

**STAGES OF DEVELOPMENT OF THE INVIOABILITY PRIVATE
PROPERTY RIGHTS IN THE WORLD AND RELEVANT
INTERNATIONAL LEGAL DOCUMENTS**

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Abstract: This article presents primary views on the concept of the right of private property and its inviolability, the stages of development of private property in the world, discussions of world philosophers and legal scholars about private property and also reveals the essence and positive aspects of a number of international legal documents adopted in different times in order to strengthen the inviolability of private property and the scientific and analytical views of the author regarding the study of these complex historical and legal processes by dividing them into conditional periods and on the inviolability of private property rights.

Key words: inviolability of private property, private property in ancient times, private property in medieval feudalism, private property in the post-bourgeois revolution, “Universal Declaration of Human Rights”, European Convention for the Protection of Human Rights and Freedoms.

Introduction

It is known that the right to private property is an integral part of human rights and legal protection of its inviolability makes a significant contribution to the economic growth and social development of the country.

In this point of view, the historical and legal study of guarantees of private property rights is very complex and at the same time very contradictory.

In this case, we can conditionally divide the process of ensuring the inviolability of private property rights in the world into four periods.

The First period is the period from the appearance of the first philosophical views and ideas about private property in the states of Ancient Greece and Ancient Rome until the fall of the Western Roman Empire (from approximately the 2nd millennium BC to the 5th century AD).

From the history of ancient times it is known that at first people worked together as a team, and lived together. Since tribal times, persons who for one reason or another have a special rank

and reputation before society (for example, elected tribal leaders, elders, etc.) have the right to retain a certain part of the tribal property. The totality of material goods and materials earned by a community. They disposed of these material goods at their own discretion, guards were appointed to protect their integrity and those who encroached on these objects were punished [1/P.7].

This can be interpreted as the first manifestations of the inviolability of private property rights.

Later, with the advent of human civilizations in Europe, social relations between people also developed and began to become more complex.

For instance, with the collapse of the tribal system and the formation of the ancient Greek or Roman system of slavery, not only material wealth but also people began to be considered as a subject of private property rights. Meanwhile, a class of noble slave owners was formed, who received fertile lands and ranks for special services to the state and so forms of state property and private property appeared. Those who encroached on this property were tried and punished accordingly.

For example, in ancient Greece the concept of private property developed slowly and did not take the form it has today.

However, several significant aspects can be identified that reflect the doctrine of private property during this period. In the early history of Ancient Greece villagers typically owned their own plots of land and farmed for their own needs. But with the emergence of city-states (polises) over time, land became an object of exchange and sale. The Laws of Solon in Athens in the 6th century BC played an important role in defining private property rights. Solon introduced reforms aimed at easing debts and protecting citizens' land rights. In some cases, public resources such as land may become private property. By way of example, after conquering new territories, land could be distributed among citizens. The concept of inheritance was also one of the important aspects of property transfer. Inheritance laws govern the transfer of property from generation to generation. In Ancient Greece, there were such forms of property as private property and public property. At the same time, state resources were used according to general rules, but could change depending on the decisions of society. Concluding deals and contracts was also one of the ways to acquire private property. Sales, exchanges and rentals of land were common. In general, the concept of private property in Ancient Greece was regulated by laws and customs and changed depending on the specific social conditions of various political views [2/P.45-46].

Ancient Greek philosophers expressed their views on private property in their writings, and their views varied.

Plato (427-347 BC) in his work *The State* (Politei) proposed an ideal model of a state with very limited ownership of private property, especially land. According to Plato, private property could ultimately lead to social inequality and conflicts between citizens in a society. Plato intended that the rulers and guardians of a country should not have private property and that property should be common to all citizens. In his opinion, this prevents corruption, ensures justice and reduces social differences between the population [3/P.175].

Contrary to this opinion, Aristotle (384-322 BC) in his work “Politics” expressed a moderate view of private property. He considered private property a natural and necessary phenomenon.

Simultaneously he also emphasized the importance of moderation in the distribution of wealth to maintain harmony in society [4/P.344]. Socrates’ friend and student Xenophon (431–354 BC) also agreed with Aristotle, who in his “Economy” (Economicus) praised the importance of private property in achieving wealth, speaking about housekeeping and entrepreneurship [5/P.219].

