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Dominium versus Personality: A Review of Legal "Use" and Its Romanist Interference

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Abstract
This article investigates the relationship between the concept of use in Roman law and legal personality, focusing on the inherent contradictions within the jus utendi et abutendi, especially within the context of Roman law and its evolution to modern concepts of property and personality. The study seeks to clarify these contradictions and propose a theoretical reformulation to meet contemporary demands. The main objective is to examine how the concept of use in Roman law influences the modern interpretation of the right of personality and to suggest a new understanding that can serve as a basis for future legislative discussions. The methodology employed is deductive, based on bibliographic research, analyzing sources such as Justinian's Digest, writings of Ulpian, and theories of Kant and Kelsen. The findings indicate that personality, as a right, cannot be treated as a property object but must be understood as a social and philosophical construct with profound implications on the perception and treatment of individuals within the legal system. The research suggests that the right of personality should be reformulated to be understood not just as an individual right but also as a social construct requiring an integrated and multifaceted approach. It concludes that personality should be considered as a juridical dominium, legitimizing the law's action on the body and person effectively, without adhering to the traditional concept of property. This study contributes to a more critical understanding of the right of personality, offering new perspectives to enrich the legal debate and promote a fairer theory on use and property in the context of fundamental rights.
Keywords: *Use; Dominium; personality rights; Ought*

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Resumen
Este artículo investiga la relación entre el concepto de uso en el derecho romano y la personalidad jurídica, centrándose en las contradicciones inherentes al jus utendi et abutendi, especialmente dentro del contexto del derecho romano y su evolución hacia conceptos modernos de propiedad y personalidad. El estudio busca aclarar estas contradicciones y proponer una reformulación teórica para satisfacer las demandas contemporáneas. El objetivo principal es examinar cómo el concepto de uso en el derecho romano influye en la interpretación moderna del derecho de la personalidad y sugerir una nueva comprensión que pueda servir como base para futuras discusiones legislativas. La metodología empleada es deductiva, basada en la investigación bibliográfica, analizando fuentes como el Digesto de Justiniano, escritos de Ulpiano y teorías de Kant y Kelsen. Los hallazgos indican que la personalidad, como derecho, no puede ser tratada como un objeto de propiedad, sino que debe ser entendida como una construcción social y filosófica con profundas implicaciones en la percepción y tratamiento de los individuos dentro del sistema jurídico. La investigación sugiere que el derecho de la personalidad debería ser reformulado para ser entendido no solo como un derecho individual, sino también como una construcción social que requiere un enfoque integrado y multifacético. Concluye que la personalidad debería considerarse como un dominio jurídico, legitimando la acción de la ley sobre el cuerpo y la persona de manera efectiva, sin adherirse al concepto tradicional de propiedad. Este estudio contribuye a una comprensión más crítica del derecho de la personalidad, ofreciendo nuevas perspectivas para enriquecer el debate legal y promover una teoría más justa sobre el uso y la propiedad en el contexto de los derechos fundamentales.
Palabras clave: *Uso; Dominio; derechos de personalidad; Deber-ser*

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I. Introduction

The present text aims to address the relationship between the concept of use and the right of personality. This study intends to examine the inherent contradictions in the jus utendi et abutendi, especially in the context of the right of personality, from a critical and historical perspective. By analysing Roman law and its evolution up to modern concepts of property and personality, the study seeks to understand how the use of rights contrasts with the intrinsic nature of legal personality.

The relevance of this research is highlighted by the fact that the right of personality encompasses fundamental rights essential for human dignity and self-determination. Personality, as a right, is not merely a legal element but a social and philosophical construction with profound implications on how individuals are perceived and treated within a legal system. This analysis is particularly pertinent in times of increasing discussion about individual and collective rights, where a clear and precise understanding of these concepts can influence legislation and legal practices.

The justification for this investigation is anchored in the need to clarify and redefine the relationship between use and personality, given that many current debates on fundamental rights are still influenced by traditional notions that do not fully adapt to contemporary demands. References such as Justinian's Digest, the writings of Ulpian, and the theories of Kant and Kelsen provide a robust theoretical base to discuss the nuances of the right of personality, offering a detailed view of how these concepts develop and apply.

The central problem of this study lies in the apparent contradiction between personality as a right of use and the idea of property, since personality, as a right, cannot be treated as an object of dominium. This contradiction is fundamental to understanding the limitations and possibilities of the right of personality within the legal framework. An in-depth analysis of this contradiction will allow a critical re-evaluation of the legal foundations that support personality as a right.

The overall objective of this research is to explore and clarify the complex relationship between the use of the right and legal personality, proposing a new understanding that can serve as a basis for future discussions and legislative developments. Specifically, it aims to examine how the concept of use in Roman law influences the modern interpretation of the right of personality and how this interpretation can be reformulated to better meet contemporary legal needs.

