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John Chrysostom's Discourse on Property Ownership: An Analysis from the Perspective of Roman Law

1. Introduction

The value of patristic literature as non-legal sources of information for the study of legal texts and practices in the Roman Empire has been greatly appreciated during the twentieth century. Besides the informative yet auxiliary contribution of patristic texts to the studies of Roman law, scholars have also noticed the use of legal language in patristic discourses[2]. But in the research of the interactive relationship between patristic and Roman legal texts, a disproportionate amount of scholarship has been dedicated to the Latin Church Fathers[3], while the Greek Church Fathers, with a few exceptions[4], have not received the attention they deserve. In the case of John Chrysostom, the most prolific Greek Christian writer of late antiquity, few

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[2] For a good survey on this topic, see C. Humfress, *Patristic Sources*, in: *The Cambridge Companion to Roman Law*, ed. D. Johnston, New York 2015, p. 103-109.

[3] For the secondary literature on the Latin Christian authors, see Humfress, *Patristic Sources*, p. 98, n. 5; p. 100, n. 12.

[4] For the studies dedicated to the Greek Church fathers (except Chrysostom), see J. Modrzejewski, *Grégoire le Thaumaturge et le droit romain. À propos d'une* édition *récente*, "Revue historique de droit français et étranger" 49 (1971) p. 313-324; S. Troianos, *To Ergo ton trion ierarxon ston nomiko vio tou Byzantiou*, "Platon" 53 (2003) p. 41-61.

studies have ever, still less systematically or particularly, been carried out on this theme[5].

If a discussion of the legal background of Church fathers is the prerequisite for initiating research on the legal aspects of patristic discourses[6], there is no reason for Chrysostom to constitute an exception. According to the biographical information provided by the ecclesiastical historian Socrates, Chrysostom was trained for the bar[7]. Sozomen likewise recorded: Chrysostom was expected to practice law in a secular career[8]. However, A.H.M. Jones cast doubt on the veracity of these two ecclesiastical historians' accounts. In his short essay about Chrysostom's education, Jones considered that the account of Palladius, the biographer of Chrysostom, was much more trustworthy, according to whom Chrysostom was expected to serve as a clerk of the *sacra scrinia* (imperial documents)[9]. Despite the discrepancies of the different historical records concerning his originally planned secular career, no one can deny that a good knowledge of Roman law was necessary either for the bar or the civil service[10]. Another source of information in Chrysostom's own words must be added to the discussion of his possible legal training. We can deduce from an episode in his *De*

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[5] Admittedly, there are some sporadic such attempts, see A. Sifoniou, *Les Fondements Juridiques de L'aumone et de la charite chez Jean Chrysostome*, "Revue de droit canonique" 14 (1964) p. 241-269, in which Sifoniou argues that the ideas of Chrysostom about charity were not far from the civil legislation relating to the *pars Ecclesiae* in inheritance *ab intestato*; S. Verosta, *Iohannes Chrysostomus: Staats Philosoph und Geschichts Theologe*, Wien 1960, p. 366-373, there is a discussion about the law of Roman state and nature law according to John Chrysostom, the similar topic is further developed by C.A. Bozinis, *The Natural Law in John Chrysostom*, in: *Revisioning John Chrysostom: New Approaches, New Perspectives*, v. 1, ed. C.L. de Wet – W. Mayer, Leiden 2019, p. 498-520. For Chrysostom's use of the Roman family law, see a brief note by M. Kuefler, *The Marriage Revolution in Late Antiquity: The Theodosian Code and Later Roman Marriage Law*, "Journal of Family History" 32 (2007) p. 363; For Chrysostom's attitude towards slavery related to Roman law, see C. De Wet, *Preaching bondage: John Chrysostom and the Discourse of Slavery in Early Christianity*, California 2015, p. 232-239.

[6] Modrzejewski, *Gregoire le Thaumaturge et le droit romain A propos d'une edition recente*, p. 315, where the research on the relationship of Gregory Thaumaturgus and Roman law was began with the discussion of the saint's legal education.

[7] Socrates, *Historia ecclesiastica* VI 3, 1: "μέλλων δὲ ἐπὶ δικανικὴν ὁρμᾶν".

[8] Sozemenus, *Historia ecclesiastica* VIII 2, 5: "προσδοκηθεὶς δὲ δίκας ἀγορεύσειν".

