



## CIVIL LAW

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### Development of Private Property Law: A Comparative Analysis

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**Abstract.** The article is devoted to a comprehensive comparative legal analysis of the genesis and evolution of private property law. The study covers a wide historical period – from antiquity to the present – and examines the development of this institution in various legal systems (Roman law, the law of Ancient Mesopotamia and Greece, Russian pre-revolutionary, Soviet, and modern constitutional law, as well as the experience of the USA, Germany, France, China, and other countries). The relevance of the work stems from the fundamental role of private property as the foundation of legal systems and economic development, as well as the need to identify common trends and national peculiarities in its regulation at present. The purpose of this work is to determine universal and specific patterns in the development of constitutional and legal regulation of social relations in the sphere of private property. The work sequentially addresses the tasks of studying its origin, stages of historical development, and modern constitutional and legal status. The scientific novelty lies in combining historical-legal retrospect with synchronous comparative analysis, which enables proposing a periodization of the evolution of the institution and formulating conclusions about the convergence of national models. The key conclusion of the article is the transformation of private property law: from an absolute individual right, it has evolved into an institution performing a social function, accompanied not by a weakening but by a strengthening of its guarantees through the development of international legal protection mechanisms and the activities of constitutional justice bodies.

**Key words:** constitutional law, history of law, social function of property, expropriation, constitutional guarantees, evolution of law, legal systems, internationalization of law

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## Развитие права частной собственности: сравнительный анализ

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**Аннотация.** Исследование посвящено комплексному сравнительно-правовому анализу генезиса и эволюции права частной собственности. Исследование охватывает широкий исторический период – от античности до современности – и рассматривает развитие данного института в различных правовых системах (римское право, право Древней Месопотамии и Греции, российское дореволюционное, советское и современное конституционное право, а также опыт США, Германии, Франции, Китая и других стран). Актуальность работы обусловлена фундаментальной ролью частной собственности как основы правовых систем и экономического развития, а также необходимостью выявления общих тенденций и национальных особенностей ее регулирования в настоящее время. Цель исследования – определение универсальных и специфических закономерностей развития конституционно-правовой регуляции общественных отношений в сфере частной собственности. Последовательно решаются задачи по изучению его зарождения, этапов исторического развития и современного конституционно-правового статуса. Научная новизна заключается в сочетании историко-правовой ретроспективы с синхронным сравнительным анализом, что позволяет предложить периодизацию эволюции института и сформулировать выводы о конвергенции национальных моделей. Ключевым выводом является констатация трансформации права частной собственности: из абсолютного права индивида оно эволюционировало в институт, выполняющий социальную функцию, что сопровождалось не ослаблением, а усилением его гарантий за счет развития международно-правовых механизмов защиты и деятельности органов конституционного правосудия.

**Ключевые слова:** конституционное право, история права, социальная функция собственности, экспроприация, конституционные гарантии, эволюция права, правовые системы, интернационализация права

**Вклад авторов:** *Саудаханов М.В.* – формулирование идеи, сбор материала, анализ, систематизация и научная проработка собранных материалов, подготовка и написание рукописи; *Чихладзе Л.Т.* – рецензирование и редактирование рукописи. Оба автора ознакомились с окончательной версией статьи и одобрили ее.

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## Introduction

The relevance of the chosen topic lies in the fact that the right to private property is a cornerstone of modern legal systems and the foundation of society's economic development. Its formation and evolution represent not only a legal phenomenon but also a reflection of profound socio-economic, political, and cultural transformations. In the context of globalization and enhanced interstate interaction, a comparative analysis of the development of the institution of private property in various legal families and national systems acquires particular significance. Such research enables identifying common patterns, unique national features, and trends toward the convergence of legal regulation – crucial for harmonizing international legislation, improving the investment climate, and developing private law relations.

Regarding the degree of scientific elaboration, the issue of private property law is traditional in legal science and widely represented in the works of domestic and foreign researchers. Significant contributions have been made by scholars such as A.V. Venediktov, E.A. Sukhanov, B.S. Ebzeev, and others. However, despite extensive literature devoted both to the theoretical aspects of property and to its regulation in individual countries, comprehensive comparative legal studies specifically analyzing the historical development of this institution over a long-term retrospective – while highlighting universal and specific trends – remain insufficient. Most works focus on dogmatic analysis of current legislation without considering its historical-legal context.

The research problem lies in the contradiction between the universal significance of the principle of inviolability of private property and the diversity of paths of its historical formation, legal formalization, and modern application across different legal systems.

The goal of this study is to conduct a comparative analysis of the genesis and development of subjective private property rights through the prism of constitutional law, while identifying main trends and prospective models of its further transformation in the context of legal doctrine, as well as political and economic teachings.

To achieve this goal, the following tasks are set:

- to investigate the genesis of private property as a subjective legal right;
- to study the stages of development of private property law;
- to consider private property law in the context of its social purpose;
- to analyze private property through constitutional and legal regulation.

