Law. Human. Environment

Journal homepage: https://environmentalscience.com.ua/en
***Law. Human. Environment*, 13(1), 58-64**

UDC 347.61
DOI: 10.31548/law2022.01.007

Features of Personal Non-Property and Property Relations of Parents and Children in Ancient Rome

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Article's History:

Received: 08.11.2021
Revised: 19.01.2022
Accepted: 23.02.2022

Abstract

Roman law is one of the foundations of modern law. However, today the issue of personal non-property and property relations between parents and children of ancient Rome remains poorly understood. This determines the relevance of the research. The aim of the article is to study the non-property and property relations between parents and children of ancient Rome. The methodological basis of the research was the dialectical method of scientific knowledge, general scientific (formal-logical, methods of analysis and synthesis, method of observation and comparative method) and special-legal method (formal-legal). The article analyses a number of scientific works of Ukrainian and foreign scholars on non-property and property relations between parents and children of ancient Rome. It was found that the status of children as participants in property and non-property relations between children and parents in ancient Rome was directly dependent on the status of parents. In particular, it was illustrated that the status of children born in concubinage and children born in marriage was different. It is substantiated that the mother and father had somewhat different rights in the context of caring for and raising children together. It was established that in the families of that time the power of its head was introduced not only over the children born in the family, but also over the persons whose will was included in the family as its free members by the will of the householder. At the same time, under the paternal authority was not only the property of children, but also their lives. At the same time, it was found that the content of personal non-property and property relations of parents and children in ancient Rome changed for the most part during the period of Roman private law, which under the influence of different circumstances and during the reign of different rulers. The presented data can serve as a guide for Ukrainian and foreign scholars in the process of further research in this field in Ukraine and around the world

Keywords: Roman family, paternal authority, Roman law, property law, non-property law

Suggested Citation:

Kanaryk, Yu.S. (2022). Features of personal non-property and property relations of parents and children in ancient Rome. *Law. Human. Environment*, 13(1), 58-64.

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Introduction

In the context of the harmonisation process in Ukraine, the study of the origins of Ukrainian law, the history of which dates back to ancient times, is becoming very important. After all, one cannot ignore the fact that Roman law is one of the foundations of modern European civilisation, and the historical origin and development of Ukrainian law are related to Roman legal doctrine. The sphere of relations between parents and children is no exception. In view of the above, it is quite expected that the study of aspects of the "Roman family" is constantly gaining momentum in the Ukrainian legal doctrine, without losing its relevance today.

Both Ukrainian and foreign researchers have raised the issue of personal non-property and property relations between parents and children in ancient Rome. For example, a whole paragraph in the textbook I.G. Kozub and M.I. Bodnaruk is devoted to personal and property relations between parents and children [1]. However, the authors of the manual focused mainly on property relations. Some aspects of this topic were also studied in his article by Yu. Monnickendam [2]. Thus, in particular, the scholar analyses the relationship of children with their adoptive parents. G. Jassogne [3] considered the relationship between children and mothers in the days of ancient Rome, focusing mostly on the duty of children to care for their mothers. O.V. Rezvova [4] researched the rights and responsibilities of parents in raising a child. However, in her dissertation research, the author considered the rights and responsibilities of parents to raise a child mainly in the family law of Ukraine. The question of the rights and responsibilities of parents regarding the upbringing of a child in Roman law is only partially mentioned in the work of O.V. Rezvova. The dissertation is a complex research of the institute of rights and responsibilities of parents regarding the upbringing of a child in family law of Ukraine. In the relevant context, the evolution of the legal regulation of the institute of rights and responsibilities of parents for raising a child in Ukraine is traced and the legal regulation of the institute of rights and responsibilities of parents for raising a child under the legislation of other countries is considered. The concept and legal nature of parents' rights to raise a child are identified and their place in the system of personal non-property parental rights is determined. The concept, content and types of responsibilities of parents in raising a child are described. Roman private law was also studied by T.I. Demchuk, O.V. Manzhosova, Ya.S. Moshinska [5]. Scholars have focused on parental authority. In particular, the grounds for its termination. Indirectly, the question of the relationship between parents and children in Roman families was considered by O. Safonchyk and O. Shamota [6] in the study of personal intangible rights of men and women in actual marital relationships. Scholars, in particular, paid attention to the personal non-property and property rights of children born in concubinage and legal Roman marriage. A significant contribution to the development of the theme of family relations in ancient Rome was made by O.V. Kozynets [7] in his work on paternal authority in ancient Rome. However, many aspects have gone unnoticed by the scholar O.M. Ponomarenko [8], considering the alimony agreement as a basis for alimony obligations, in her article on the debatable issue in modern civilisation on the possibility of alimony agreement to be the basis for alimony obligations, the solution of which depends on the study of potential subjects of this agreement and its conditions conclusion, partly also mentions alimony from Roman times.

