as a result of their practical approach to measuring and documenting land possessions. “The ancient Romans, guided by their predominantly urban (i.e. literally petrified) perspective, on the one hand, and by their ability of and positive experience in keeping written records, on the other hand, started to make land holding a subject of systematic formalization and documentation”. It is worth mentioning that no distinction was made with respect to benefits (‘fruits’), access to them and the soil itself. Oestereich underlines, “In the sequel, the continuous struggling and arbitration disappears, heritage and succession become transparent. Transactions on the model of a contract between private parties, facilitated by surveyors, notaries, etc., make land a commercial good”<sup>2</sup>.

Jakab analyzes the main formats of land plots in the Roman Republic, such as, *scamnatio* or *strigatio* and *centuriatio*. *Scamnatio* was a division technique per *scamna*, crosswise, while *strigatio* divided per *strigas*, lengthwise. As a result, a row of rectangular plots had been created, irregularly arranged, often along a road, but without connecting trails. Land was scarce and originally owned by the state (*populus Romanus*): nobody had open access to public land, and property rights to individuals could be granted only by the state. The scholar concludes, “low efficiency of public exploitation and private interference (by force) generated several types of private usage without a proper legal framework, therefore with lack of security”<sup>3</sup>. Ownership (*dominium ex iure Quiritium*) existed only on assigned plots in a centuriation; legal protection by *ius civile* was granted only for this type of property rights. Jakab underlines that “Ownership as such was never absolute, unlimited and exclusive in ancient Rome. It seems very likely that the ancient Roman conception of ownership on land met a broader

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<sup>1</sup> T. J. Mcsweeney, *Property Before Property: Romanizing the English Law of Land*, in *Buffalo Law Review* 60.4 (2012) 1414 pp.

<sup>2</sup> J. Oestereich, *Land and property rights: some remarks on basic concepts and general perspectives*, in *Habitat International* 24.2 (2000) 538 pp.

<sup>3</sup> Jakab, É., *Land, law and exploitation of natural resources. Property rights in ancient Rome*, in P.Erdkamp, K.Verboven, A. Zuiderhoek (eds), *Land and Natural Resources in the Roman World*, Oxford 2015, 407 pp.

target, and fostered conditions amenable to an optimal exploitation of the main natural resource, agrarian land, complying with collective interests in the exploitation of natural resources”<sup>4</sup>.

#### b) Leges Duodecim Tabularum (451—450 BC)

The first written mention, though rather indirect, of property rights can be traced to the first ancient Roman codex *Leges Duodecim Tabularum*, or the Twelve tables. Thus, Table VII was partly dedicated to real property. Arts 8b, 9b and 10 considered damages caused to property of private persons by public or private actions. Table VIII provided for penalties and severe punishments for torts or delicts violating property rights or destroying the property. For instance, “If anyone pastures on or cuts by night another's crops obtained by cultivation the penalty for an adult shall be capital punishment and, after having been hung up, death as a sacrifice to Ceres” or “Whoever destroys by burning a building or a stack of grain placed beside a house ..., shall be bound, scourged, burned to death...”<sup>5</sup>.

According to Hall, in terms of sources of written law, the Twelve Tables were both a ‘statute’ (*lex*) and a code – an early example of the codification of Roman law. The law of contract - deposit and sale, elements of what is termed the law of obligation – whereby private agreements were recognized by the State and legally enforceable - can be traced back to the Twelve Tables. The concept of the consensual contract of sale *emptio venditio* was one of the great Roman ‘inventions’<sup>6</sup>.

#### c) The Theodosian Code (438)

The Theodosian Code was intended to organize into one complex body all the *edicta* and *generales constitutiones* from the time of Constantine. As a reference model were taken two existing unofficial Codes Gregorianus and Hermogenianus (*ad similitudinem Gregoriani et Hermogeniani Codicis*) collected by private jurists and published during the reign of Diocletian.

The *Codex Theodosianus* consists of sixteen books, which are divided into 450 titles, which in turn are subdivided into more than 2.5 thousand of *constitutiones* or laws. It is worth mentioning that in modern public discourse the *Codex Theodosianus* is often mentioned in connection with a legal introduction of Christianity as the state religion and even with “religious intolerance”, particularly, against Judaism<sup>7</sup>. However, the laws relating to Christian church are contained in the sixteenth and last book unlike the Code of Justinian, which begins with *jus ecclesiasticum*.

First five books of the Theodosian Code focus on *jus privatum* (private law); books 6–8 address matters of constitutional and administrative law; criminal law is the subject of book 9; books 10–11 contain the law relating to public revenue; books 12–14 stipulate rules governing municipalities and corporations; book 15 includes provisions pertaining to public works and games; and book 16 elaborates provisions on ecclesiastical matters.