[9] A.H.M. Jones, *St. John Chrysostom's Parentage and Education*, HTR 46 (1953) p. 172.

[10] A.M. Riggsby, *Roman Legal Education*, in: *A Companion to Ancient Education*, ed. W.M. Bloomer, Oxford 2015, p. 449.

sacerdotio that Chrysostom indeed acquired some legal training, though in an amateurish way. During his early years, he might have the habit of hanging around in the law courts[11], probably to get more experience in forensic rhetoric[12]. This episode and the unrealized secular career mentioned by his contemporary historians suggest a familiarity with Roman law in his youth, hence rendering much more feasible any attempt to analyze his works from the legal perspective.

However, given the breadth and depth of Chrysostom's corpus, the task of this paper is not to conduct a comprehensive investigation concerning Roman law and Chrysostom's writings, but to focus on the legal aspects of his discourse on property ownership. Among the Church Fathers, Chrysostom is renowned for his concern about the issue of wealth; his thought on this subject is considered "the culmination of early patristic teaching"[13]. The abundant works he has left touched upon various aspects of wealth and poverty in late antiquity[14], including the issue of ownership which constitutes a significant part of the Roman property law. Early in the beginning of the twentieth century, the German Catholic scholar Otto Schilling made a general statement in his classical treatment of the early Christian literature on wealth and ownership (*Reichtum und Eigentum in der altkirchlichen Literatur*) that "Der Eigentumsbegriff der Kirchenväter steht demnach im direkten Gegensatz zu dem des römischen Rechtes, der

[11] Joannes Chrysostomus, *De sacerdotio* 1, 2: "Πλὴν ἀλλ' ἀγαθός τε ὢν καὶ πολλοῦ τὴν ἡμετέραν τιμώμενος φιλίαν, ἁπάντων ἑαυτὸν ἀποστήσας τῶν ἄλλων, ἡμῖν τὸν ἅπαντα χρόνον συνῆν, ἐπιθυμῶν μὲν τούτου καὶ πρότερον, ὅπερ δὲ ἔφην, ὑπὸ τῆς ἡμετέρας κωλυόμενος ῥαθυμίας. Οὐ γὰρ ἦν τὸν ἐν τῷ δικαστηρίῳ προσεδρεύοντα […]".

[12] J.N.D. Kelly, *Golden Mouth, the Story of John Chrysostom: Ascetics, Preacher, Bishop*, Ithaca 1995, p. 15.

[13] J.L. Gonzalez, *Faith and Wealth, A History of Early Christian Ideas on the Origin, Significance and Use of Money*, San Francisco 1990, p. 200.

[14] For recent literature (after the year 2008) see W. Mayer, *John Chrysostom on Poverty*, in: *Preaching Poverty in Late Antiquity, Perceptions and Realities*, ed. P. Allen – B. Neil – W. Mayer, Leipzig 2009, p. 69-118; S. Brisbane, *Identity: the indigent and the wealthy in the homilies of John Chrysostom*, VigCh 63 (2009) p. 468-479; S. Brisbane, *Deviance and Destitution: Social Poverty in the Homilies of John Chrysostom*, in: *Studia Patristica XLVII: Cappadocian Writers, the Second Half of the Fourth Century*, ed. J. Baun – A. Cameron – M. Edwards – M. Vinzent, Leuven 2010, p. 261-266; E.A. Clark, *John Chrysostom as an Interpreter of Pauline Social Ethics*, in: *Studia Chrysostomica*, ed. A. Ritter, Tübingen 2012, p. 68-93; E. Costanzo, *Harbor for the Poor, A Missiological Analysis of Almsgiving in the View and Practice of John Chrysostom*, Eugene 2013; for the literature before the year 2008, see Mayer, *John Chrysostom on Poverty*, p. 69, n. 4.