The object of this scientific inquiry is the complex of legal relations inherently connected with the genesis, current functioning (legitimation and actualization), and mechanisms of legal protection of private property law. This mechanism is examined through diachronic analysis, revealing its historical transformation and evolution, as well as through synchronic comparative legal analysis, which identifies universal and idiosyncratic features in various legal systems.

The subject of the research is structured on multiple levels, integrating both positive sources of law and doctrinal interpretations. It encompasses normative prescriptions from civil and constitutional law that form the fundamental legal regime of property; relevant legal doctrines and concepts defining the conceptual foundations of the institution; judicial practice (precedents) reflecting the concretization and dynamics of norms interpretation; and a corpus of historical legal sources (from codified acts to legal customs) that trace the establishment and development of this institution across various legal orders.

The methodological apparatus of the research relies on a stratified system of epistemological tools, including general scientific and specialized (special-legal) methods. The general scientific foundation comprises methods of analysis, synthesis, induction, deduction, and the systemic-structural approach, ensuring a holistic perception of the object. Among special methods, priority belongs to historical-legal and comparative-legal approaches, which enables reconstructing the institution's genesis and conducting cross-cultural analysis. Additional tools include the formal-legal (dogmatic) method for studying the internal structure of legal norms and hermeneutic interpretive methods (teleological, contextual, and historical) for authentic understanding of legal texts.

The scientific novelty of the research lies in implementing a comprehensive, polymethodological approach to analyzing the evolution of private property law. This approach entails an integrative – not isolated – application of historical and comparative tools, enabling not only the tracing of the institution's autochthonous development in national legal systems but also the identification of systemic patterns and vectors of its convergent evolution in the global legal space, as well as modeling potential trajectories of its further transformation. Such methodology combines historical retrospect with synchronous comparative analysis of modern legal orders. As a result, the research proposes a periodization of the stages in the evolution of this institution and formulates conclusions about the convergence of national models under the influence of supranational regulation and economic integration.

The structure of the article follows the logic of the research and includes sections that sequentially address the theoretical foundations, historical development, comparative analysis of the current state, and prospects of private property law.

### **The Genesis of Private Property Law in Antiquity and Early Rus'**

The genesis of private property law dates back to antiquity, the era of emerging of slave-owning social relations. As the Russian legal historian O.A. Omelchenko rightly points out, the system of property rights differentiates into separate categories according to the nature and scope of the subject's powers in relation over an individualized object. The central place in this system is occupied by the right of ownership, representing the most complete (possible in a given society) legal dominion over a thing. Notably, the very category of property remains abstract and acquires concrete content only within the context of a specific legal culture and historically established legal tradition<sup>1</sup>.

It is characteristic that at all stages of historical development, including the slave-owning formation, the central place belonged to the right of private land ownership. Thus, in the evolution of Roman law from the emergence of Roman statehood, land resources concentrated in the hands of patricians, while the plebeians, employed in agriculture faced an acute shortage of land plots. Accordingly, the socio-political conflict between plebeians and patricians was largely predetermined by the struggle for land redistribution (Mommsen, 1854).

It is worth noting that the formation of the institution of property in the Ancient World was gradual and correlated with disintegration of tribal relations in archaic society. As a result, the term *dominium* was used for a long historical period to denote any dominion over objects integrated into the household (*familia*). This concept encompassed a broader spectrum of legal relations than the actual right of ownership, since the latter had not yet been clearly differentiated from possession (*possessio*), rights to others' things (*iura in re aliena*), and relations arising from family law (Singer, 2014).

According to the consensus in modern historical-legal science, starting from the 3rd century AD, the term *proprietas* began to denote objects delineated by a legal regime. By the end of the classical period, its use marked the right of ownership as a full-fledged and absolute legal dominion of a person over a thing, possessing supremacy over other property rights.

However, even in antiquity, the right to private property did not have the character of absolute and unrestricted freedom. In Ancient Rome, as one of the attributes of the ruling class, it could be subject to limitations in the fiscal interests of the state and society, as well as in favor of servitudes, pledge holders, and other subjects possessing rights to others' things, including neighbors' rights (Mitteis, 1949:176–177). Illustrations of such limitations appear in the *Institutes of*

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<sup>1</sup> Omelchenko, O. A. (2000) Roman law. Moscow, TON-Ostozhye Publ., pp. 77–78.

*Gaius* (160–162 AD). For example, paragraph 14 of Book II proclaims the right to prohibit buildings exceeding a set height to avoid depriving neighboring structures of light, and it also regulates the right to divert water and lay pipeline<sup>2</sup>. The normative definition in paragraph 44 of the relevant source incorporates an immanent limitation in the context of acquisitive prescription (*usucapio*). The legitimation of this normative prescription stems from a complex of political-legal goals, with the key vector being the imperative need to minimize legal uncertainty associated with the stability of property relations in a diachronic aspect. Prolonged uncertainty in the status of subjective property rights is recognized as a destabilizing factor for civil turnover.