In general, the current research examines the personal non-property and property relations of parents and children of ancient Rome is quite limited. There are no comprehensive studies in this regard, which determines the scientific novelty of the integrated approach outlined in this article.

The purpose of this article is to study the features of personal non-property and property relations of parents and children in ancient Rome.

Materials and Methods

During the research, a set of methods and techniques of scientific knowledge was used, which allowed carrying out a comprehensive and objective analysis of the subject of research — philosophical and philosophical, general and special scientific methods. The application of the dialectical method allowed studying the tendencies of change of personal non-property and property relations between parents and children of the times of Ancient Rome under the influence of various factors of development of society. The formal-logical method helped to characterise the content of system-forming concepts and constructions of the subject of research, such as "personal intangible rights", "property rights" and so on. Methods of analysis and synthesis have been used in the study of scientific achievements of scholars on the topic of research. With the help of the method of observation, knowledge about the external parties, the properties of the studied relations was obtained. The comparative method allowed to compare the features of personal non-property and property relations between parents and children of ancient Rome, depending on the status of parents and other factors. The formal-legal method helped to clarify the content of legal norms governing personal non-property and property rights and relations of parents and children in ancient Rome.

The initial stage of the study was to characterise the grounds for establishing parental authority. It was found that paternal authority arose on three grounds: the birth of a child from a man to a woman who was legally married to him; by legalisation; by adoption. The requirement to obey the father was conditioned by the special nature of the development of family relations, in

which the main and indisputable authority has always been recognised as the eldest in the family. At the same time, personal non-property and property relations of parents and children in ancient Rome had their own specific features depending on the status of the relationship between parents, the status of parents. In the second stage of the study, the Roman legislation on property relations was analysed. It is established that under the law of ancient Rome, all property acquired by children of different ages belonged to their parents. However, over time, they have been affected by the development of economic life and, accordingly, certain changes. Particular attention is paid to the characteristics of peculium — the right to manage part of his property, which the father often endowed his children. At the next stage, attention was paid to the personal non-property relations of parents and children. It was found that parental authority, in addition to the child's property, extended to the child's identity. The focus is on the right to life. At the final stage of the study, attention was paid to the analysis of the legal relationship between mother and children. The content of such legal relations was identified. In particular, it was found that mothers who felt abandoned by their children could go to court to obtain the necessary assistance or resources for survival, and other relatives could apply on their behalf.

In the course of the study the Ukrainian and foreign literary sources are analysed, which consider the issues of personal non-property and property relations of parents and children in Ancient Rome, in particular, the works of such scholars: G. Kozub, M.I. Bodnaruk [1], Yu. Monnickendam [2], G. Jassogne [3], O.V. Rezvova [4], T.I. Demchuk, O.V. Manzhosova, Ya.S. Moshinska [5], O. Safonchyk, O. Shamota [6], O.V. Kozynets [7; 9], O.M. Ponomarenko [8], L.R. Antonova [10], S.C. Mancisidor [11], O.I. Lukianchuk [12], R.F. Cidoncha [13], Yu.O. Melnychenko [14], S. Demina [15].