ein individualistischer und absolutistischer ist"[15]. The tension discerned by Schilling between the Church Fathers and Roman law on the concept of ownership has been accepted and further developed by many later scholars. H. Wolf-Dieter asserted that Clement of Alexandria, with his belief that wealth came from God and one should use it to serve God, significantly restricted the right of free use (das Recht der freien Verfügung), an essential feature in the Roman legal understanding of the property[16]. Charles Avila, in his survey of the early Christian teaching on ownership, gave us an equally sweeping view that the Christian fathers "attacked and sought to replace" the Roman law theory-and-practice of ownership[17]. In the case of our protagonist, Avila continued that "Chrysostom has scant respect for Roman legalization of ownership. To him, absolute ownership is meaningless because God alone is the true owner"[18]. J.L. Gonzalez also held that Ambrose's teaching "contrasts sharply with the Roman legal understanding of property"[19], and Chrysostom attempted not only to reject but also to substitute the traditional Roman notion of property[20], a notion defined in Latin as "jus utendi, jus fruendi, jus abutendi", and considered as "the backbone of Roman law"[21]. Until recently, Chrysostom is still deemed to call into serious question "the concept of personal property, which constitutes the fundamental backbone of Roman civil law"[22]. However, quite different from this dominant trend, K. Farner in the late 1940s questioned the supposed binary between the patristic and the Roman law concept of property, as he pointed out that the Church fathers never openly opposed Roman law but just attempted to soften the harshness of the law of property. But he did not provide adequate evidence to substantiate this thesis, and his voice of doubt was soon too weak to be heard[23].

The assumed tension most scholars have emphasized is questionable and misleading in two ways: first, it is based on an absolute and erroneous understanding of Roman property ownership, for in Roman law this con-

[15] O. Schilling, *Reichtum und Eigentum in der altkirchlichen Literature*, Berlin 1908, p. 208.

[16] H. Wolf-Dieter, *Christentum und Eigentum: Zum Problem eines altkirchlichen Sozialismus*, "Zeitschrift für Evangelische Ethik" 16 (1972) p. 37.

[17] C. Avila, *Ownership: Early Christian Teaching*, Eugene1983, p. 11.

[18] Gonzalez, *Faith and Wealth*, p. 97.

[19] Gonzalez, *Faith and Wealth*, p. 192.

[20] Gonzalez, *Faith and Wealth*, p. 205.

[21] Gonzalez, *Faith and Wealth*, p. 18-19.

[22] Bozinis, *The Natural Law in John Chrysostom*, p. 514-515.

[23] K. Farner, *Christentum und Eigentum, bis Thomas von Aquin*, Bern 1947, p. 88.

cept of ownership was never so "absolutistisch/absolute" or "individualistisch" as claimed by earlier scholarship. The right of free use ("das Recht der freien Verfügung") was not unrestricted as sometimes claimed. Moreover, the Latin phrase "jus utendi, jus fruendi, jus abutendi" as a modern fabrication is a typical abuse of Roman law[24]. Second, this dichotomous interpretation usually results from a generalized impression drawn from some isolated passages. Such an interpretation lacks a careful and detailed reading of relevant patristic texts, thus oversimplifying the Fathers' attitudes towards the Roman property law as well as the concept of ownership formulated by it.

In the case of Chrysostom, as I will demonstrate in the following sections, his position could never be boiled down to a simple gesture of "rejection" or "opposition"; instead, he intended a rather complicated dialogue with Roman law regarding the concept of ownership and different property rights. One of my tasks in this paper is to present and clarify the multidimensional attitudes that can be recognized in him. Chrysostom, like most Church fathers, was not a jurist in the strict sense, which means he might not employ or refer to the technical legal terms in a standardized way, but rather in an indirect, allusive, or figurative manner. For this reason, another task of the present study is to identify, according to the context, his mention or use of the property law as far as possible. Moreover, most of his writings I will analyze are homilies, surly not intended for judicial use but serving first and foremost his own theological and pastoral purpose. The present study thereby aims also to explore how he adopted and manipulated the Roman legal language as a rhetorical strategy to inculcate the congregation with his own concept of property ownership rooted in Christian teaching.

2. The Order of Creation and the Acquisition of Property

I will start with a passage from the *Homiliae in epistulam i ad Timotheum*, which is dated back to Chrysostom's years in Antioch. It has been cited frequently to demonstrate his views about wealth and possessions[25], but it is still worthy of rereading as far as its legal meaning is concerned:

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[24] S. Herman, *The Uses and Abuses of Roman Law Texts*, "The American Journal of Comparative Law" 29 (1981) p. 676-679.