It can be said that a concomitant and complementary goal of the established chronological barrier is the legal fixation of a relevant and socially justified period during which the entitled subject (title owner) possesses the authority to exercise a vindicatory claim. Upon expiration of this period, the *bona fide* possessor acquires the right of ownership, aimed at achieving legal finality and ensuring the principle of legal peace. Thus, the analyzed norm performs a dualistic function: on the one hand, it protects the interests of the original owner by sanctifying the established state of possession after a significant period of time<sup>3</sup>.

As V.G. Grafsky notes, in an earlier period in Ancient Mesopotamia, the laws of Hammurabi endowed a peasant-communal member with powers approximating ownership: he was authorized to alienate, exchange, pledge, lease, and inherit his allotment as a special type of real estate (Articles 39–47, 60–65) without needing sanction from the ruler or community. As a result of property differentiation, a significant layer of impoverished population emerged, forced to mortgage land and other property for monetary or natural obligations, pledge family members, resort to leasing others' lands, or hired labor. Under these conditions, purchase and sale became the most common derivative method of acquiring ownership<sup>4</sup>.

It is noteworthy that in Ancient Greece, there was no modern understanding of private property as an absolute right. The central place in property relations was occupied by possession (*ktesis*), which represented nothing other than the actual control of a thing coupled with the possibility to dispose of it. From a legal perspective, the external expression of property manifested in two main forms – joint (state latifundia and mines, temple estates, public land of *phylai* and *demoi*) and private. The latter, in turn, could be subdivided into visible (land, slaves, houses, etc.) and invisible, which included movable valuables that could be hidden from taxation (money, luxury items, precious metals, etc.). The legitimacy of possession was confirmed by the annual declaration by archons upon taking office regarding the preservation of citizens' property. At the same time, the distribution of land plots

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<sup>2</sup> Gai Institutionum commentarii quattuor: text, translation from Latin, comments / Edited by Prof. D.V. Dozhdev. Moscow: Statut, 2020. P. 75

<sup>3</sup> Gai Institutionum commentarii quattuor: text, translation from Latin, comments / Edited by Prof. D.V. Dozhdev. Moscow: Statut, 2020. P. 75.

<sup>4</sup> Grafsky, V.G. (2007) The universal history of law and the State. Moscow, Norma Publ., pp. 62–63.

(*kleroi*) – whose name derives from *lot* – underscored their conditional character. Importantly, property rights imposed a number of public duties (*liturgies*) on the wealthiest citizens, such as financing festivities or equipping warships, while legal obligations were subdivided into voluntary (arising from contracts) and involuntary<sup>5</sup>.

Regarding the genesis of statehood and law among the Eastern Slavs, historiography presents various viewpoints. For instance, M.A. Isaev dates its emergence to the mid-5th to late 6th century<sup>6</sup>. In contrast, I.A. Isaev attributes the formation of ancient Russian statehood and law to a later period – the 9th–11th centuries – substantiating this with a significant number of reliable historical testimonies and legal monuments<sup>7</sup>.

It is worth noting that among the oldest written sources of Russian law are the texts of treaties between Rus' and Byzantium (911, 944, and 971). These documents contain norms of Byzantine and Russian law regulating international, trade, procedural, and criminal relations. References in the treaties to the “Russian law” testify to the existence of a body of customary law norms. In particular, the treaty articles address issues of inheritance (both by will and for descending and collateral relatives), as well as the institution of servitude (*zakhrebetnichestvo*), including obligations for the return of fugitive bondsmen (*zakhrebeiniki*).

The adoption of Christianity in 988 contributed to the expansion of sources of law through church legislation. According to historians' general consensus, Byzantine church law – which integrated religious, moral, and legal norms – had the greatest influence. Through the Russian Church, two fundamental Byzantine codes were received: The Code of Laws of Patriarch John Scholasticus (6th century), systematizing the rules of church councils and secular laws concerning the church, and the Nomocanon of Patriarch Photius (late 9th century), in which church rules were correlated with articles of Justinian's secular legislation.

Thus, the unification of church and civil prescriptions into single sources of law occurred according to the principle of content similarity. In Rus' during the 11th–12th centuries, both collections were known as the “Kormchaya Kniga” (The Pilot's Book).

### **Post Law Evolution of Private Property Law**

In the context of historical-legal retrospect, the feudal era is characterized by the absence of radical innovations in regulating the legal status of private property, which remained absorbed within a complex system of hierarchical conditional holdings (*fiefs*) and seigniorial privileges, neutralizing its autonomous and absolute character.

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<sup>5</sup> Grafsky, V.G. (2007) The universal history of law and the State. Moscow, Norma Publ., p. 163.

<sup>6</sup> Isaev, M.A. (2012) History of the Russian State and Law. Moscow, Statute Publ., pp. 13–17.