Another famous Greek philosopher Epicurus (341-270 BC) in his Epistles to Menetius expressed the ideas of freedom and well-being through the satisfaction of personal needs. According to his philosophy, the idea of private property arises as a means of achieving satisfaction and well-being [6].

Another prominent Greek philosopher, Epictetus (50-135 AD), in his “Conversations” (Diatribai), argued that the external environment, including property, is not completely under human control. His views emphasize internal freedom and independence from external conditions [7/P.112].

In Ancient Greece, the inviolability of private property was largely determined by laws, customs and sociocultural norms. Although there were some differences between city-states (Polises) in approaches to protecting private property, general principles included:

- Laws and regulations: Laws play a key role in ensuring the integrity of private property. Various states had laws defining the rights and responsibilities of owners and prescribing penalties for violating those rights;

- Contractual property rights: are formalized by contracts of ownership, purchase and sale, inheritance, donation, etc. These agreements are related to the transfer of ownership and use rights to another person, and also include protection against illegal interference in property relations;

- Protecting private property from the state: In ancient Greek societies, there was a desire to limit government intervention in the private affairs of citizens. The laws were intended to protect private property from confiscation or unlawful taking by government officials;

- Judicial System: The judicial system has played an important role in resolving disputes related to private property. Citizens could go to court with complaints about violations of their property rights, and judges made decisions based on existing laws;

- Custom and sociocultural norms: Sociocultural norms also played an important role in ensuring the inviolability of private property. Ancient Greek societies had certain values based on respect for private property and violating these norms could have social consequences;

- Protection of private property from illegal possession: Owners have the right to protect their property from illegal seizure. This included using physical force or going to court to protect their rights. In ancient Greece social values and legal norms developed in different political

periods, and their specific form could change depending on the historical and cultural characteristics of each society [8].

Let us continue our reflections using the example of attitudes towards private property in Ancient Rome.

Even in ancient Rome, the concept of private property was important and developed in proportion to legal, social and economic changes.

In particular, Roman law played a decisive role in the development of the doctrine of private property. The principles of Roman private law, such as “jus civile” (civil law) and “jus gentium” (national law), developed and changed over time. As a result, Roman law distinguished the right of ownership (dominium) from the right of possession (possessio). Ownership could be temporary, but ownership meant a more permanent and complete right to a thing. Owning a property for a certain period of time can lead to purchasing it. For example, according to the “usucapio” procedure, the temporary owner of an object could, after a certain time, become its legal permanent owner [9/P.92].

Later, Roman jurists developed various theories about the nature of property. Especially, Guy’s theory emphasized the concept of “animus domini” (the will of the owner) in determining property. Unlike the early days of Ancient Rome, when land was a public resource, land was later allowed to be privatized. Land plots were privately owned and could be inherited. Sale, donation, inheritance and other transactions played an important role in the transfer of property. In ancient Roman culture, personal freedom was closely linked to property rights. The concept of “Suum cuique tribuere” (to each his own) emphasized the importance of protecting private property. Thus, in Ancient Rome, private property was determined by various legal documents, theories and traditions, and the right of private property was given special importance within the framework of social relations [10/P.78].

In this context, ancient Roman philosophy also had different views on private property.

The Roman philosopher and orator Cicero (106–43 BC) expressed the idea in “Republic” (De re publica) that private property is a natural right inherent in human nature. He emphasizes that property rights preserve fairness and prevent conflicts arising in social relations in society [11].

Another Roman philosopher, Seneca (4 BC - 65 AD), in his work “Moral Epistles to Lucilius” (Epistulae morales ad Lucilium) defended the importance of private property for the well-being and spiritual development of man. He emphasizes that a person should freely dispose of his things [12/P.84].

The Roman emperor and philosopher Marcus Aurelius (121-180 AD) in his work “Meditations” examined the topic of private property in the context of moral and philosophical considerations. He recognized the importance of material wealth, but emphasized that a person must maintain inner morality under all circumstances [13/P.246].