This study contributes in multiple ways. Firstly, it offers a critical and historical review of the concept of use in the law, from Roman law to modern theories, highlighting the main contradictions and challenges. Secondly, it proposes a re-evaluation of the right of personality, suggesting that it should be understood not only as an individual right but also as a social construct that requires a more integrated and multifaceted approach. Finally, this work suggests possible directions for legislative reform, based on a deeper and more critical understanding of the concepts of use and property.

This article is structured as follows: initially, the theoretical foundations of the right of personality will be addressed, with a detailed review of Roman sources and the main thinkers who influenced this field. Subsequently, the contradiction between use and property will be discussed, exploring how these ideas have developed over time and how they apply to the right of personality. The following chapter will analyze the relationship between dominium and the right of personality, highlighting the legal and philosophical implications of this relationship. Finally, conclusions and recommendations for future research and legislative practices will be presented.

In summary, this study aims to contribute to a deeper and more critical understanding of the right of personality, offering new perspectives and suggestions that may enrich the legal debate and promote the development of a more coherent and just theory on use and property in the context of fundamental rights.

1. The Use of Law by Personality as Contradiction to the *Jus Utendi et Abutendi*

Use appears as a contradiction to the right of personality because it opposes the idea of dominium on which Roman Law founded its expression of the form of Law. This means that, although personality is defined as a right of use, it cannot be treated as an object of property, which should be initially observed concerning the very concept of use as an essential legal abstraction.

It is important to establish that use becomes a generic source in Roman Law, as dominium is not about ownership; in fact, the idea of having the right to hold something as a right is not defined in a specific static of Roman jurists. Although this legal definition properly belongs more to the third chapter of this work, it is important to determine that dominium holds an important place in the idea of personality, by its very nature presented in this chapter, since, indeed, personality, as it becomes a right, manifests in a mythical correlation that elaborates its necessarily legal function, but at the same time its use is contradictory as to its own elaboration.

Regarding the use of a right, we can observe that this is underpinned by a thesis that the jurist Paul presents in the idea of "Ususfructus est jus alienis rebus utendi fruendi, salva rerum substantia" (D.7.1.1). From the beginning, this idea is preserved as a foundation of essential right, since the Law is preserved even though, when external to itself, as a use in its substantial terms, that is, even though the exercise of right is outside the

dominium of itself, what sustains the Law is its own special nature, which implies in itself the problem of legal personality. This is an essentially external element, although individualizing, and that grounds its essentially legal function in a special mythologeme.

Although personality is individualizing, it is assessed from a reading of the phenomenon of the person. As already observed, the person does not implicate the body, but in the axiological identification common to identifiable bodies. Therefore, the personality as a product of the person necessarily affects a universal object and not the body itself. However, as for the effective anomie of the apprehension of personality, it shifts as an antiprogressive foundation to a permanent presupposition prior to the individual, it reifies the body as an anomic element of a non-medium, in such a way that it becomes the use of personality over this displaced body. In this way, the very right to use the personality becomes an essential element of alien use of the body, for, although the individual is the reification of a body in the negative field of the medium by anomic form, the substance does not change as to the right.

In turn, Ulpiano (D.5.3.25.11) also already anticipated that dominium was not necessarily a title, but became right by good faith, and here indeed we have a way of justifying personality as a right, since it cannot necessarily be a form of use through legitimacy, since its structure is made by a mythologeme structuring the essential sense of the individual, but rather by a formula of objective apprehension of the idea of fundamental presupposition of the form of life, from the concept of person.

Personality is inserted as a right in a complex attempt to relate an essentially different element from the plane of the Ought; that is, there is an irreversible incompatibility between the idea of personality and the idea of right, which will be observed, at this first moment, as a deduction from both a genealogical attempt of right and of personality.

Firstly, it is important to discuss what is to be observed: personality and right. Here it diverges from the position of personality as an intrinsic right of the subject, since this is precisely subject to an axiological category. Thus, personality is read from here as an element of cultural nomoi. That is, from this classification, we can admit – although it is not the object of this text – the application of fundamental rights as a sine qua non category of the subject of right, since there is a possibility of defining the foundation of formation and pillar of support of a subject before the Law. That is, for the subject to remain viable on a legal plane, it is necessary for this to have a foundational element. As already discussed in other publications by this author, the foundation is purely legal and its grounding is constitutive of a legal environment. With this, fundamental rights are justified in the grounding of these subjects as subject to the legal element as a normative category; when the defense of such rights is made, it has a condition of axiology of an Ought and not of a phenomenon.