Throughout the Code, the ownership of land is closely intertwined with the fate of those who cultivate land, namely, landowners, peasants, coloni, slaves and tenants. Thus, Art.2.25.0. *De communi*

<sup>4</sup> Id.

<sup>5</sup> *The Twelve Tables*, in A. Ch. Johnson et al (trans); C. Pharr (ed), *Ancient Roman statutes: translation, with introduction, commentary, glossary, and index* [online] Available: [http://avalon.law.yale.edu/ancient/twelve\\_tables.asp](http://avalon.law.yale.edu/ancient/twelve_tables.asp) [accessed 26 June 2018].

<sup>6</sup> E. G. Hall, *An Introduction to Roman Law and its Contribution to the World*, Dublin 2014, 14 pp.

<sup>7</sup> The second key part about the codex is that it is known for codifying Christianity in the latter stages of the Roman Empire and for most of the Byzantine Empire. Christianity was not only encouraged in the Empire, but the *Codex Theodosianus* was the first known text that made Christianity an official religion of a region, and it even went so far as to foment a reputation of Christian intolerance by making all other religions illegal in the Empire. *The Codex Theodosianus* // Byzantine Conference [online] Available: <http://www.byzconf.org/the-codex-theodosianus/> [accessed 26 June 2018].

*dividundo* deals with the division of estates among many owners so that each possessor should retain a kinship of slaves. Art.5.6.0. *De bonis militum* stipulates that defeated barbarians (Huns) can be used to work on fields only on the basis of the colonate right. Art.13.10.0. *De censu sive adscriptione* provides that if someone decides to sell or donate an estate, he cannot keep his coloni, by private agreement, in order to transfer them to other places. Art.5.16.0. *De agricolis et mancipiis dominicis vel fiscalibus sive rei privatae?* regulates the legal relationship between the imperial house and those who bought, according to the constitution, estates belonging to imperial possessions, as well as the coloni that bought fields from the imperial patrimony<sup>8</sup>.

It is not surprising that a number of provisions concern runaway coloni, inquilini and slaves and provide for punishment to those who illegally took them in possession as well as compensations to their legal owners and the fisc. Art.4.23.0. *Utrubi* states, if the coloni of some estate run away to other masters, first possessor should take advantage of favorable moment, as soon as he finds out the location of his fugitives, to return them without delay. Art.5.17.0. *De fugitivis colonis, inquilinis et servis* prescribes that if someone deliberately kept someone else's colony in his house, the colon to be returned to the former master and the tax for this time to be paid. If somebody does not wish to be where he was born, he becomes a slave. Art.5.18.0. *De inquilinis et colonis* states that if someone for thirty years will have in his estate someone else's colon, captured during the flight or moved by his own will, let him declare his own. If a colon is found within thirty years, he should be returned to his master along with his legal children, and all *peculium*. If a colon dies, his sons should return to his master along with their or their late father's income<sup>9</sup>.

Another crosscutting theme is collection and payment of land and property taxes, which are part and parcel of rights on immovable (estate, land etc.) as well as on movable property (especially, slaves). Art. 11.7.0. *De exactionibus* determines the mode of supervision over collection of taxes. Two articles are dedicated to rights of those who bought or took on lease fiscal or private imperial estates with coloni and slaves. Art.5.16.0. *De agricolis et mancipiis dominicis vel fiscalibus sive rei privatae?* secures rights of new owners and lessers in order to use estates and land in confidence. Art. 10.1.0. *De iure fisci* states, "We handed over to some people estates and slaves, removed from the patrimony of the fisc. We want them to own that by direct and eternal right without any investigation". At the same article, a scheme of paying taxes is stipulated in order to better observe interests of coloni<sup>10</sup>.

Art.11.1.0. *De annona et tributis* states that anyone who has received homeless slaves from abandoned lands is subject to fiscal payments in accordance with a correct inventory of the land, from which it appears that slaves belonged to it. This provision also concerns those who are allowed to move slaves from such estates to their own possessions. Further in this article, the legislator states that those who have power over their estates should either themselves or through their actors accept responsibility to pay and fulfill the duties of those local-origin coloni that are included in the qualifications of these same estates. At that, this prescription does not apply to those coloni who have at least some land ownership and are registered in census books in their estates under their own name<sup>11</sup>.

Art.11.3.0. *Sine censu vel reliquis fundum comparari non posse* stipulates that slaves inscribed in the census of purchased estates should be sold within the given province. The same is valid for public

<sup>8</sup> *Theodosiani libri XVI cum Constitutionibus Sirmondianis*. (Based on the edition of Th. Mommsen, *Theodosiani libri XVI.*, Berlin, 1905) [online] Available: <http://www.koeblergerhard.de/Fontes/CodexTheodosianus438.htm> [accessed 26 June 2018].