In ancient Rome, the inviolability of private property was established mainly through legal rules, laws and customary laws. Roman law played an important role in the protection of property, and Roman jurists developed various aspects of property law. In Ancient Rome, there were several key aspects that ensured the inviolability of private property:

- The concept of property rights (dominium): as mentioned above, Roman law separated the right of ownership (dominium) from the right of possession (possessio). The concept of “dominium” implied an absolute right to property, and its protection was considered an important part of the Roman legal system;

- Laws: Roman law had rules aimed at protecting private property. For example, the Laws of the Twelve Tables (Lex XII Tabularum), one of the first legislative documents of Roman law, confirmed the right of the owner of the house to kill a thief who broke into his house.

- Legal Liability: Violations of private property rights entail legal liability. To protect private property rights, legal instruments are provided such as “actio furti” (claim for stolen property) and “actio legis Aquiliae” (compensation for damage);

- Ideas about justice and right: As mentioned above, Roman philosophers such as Cicero emphasized the importance of laws and justice in ensuring the integrity of private property. They argue that the protection of property is a key element of a just society;

- Protection of private property from the state: an important aspect of the inviolability of private property was the limitation of government interference in it. Citizens had the right to protect their property from the arbitrariness of government officials. Together, these elements ensured the integrity of private property in ancient Rome and provided citizens with a means of protecting their rights [14].

In general, the idea of private property existed in ancient times, and this concept was developed or limited under the influence of prevailing political and social views.

The Second period is the period from the establishment of the feudal system in Europe to the bourgeois revolutions (V - XVIII centuries AD).

By the Middle Ages, the idea of the inviolability of private property in Europe had changed somewhat from its ancient form. However, the definition and protection of private property as we know it at the time was not fully developed. There were different forms of ownership of land and other resources.

For example, one of the main forms of property in the Middle Ages was the feudal system. The land area was divided into specific plots and distributed to vassals in exchange for their loyalty and military service to their rulers. Ownership of these plots of land came with certain responsibilities, and landowners could deprive vassals of their ownership rights if the contract was violated. In some communities, land was common property and community members had certain rights to use the land. These may be villages or large plots of land, the ownership of which is passed down from generation to generation within the community. Kings were considered the supreme owners of the land and leased or outright owned tracts of land to their vassals. However,

these rights could be changed by royal decree. Different regions had different laws and customs governing land ownership. These laws and customs varied depending on the region and period of the Middle Ages [15].

In brief during the Middle Ages the concept of the inviolability of private property was more vague and depended on the complicated socio-political relations of that time. Land ownership was closely linked to the feudal hierarchy, personal relationships and customs.

Throughout the Middle Ages philosophers had different views on private property, and these differences were reflected in various works.

Particularly, the famous medieval theologian Thomas Aquinas (1225–1274) viewed private property as a natural right arising from divine law. In his “Summa Theologica”, he argues that only man who used his sources wisely acted in accordance with the law of nature and the purpose of God [16].

French jurist and philosopher Jean Bodin (1358-1420) is famous for his work “Six Books of the Republic”, which discusses political philosophy and power, in which he emphasized the importance of private property in ensuring individual freedoms and social stability [17/P.580].

Thomas More (1478-1535), an English philosopher and representative of the European Renaissance, introduced the idea of collective ownership of land in his work “Utopia”, which describes an imaginary society with ideal social and political institutions, but the work itself does not represent such an arrangement in real life acknowledged that it may be difficult to implement [18].

St. Augustine (354-430), one of the great church fathers of the Middle Ages, focused in his writings on the moral aspects of property and its use, emphasizing that property should be used on the basis of justice and the common good [19].

These philosophers provide several examples of the variety of views on private property in the Middle Ages. It should be noted that their views may have differed depending on certain aspects including social, economic and religious factors of the time.