[25] Gonzalez, *Faith and Wealth*, p. 204; M.M. Mitchell, *Silver chamber pots and other goods which are not good: John Chrysostom's discourse against wealth and possessions*, in: *Having Property and Possession in Religious and Social Life*, ed. W. Schweiker

> Tell me, then, how did you become rich? From where did you receive (your wealth)? And from where did the one (who transmitted you the wealth) get it? He said from his grandfather and his father. But can you, going back through many generations, show the acquisition just? You can't. The root and origin of it must be from certain injustice. Why? Because God, in the beginning, did not make one man rich but another poor. Nor did he take and show to one man treasures of gold, and deprived of others from the right of searching for it, but left the same earth to all. So if it is common, why do you have so many acres of land, while your neighbor has not a portion of it? He said it was my father who transmitted it to me, but from whom did he receive it? From our ancestors, but it is necessary to go back and inquire into the origin. Jacob became rich, but he received the rewards from his labor. But I will not investigate these in detail. Let the wealth be just, let it be free from any robbery. Certainly, you are not responsible for what your father defrauded. You have the property out of robbery, but you didn't rob. But even if it is agreed that he didn't rob, but possessed the gold which gushed out somewhere from the earth. What then? Is the wealth therefore good? By no means, nor is it bad. If you are not greedy and distribute it to the poor, it is not bad, otherwise, it is bad and insidious[26].

It is clear that according to Chrysostom, private property does not stem from the order of creation, nor is it God's original plan for us. As he claimed, it was not God who created the economic inequalities among us; on the contrary, He created everything for all mankind alike and distributed goods common to all. It was not on this occasion alone that Chrysostom contended that the earthly goods created and given by God are for the benefit of all[27]; nor did he monopolize this belief. He was just one of the most enthusiastic exponents of this patristic tradition[28], based on which elsewhere, he argues that human beings are guilty of fabricating the difference between the rich and the poor – "imagined difference"(δοκοῦσα

– C. Mathewes, Grand Rapids 2004, p. 91-94; C. Pierson, *Just Property, A History in the Latin West*, v. 1: *Wealth, Virtue, and the law*, Oxford 2013, p. 64-65.

26 Joannes Chrysostomus, *Homiliae in epistulam i ad Timotheum* 12, 4, PG 62, 562-563.

27 See also Joannes Chrysostomus, *De virginitate* 68, 51: "Ἡ μὲν γὰρ χρῆσις κοινὴ πάντων ἐστίν"; *Homiliae in epistulam I ad Timotheum* 12, 4, PG 62, 563: "τὰ γὰρ τοῦ Δεσπότου πάντα κοινά".

28 For the same conviction of other fathers, see M. Hengel, *Property and Riches in the Early Church*, Minneapolis 2007, p. 76-77; Gonzalez, *Faith and Wealth*, p. 116-118, 126, 138, 178, 191, 197.

διαφορά) defined by him as "anomaly" (ἀνωμαλία)[29]. Chrysostom thereby ontologically denies the existence of private property in the created order. That is why on many occasions, he emphasizes that the distinction between "mine" and "yours" is meaningless, lacking realistic connotations: "But generally speaking what is 'mine' and 'not mine'; For whenever I scrutinize these words with accuracy, I see mere words (ῥῆματα)"[30]. "There never exist 'mine' and 'yours'"[31]. "'Mine' and 'yours', they are mere words (ῥῆματα), cannot stand fast on true facts"[32]. Furthermore, his statement that the earthly wealth was meant to be shared by all was also deduced from his conviction that God, who created the world, is the ultimate owner of it: "If then our possessions belong to our common Lord, therefore they belong to our fellow-slaves as well"[33]. "But what you gave to the poor are not your possessions, but these of the Lord, the common possessions of the fellow-slaves"[34]. "For all belongs to God, […] Since there is no 'ours', but of the Lord, it is necessary to consume with our fellow-slaves"[35].