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

burdens and payments connected with these properties, which should be transferred to new owners of estates<sup>12</sup>.

For the purposes of this article, one of the most important provisions of the Theodosian Code can be found in Art.5.12.0. *De fundis patrimonialibus et saltuensibus et emphyteuticis et eorum conductoribus*. Here for the first time, we meet a very clear and detailed legal notion of a particular pattern of land use, namely, the emphyteusis.

The article provides for equal rights for land use to possessors as well as emphyteuts. “Patrimonial possessors or emphyteuts even if they at least until now, have not bought many estates, are in no way compelled to over-buy them, but let them possess on the basis of this command, like those who bought them. Let them know that their right is secured as soon as they were cultivating the land in the estate, which they own, or had received by heredity, or by acquiring it in private, or because of generosity of the emperor or in any other way. In order to facilitate buying and selling estates, purchasers are exempt from the burden of small debts for the years that followed the 10<sup>th</sup> taxation to the present time so that the collection of debts would not burden revenues that come from patrimonial estates”<sup>13</sup>.

Art.11.16.0. *De extraordinariis sive sordidis muneribus* stipulates that patrimonial and emphyteutic estates established in Italy should be exempt from all extraordinary payments, following the example of Africa. Art.11.26.0. *De discussoribus* provides for eliminating the land tax in Italy as the fulfillment of duties related to the *annonas*. Art.13.1.0. *De lustrali collation* clarifies that only those should effectuate payments of contributions in gold and silver, who are engaged constantly in buying and selling, but not the coloni of estates, who sell out what they produce in imperial estates during the year<sup>14</sup>.

Additionally, in the “Novels of Valentinian III” a thirty-year period of limitation is determined for the eternal emphyteuts of patrimonies, which should be taken into account in all cases<sup>15</sup>.

#### d) The *Corpus iuris civilis* of Emperor Justinian (529-534)

The *Codex Justinianus*, or Code of Justinian, is a collection of Roman laws and legal principles enacted by Roman Emperor Justinian. The Code discusses different categories of laws, process of law implementation, persons who have jurisdiction to enact and enforce laws, and criminal procedure. The Code of Justinian served as the foundation for Byzantine legal system for nearly nine centuries. The law of Justinian became the corner stone of the law of the continental Europe. The Roman law of ‘things’ (*res*) - economic assets - was divided into the law of property (‘things’), the law of succession and the law of obligations. Today, this division is the cardinal feature of modern Civil law.

Re rightfully states, “As for the Romans, time has decreed that their most permanent contribution was their law. What can be said of Rome can be said of Justinian. Justinian, like earlier Roman emperors, was a great builder of roads and public buildings. The most splendid of his many churches was the dome-covered Cathedral of St. Sophia. However, history will continue to proclaim his name because he was the Roman Emperor who finally codified the Roman law”<sup>16</sup>.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Кодекс Феодосия и Новеллы императоров Валентиниана III, Майориана и Либия Севера о колонах, сельских рабах и вольноотпущенниках. [online] Available: <http://ancientrome.ru/ius/source/theodosius/codex-f.htm> [accessed 26 June 2018].

<sup>16</sup> E.D. Re, *The Roman Contribution to the Common Law*, in *Fordham Law Review* 29.3 (1961) [online] Available: <http://ir.lawnet.fordham.edu/flr/vol29/iss3/2> [accessed 26 June 2018].

The concept of property, as that, is dealt with in both parts of the Justinian code. The Institutes provide the methodological basis for scientific analysis of ownership. Meantime, the Digesta reviews the juridical practice in the field of securing property rights and protecting owners against their violation. Buhofer studies the structure of the Institutes from the point of view of private law. Thus, in Inst.1.2.12, the central statement is that all law is about Persons, Things, or Actions. Inst.2.2 further divides Things into corporeal and incorporeal ones. Here, we can observe an important division of incorporeal Things in three groups: 1) rights of use and enjoyment in real and movable property, 2) estates by inheritance, and 3) obligations. Further subdivision of obligations in contracts, quasicontracts, wrongs (or delicts) and quasi-wrongs can be found in Inst.3.13.2. Actions are subdivided in Inst.4.6.1 and 4.6.20 into real, personal and mixed ones<sup>17</sup>.