<sup>7</sup> Isaev, I.A. (2004) History of the State and law of Russia. Moscow, Jurist Publ., pp. 11–33.

Essentially, a paradigm shift occurred in the modern era with the establishment of constitutional law, within which the institution of private property underwent fundamental reconceptualization. It evolved into a cornerstone principle, acquiring qualitatively new fundamental characteristics. Moreover, in democratic legal orders, it was constituted not merely as one of many subjective rights but as a fundamental, basic right of the individual, largely determining the very possibility of an autonomous personality and civil society. Furthermore, in several key legal acts of that time, it occupied a priority, avant-garde position as the first in the system of constitutionally legitimized legal goods.

Illustrations of this trend appear in normative provisions enshrined in fundamental constitutional documents. Thus, the Fifth Amendment to the United States Constitution of 1787 implicitly guarantees the inviolability of property, establishing an imperative prohibition on taking private property for public use without just compensation (Kikot-Glukhodedova, 2011:91–89). An identical legal construction is found in Article 17 of the Declaration of the Rights of Man and of the Citizen of 1789 (France), which not only proclaims inviolability but attributes a sacred, inviolable character to property, elevating it to the rank of the highest social value protected from arbitrary public authority interference. These acts mark the institutionalization of property as the cornerstone of human personal freedom and the essence of the rule of law. They permit alienation of property strictly within legal procedure in cases of public necessity with preliminary and just compensation, principles subsequently incorporated into the French Constitution of 1793 (Articles 16, 17, 19)<sup>8</sup>.

The cited legal sources refute the thesis – widespread in the Soviet period – about the absolute nature of private property law. Its non-absolute nature is demonstrated by the following aspects:

1. The possibility of lawful deprivation of this right was permitted.
2. The basis for such deprivation could only be public, not private, interests.
3. Expropriation of property could be carried out only in cases established by law, under the mandatory condition of prior and just compensation, the amount of which was subject to judicial determination.

Thus, the legal status of private property, formed in the constitutions of the late 18th – early 19th centuries, has preserved continuity in its basic principles in modern foreign constitutional law. The key development after World War I lies in the supplementing traditional guarantees with the provision on the social function of property. For example, the Weimar Constitution of 1919 legitimized expropriation for purposes of “social benefit” and “common interest.” Notably, the author of this *Basic Law*, H. Preuss, viewed the Constitution not as a frozen normative act but as a document that could be supplemented based on current realities of public life (Preuss, 1915:15). In line with his views, Articles 89, 90, and 97 of the Weimar Constitution provided for the transfer of railways

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<sup>8</sup> Declaration of the Rights of Man and of the Citizen, August 26, 1789. Pacific State University. Available at: [https://togudv.ru/ru/faculties\\_old/full\\_time/isptic/iogip/study/studentsbooks/histsources2/igpzio35/](https://togudv.ru/ru/faculties_old/full_time/isptic/iogip/study/studentsbooks/histsources2/igpzio35/) [Accessed 26<sup>th</sup> August 2025].

and waterways into Reich ownership, illustrating the subordination of property rights to broader public tasks.

In the historical-legal dimension, the postwar period was marked by a radical transformation of the paradigm of constitutional and legal regulation of private property. This transformation was systemic and determined by a complex of socio-economic and political factors related to post-conflict recovery and the construction of more stable societal models.

The key determinant of these changes was the widespread legitimation and constitutional institutionalization of the social state principle. Essentially, this principle implied a transition from the state's passive role to its active functioning as an arbiter and guarantor of social equilibrium. Accordingly, the classical liberal doctrine of property underwent significant modification, ceasing to be interpreted as an absolute and unlimited individual right.

A consequence of this new paradigm was a substantial strengthening of the state's regulatory and interventionist functions in the economic and social spheres. Private property rights began to be considered not only through the prism of the owner's individual interests but also in the context of their social function. This approach found expression in constitutional norms legitimizing broader restrictions, public control over property use, and an expanded range of grounds for its alienation in the public interest – collectively narrowing the sphere of private autonomy in favor of social justice and general welfare.

A key novelty was the institutionalization of nationalization, reflected in the basic laws of several countries. Thus, Article 43 of the Italian Constitution of 1947 establishes the possibility of transferring enterprises of strategic or monopolistic importance into public ownership (subject to compensation) for the purpose of general utility (Shashkova, 2019:52).

Another characteristic feature of this period is the integration of international legal sources into national legal systems. This process contributed not only to expanding the territorial limits of legal regulation but also to its unification and the creation of international protection mechanisms. Of fundamental importance in this context is Article 17 of the Universal Declaration of Human Rights of 1948, which guarantees everyone's right to own property and prohibits arbitrary deprivation of property<sup>9</sup>.