If we give full consideration to the ultimate ownership which Chrysostom attributed to God, we could better understand why he questioned the modes of acquisition of ownership approved by Roman law in the passage cited above. First, by constantly urging his congregation to investigate the moral motive at the inception of the acquisition of property, Chrysostom echoed to some degree the moral restriction in Roman law which was imposed as a prerequisite for acquiring ownership by continuous occupation for a certain period of time (*usucapio*)[36]. In other words, a stolen thing or anything taken by force could not be usucapted since the taker was considered to have possessed the thing in bad faith (*mala fide*)[37]. Given this legal regulation, possession through the robbery

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[29] Joannes Chrysostomus, *Expositiones in Psalmum* 48, 1, PG 55, 223: "Τότε καὶ τὴν ἐκ τῶν βιωτικών δοκοῦσαν διαφορὰν εἶναι καὶ ἀνωμαλίαν εἰσάγων […]. Ἀλλ'ἐπενοήσατέ τινα διαφορὰν ἀπὸ πλούτου καὶ πενίας, καὶ ἀνωμαλίαν εἰσηγάγετε". Also see *Sermones de Anna* 5, 3, PG 54, 693: "ἀπὸ δὲ τῆς κατὰ τὸν πλοῦτον καὶ τὴν πενίαν δοκούσης ἀνωμαλίας".

[30] Joannes Chrysostomus, *De virginitate* 68, 43-44.

[31] Joannes Chrysostomus, *Homiliae in Matthaeum* 72, 3, PG 58, 671.

[32] Joannes Chrysostomus, *Homiliae in epistulam I ad Corinthios* 10, 3, PG 61, 85.

[33] Joannes Chrysostomus, *Homiliae in epistulam I ad Timotheum*12, 4, PG 62, 563.

[34] Joannes Chrysostomus, *Homiliae in Joannem* 33, 3, PG 59, 192.

[35] Joannes Chrysostomus, *Homiliae in epistulam I ad Corinthios* 10, 3, PG 61, 86.

[36] As defined by the Roman jurist Modestinus: "Usucapio est adiectio dominii per continuationem possessionis temporis lege definiti" (*Digesta* 41, 3, 32-33).

[37] Gaius, *Institutiones* 2, 45: "Sed aliquando etiamsi maxime quis bona fide alienam rem possideat, non tamen illi usucapio procedit, velut si quis rem furtivam aut vi posses-

as Chrysostom castigated here, if understood in its literal sense, in most situations would not be protected by Roman either. But just like the renowned Roman jurist Gaius said in his *Institutes* that "Suppose we are made someone's heir […]. Their whole estate goes to us"[38]. That is to say, for the Romans, inheritance is a legal mode by which one can acquire another man's property in its entirety (*per universitatem*)[39]. A considerable part of Gaius's classical legal textbook on the acquisition of ownership deals with inheritance[40], which reflects the generally acknowledged fact that in Roman society, inheritance was a most socially accepted as well as extensively practiced way of acquiring property. And yet, acts such as theft or possession by force that invalidated an appeal to *usucapio* in Roman law only applied to Roman citizens[41] and could be disregarded after a certain period of time[42]. Hardly did the Roman jurists attempt to impose such restrictions upon the scenario of inheritance through many generations.

In contrast, Chrysostom in his homily made a sweeping judgment about the fundamentally immoral origin of any inheritance acquired in human society:

> the passion (of greed) is so destructive that it is not possible to become rich by not doing injustice […]. What about, therefore, he says that he received the inheritance from his father? He just received what had been collected as a result of injustice. Because the ancestor of that man was rich but surely was not from Adam, it is likely that many had been born before that man. Later

sam possideat"; Gaius, *Institutiones* 2, 48: "Quod ergo vulgo dicitur furtivarum rerum et vi possessarum usucapionem per legem XII tabularum prohibitam esse, […] nam huic alia ratione usucapio non competit, quia scilicet mala fide".

[38] Gaius, *Institutiones* 2, 98, tr. W.M. Gordon – O.F. Robinson, *The Institutes of Gaius*, London 2001, p. 169.

[39] Gaius, *Institutiones* 2, 97.

[40] É. Jakab, *Inheritance*, in: *The Oxford Handbook of Roman Law and Society*, ed. P.J. Plessis – C. Ando – K. Tuori, Oxford 2016, p. 498.

[41] In *Institutiones* (2, 69) Gaius said the Romans by natural reason could be the owners of things captured from enemies. The so-called "by natural reason (*naturali ratione*)" indicates that no further investigation of *mala fide* is needed in the case of peregrines. Also see W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, Cambridge 1975, p. 248.

[42] For instance, a lost law enacted by the Emperor Constantine ordered that anyone who held the possession for themselves for forty years, the origin of his possession shall not be questioned. See *Codex Iustinianus* 7, 39, 2.

among the many, there was someone who unjustly seized the property of others and cut fruit from it[43].