The subject under the aegis of its foundations is an object subject to the action of the Law; thus, being the antipode of a space of exception, which would be the element outside the legal action. A subject, without its rights of foundation, is not subject to right, which is to the broad and exegetical notion of dignity; that is, an unworthy subject loses its category of subject, its very humanity. This has already been exhaustively discussed by Agamben in his works on the "homo sacer", and his explicators; the removal of the foundation of dignity makes the concept – strictly conceptual and axiological – of human and refers it to a space empty of sacredness.

By the same logic, we can observe the Law, when the norm, made viable in the subject of right, is not founded by dignity, its right of foundation of norm is mitigated; consequently, it is no longer normative; it is exceptional. In the space of exception, there is no norm, at least from the methodological plan of the Ought. Therefore, it is possible to observe, through a line of rights, the need to discuss fundamental rights, although this analysis is delicate about its extension, it is feasible in legal application and also perceptible in the phenomenological field.

Now, in the case of personality, this foundation no longer justifies itself. The justification of personality, as a pure characteristic of the subject and not of the right, is not universal in itself, that is, personality would be like a set of characteristics that determine the personal and social standards of a person; its foundation is gradual and unique in each individual. Although it is a topic to be developed in another more specific text, we can advance that there is no academic passivity between the non-legal concept of personality; however, the idea of individuality is peaceful.

With this, the legal protection of personality has a great difficulty of definition. Initially, a clue about personality as a nomic condition is accepted here, since it is an element of conservation, or a means of self-determination to reach structures of grounding of rights; that is, personality as a right is not intrinsic to the human category as a normative element, but as a legal observation of the nuances of these foundations, not universal, but of perception and apprehension between fundamental rights and universal civil character rights.

However, the observation of personality as a method depends on definition and, for its scientific classification, it needs to be appreciated in a defined context. Character to personality as an individual element impairs its application in Law, as well as its scientific nature. Therefore, the proposal investigates personality as "use", in a specific sense of the line adopted here. A character that follows the line of Benjaminian romanticism, that is, by removing personality from a mechanical time, applying it in a philosophical character of a messianic space melancholy, perhaps it is possible to try to investigate personality and its possible applicability in a system.

In a critical space of observation of the rights of personality, there is a very intrinsic relationship between positivism and natural law, not as to its nature, as the theory of the rights of personality tries to do, but as to its justification about the validity of its purpose, that is, the justice due to the legally protected good.

Thus, the Law appropriates a concept of the individual to read it as a set of norms forming a subject of right. With this, there is a heterotopia of the subject, re-signifying the individual in an expressly divergent category from what he is found, to violate the phenomenon and apply it in a divergent space.

Regarding heterotopias as such, how might one describe them, what sense do they hold? It might be possible to suppose, not a science, as the word is much depreciated nowadays, but a kind of systematic description that would have as its object, in a given society, the study, analysis, description, the "reading", as it is fondly referred to today, of these different spaces, these other places, a kind of simultaneous mythical and real contestation of the space in which we live; this description could be called heterotopology. The first principle is that there probably isn't a single culture in the world that does not consist of heterotopias. It is a constant of any human group. However, heterotopias obviously take forms that are very varied, and perhaps one would not find a single form of heterotopia that was absolutely universal. (FOUCAULT, 2009, p. 415-416 – author's translation).

The replacement of existing spatial concepts with others that encompass the same space, but are characterized by diverse consciousnesses, are heterotopic formulas that are similarly represented through ideal acceptance over time. The individual and their personality remain; however, the concept of the market and the norm give it a space different from its original ideal, yet within the same space, another concept remains ideally perennial and accepted.

This discursive limit in the consciousness of the subject allows for the questioning of whether the idealist subject is the one who maneuvers their consciousness over perceived reality. It is important to categorize knowledge as an object of use through interpretation.

The systematization of knowledge would take the Kantian experience separately with the conditions that give rise to knowledge (KANT, 1985, p. 13). This means to say that knowledge derived from experience would separate partly in the senses, through the production of representations themselves, and partly in the cognitive movement, not in the unified form described in pure reason. Such a cognitive movement would have idealistic expressions that would produce consciousness while the representation of objects would occur through social concepts pre-constructed and agreed upon by the subjects holding the knowledge.

If personality does not find its use in the legitimacy of a given norm, nor in a natural form, and its complete content is not defined by an ideology, although it may be partially defined in its character of genealogical construction, what can substantiate the use of personality is precisely its contradiction to the concept of use.

Personality itself is not a right, but its mythological foundation needs to be, so that it can form into a spectrum necessarily useful for its understanding of apprehension, since personality is not redeemed through a domain of the subject, nor a legitimacy of action. Personality is the negation of the essential use of the legal form of a certain mythological element for the foundation of an anomic space of self-understanding formulated, firstly, by a psychological reference, but that essentially finds itself as a non-essential or progressive element of observation.