### **The Social Function of Private Property**

Constitutions adopted in recent decades have substantially expanded the social function of private property, emphasizing the aspect of legal duties. For example, Article 30 of the Constitution of the Republic of Macedonia of 1991, while guaranteeing the right to property and inheritance, directly establishes that

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<sup>9</sup> Universal Declaration of Human Rights. *Sociology of Power*. 2005. No. 6. Available at: <https://cyberleninka.ru/article/n/vseobschaya-deklaratsiya-prav-cheloveka-1> [Accessed 26<sup>th</sup> August 2025].

property must serve the good of the individual and the community, with expropriation permitted only in cases established by law with mandatory fair compensation (Bondarenko, 2018:107).

Detailed regulation of property relations appears in Article 44 of the Constitution of Romania of 2003. Its provisions cover a wide range of issues: guarantees of property rights, the regime of foreign land ownership, conditions for expropriation (exclusively for public utility reasons with prior and just compensation), prohibition of discriminatory takings, dispute resolution procedures, and – particularly important – environmental and neighborly duties of the owner<sup>10</sup>.

Similarly, Articles 17 and 18 of the Constitution of Greece of 1975 provide detailed regulation of expropriation. They specify procedural aspects: the procedure for determining compensation (based on value at the time of judicial proceedings), payment timing (to avoid automatic cancellation of expropriation), tax immunity of compensation payments, and special conditions for land takings in large-scale socially significant projects<sup>11</sup>.

In the context of the genesis of legal institutions in the Russian Empire, the initial legitimization of the terminological construction “private property” chronologically correlates with the era of Catherine II’s reign, in the final third of the 18th century. This period was marked by the active reception of Western European legal ideas and attempts to systematize legislation.

The key normative legal act that played a catalytic role in institutionalizing this concept was the *Manifesto on Commercial Freedom*. This document holds substantial historical-legal significance, as it not only nominally introduced the category into legal circulation but also explicated its content, extending the powers of a private owner to both objects located on the surface of a land plot and resources in its subsoil (*de jure* modifying the previously existing legal regime and laying the foundations for recognizing the exclusivity and universality of property rights<sup>12</sup>).

Despite this early formal legalization, subsequent development of domestic constitutional thought revealed no systemic or representative analysis of this fundamental category. Its doctrinal comprehension and place within the system of public law were not subjected to comprehensive conceptualization, resulting in a theoretical vacuum and fragmentation in understanding its legal nature during the pre-revolutionary period. Thus, a significant disproportion arose between normative fixation and the level of subsequent scientific reflection.

Expanding the chronological framework of the research reveals mentions of the institution of private property in legal sources dating back to deep antiquity. At the same time, despite the universality of its basic principles of legal formalization across the legislation of various states, significant national peculiarities

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<sup>10</sup> Constitution of Romania of 2003. Constituția României. Available at: <https://romanianpass.com/konstitutsiya-rumynii/> [Accessed 26<sup>th</sup> August 2025].

<sup>11</sup> Constitution of the Republic of Greece of June 9, 1975. Bibliotekar.Ru. Available at: <https://bibliotekar.ru/3-1-11-konstitucii/90.htm> [Accessed 26<sup>th</sup> August 2025].

<sup>12</sup> Illarionova, T.I., Gongalo, B.M. & Pletnev, V.A. (2008) Civil law. Moscow, Norma Publ., p. 58.

are observed. These peculiarities stem from the specifics of regional, religious, and historical development, which shape a unique legal regime for this institution in each country.

### **Constitutional Regulation of Private Property**

Despite the long history of the institution of private property, its legislative regulation in scientific literature is covered fragmentarily. Analyzing publications shows that most research addresses mainly separate aspects of this problem. In particular, A.M. Osavelyuk does not go beyond general specifications and analysis of the evolution of the entire system of rights and freedoms<sup>13</sup>. V.E. Chirkin, B.S. Ebzeev, and the authors of the textbook edited by B.A. Strashun investigate private property law in the general context of subjective rights and freedoms evolution. The authorial team of the textbook “Constitutional Law of Russia” edited by B.S. Ebzeev and A.S. Prudnikov focuses solely on legal instruments for ensuring these rights<sup>14</sup> (Chirkin, 2015: 25–36). Thus, comprehensive analysis of private property institution is absent in existing research. This gap determined the goal of the present work: a comparative analysis of private property law evolution in Russia and foreign states.

As established, the initial constitutional enshrinement of the right to private property – which began at the end of the 18th century – was carried out as an independent legal institution, not as an economic basis as interpreted in the Soviet period. Furthermore, since private property formed a key foundation of a person’s material base, basic laws enshrined a prohibition on its expropriation (even for public needs) without prior and just compensation.

The subsequent phase of historical-legal evolution – from the mid-to-late 19th century to the turn of the 20th century – was marked by substantial conceptual convergence between private property law and other categories of economic rights. Most representative here is its close interaction with the emerging right to work, reflecting a general conceptual shift from the classical liberal model of absolute property rights to one shaped by the principle of social function.