In the Middle Ages in the West, including Western Europe, ideas about the inviolability of private property were formed under the influence of various factors, including legal, religious and social traditions. Here are some aspects of this process:

- Roman Law: during the Middle Ages, the influence of Roman law continued in Western Europe. The concepts of property and private property rights developed by Roman jurists influenced the legal systems of a number of countries of the time;

- Feudal system: in feudal society, private property was closely connected with feudal relations. Land was often regarded as the property of vassals loyal to their lords. In this respect, property was part of a complex system of duties and rights;

– Catholic Church: The Catholic Church had a significant influence on the social and moral standards of the Middle Ages. Christian ethics includes principles of moderation, duty, and justice, which influence views on private property;

– Scholasticism and Thomism: The philosophy of scholasticism and Thomism, based on the teachings of Thomas Aquinas, made a great contribution to the justification of the sanctity and inviolability of property. Thomas Aquinas considered property to be part of natural law and argued that man has a natural right to own private property, which must always be protected;

- Common Law: The Development of common law in the Middle Ages also played a significant role in shaping the concept of private property. Precedents and customs developed in different communities and kingdoms influenced the legal rules relating to property.

– Municipal charters and guilds. Some cities created municipal charters to regulate private property and commerce. Craftsmen and their associations also played an important role in determining the rules for owning and using private property [20].

These various elements influenced ideas about the sanctity of private property in Western Europe during the Middle Ages. However, it is worth noting that the concept and legal rules relating to property varied significantly among different regions and communities.

Eastern societies that existed in China, India and the Middle East in the Middle Ages had their own system of understanding property and private property, which was very different from the European one.

It is important to note that Eastern civilizations had different cultural, religious and economic contexts, hence different approaches to private property and property issues.

Although China had a system of private land ownership, this property was under the control of the state. The lands were actually given to the peasants on the basis of tax obligations. Ownership of land could be inherited, but the state could also interfere in these processes. Medieval Indian society had a tradition of land ownership based on the caste (class) system. Land may be owned by a village or family, and its use is dictated by traditional customs. Land relations may also depend on the system of feudal relations, especially during the Mongol Empire [21/P.19].

Islamic societies such as the Ottoman Turkish Empire had sharia laws governing property and private ownership. Sharia law establishes the rules for inheritance and transfer of property. Islamic societies such as the Ottoman Turkish Empire had sharia laws governing property and private ownership. Sharia laws established the rules of inheritance and transfer of property, and although movable property was an object of private property, real estate could not be an object of private property, since real estate was considered God's [22/P.15].

During the Abbasid Caliphate, rural land could be owned by peasants, but the land tax went to the caliphate's treasury. These societies had unique approaches to property and ownership, and the concept of private property often corresponded to the social, religious, and cultural values of these societies. However, in general, the concept of private property in Eastern societies of the

Middle Ages, as in European societies of that time, was more complex and less individual than in modern societies [23].

Philosophers in medieval Islamic countries also discussed issues of property, but their views were often influenced by the cultural and religious characteristics of the region.

Abu Nasr Farabi (872–950) was an Islamic philosopher who primarily discussed topics in political philosophy. He put forward the idea that society should strive for justice and harmony, and private property should serve these goals. He discussed ideas about an ideal state, where private property is an important factor in ensuring the well-being of society [24].

The Arab historian and philosopher Ibn Khaldun (1332-1406) reflected the ideas of the development of civilization in his work “Muqaddimah” and examined the factors influencing the development of society, including economic and social aspects. His work may influence the understanding of the role of private property in the structure of society [25].

These examples give a general idea of how Eastern philosophers approached the topic of private property, they expressed different opinions in different cultural and historical conditions, and considered the concept of private property within the framework of extremely broad socio-political issues.

By the last period of medieval Europe, the system of feudalism was gradually eroded, with the development of industrial production and market relations in society in many European countries, new ideas began to appear, some important documents appeared concerning the recognition of human rights and their guarantees began to be created.

For instance, Karl Marx defined private property as the main instrument of exploitation of the working class by the owners of the capitalist means of production. In his opinion, private ownership of the means of production (factories, land, equipment) allowed the bourgeoisie or capitalist class to exploit the labor of workers, which, in his opinion, led to social and economic inequality. In his works, including Capital, K.Marx analyzed the role of private property in the formation of relations of power, exploitation and confrontation in capitalist society [26/P.765].

Or Hegel, another philosopher representative of medieval Europe, defined private property as the basis of individual freedom and self-realization. According to his philosophy, private property creates the basis for the development of the individual in society through the ownership of material goods and the manifestation of his personality and will. Hegel attached great importance to private property as the basis of personal responsibility and freedom, as an important element of the social order [27/P.104].