Buhofer examines relations between categories of Persons, Things, or Actions in the Institutes. According to him, categories of Persons and Things determine objects of law, while Actions designate means of legal redress. The law of Persons deals with the status of and the consequential relations among Persons; and the law of Things is concerned with assets. In this broad sense, Things are objects that increase or decrease a Person's wealth; therefore, Things also encompass obligations. Thus, obligations are relationships between Persons over Things. The scholar highlights the most important aspect of the institutional arrangement, that is a differentiation between *actiones in rem* (real actions) and *actiones in personam* (personal actions), and their counterparts on the side of Things. This is the basis for the central division of modern legal systems into the law of property and the law of obligations, the latter including contracts, torts and unjust enrichment.

Buhofer acknowledges that all continental European laws trace their structure back to the Roman institutional scheme; however, a parallel development was that the institutional scheme began to be seen as a system of rights. *Actiones in rem* and *in personam* were replaced by rights *in rem* and rights *in personam*. According to the definition in the Institutes, the first was concerned with the right of a Person to a Thing and the latter with the legal relation between Persons. Thinking in terms of rights allowed the combination of the pairs of property - *in rem*, and obligation - *in personam*. A property right is a right *in rem*, and the claim based on an obligation is a right *in personam*<sup>18</sup>.

#### e) The Digest of Justinian

The Book 2 “Provision for a Guarantee” gives an explicit classification of possessors of immovables. Art.15, para.1 states, “he is taken to be possessor who possesses land in the country or in the town, either solely or in part. Again, one who possesses *ager vectigalis*, that is, holds land under a contract of emphyteusis, is understood to be possessor. Likewise, one who has bare ownership is understood to be possessor. But Ulpian writes that one who has only a usufruct is not possessor”<sup>19</sup>. Further on, there is made concretization of different cases of possession, for instance, para.2 denies a creditor a right of possession. “A creditor who has received a pledge is not possessor even if he holds possession either because possession has been delivered to him or because he has allowed the debtor to hold the property by license”<sup>20</sup>. Another case is connected with litigation over a land plot (Art.6). “If you claim from me land, which I possessed, then, when judgment has been given in your favor, I appeal, am I possessor of the same land? And it is rightly said that I am possessor because nonetheless I possess, nor is it relevant that I can be evicted from that possession”<sup>21</sup>.

<sup>17</sup> Buhofer, S.P. Structuring the Law: The Common Law and the Roman Institutional System, in *Swiss Review of International and European Law* 5 (2007) [online] Available: <http://www.beckerlynn.com/wp-content/uploads/2008/08/news.58.pdf> [accessed 26 June 2018].

<sup>18</sup> Id.

<sup>19</sup> A. Watson (trans., ed.), *The Digest of Justinian* Vol. 1. Book 2. University of Pennsylvania Press 1998. 530 pp.

<sup>20</sup> Id.

<sup>21</sup> Id.

Here again a very important notion of emphyteusis is further developed. According to the glossary, which precedes the translation of the Digesta made by Watson, emphyteusis is “a real right over the property of another, consisting in a grant of land by the state or local authority on a long lease or in perpetuity for a groundrent”<sup>22</sup>.

As Long explains, emphyteusis is a perpetual right of a person for a land plot which is the property of another: the right consists of legal power to cultivate it, and treat it as his own, on condition of cultivating it properly, and paying a fixed sum (*canon, pensio, reditus*) to an owner (*dominus*) at fixed times. The right is based on a contract between an owner (*dominus emphyteuseos*) and a lessee (*emphyteuta*), and the land plot is called *ager vectigalis or emphyteuticarius*. Emperor Zeno is credited to define it as *contractus emphyteuticarius*. The *ager vectigalis* was first distinctly mentioned in the time of Hadrian, and the term was applied to lands, which were leased by the Roman state, by towns, by ecclesiastical corporations, and by the Vestal virgins. The Digest mentions only lands of towns to let, dividing them into *agri vectigales* and *non vectigales*, according as the lease was perpetual or not; but in either case a lessee had a real action (*utilis in rem actio*) for protection of his rights, even against an owner<sup>23</sup>.

#### f) The Ecloga (726)

The Ecloga, compilation of Byzantine law issued by Emperor Leo III the Isaurian, is the most important Byzantine legal work following the Code of Justinian. The Ecloga had a strong influence on later Byzantine legislation as well as on development of law in Slavic countries beyond Byzantine frontiers<sup>24</sup>.

Titles II, III, IV, V, VI, VII. determine the order of distribution property between members of family on the basis of marriage, dowry, inheritance, donation etc.

Title XII is dedicated to eternal and limited emphyteusis. Though the notion of emphyteusis first appeared in the Theodosian Code and then in the Digest of Justinian, namely, the Ecloga gives a clear-cut and detailed definition of this important concept.