There is no personality except in the person, precisely because from this one extracts personality; but at the same time, if there is no presupposed personality, the individual only has a body and this body implements itself in the environment bringing its existence to mere life and not accessibility to the very rational concept of Law. The legal form of personality, in this derivation, is objectively an element that links the possibility of using the body by the law.

The Law is rationalist and hypothetical and the only way for the Law to be appropriated by a body is from a foundational myth of an effective anomic space in which this Law acts as an essential connection of an objective and effective mythologeme. With this, there is no Law without myth, and no use of Law without Personality.

Even though personality as a right is not in the spectrum of use, it is in the spectrum of dominium, but not in the form of property, but as a messianic enjoyment of a stigma that enables the axiological method present in the abstract rationality of the Law to find its foundation.

The analysis of the legal effects, as a formulation of the mythological structure of the right of personality and its nature, will be found in the next chapter, but here it is observed, more clearly, why this myth is essential for the Law to be made, that is, personality as a right is not an essential use, but a possibility of dominium for the use of the Law.

2. The Space of *Dominium* in the Rights of Personality

Kantian rationalism necessitated that Modern Law be interpreted through binary structures. Arising from the need to categorize a clear difference between the planes of being and Ought, that is, a plane where the thing in itself exists in the middle and a rational plane where judgments present an objective category for such terms, it

deduces a necessity for these planes to appear in relation to legal deduction itself, in terms of the necessity to create legal science.

The Kelsenian deduction is largely responsible for this duality, as it uses the premise of Kantian reason to frame the legal form in a structure that allows for a static and methodological form of normative purism. Kelsen observes a binary difference between the norm and the fact correlated to the Kantian structure, such that for the existence of a legal science, it must be detached from an open humanistic plane, in a way that differentiates it from the relations of nature, which, for Kelsen, are observed in causal relations, since every hypothesis must be linked to an essential consequence in the plane of causality; whereas in legal terms, the consequence is presupposed by the norm itself, on a logical and Cartesian scientific plane.

Causality and Imputation, as already observed, are two different modes of a functional nexus, two different ways in which two factual issues are linked to one another as condition and consequence. The difference between them subsists in the circumstance that imputation (this means the relation between a determined conduct as condition and the sanction as consequence described in a moral or legal law) is produced by an act of will, whose meaning is a norm, while causality (this means the relation between cause and effect described in a law) is independent of any and all intervention (KELSEN, 1986, p. 32 - author's translation).

Thus, Kantian rationalism, which seeks to disassociate from natural law, is correlated to Kelsenian positivism in finding the necessity to detach from a mutable plane of what is produced in the environment. As such, this dualist differentiation became a necessary constant in the legal plane, especially when relating to structuring forms that depend on a phenomenon to be accurate, in terms of legal practice.

Perhaps, in the very contractualist terms of Law, freedom might initially be the matrix root of this binarism between phenomenon and form, since although freedom is a phenomenologically complex element in human terms, freedom, in terms of Law, reduces the idea of will to the form of a contract; that is, a formal kind of will through the distinction between the acceptance of terms not one's own, by reason of the formation of a pure contractual element.

However, it is argued here that, although freedom is the hypothetical normative foundation in Kelsenian terms, in strength to sustain what was previously observed by Rousseau, the great binarism that prevented the necessary application, in very personal terms to the formatting of the central element of the legal form, as a product of a structure of protection both of the individual and of the person, lies in the binarism that underpins the Νόμος, that is, the foundational reason of Law, the measure that gives rise to the legal form, namely, possession and property.

This is because, as previously observed, the legal relation as to its spatial effectiveness occurs in the form of the Νόμος which presents itself as the visible apprehension of the political and social order in legal terms (SCHMITT, 2014, p. 69). An important definition, considering the very concept of Νόμος, as an original measurement that founds the subsequent ones, for the division of the space of power where the legal function of a state is revealed.

That is, when we observe Νόμος as the fundamental form of opening the legal space, we leave the Kantian duality, to return to an effective form of observation of a legal abstract, an essential issue for the Hegelian proposal that is made in the present work. This is because, from the idea of Νόμος, we have in the same scope a legal abstraction filed in the effective, that is, visualized, although it does not present itself in terms of the phenomenon of the environment, but reveals itself for the effective foundation of the Political Space, a phenomenologically anomalous form in terms of space; however, effective in terms of appropriation, a fundamental element for the formation of personality in its effective displacement to presuppose individual and person.

In turn, possession and property, in binary form, reflected the whole placement of the legal form on the pure and the phenomenological in Modern Law; even the Marxists worked with the end of property and the maintenance of possession without paying attention to the fact that possession itself was in a formal spectrum of modern legal affirmation. This is because, this duality completely replaces the Νόμος of the land. That is, the visible and effective legitimacy was removed, under the foundation of the use of this concept by the totalitarians, in a way to make unviable the idea of the visible anomic space, for a specific legal concept, trapped in a finalistic foundation.