Results

Both personal non-property and property relations of parents and children in ancient Rome had their own specific features depending on the status of the relationship in which the parents were, the status of parents. At the same time, in general, according to Roman legal customs, parental legal relations are based on the dominant position of one subject (*pater familiae*) over others [10, p. 30]. The rights of fathers and mothers in Roman families to care for and raise their children were not the same. Such relations led to the adoption of a number of legal norms, according to which the power of its head was introduced in the family both over children born in the family and over persons who were included in the family as its free members [2]. From the beginning of Roman history, the power of the father, the master over the children was so indivisible that Guy claimed: "there are almost no other nations that have such power over their sons as we have" [1, p. 43-44].

Parental authority arose on several grounds:

— first, in connection with the birth of a child from a man to a woman who was legally married to him. It belongs to the husband if he was *sui juris* at the time of the birth of the child, otherwise to the landlord and only after the death of the latter to the husband;

— secondly, by legalisation (*legitimatio*). That is, granting rights to legitimate children born out of wedlock. As a result of such actions, children are included in their father's family and, as a result, are further subject only to him;

— thirdly, by adoption [1, p. 175].

It should be noted that in Roman law there were two options for adoption: adoption of a person of his own right (*arrogatio*) and adoption of a person of another's right (*adoptio*). Both options for establishing adoption were accompanied by the process of certain actions, which resulted in the emergence of paternal authority of the adopter over the adoptee. Children were adopted if there was no male heir. The simplest form was adoption immediately after the birth of a child. Older children were adopted, reimbursing their parents for their upbringing. These actions were designed as purchases. The adoption contract contained conditions to preserve the status of the heir (the wording was as follows: "even if the couple has ten sons, the adopted child will still be considered their firstborn") [11].

The family, based on the subordination of power to the landlord, was called the lamb. All subordinates of one householder were considered relatives, ie agnats. The blood relationship at that time had no legal significance. Therefore, the girl, who married and moved into her husband's family, held the position of his parents' daughter, that is, became the sister of the husband's siblings, losing family ties with blood parents. Interestingly, the lamb's kinship persisted after the death of the landlord.

In fact, children in a patriarchal Roman family were slaves to the head of the family, the eldest husband in the family. First of all, the father could for some reason not accept the newborn baby, just not taking him in his arms. In this case, the child was deprived of the opportunity to stay in the parental home and become a citizen. In some cases, such children fell into other families, more often — died [2].

Interestingly, the requirement to obey the father did not follow from the legal norm, but was conditioned upon the special nature of the development of family relations, in which the main and indisputable authority has always been recognised as the eldest in the family. This position of the father in the family and his power was historically determined. The ancient Romans were a warlike people and they had to constantly defend themselves against the aggressive actions of their many neighbors and attack neighboring tribes. The success of hostilities and the security of the Roman family depended on how strong the power of the landlord was. Only under

the unlimited authority of the head of the family could the safety of all family members be fully ensured.

Under Roman law, all property acquired by children belonged to their parents. At the same time, children's property dependence did not weaken with their age. At the same time, the child had no rights to the father's property. The children could neither dispose of the property belonging to the father nor limit his responsibilities. In the case of an offense (tort) by a subordinate, the victim was given a special claim *actio noxalis*. In turn, the father had the freedom of choice: pay the victim the amount of damage caused to him or give the subordinate in bondage for the period necessary to work out the amount of damage. In this case, if the offender came under the authority of another homeowner, then the responsibility for the *actio noxalis* passed to the new homeowner, because the responsibility follows the guilty person [1, p. 178].