The normative projection of this collaboration was intensive legislative activity in the late 19th – early 20th centuries across leading Western legal systems, including Germany, Great Britain, France, and the United States of America. During this period, numerous normative acts established legal limits on exercising proprietary powers in the socio-economic sphere. This regulation specifically addressed permissible exploitation of hired labor – through working hours and labor protection standards – and imposed restrictions on land ownership concentration, marking the intervention of public law principles into private law relations (Chirkin, 2015:33–34).

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<sup>13</sup> Osavelyuk, A.M. (2019) Constitutional law of foreign countries. St. Petersburg, Lan Publ., pp. 61, 65.

<sup>14</sup> Ebzeev, B.S. (2017) Constitutional Law of Russia. Moscow, UNITY-DANA Publ., pp. 198–205; Ebzeev, B.S. (2019) Constitutional law of Russia. Moscow, Prospekt Publ., pp. 393–396.

In the Russian Empire context, this period also features relevant normative trends. Despite socio-political specifics, it saw developed (for the time) social and labor legislation, plus large-scale agrarian reform under P.A. Stolypin. The latter aimed not only to boost agricultural efficiency but also to reshape land ownership by fostering owner-farmers – objectively limiting communal tenure and reflecting global trends in state regulation of property for public interest (Belkharoev, 2009: 32–33).

The third stage (early 20th century – mid-1970s) is characterized by methodological divergence in the legal position of private owners. In democratic legal orders with market economies, normative emphasis shifted substantially from limiting property size to proclaiming its social orientation. Importantly, the primary legitimation of this paradigm – linking property rights to social function – found initial constitutional embodiment in Germany’s Weimar Constitution of 1919, serving as a legal manifesto of the social state. In the postwar period, this concept became universal, incorporated into fundamental constitutional acts across numerous states, transforming into a global constitutional standard. Relevant provisions establishing owner duties and public-interest limitations appear explicitly in the FRG Basic Law of 1949 (Article 14), Greece’s 1975 Constitution (Article 17), and India’s 1949 Constitution (Articles 38, 39) – demonstrating adaptability across legal cultures and political systems.

Parallel to this development trajectory, non-democratic legal orders of the 20th century exhibited a diametrically opposite tendency: normative fixation not on limitation, but on the complete liquidation or radical curtailment of private property. The Soviet legal model provides the most representative example, where sequential annihilation began with the Decree on Land (1917) and Decree on the Abolition of Private Property in Cities (1918), later consolidated in the RSFSR Constitution of 1918 and the USSR Constitutions of 1924, 1936, and 1977 – nullifying centuries of private property reform experience and establishing its legal ostracism (Timofeev, 2000:55).

This radical approach traces its ideological genesis to classical Marxism: “The Communists may summarize their theory in a single phrase: Abolition of private property” (Marx, 1976:12), from the 1848 Manifesto of the Communist Party. Soviet socialism – as an economic-political system with state property monopoly, one-party dictatorship, and systemic prohibition of private property relations – represents the practical implementation of this doctrine as a total legal imperative. This perspective harbors a key flaw: it posits historical processes in such societies as determined solely by the doctrinal directives, yielding a tautological view where the socialist system’s essence reduces to the ruling party’s goals and achievements (Grossman, 1977; Grossman, 1983; Katsenelenboigen, 1977:65–66; Mars, 1983:551; Montias, 1981; Simis, 1982; Wiles, 1983:549–550).

Within comparative legal analysis, the evolution of constitutional property regulation in socialist states merits attention. The USSR Constitution of 1977 enshrined three property forms: state, collective-farm/cooperative, and personal. Article 10 established socialist ownership of production means – in state (public) and

collective-farm/cooperative forms – as an economic foundation with state protection, prohibition of unearned income, and ban on selfish use.

Article 13 defined citizens' personal property by labor incomes (consumer goods, housing, savings), emphasizing its purely consumer character by prohibiting its use for unearned income or to the detriment of society<sup>15</sup>.

Importantly, applying a normative approach to socialist doctrine complicates analysis for researchers, particularly economists. In economic terms, it is difficult to justify positing three basic principles (party power, private property prohibition, and public property dominance), as this phenomenon reduces to one key attribute: the prohibition of private property rights.

Within the proposed methodological framework, political power serves as a superstructural legal category that legitimizes and consolidates a special legal regime, thereby determining the status and content of property rights. Historical-legal analysis of totalitarian regimes reveals that communist party dictatorship reduces to the consistent, total implementation of the normative prohibition on private property.

The establishment of normative ostracism toward private property rights implicitly transforms all national wealth into an object of public law regulation, imparting to it the character of universal public property. Essentially, a reverse causal link emerges: the normative implementation of a private property ban can only occur through political dictatorship mechanisms that monopolize power. The intensity, scale, and depth of curtailing private owner powers correlate with the totality and effectiveness of this totalitarian system. Thus, political dictatorship's definition finds direct, logically necessary reflection in the prohibition of private ownership.