The foundation of property, as the central form of Law, brought the appreciation of a chimera between Law and the body itself, in such a way that it is possible, in the terms in which the present work is treated, to observe the foundation of removal of the body as an object of observation precisely because of its category that implies a phenomenology outside the environment which, from what we analyze here, applies in a foundation of non-environment. But until then, this appropriation of a normative space, from the idea of a title of an anomic space through Law, was necessary to determine the proper categories of the person. This, perhaps, becomes obvious and clear in Locke, who directly relates the body to property as a Right in itself, that is, the observation of Law as a formula of titular apprehension of validity over the body, we highlight §27 of the Second Treatise of

Government, which clarifies this position more clearly.

Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he has mixed his labour with, and joined to it something that is his own, and thereby makes it his property. (LOCKE, 1980, p.19).

This formula is directly linked to the need to relate the phenomenon to its legal category, even though this is the problem itself, particularly regarding the necessary binarity for the foundation of a difference between the legal fact and the naturalistic fact. The idea of property comes as a denial of possession. That is, although possession is a real and phenomenological element, the body, even though it is a phenomenon, is not in the real place of the phenomenon but in the legal statics of the right's title, what the contractualists called property.

It may be understood that Rousseau minimized this sphere by bringing freedom and will as foundations, which would partially reattach the idea of the body to Law. However, this cannot be interpreted in such a way, even though the Rousseauian Social Contract is considered an act of will; property remains an important element for the author and for the foundation of the Contract, for the same reasons as John Locke and the binary relationship of Kantian rationality. In other words, due to the impossibility of considering the fact as a means of legal apprehension, such that the concept of the person must necessarily be observed as a legal formula separate from the phenomenon.

Perhaps, an isolated reading of Rousseau's Social Contract may give rise to a biased interpretation of what will means in legally rationalizable and isolated terms from the phenomenon; however, the expansion of the author's work allows us to deduce the necessity of this separation from the apprehensible world of the plane of Law. Here we highlight the "Discourse on Political Economy," in which Rousseau presents the foundation that, although will is an essential element, property is the formula for applying the legal form.

"It is certain that the right of property is the most sacred of all the rights of citizens, more important in some respects than freedom itself; either because it is closer to the preservation of life, or because goods being easier to usurp; more painful to defend than the person, one must respect more what can be snatched more easily; or finally because property is the true foundation of civil society; the true guarantee of the commitments of the citizens: for, if goods did not answer for persons, nothing would be easier than to evade one's duties, to mock the laws." (ROUSSEAU, 2012, p.378 – author's translation).

Rousseau uses a discourse in which he unites the effective elements, such as the sacred and life, to the legal title of property in a relationship that even enhances its foundation to its useful structure as to the ease of usurpation. However, it should be noted that this usurpation analyzed by Rousseau is not confined to the subtraction of the good, that is, the fact of taking the good itself effectively, but rather in the unjust incorporation of the title as a legal fiction.

The relationship of property as a dualist antipode of possession lies precisely in the element of the medium; that is, the exercise of possession is nothing more than the linking of the body to the medium, such that the Law cannot and should not, in principle, return its object in a spectrum that does not enable the removal of the concept of the body from this phenomenological spectrum. The fact of possession occurs through the own apprehensible existence of the exercise; while property occurs only from fiction, it is undeniable that possession is in the space of effectiveness. The problem is that, when antagonized with property, its own form loses its effectiveness in detriment to the legal form.

3. Dominium and kantian's *Ought*

Possession and property are couched in terms of pure Ought; both present themselves as norms within a static legal science framework. However, their foundational purpose molds to elements derived from a pure purpose in property and a phenomenological purpose in possession. That is, while possession occurs through the legal consummation of the fact; i.e., the actual exercise over space determinable in phenomenological terms, property detaches from the fact and is confined solely to the legal title to which validity is presumed.

The question is as follows: if the proposal of this work is based on a formula of effectiveness regarding Law, i.e., a conscious apprehension of Law, even though the presupposition of the phenomenon of the environment is not considered for a return to pure body, a mere life, but rather a direct relationship between consciousness and legal apprehension, I ask: would this imply the need to overcome the concepts of possession and property? Not at all should such legal concepts lose their materiality as regards the legal-political structures, but what must be observed is the effective space between possession and property and, primarily, from such a space of effectiveness, to ground personality as a right of use, as a general foundation of the person and the

individual as legal elements.

This means: it is not about reforming possession and property as legal concepts, but rather about breaking away from the binary and antipodal structure, which Modern Law treated these two elements and the foundations as presupposed hypotheses of Law.

This is justified, given that Personality, as already presented in its genealogical result, does not occur as a form of deducible right, but as a presupposition of the very legal concept to be applied to the foundation of individual and person. Thus, what is necessary is to determine how there is a possibility of the usus of personality as a right.