Subsequently, under the influence of the development of economic life, these norms *jus civile* underwent certain changes. This situation is quite logical, because the actual inability to demand anything from the subordinate and the legal irresponsibility of the homeowner under the subordinate's agreements led to the fact that third parties were not interested in concluding agreements with the latter. Therefore, the position of subordinates becomes unfavourable for the homeowner. In addition, the economic interest of the homeowner required the widespread use of subordinates not only to provide a variety of actual services and works in the economy, but also legal action. This led to the expansion of property capacity and legal capacity of the subordinate, and the recognition of the responsibility of the homeowner under the agreements of the subordinate. Therefore, the father often gave his children the right to manage part of his property. This part was called *peculium* [1, p. 178]. Peculius was not inherited, and in the event of the death of the son to whom it was transferred, was returned to the ownership of the head of the family. In case of death of the head of the family, peculium was inherited along with the rest of the property. In the case of the emancipation of the subordinate son, peculium became the property of the son as a gift and could not be returned to the father of the family. In addition *to peculium profecticium*, ancient Roman law knew other types of peculium. Thus, we can distinguish military peculium (*peculium castrense*), which meant the property that the son bought in military service or in connection with military service. This peculium included salary, military output, gifts during military service and other property. Unlike *peculium profecticium, peculium castrense* belonged to a subordinate person on the right of ownership. Meanwhile, this type of peculium was also not inherited in the event of the death of a subordinate. In the latter case, it became the property of the head of the family [12].

Parental authority extended not only to property but also to the person of the child [4, p. 43-44]. The exclusive power was the right to life and death (*ius vitae as necis*), which remained in force throughout the classical period [12, p. 39]. For example, the father ("*pater familias*") single-handedly decided on the life or death of a child. This rule applied not only to weak, unviable children or children with developmental disorders ("*monstrum*"), but also to completely healthy newborn girls [1, p. 30]. The father was given the right to dispose of the child's life until he or she reached the age of majority. At the same time, it should be noted that this right was governed by customs and required the participation of the family council [4, p. 43-44].

Children born in a concubine were not endowed with the status of children born in wedlock. They could not acquire the status and name of their father, did not have the right to alimony (" *alimentum*" translated means "feed, keep, grow" [8, p. 54]), could not be the heirs of the father, they were not subject to paternal authority [8, p. 50]. These children inherited the name of the mother's family, regardless of whether the mother was free or a slave [13, p. 309]. However, "given the importance of concubinage as a de facto marriage, the rights of persons in such relationships, including the rights of children born in this marriage, over time began to be protected by various legal means. The father could recognise his children born in the concubine. At the request of the father, such a child could acquire the rights of a child born in wedlock by legalisation" [14, p. 32; 6, p. 55].

According to the Emperors Marcus Aurelius and Lucio Vero, illegitimate children had to be registered in the state register after birth, including legal. These emperors set a thirty-day deadline to give their son a name and announce his birth to the appropriate authorities in both Rome and the provinces. They also acknowledged that a birth declaration made through a letter from the mother could be accepted if its veracity was verified without the need to contact the authorities [13, p. 310]. It should be noted that before the coming to power of these two emperors, the births of these illegitimate descendants were not registered. Despite their illegality, these free-born children had a higher status than freed slaves.

It is also worth noting that in classical Roman law, actions such as exposing children, selling children or pledging children could not change the legal status of the child and turn the freeborn into a slave. The paternal authority of the head of the family over his children allowed him to expose or sell them. However, although the *pater familias* who exposed his children lost *patria potestas* as a result of this act, the status of the exposed child remained unchanged. Free children were protected from enslavement after being exposed, sold or pledged by their parents, children in care or found if they could confirm their status. Naturally, without such evidence, the exposure of children and the sale of children have led to a change in status and enslavement, de facto, if not de jure [2].

Claims that the exposure does not change the legal status of the child appear in classical Roman legal

sources until the reign of Diocletian, who repeated this principle as early as 294 AD. Initially, Constantine continued this trend. Only twenty years after the reign of Diocletian, on April 24, 314, Constantine decided that if a person knew about a free-born man who was treated like a slave, he should try to free the free-born and return them to natal status, bearing in mind that free-born man has not lost his status [2].