Based on the analysis above, the primary research task involves a comprehensive examination of the mechanisms and scales for implementing the doctrinal prohibition of private property within the Soviet legal system. Systemic analysis of socialist doctrine should prioritize precise scientific definition of the direct object of prohibition – the property right in its full content – over exegesis of political slogans.

In civil law tradition, property encompasses the authority and factual ability to freely dispose of economic goods. Methodologically, it is crucial to demarcate formal legal right – sanctioned by positive law – from its actual economic exercise.

Indeed, from a dogmatic perspective, the institution of possession as a legal title is not identical to the factual, economically conditioned possibility of autonomous disposal of the corresponding good – a distinction especially pronounced in state-controlled economies, where legal constructions often mask the actual distribution of economic power. Conversely, what proves economically relevant is factual (physical) possession of a good, while legal norms

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<sup>15</sup> Constitution (Fundamental Law) of the Union of Soviet Socialist Republics. Adopted at the extraordinary seventh session of the Supreme Soviet of the USSR of the ninth convocation on October 7, 1977. Historical Faculty of Moscow State University. Available at: <https://www.hist.msu.ru/ER/Text/cnst1977.htm> [Accessed 30<sup>th</sup> August 2025].

fulfill a facultative function, merely legitimizing its acquisition, preservation, and return.

The Constitution of the People's Republic of China (1982, as amended) demonstrates a distinct approach. While proclaiming the sacredness and inviolability of socialist public property (Article 12), it permits limited private property. Article 11 recognizes the non-public economic sector as an important component of the socialist market economy. The legal regime differentiates: state and collective property receive unconditional protection (Article 12), whereas citizens' private property is safeguarded by law but may be restricted by the state for public needs with compensation (Article 13)<sup>16</sup>.

The next stage in private property regulation's evolution was its internationalization in the second half of the 20th century. This manifested in the USSR's ratification of key international acts, including the 1966 International Covenant on Economic, Social and Cultural Rights and the Helsinki Final Act of the Conference on Security and Cooperation in Europe (1975). Fundamental were the provisions of Article 1 of Protocol No. 1 to the European Convention on Human Rights (1952), enshrining everyone's right to peaceful enjoyment of possessions, and permitting deprivation only in the public interest, per domestic law and international standards.

Although the Constitution of the Russian Federation (Articles 8, 35) does not directly enshrine a norm on the social function of private property<sup>17</sup>, this gap in legal regulation has been partially filled through the legal positions of the Constitutional Court of the Russian Federation and subsequent legislative developments adopted in execution of its decisions. As N.S. Bondar rightly notes in his research, the Constitutional Court of the Russian Federation in its law enforcement practice pays significant attention to cases arising in the economic-legal sphere. Empirical data indicate that more than a third of the total array of decisions issued by the Court are devoted to the consideration of issues related to property relations, privatization processes, the institution of bankruptcy, as well as tax, customs, and currency regulation (Bondar, 2017:115), which emphasizes the central role of constitutional justice in forming a stable legal order in the economy.

Under the convergent influence of domestic constitutional and international legal regulation, the social function of private property law has acquired unified normative content, universal implementation mechanisms, and effective enforcement means within the territorial jurisdiction of all states that have ratified the relevant international treaties. At the same time, when resolving legal conflicts, this right – along with national organizational-legal guarantees – is ensured by a comprehensive international legal toolkit. Such a high level of normative protection stems primarily from the fundamental

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<sup>16</sup> Constitution of the PRC 1982 (as amended in 1988, 1993, 1999, 2004). Window to China. Available at: [https://chinalawinfo.ru/constitutional\\_law/constitution](https://chinalawinfo.ru/constitutional_law/constitution) [Accessed 30<sup>th</sup> August 2025].

<sup>17</sup> Constitution of the Russian Federation (adopted by popular vote on 12.12.1993 with amendments approved during the all-Russian vote on 01.07.2020). Consultant Plus. Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_28399/](https://www.consultant.ru/document/cons_doc_LAW_28399/) [Accessed 30<sup>th</sup> August 2025].

social significance of private property, which serves as the cornerstone of individual material well-being and existential stability.

It seems that the most important aspect is the systemic interconnection of the right to private property with other economic rights, where it serves as a basic institutional prerequisite for realizing a wide spectrum of constitutional rights and freedoms. These include the right to work, a decent standard of living, freedom of entrepreneurial activity, housing, and others (Articles 8, 34, 37, 40 of the Constitution of the RF). Given this functional interdependence, modern constitutional doctrine avoids rudimentary proclamation of this right, instead detailing its objective and subjective composition, establishing legal limits and grounds for restriction, and developing effective guarantees and mechanisms for judicial and extrajudicial protection. Thus, the texts of basic laws record not only the subjective right of private property itself but also its key specifications as a complex institution of legal regulation – including its correlation with other forms of property and, particularly significantly, its social orientation.