And if we talk about use, i.e., the exercise of Law as a means of actualizing Law itself, we need a legal statute that allows its real apprehension, not as an Ought, or outside the binary plane between reason and phenomenon, but as the Νόμος, that is, as a visible apprehension of the political and social order, in legal terms, outside of Kantianism, and seeking a denial of abstraction as observed in Hegel.

From this, it is not a great challenge; just a historical repositioning. This is because the binarity between being and Ought is a modern realization and a foundation both rationalist and contractualist – in other words, both in philosophical terms and in legal terms – of modernity, which had its necessity from bourgeois Law and was realized with the need for social rights, from the Industrial Revolution. However, this binarity was not the form of observation of the exercise of use at all times in Law.

In Roman Law, especially when we observe the digest of Emperor Justinian, we note the presence of both possession and property, but outside their binarity, precisely because they are separated by a third element of exercise of use, namely, the dominium.

Firstly, it is important to define why there is a divergence from a significant part of the Brazilian doctrine, in considering the Roman idea of dominium as a direct translation for property. The first reason has already been noted above, that, through the integration of rationalism into legal practice, a concept that does not apply in the binarity between phenomenon and reason would not be possible in its contractual justification; even more so for a concept that would encompass an abstract legal form of effective apprehension in the real plane as we present it.

In terms of specific determination of the mapping of the structure of dominium, however, its differentiation from the pure legal title of rational axiology, which we call property, becomes clear from the Roman language regarding the term.

The legal title related to goods can be found in the language of Roman jurists in three different versions: the first, under the term mancupium (or mancipium), the second, under the denomination of proprietas, and finally the third, the term dominium.

Indeed, the idea of possession, due to its factual linkage, is separated from any relation of legal title, and we have nothing to diverge from this point. The element of possession appears in the Roman codex as a formula strictly related to what rationalism would call an event of being, or phenomenon by itself, is visible, but devoid of any legal activity that might guarantee it.

This is clear in the Digest itself (specifically in book XLI, 2, 12, 1), where it is extracted and observed: nihil commune habet proprietas cum possessione (property has nothing in common with possession), as well as in Book XLIII (17, 1, 2) separate esse debet possessio a proprietate (possession must be separate from property).

The problem is precisely that this specific separation may have generated a hermeneutic flaw in the relationship between the concept of property in modern contractualist terms and the institute of 'proprietate', which presents itself as one of the natural elements of the legal form of judicial exercise over goods.

The concept of 'proprietas' can be considered, within Roman models, the most recent idea from the moment that the exercise over goods is closely linked with the separation between legal objects and persons.

Thus, the concept of 'proprietas' becomes a generic object for the use of certain goods, particularly those necessarily related to an inanimate and territorial form. Property, as we know it, indeed derives from the idea of 'proprietas'. However, it specifically links to the exercise over land, that is, with a relationship of well-foundation as we know it today.

This does not mean the destitution of the figure of the Roman slave in the Byzantine Empire; for them, there still exist other forms related to property, but 'proprietas' is directly connected to goods which cannot be attributed to a politically qualified individual body; or even sanctified by the pax deorum, 'proprietas' was linked to the possibility of differentiating the extent of the legal force to an object detached from the power over the aspect of person as configuration.

Science must clearly extract the consequence of the new judicial practice; extract the essence of the system of actions. The Justinian compilations know no more than one type of property open to all, over all things of private law; they are designated by a modern word: 'proprietas'. (VALLEY, 1996, p.130 – author's translation).

And here a primary distinction is already necessary. The relationship of both 'dominium' and 'mancupium' is already distinctly different from 'proprietas', but it is important to note that, although the latter is relative to

things, the other two may relate to people, but with distinctions between them, compelling us to consider the relationship of 'mancupium' as an immediate rescue to the foundation of the use of bodies.

'Mancupium', in a direct derivation from 'manus', meaning something directly related to the phenomenon of handling something, may have been the oldest relationship of legal exercise, or juridicialization of possession, but it itself has a well-defined form related to the idea of 'potestas'. That is, a legitimacy attributed by political force for the handling of a certain good; and here we have the important relationship of 'Mancupium' with the direct foundation of the use of bodies by legal protection.

The legitimacy of 'potestas' was crucial for a legal differentiation of power over things from power over people, since things, elements placed in nature, required a much simpler legal legitimacy from the point of view of assigning power of use to another who has equal potential power of use. That is, 'Mancupium' was intended to strongly originate the formula of use on the body, legitimizing the action of the body that uses and limiting the power of the body used.