The Third period is the period from the creation of the first historical legal documents aimed at ensuring the inviolability of private property rights after the bourgeois revolution, until the adoption of the “Universal Declaration of Human Rights” by Resolution No. 217 A (III) UN General Assembly (18th century AD - 1948).

Let's start with the French Declaration of the Rights of Man and the Citizen [28], this document is one of the most important documents of the French Revolution, defining individual human rights.

This Declaration was adopted by the National Constituent Assembly on August 26, 1789, and Article 17 of the Declaration states: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified". This Declaration was approved by the French Constitution on October 4, 1958, and on July 16, 1971, the French Constitutional Council recognized it as a binding legal document, and this document subsequently served as the basis of national and international law guaranteeing the inviolability of individual rights and regulating protection against state arbitrariness [29/P.11].

Later in 1791 similar principles were amended to the Constitution of the United States of America.

The Fourth Amendment to the Constitution of the United States, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized". An item may not be released unless there are probable cause supported by the person's declaration or oath.

According to the Fifth Amendment to the US Constitution, "No person shall be... ..deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" [30].

The meaning of this concept is:

first, the state can take or destroy private property or limit private property rights only for public needs;

secondly, the state must pay the owner "fair" compensation for the property subject to seizure or destruction, or limit the right to use it;

thirdly, a person whose property is confiscated, destroyed or whose use is limited must be given the right to legal protection.

There are different approaches to what constitutes "fair" compensation. For example, based on the Fifth Amendment to the U.S. Constitution, the U.S. Supreme Court has held that "fair value is the market value that a buyer would pay to a seller by mutual agreement". Another important criterion developed by the US Supreme Court is that "it would be unfair if expenses (budgetary) that all taxpayers can and should share in common should be borne by one of those whose property is confiscated" [31/P.10].

Although the principles of the above-mentioned documents were created back in the 18th century, their legal significance has not yet disappeared, but has developed and improved over

time, and these documents are a model of national and international law that guarantees the inviolability of a person's private property rights and regulates the protection of property from the state arbitrariness.

The Fourth period is the period of development of the inviolability of private property in the world from 1948 to the present.

The above-mentioned principles are reflected in Article 17 of the Universal Declaration of Human Rights [32], adopted on December 10, 1948 by Resolution No. 217 A (III) of the UN General Assembly, which is one of the universal international documents for the protection of human rights.

According to it, it is established that every person has the right to own property individually and jointly with others, and no one can be deprived of his property by force.

Moreover, the principle of inviolability of property was expressed in Article 1 of the protocol adopted on March 20, 1952 as Annex 1 to the 1950 European Convention for the Protection of Human Rights and Freedoms. In particular, it states that "Every natural and legal person can freely enjoy his property, no one can be deprived of his property except in the interests of society and in accordance with the law and the general principles of tort law" [33]."

In short, the content of the concept of "inviolability of private property rights" is one of the main parts of the modern socio-legal system. This concept, having a long history, has gone through the following stages of development:

- Ancient period;
- The era of feudalism;
- Renaissance period;
- The period of the industrial revolution;
- Marxism and the socialist era;
- Modern era.

In our opinion, it is permissible to dwell on some controversial and debatable aspects of the inviolability of private property rights.

A group of scientists, such as A. Smith, J. Locke, M. Friedman, F. Hayek, R. Coase, believe that the absolute inviolability of private property rights creates the basis for economic efficiency and innovation, in contrast another group - J. Rousseau, K. Marx, scientists such as J. S. Mill, J. M. Keynes argue that the absolute inviolability of private property rights should be regulated by the state so that it does not cause economic inequality and social problems.

On the one hand, the views of social justice supporters that private owners should approach property in their own way, taking into account their obligations to society, seem reasonable.

On the other hand, the degree of government intervention in private property is also highly controversial. The reason is that while minimal intervention is required to maintain a free market, it is also recognized that an active regulatory mechanism of the state is necessary to prevent abuses and maintain social justice.

We believe that to ensure by the state the absolute inviolability of private property rights, is one of the crucial factors in the development of a market economy.

In conclusion, it should be noted that today the concept of the inviolability of private property rights continues to cause intense controversial debates among various scientists and requires a balanced approach that takes into account both economic interests and social aspects of society.

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