“1. An eternal emphyteusis for disposal of a real estate is established with an annual payment of a fee, subject to agreement, under condition of taking care of real estate and improvements made to it...

2. A perpetual emphyteut who pays an annual contribution without evasion and who cares about preserving and improving real estate should not be removed from such an agreement. He has the right to leave such an emphyteusis to his heirs, give it as a gift or a dowry, or otherwise transfer and sell it. Of course, when selling, the preference for buying this right is given to the original owner.

3. If an emphyteut neglects for three years contribution of the annual fee to its owner or worsens the object received in the emphyteusis, then the owner has the right to deny the emphyteut his right to the real estate, leaving him, as expected, what he should.

5. A limited emphyteusis is leased by any kind of pious institutions or the imperial house, or by other persons, indicating the annual payment, as mentioned above, for up to three and no more generations succeeding each other by will or without will, with relief at the beginning of the contract at the rate of the sixth part of the received canon. And no one has the right after death of a third person to prolong the limited emphyteusis and stretch it in this way forever”<sup>25</sup>.

Title XIII regulates the order of hiring. A written or oral lease is also done with indication of an annual fee for a period not exceeding twenty-nine years, be it estates, or villages, or fields, or other that is

<sup>22</sup> Id.

<sup>23</sup> G. Long, *Emphyteusis* [online] Available: [http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA\\*/Emphyteusis.html](http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Emphyteusis.html) [accessed 26 June 2018].

<sup>24</sup> Ecloga, in *Encyclopaedia Britannica* [online] Available: <https://www.britannica.com/topic/Ecloga> [accessed 26 June 2018].

<sup>25</sup> *Эклога. Византийский законодательный свод VIII века* [online] Available: <http://www.hist.msu.ru/ER/Etext/ecloga.htm> [accessed 26 June 2018].

part of the treasury, or the imperial house, or pious institutions, and such renting is performed for an annual fee charged, agreed and approved between the hiring and surrendering body. And neither a lessor nor a lessee can change their intentions after conclusion of the lease contract during a year, if it specified in the agreement<sup>26</sup>.

Emphyteusis was used extensively in the late Empire to stir up Roman agriculture and laid the groundwork for Roman colonate and medieval feudalism. The state gained some revenues from the arrangement and placed part of vast tracts of fallow land for agricultural production, satisfying needs of ever expanding population.

In early usage, only lands belonging to the state, municipalities, or other public entities were subject to lease by emphyteusis. As time went on, however, the institution grew to encompass even privately held lands. By Justinian's time, emphyteusis had become the ubiquitous perpetual tenure<sup>27</sup>.

#### g) The *Leges Rusticae* (7-8<sup>th</sup> Centuries)

The *Ecloga* was accompanied by the Farmer's, Naval and Military Laws (*Leges Rusticae, Militares, Navales*).

*Leges Rusticae*, or Farmer's Law, is focused largely on matters concerning peasantry and villages in which they lived. It protected farmer's property and established penalties for misdemeanors committed by villagers. It was designed for a growing class of free peasantry, supplemented by the influx of Slavonic peoples into the Empire that became a dominant social class in later centuries. Its provisions concerned property damage, various kinds of theft, and taxation. The village was regarded as a fiscal unit, and payment of a communal tax was required of all members of the community. The land and crops of delinquent farmers could be appropriated by anyone willing to pay the tax.

The Farmer's Law regulates in great detail all possible cases concerning property rights on land, its fruits and livestock, as well as their violation. A number of provisions deals with borders and their encroaching. Generally, "the Farmer who is working his own field must be just and must not encroach on his neighbor's furrows". According to the Law, the main punishment for a transgressor was depriving him of crops from the illegally occupied plot.

Several provisions regulate a mode of exchanging lands between farmers. "If two farmers agree with each other before two or three witnesses to exchange lands and they agree for all time, let their determination and their exchange remain firm and secure and unassailable". An important provision is connected with the historic priority of possessing land. "If two territories contend about a boundary or a field, let the judges consider it and they shall decide in favor of the territory which had the longer possession; but if there is an ancient landmark, let the ancient determination remain unassailed". A number of cases treat renting land or vineyard from an impoverished farmer who is not able to cultivate them. "If a man takes land from an indigent farmer and agrees to plow only and to divide, let their agreement prevail; if they also agreed on sowing, let it prevail according to their agreement"<sup>28</sup>.

Many provisions are concerned with theft of crops and livestock. Usually, punishments are rather adequate and have an economic character. In most cases, theft or damage to someone else's property entails only property sanctions, which are primarily aimed at compensating for the harm caused. For example, if it is a worker, "let him be beaten and lose his wages", if he is a stranger, "he shall restore it twice over". But in those cases when the damage is particularly significant and thereby threatens

<sup>26</sup> Id.