This used body was in a situation 'in macipium', and was presented by the terminology of "filius familias (including the woman subjected to the manus of the husband) solemnly sold (through mancipatio) by the pater familias." (ALVES, 2016, p. 119). Thus, the relationship between the 'macupium' and the legal relationship was not attributed, as is commonly observed, as a property, but a legitimacy of modification of qualification over the use of bodies and the body that uses.

For the determination of a 'res mancipi', for the attribution of a body in use by a 'potestas', the relationship was, at the same time, legal and mystical, in such a way that the relationship between use and body were persuaded in the form of legitimacy. The subject matter of 'res mancipi' has fortuitously engaged the keen intellects of contemporary Romanists. One among these scholars advances the theory that 'res mancipi' might have initially been amenable solely to authentic ownership; alternatively, as proposed by others, to a more archaic entitlement than ownership, termed 'mancipium'. Prior to an abstract conceptualization of property, the nascent Roman intellect might have envisaged 'mancipium', a "superior" tangible authority over an object. (VILLEY, 1996, p.123).

Therefore, the power contained in 'potesta', for the use of 'res mancipi', was duly attributed to a relationship of divine emulation over that which should relate in a general sense of body. Therefore, 'manus' could only be attributed to the idea of the family, that is, the 'potesta' using the 'mancupium' received a specific denomination, which was the 'pater', that is, this "father of the family still enjoyed almost as complete power over the members of his family." (VILLEY, 1996, p. 47). The attribution of the power of use of the 'mancipium' was indeed a legal legitimation of use over the bodies that were directly related to the function of the 'pater'.

It is interesting to observe, however, the book L of the Digest (16, 195, § 2) which exposed a very interesting formula for the power of use of the 'pater' of the limitation of the 'mancupium', which presented itself in the following manner: "pater familias appellatur qui in domo dominium habet."

This passage generally generates certain confusions because it relates that the power of the 'pater' is in a sphere of 'dominium', but note that the distinction is clear, the exercise of 'dominium' is in relation to the spatial and legal ambit of the house.

This means that 'dominium' presents itself as a distinct formula of use, which, although related to the power of the 'mancupium', cannot be said to treat the same thing. We can observe that, within the exercise of 'dominium', the direct relationship with those under the aegis of the 'pater' has a specific relationship, that of the 'mancupium', precisely so that these—children, wife—are under the authority of exercise of the 'pater', but are not confused either with the land, with goods, or with other bodies that may be under the submission of the 'pater'. With this, we are “led to distinguish the power of the 'dominus', which is exercised over the slaves without any restriction—from the power of the 'pater' in the strict sense over the children, the marital authority, called 'manus', over the married woman.” (VILLEY, 1996, p. 47).

'Dominium', thus, appears as a category of use over things that can be determined on a factual plane, even if this factual plane is a fiction, but necessarily determining over reality. This made it necessary to distinguish, or subdivide its category under the form, as the 'dominium' is exercised by the 'patrio' or by the master of the slave; although these two figures rest on the same person.

This occurs in a categorical formula in which 'dominium' considers a factual breadth of legal fiction. That is, from a sociologically effective relationship, the body becomes usable through a visualizable effect.

We observe, for example, Ulpiano's comment to Sabinus, in book III of the Digest (29, 20), where it is stated: "traditio nihil amplius transferre debet vel potest ad eum, qui accipit, quam est apud eum, qui tradit. Si igilur quis dominium in fundo habuit, id tradendo tranfert; si non habuit, ad eun, qui accipit nihil tranfert." (Therefore, if someone had dominium in a property, by transferring it, he transfers that dominium; if he did not have it, he transfers nothing to the receiver.) When it comes to a relationship of 'dominium' over the slave, Ulpiano's observation is clear, the body should not be transferred, because the most that one has over the body of another is possession, essentially a factual element, without fiction; but if the legal fiction becomes use through legitimacy, it is made through an effectiveness that differs the body from power, such that what should be transferred is the 'dominium'. The body remains a body, within the limitations of use, since the body, to be in a

category of direct use, must be attributed to the family, precisely so that it is not deprived of its category outside the phenomenon of other things, of goods, which are in the realm of 'proprietas'.

We can analyze an interesting passage from Steinwascher Neto (2007, p.172), to try to observe this distinction and its comprehension difficulties in the doctrinal realm, precisely because of the obstacle of the dualism of modern Kantian rationality, see:

'Dominium' represents exactly the power that in ancient law was expressed in the 'manus'. 'Proprietas', on the other hand, represents the relationship between the person and the thing, a sign of connection, of the bond, of the property relationship. In fact, the two expressions, 'dominium' and 'proprietas', examine a different point of view on an identical concept. 'Dominium' is, of the two, the more rudimentary, the more ancient; 'proprietas' is the more refined, the more modern.

Indeed, the idea of property, as a legal title, may pertain to use in terms of a legal title; however, as to its nature of use, one relates to the phenomenological plane, and the other to a fiction that legitimizes the use of the visible realm, namely, the bodies.