In confirmation of this thesis, an analysis of the normative prescriptions in Article 60 of the 2015 Constitution of the Republic of Armenia reveals the complex character of modern constitutional regulation of the right to private property. It integrates guarantees of inviolability with clearly articulated public duties of the owner, thereby reflecting the balance of private and public interests within a social law-based state. This includes not only traditional elements – the rights to possess, use, and dispose of property, plus inheritance (Parts 1, 2) – but also exhaustive legal grounds for restriction (Part 3), judicial protection guarantees (Part 4), and rules for compulsory alienation with mandatory compensation (Part 5), alongside special regimes for foreigners (Part 6), intellectual property (Part 7), and the owner's fiscal obligations (Part 8)<sup>18</sup>.

The modern stage of private property law evolution is characterized not only by its deep institutionalization in national constitutions and a system of international guarantees but also by the crystallization of stable vectors for further development. In this context, L.R. Bukhonova's position – which identifies as key determinants the strengthening of property's social function, the reduction of constitutional guarantees, the displacement of individual property by corporate forms, and the expansion of its object range (Bukhonova, 2016:52–53) – provokes scientific discussion. The proposed classification requires critical reflection and substantial correction.

First, the analysis overlooks the spatial (cross-border) dimension of property's social function, ensured through international legal mechanisms – both treaty-based and institutional. Notably, the Russian Federation actively participates in developing these supranational standards.

Second, the thesis about the weakening constitutional guarantees of private property seems misaligned with modern legal realities. Empirical data indicate the opposite: their consistent legal and organizational strengthening. This trend stems not

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<sup>18</sup> The 2015 Constitution of the Republic of Armenia. Website of the President of the Republic of Armenia. Available at: <https://www.president.am/ru/constitution-2015/> [Accessed 30<sup>th</sup> August 2025].

only from the social nature of the domestic legal order enshrined in Article 7 of the RF Constitution but also from the 2020 constitutional amendments, which substantially expanded public authority's competence in economic, social, and environmental policy (Articles 71, 72, 75, 75.1, 114). This position finds confirmation in the stable law enforcement practice of the Constitutional Court of the RF, and the system of international guarantees.

Third, the postulated trend of weakening individual private property amid growing corporate forms also seems debatable. Corporate property's rise does not always displace individual ownership; it often stems from objective factors like technological progress, rising labor productivity, and digital transformation of economic relations, which foster complex business organizations.

In addition, it seems methodologically justified to highlight an independent trend: the internationalization of private property regulation. Modern constitutional enshrinement in national legal orders actively considers comparative experience, particularly under international law's influence since the postwar period. Domestic state-legal practice fully aligns with this global trend, as expressed in Part 1 of Article 17 of the RF Constitution, which proclaims recognition and guarantees of human and civil rights in accordance with generally recognized principles and norms of international law.

### **Conclusion**

In conclusion, starting from the final third of the 18th century – marked by the era of first revolutions and modern constitutionalism – a fundamental institutional transformation occurred in the essence and legal regime of private property. This process was continuous and progressive, leading to a conceptual shift in its socio-legal perception. Initially, classical liberal doctrine viewed property as a purely individual, absolute, and exclusive right – the main source of personal autonomous well-being – but evolution imbued it with characteristics of a collective legal good.

The essential metamorphosis lies in the transition from unlimited dominion to property burdened with a social function. This transforms it into an institution mediating individual and public interests alike, objectively enhancing social communication, consolidating society, and creating legal grounds for solidarity and interaction among social groups. Such evolution stems largely from purposeful constitutional regulation and consistent socially oriented policies within modern democratic legal orders. The state, as guarantor of social equilibrium, imposes a legal duty on owners to fulfill property's social function, setting limits on its use in the public interest.

It is important to emphasize the dialectical character of this transformation: parallel to the increase in the volume of public obligations imposed on the owner, a significant strengthening of the level of protection of the owner's subjective right against arbitrary interference is observed. This represents not a weakening but a qualitative modification of guarantees, their adaptation to a new social paradigm. Such a balance is ensured, in particular, through the effective activity of constitutional justice

bodies, which in their decisions carry out a carefully calibrated proportional assessment of the correlation between private and public interests. An additional cluster of protection is provided by the direct provisions of national basic laws, which enshrine the principles of inviolability of property and the legal conditions for its limitation, as well as a developed system of international guarantees incorporated into national legal orders.

As is clearly provided, for example, by Part 3 of Article 46 of the Constitution of the Russian Federation, which guarantees everyone the right to apply to interstate bodies for the protection of human rights and freedoms, the modern legal order creates a multi-level mechanism for the protection of property rights. Thus, the institution of private property in the 21st century represents a complex symbiosis of an individual right and a social institution, whose dynamic development continues to define the contours of contemporary economic and legal systems, ensuring both individual autonomy and social progress.

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