<sup>27</sup> G.W. Rome, *An Elegy for Emphyteusis*, 1 *Civ. L. Comment.* 2, 1 (2008) [online] Available: <http://www.civil-law.org/v01i02-Rome.pdf> [accessed 26 June 2018].

<sup>28</sup> W. Ashburner (trans.), The Farmer's law, in *Journal of Hellenic Studies* 32 (1912) [online] Available: <https://sourcebooks.fordham.edu/source/farmerslaw.asp> [accessed 26 June 2018].

the developing feudal order, corporeal and corporal punishment is used (cutting off a hand from a thief, arsonist of another's shed, etc.) and even death penalty (for slaves). Thus, some crimes, such as stealing an ox, are very severely punished. "If while a male is trying to steal one ox from a herd, the herd is put to flight and eaten by wild beasts, let him be blinded" and "If a man finds an ox in a wood and kills it, and takes the carcass let his hand be cut off"<sup>29</sup>.

The Farmer's Law draws particular attention of scientists because it does not mention the colonate, i.e. serfdom, which prevailed in the late Roman Empire. However, it has indications of personal peasant property and communal land ownership.

A hypothesis of an exceptional influence of Slavonic communities on the customs of Byzantine agrarian life was first put forward by Zachariae von Lingenthal and supported by Russian researchers of Byzantine history. They took into account the fact that the concept of small free peasantry and community was alien to Roman legal tradition. A thorough study of Codes of Theodosius and Justinian, the data resulting from papyrology and hagiography studies clearly proved the existence in the Roman Empire of villages ("Rus") inhabited by free landowners, whose communal land property existed since ancient times<sup>30</sup>.

## 2. - The Byzantine Influence on Old Russian Law

### a) The Crucial Role of Christianization of Russia on Its Legal System

Roman legal tradition had reached Old Rus in a roundabout way through its multilateral cooperation with the Byzantine Empire in political, military, economic, cultural, religious and legal fields. Since the 9<sup>th</sup> century, Russia was increasingly exposed to Christianity from Byzantium, Bulgaria and Western Europe. Through this impact, Byzantine Christianity had a profound and permanent effect on Russian civilization<sup>31</sup>. Official Christianization of Old Rus took place in 988 when Prince Vladimir the Great was baptized in Chersonesus (Crimea).

After adoption of Christianity as official religion, Byzantine law began penetrating in the legal system of Old Rus. It should be noted that the main role in reception of Byzantine law belonged to legal collections of "nomokanons".

The main concepts of Byzantine law were incorporated in legal collections of Slavonic states, such as "Merilo Pravednoye" (Measure Righteous), "Zakon Sudny Lyudem" (Law for Judging People), "Kormchaya Kniga" (Helmsman's Book), the Charter of the Grand Prince Yaroslav Vladimirovich etc. Byzantine legal norms were widely adopted in the fields of civil, criminal, administrative and family law. Old Russian law represented a broad legal complex, which included mainly norms of customary law, traditions, religious norms and norms of written law. However, certain lacunas existed in the Russian legal system, which were filled in by Byzantine legal norms.

The main kind of monuments of Byzantine and ecclesiastical law in Rus were collections that appeared in the XI century and became known as Helmsman's books in the XIII century. They included Christian norms of governance, legislation and religious services, as well as decrees and laws of Byzantine emperors.

With adoption of Christianity, Byzantine law began to be applied in church courts. Thus, the Byzantine Nomocanon formed the basis of the Church Charter adopted in the XI century by Great Princes Vladimir, Yaroslav and Vsevolod. References to Nomocanon as a mandatory source of law

<sup>29</sup> Id.

<sup>30</sup> П.М. Золин, *Земледельческий закон* [online] Available: <http://www.russika.ru/t.php?t=2126> [accessed 26 June 2018].

<sup>31</sup> Norma Ryan, "Byzantine Influence on Russia Through the Ages", *Culture & Memory. Special Issue of Modern Greek Studies (Australia and New Zealand)*, 2006: 279-290.

were included in a number of Russian legislative monuments. Translations of Byzantine legal codes, including Nomocanon, were widely practiced in Old Rus but they were not widely applied in secular or church legal practice and were restricted mainly to canon law.

In the 11<sup>th</sup> century, Great Prince Vladimir adopted the law called “Zakon Sudnyy lyudem” (Law for Judging People) which was a collection of Byzantine religious and civil legislative provisions. The main sources were Byzantine legislative documents, such as, the rules of Basil the Great, the Codes of Theodosius and Justinian, the Basilicas and the Prohiron. In Russia, the Law for Judging People served as a guide for all civil cases. This Law is the oldest preserved Slavonic legal text. Its oldest (short) version contains thirty chapters of penal law adapted from the Ecloga. Parts of this version are word-for-word translation of the source.