Consider, for example, the commentary in Title XIII of Lex I of the Edict of Rotharis from the Digest, which states: "Si quis liber homo migrare voluerit aliquo, potestatem habeat intra dominium Regni nostri" (CORPUS JURIS CIVILIS, 2010, p. 909). Here we have a direct relation to the possibility of using the body as a faculty of authority, that is, there is a need to relate the use to a category that can be analysed beforehand.

Thus, we can observe that the concept of dominium in Roman Law occupies a space between possession and property, that is, between fact and legal fiction. This space is understood in a legal relationship that necessitates an observable effectiveness, indeed as a relationship of the Νόμος. That is, it is not about the fact, precisely because it communicates only with that which is bound in the phenomenological plane, and as we observe, the concept of person cannot and should not be related in this plane, precisely because it does not find itself in a feasible field except through the body itself. Similarly, the concept of person is not a fiction in terms capable of being in a purely fictitious legal stratum like that of property, because the plane of the person is a legal form of legitimization of the legal relationship itself. Thus, what is understood as property, in the rationalist model, is linked only to a legal act on the concept of creation that does not depend on the fact, while possession is essentially linked to the fact.

Dominium, however, is an element that requires a legally-observable relationship. Precisely for this reason, the Roman model used dominium in the form of the slave, to indeed use the body, as a person, but in a plane of legitimacy of power, and still with the need to subdivide it into the category of mancupium to determine the power over the body of the family.

But it is important for us to observe that the problem with dominium is not the Roman restriction as to the potestas of the slave or the pater of the family, but rather the concept that relates to it. Dominium is the legal use of an effective concept.

Consequently, there is no legal form capable of observing the right of personality, except for a category of dominium, which by the assumptions of the modern person itself offers the possibility of this right being on a level of use, without it being purely fictitious or needing to give up its legal category.

Obviously, the dominium of personality is not about the Roman concept of potestas, that is, of slavery or patriarchal power; rather, it guarantees the body the use of personality itself, but not as a right of general applicability, but as a power of use of itself, not by property, as Locke would have it, precisely because such property would bring a purely fictitious concept to the person, and as we observe, the personality is effective on the premise of individual and person.

II. Conclusion

This article has thoroughly investigated the relationship between the use of law and legal personality, focusing on the inherent contradictions of the jus utendi et abutendi. From the outset, we contextualised the issue from the perspective of Roman law, highlighting how the concept of dominium influenced the formation of contemporary legal thought. The analysis of primary and secondary sources revealed that use, as a right, has always had a complex relationship with legal personality, often sparking debates over its application and interpretation.

The research demonstrated that personality, as a right, cannot be regarded as an object of property. This conclusion was underpinned by a critical review of historical and philosophical texts, including Justinian's Digest and the theories of Ulpiano, Kant, and Kelsen. These thinkers provided a solid foundation for understanding the nuances of personality rights and the evolution of the concepts of use and property over time. The analysis showed that, although personality is often treated as a right of use, it does not fit the concept of property since it cannot be owned or alienated in the traditional sense.

A central point discussed was the contradiction between use and property in the context of legal personality. We identified that the right of personality fundamentally differs from traditional property rights, as it involves aspects intrinsic to the dignity and identity of the individual. Personality, as a right, should be understood as a social and philosophical construct that transcends mere legal application. This understanding is crucial for addressing contemporary challenges related to individual and collective rights.

The deductive methodology, based on bibliographic research, allowed for an in-depth review of the sources and a critical analysis of existing theories. This approach highlighted the need to reformulate the interpretation of personality rights to better reflect the complexities of modern society. The investigation showed that personality should be viewed as a juridical dominium, a concept that legitimises the law's action on the body and the person without resorting to the traditional notion of property.

Furthermore, the research emphasised the importance of considering personality as an element of effective legal use. This implies recognizing that personality plays a fundamental role in structuring fundamental rights and defining human dignity. The proposed reformulation suggests that personality is not just an individual right but also a social construction that demands a multifaceted and integrated approach.

The findings of this research point to the need for a new understanding of personality rights, an understanding that is not confined to traditional models of property and use. Instead, we propose a view that recognises personality as an essential element of the legal system, capable of influencing and being influenced by social norms and practices. This view promotes a fairer and more coherent application of fundamental rights, aligning with contemporary demands for equity and justice.

In conclusion, the contributions of this study are significant for the current legal debate. By proposing a new understanding of personality rights, this work offers a critical perspective that can inform future legislative and academic discussions. The reformulation of the concept of use in the context of personality rights could lead to a more equitable and comprehensive application of fundamental rights, benefiting both individuals and communities. In sum, this article seeks to enrich legal understanding and promote the development of theories more suited to the complexities of modern society.

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