A few years later, on May 18, 323, he decided that parents should not enslave their children. At this stage, Constantine tried to prevent the influence of children by providing financial assistance to parents who intended to kill or expose children due to economic difficulties. Subsequently, on August 18, 329, he ruled that, although the sale of free children into slavery was legal, such children could return to their free-born status provided they paid compensation to the buyer. Constantine establishes that the natal status of children can be restored, but also recognises that the action of the father can change the status of his child [2].

On April 17, 331, Constantine ruled that the *pater familias*' knowledge of the revelation changed his status. That is, if the child was exposed to the knowledge of his *pater familias*, the finder could decide whether the child would be adopted as his own or his slave. This trend continued. Thus, in particular, on March 5, 374, Valentinian repeated this decision, annulling all the *patria potestas* that the whistleblower could possess. Honorius later upheld his decision on March 19, 412, stating that such children could not be returned, but seven years later he also tied the status of a child subject to the costs of her upbringing. He reiterated the justification for this decision, but allowed the status of the child to be changed subject to the payment of double maintenance costs invested in the child's upbringing [2].

The power of the finder to decide the legal status of the child also appears in the Roman laws of the fifth century and the Sententiae Syriacae. These collections of Roman law give the right to determine the status of the toss to those who found it. At the same time, the *Sententiae Syriacae* limits enslavement to twenty years and stipulates that the status must be determined at the time of discovery, in writing, before a court. Later, in the sixth century, when the focus of legal discourse shifted from *pater familias* to exposed children, the status of abandoned children improved. On September 17, 529, Justinian ruled that exposed children could not be raised as slaves, whether they were born free or slaves. He later added, according to the edict of Claudius (41-54 AD), that a slave who was abandoned when he was ill was automatically a Roman citizen [2].

It should be noted that in Roman law there is no concept of adulthood [15]. Roman law determines the legal age only to consider someone a teenager: 14 years for boys, 12 years for girls. They are always under the rule of the *pater familias*, who must dictate to them the law until his death. Under Roman law, children had to be under the constant control of others. If the father dies early, the children enter a special status: they are under the supervision of another man under 14 years of age and under the care of up to 25 years of age. Yes, if a young man's father dies, he is no longer under his father's authority and becomes, de facto, *sui iuris* and *pater familias*, even if he is not yet an adult. If the boy is not yet 14 years old, he is under the supervision of a man who should lead him through life. Then, and up to the age of 25, the young man is under the supervision (less strict supervision) before becoming a full-fledged *pater familias*. This age, only to a certain extent and in this particular case, marks adulthood: the ward acquires all the virtues necessary for civic life [15, p. 166]. This also applies to young people whose father has not died, but has given them some savings so that they can manage them on their own [15, p. 165].

Parental authority over children was terminated, according to sources in the law of the time, for several reasons:

1) first, in the event of the death of the father;

2) secondly, in case of death of children;

3) thirdly, at the will of the father through emancipation as a result of which the son gained full legal capacity and independence, but lost the inheritance, and the father retained the right to use half of the son's property [5, p. 12].

As for the legal relationship between mother and children, they were also determined depending on the form of marriage. Generating a completely different order in the relationship between spouses, marriage *cum manu* and marriage *sine manu* differed sharply from each other in the form of conclusion and termination, and the content of property and personal relations of spouses, and the legal status of the mother in relation to children [14, p. 29]. Thus, in marriage with male authority, the mother, like her children, was under the authority of her husband or his landlord. Therefore, along with the children, she inherited after the death of her husband, children — after the death of her mother. As lambs, the adult sons took care of the mother after the death of their father (her husband). At the same time, in a marriage without male power in the early republican period, the mother was almost unrelated to her children. She remained a fiancée of her blood relatives — parents, brothers, sisters, etc. Therefore, she could not be the heiress after the death of her husband and her children, as well as they after her" [1, p. 182].