At the beginning of the 11<sup>th</sup> century, the Statute of Great Prince Vladimir has established a church tithe. Art.3 states. “Then, [in 996?] after many years had passed I founded [in Kiev] the Tithe Church of the Holy Mother of God, and gave it a tithe from all the Rus’ land, from my principality [to support] the cathedral church, from [the fees of] all [cases that come before] the prince's court [every] tenth veksha, and from trade [fees] the tenth week, and from [my] houses, from all [my] herds and from all [my] grain every year [a tithe] for the miracle-working Savior and his miracle-working mother”<sup>32</sup>.

Excerpts from the Ecloga (taken from both full Slavonic translation and the Law for Judging People) were included in Old Russian law collections. Along with Nomocanon and Procheiron, they were included in the 13<sup>th</sup> century Helmsman’s Book. They can also be found on pages of so-called Books of Law from the same period, as well as in the Measure of Justice which is a collection of legal texts written in North-East Russia in the second half of the 13<sup>th</sup> century<sup>33</sup>.

Shchapov, a renowned Russian scholar of Byzantine heritage in Old Rus, carried out a fundamental research which traces the Byzantine imprint on Old Russian law. He focused on a history of translations of Byzantine law collections into Church Slavonic language with a particular emphasis on their reception in the context of Old Russian culture. He concluded, “The Ecloga in its entirety or in fragments has been preserved in the Russian lists in four different texts of different origins. “Legal Books” are a secular collection of law, which included fragments of Ecloga. 33 articles of the Farmer’s Law are included in this peculiar code”<sup>34</sup>.

#### b) The “Russkaya Pravda” and the Byzantine codes

At the beginning of the 11<sup>th</sup> century, Great Prince Yaroslav the Wise adopted the first written legal code of the Old Russian state “Russkaya Pravda” (Russian Truth) which incorporated provisions of Byzantine codes. This short code regulated the relationship between the “druzhina” (Prince’s armed force) and the people on the basis of criminal law. In the middle of the 11<sup>th</sup> century, after Yaroslav’s death, his sons Izyaslav, Vsevolod, Svyatoslav and their “druzhinas” got together and promulgated the code concerning violation of property rights in princely lands (the “Pravda” of Yaroslav’s sons). Yaroslav’s “Pravda” and the “Pravda” of Yaroslav’s sons became the basis for the Short edition of “Russkaya Pravda”.

<sup>32</sup> D.H. Kaiser (trans.), *Statute of Saint Prince Volodimir [Vladimir, ca. 980-1015], Who Converted the Rus' Land, On Church Courts (Synod Copy)* [online] Available: <http://web.grinnell.edu/individuals/kaiser/Trans.html> [accessed 26 June 2018].

<sup>33</sup> Я.Н. Шапов, *Византийская «Эклога законов» в русской письменной традиции. Исследование, издание текстов и комментарий*, Санкт-Петербург 2011, pp. 240.

<sup>34</sup> Я.Н. Шапов, *Эклога законов в русской письменной традиции*, in *Византийский временник* 54. Москва 1993, 224 pp.

The Short “Russkaya Pravda” provided for penalty in case of land property rights violation. Thus, Art.34 states, “And if someone plows across a border or [beyond] a border marker carved on a tree, then [he is to pay the owner] twelve grivnas for the offense”<sup>35</sup>.

At the beginning of the 12<sup>th</sup> century, Great Prince Vladimir Monomakh adopted the so called Expanded “Russkaya Pravda”, which contained rules of criminal, procedural and civil law, including trade, family law and rules of obligation.

Thus, Art.71-73 of the Expanded “Russkaya Pravda” define a penalty regarding particular cases of property rights violation.

Art. 71. “If someone destroys the ownership marks on a beehive. If someone destroys the ownership marks on a beehive, then [he] is to pay twelve grivnas”.

Art. 72. “If someone cuts down beehive border marks or plows across plowland borders, or with a palisade partitions across a yard border, then [he] is to pay twelve grivnas as a fine”.

Art. 73. “If someone cuts down a marker or boundary oak [he is to pay] twelve grivnas as a fine”<sup>36</sup>.

In Russia, simultaneously with the “Russkaya Pravda” operated the Greek Nomocanon, which in the Slavic version was called the Helmsman’s Book. It was valid in Russia until the XIX century. Finally, it included nine Byzantine sources, translated into Slavonic language. In 1652, Tsar Aleksey Mikhailovich and Patriarch Joseph published the first printed edition of the Helmsman’s Book, which included eight sources of Byzantine law. By the order of the Tsar, the Helmsman’s book was printed in 1200 copies and sent to civil courts in order to be used in legal practice.