Meanwhile, the growth of private property, in turn, led to the emergence of the Kognat (blood) family. For some time the Agnatian and Cognate families existed in parallel, but the Cognate family under new conditions supplanted the Agnatian family. In turn, with the establishment of the Cognate family, the mother's rights changed. From now on, she received the right to live with her minor children, in case of divorce from their father, and the right to child support [1, p. 182].

In turn, the children also had responsibilities to their parents, providing them with the necessary

services that stemmed from the normal way of life of the family and were not purely legal in nature (it was not possible to require their implementation by court decision) [2]. Yes, in the literature [3] there are references to letters aimed at protecting mothers. One such example is a letter in which Theogiton threatens to complain about Apollonius, who does not provide the care he promised his old widowed mother. Another example is a letter from a woman named Galla who claims that her children do not respect her and use physical violence against her. Another illustrative example is a letter written in the 2nd century AD reproaching Sempronius to his brother Maximus, who was responsible for caring for their mother Saturnilus. The letter stated that Sempronius had heard that their mother was not receiving proper care.

Under the law of ancient Rome, children are obliged to respect their parents [13, p. 234]. Respect and obedience to parents were one of the key concepts of Roman families. Older people who felt abandoned by their children could go to court to get the help or resources they needed to survive [3].

Conclusions

Thus, the personal non-property and property relations of parents and children in ancient Rome had certain features related to the status of the relationship in which the parents were, including the status of parents. In particular, the personal non-property and property relations of parents and children born in concubinage and the personal non-property and property relations of parents and children born in wedlock were somewhat different in content. Thus, unlike children born in wedlock, children born in a concubine could not acquire the status and name of their father. Such children had neither the right to alimony nor the right to inherit from their father. Parental authority did not extend to them either. Although, if the father wanted, children born in the concubine could still acquire the rights of children born in wedlock. The personal non-property and property relations of parents and children also had their specificity, depending on whether it is a relationship between children and a father or between children and a mother. Moreover, such features were also determined by the form of marriage. At the same time, it should be noted that the personal non-property and property relations of parents and children under Roman law were a dynamic phenomenon and changed during the period of Roman private law under the influence of various circumstances.

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Особливості особистих немайнових та майнових відносин батьків та дітей у Стародавньому Римі

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Анотація

Римське право є одним із підґрунть сучасного права. Втім, попри це, на сьогодні питання особистих немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму залишається маловивченим. Це зумовлює актуальність дослідження. Метою статті є вивчення немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму. Методологічну основу дослідження склали діалектичний метод наукового пізнання, загальнонаукові (формально-логічний, методи аналізу та синтезу, метод спостереження та порівняльний метод) та спеціально-юридичний метод (формально-юридичний). У статті проаналізовано низку наукових праць українських та зарубіжних вчених з питань немайнових та майнових відносин між батьками та дітьми часів Стародавнього Риму. З'ясовано, що статус дітей, як учасників майнових та немайнових відносин між дітьми та батьками, часів Стародавнього Риму перебував у безпосередній залежності від статусу батьків. Зокрема, проілюстровано, що неоднаковим був статус дітей народжених у конкубінаті та дітей народжених у шлюбі. Обґрунтовано, що матір та батько мали дещо різні права у контексті догляду та виховання спільних дітей. Встановлено, що у тогочасних сім'ях запроваджувалася влада її глави не лише над дітьми, що народжуються в сім'ї, а й над особами, яких волею домовладики було включено до складу сім'ї в якості її вільних членів. При цьому, під батьківської владою було не лише майно дітей, а також їх життя. Водночас було встановлено, що зміст особистих немайнових та майнових відносин батьків та дітей у Стародавньому Римі здебільшого змінювався на протязі усього періоду існування римського приватного права, які під впливом різних обставин, так і у часи правління різних правителів. Представлені дані можуть служити орієнтиром для українських та зарубіжних науковців у процесі проведення подальших досліджень у цій області в Україні та світі

Ключові слова: римська сім'я, батьківська влада, римське право, майнове право, немайнове право