#### c) The “Sudebnik” of Ivan III (1497)

The “Sudebnik” (Code of Justice) of 1497 is a collection of laws introduced by Ivan III in 1497. It played a crucial role in the centralization of Russian state, creation of nationwide Russian law and elimination of feudal division. The “Sudebnik” introduced a special fee for peasants who wanted to leave their feudal lord, and also established the universal day (the 26 of November) St. George Day, or Yuriev Day, all over the Russian state for peasants, who wanted to change their masters.

The “Sudebnik” originated from the “Russkaya Pravda”, the Legal Code of Pskov, princely decrees, and common law, the regulations of which were upgraded with reference to social and economic changes.

In order to protect feudal landownership, the “Sudebnik” introduced certain limitations on the law of estate; increased term of limitation of legal actions with regards to princely lands; introduced flagellation for violation of property boundaries of princely, boyar and monastic lands, while violation of peasant land boundaries entailed a fine.

Art.60 provides for an order of succession of land plots. Art.61 regulates fencing of land plots and meadowlands. Art.62 secures boundaries between the lands of the Great Prince, a boyar or a monastery.

Art.63-65 establish judicial procedures concerning land litigation between boyars, monasteries, between a monastery and a boyar, between landlords or between free peasants<sup>37</sup>.

Byzantine law remained a model of codification of Russian law until the middle of the 17<sup>th</sup> century. The “Sobornoe Ulozhenie” (Council Code) of 1649, which was drafted on the order of Tsar Alexei Mikhailovich, was a kind of transitory legal collection which incorporated Old Russian law books

<sup>35</sup> D.H. Kaiser (trans.), *Pravda Ros'kaia* [online] Available: <http://web.grinnell.edu/individuals/kaiser/Trans.html> [accessed 26 June 2018].

<sup>36</sup> D.H. Kaiser (trans.), *The Pravda Russkaia. The Expanded Redaction (Trinity Copy)* [online] Available: <http://web.grinnell.edu/individuals/kaiser/exrp.html> [accessed 26 June 2018].

<sup>37</sup> H. W. Dewey (trans.), *Sudebnik of 1497* [online] Available: <http://www.departments.bucknell.edu/russian/const/sudebnik.html> [accessed 26 June 2018].

based on Byzantine law (“Sudebnik” of 1497 and “Sudebnik” by Ivan IV) along with modern European sources (Statutes of Lithuania, 1588), as well as Russian archive documents (Books of Orders, Petitions). As a result, borrowings from Byzantine laws became fewer and fragmentary and so a long period of Byzantine influence on Russian legal system came to an end<sup>38</sup>.

### 3. - Conclusion

Two major modern legal systems of European origin, common law and civil law, are structured according to the same basic principles. Both laws employ the central division into property, contracts, torts, and to some extent unjust enrichment<sup>39</sup>.

As Re states, Rome is a legendary name of the greatest historical significance. At least twice it led the world. First, by the might of its republican and imperial legions, it gave the world political unity and a legal system. Secondly, by the diffusion of Christianity, it brought spiritual unification throughout the western world, and once again, its system of laws. To tell the story of Rome and its law is to tell the story of civilization itself. The story of civilization will not be one of self-sufficiency and autonomy. It is one of constant building upon the wisdom and experience of prior peoples and a blending of the knowledge from many lands<sup>40</sup>.

**Abstract.** - This article is dedicated to Roman heritage in developing a legal concept of land property in the system of civil law. The author studies the origins of land property rights in the main sources of Roman law, especially, the Theodosian and Justinian’s Codes, the Ecloga and Farmer’s Law. Particular attention is paid to the Byzantine influence on the Old Russian law.

Questo contributo è dedicato al patrimonio romano nello sviluppo del concetto legale di proprietà fondiaria nel sistema di diritto civile. L'autrice studia le origini dei diritti di proprietà fondiaria nelle principali fonti del diritto romano, in particolare nei Codici di Teodosio e di Giustiniano, l'Ecloga e la *Leges rusticae*. Particolare attenzione è prestata all'influenza bizantina sulla legge della Vecchia Russia.

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<sup>38</sup> I.G. Napalkova, et al., *The Impact of European Law on the Development of Legal System of Russia*, in *European Research Studies* XX.1 (2017) 338 pp.

<sup>39</sup> Buhofer, *Structuring the Law* cit.

<sup>40</sup> Re, *The Roman Contribution to the Common Law* cit.