Obviously, according to Chrysostom, there was no acquisition of property that did not involve some form of *mala fide*; certain acts of injustice could always be detected in the trajectory of inheritance through generations. It seems that Chrysostom challenged the inheritance guaranteed by Roman law as a righteous way to acquire and hold property. Nevertheless, his rebuke of inheritance mainly targeted the acquisition and possession of property by those who took the inherited property for granted or who used the interests of their heirs as an excuse to refuse to share the wealth with others. A generalized conclusion that Chrysostom rejected the Roman succession at large must be avoided since he never meant to deprive his audiences of all their patrimony but just to encourage them to donate at least some part of it for almsgiving[44].

Apart from the inheritance, Chrysostom also criticized the scenario of obtaining wealth not by harming the interests of others, but by a seemingly more natural way. For instance, "(he) possessed the gold which gushed out somewhere from the earth" (ποθεν ἀπὸ γῆς ἀναβλυσθέντα τὸν χρυσὸν ἑχειν), the wealth found still cannot be good (ἀγαθός). The acquisition mode described here alludes very likely to the so-called *thesauri inventio* (acquisition of treasure by finding), which was conventionally classified in Roman law as acquisition by natural law (*jure naturalis*)[45]. Despite the various principles and rules laid down relating to this mode in different phases of Roman legal history[46], generally speaking, the finder of the treasure was entitled wholly or partially to its ownership if it was impossible to trace the previous owner or there never existed such owner[47]. As the jurist Paul's definition indicated, "Treasure is an ancient deposit of money, the memory of which no longer survives so that it is without

[43] Joannes Chrysostomus, *Homiliae in epistulam i ad Timotheum* 12, 3, PG 62, 562.

[44] See Joannes Chrysostomus, *Homiliae In Matthaeum* 66, 4, PG 58, 630: "Καὶ τί ἔμελλον, φησὶν, οἱ παῖδες ἡμῶν διαδέχεσθαι; Τὸ κεφάλαιον ἔμενε, καὶ ἡ πρόσοδος πάλιν πλείων ἐγίνετο, ἐν οὐρανῷ θησαυριζομένων αὐτοῖς τῶν κτημάτων. Ἀλλ' οὐ βούλεσθε οὕτω; Κἂν ἐξ ἡμισείας,κἂν ἀπὸ τρίτης μοίρας, κἂν ἀπὸ τετάρτης, κἂν ἀπὸ δεκάτης".

[45] J. Thomas, *Textbook of Roman Law*, Amsterdam 1976, p. 178.

[46] Thomas, *Textbook of Roman Law*, p. 178-179.

[47] P. Bonfante, *Istituzioni di Diritto Romano*, Milano 1921, p. 248; Thomas, *Textbook of Roman Law*, p. 179; M. Kaser, *Das Römische Privatrecht, Erster Abschnitt, Das Altrömische, Das Vorklassiche und Klassiche Recht*, München 1971, p. 135.

an owner"[48]. However, as mentioned above, Chrysostom affirmed that it is God who has the ultimate ownership; in this sense, no property is ultimately ownerless no matter whether it is found by anyone or not. His statement in another homily that "the property (*χρήματα*) wherever we collected belongs to the Lord"[49], aiming to persuade his audience not to squander wealth, could also be applied here to nullify the so-called *thesauri inventio*. As Chrysostom further explained, quite contrary to the Roman legal thinking, it was not the way of finding but the way of using (namely distribution to the poor) that led to the just possession of wealth.

In contrast to the acquisition by inheritance or by *thesauri inventio*, it appears that Chrysostom showed some more tolerance towards "labor" (πόνος) as a source of title to property, as he mentioned laconically above that Jacob was rich just because of the reward he received from his labor. However, we should be cautious about making generalizations from this particular passage in which Chrysostom attributed the possible legitimate source of property to human labor[50]. A closer analysis of his other works reveals that Chrysostom did not intend to generalize the case of Jacob, for the wealth from labor, in his opinion, may also be unjust[51]. Labor may be considered the legitimate source of the property only when compared with unjust ways of acquiring wealth, such as robbery in this passage and possessing wealth for the sake of greed[52]. Moreover, according to him, wealth obtained from labor should not be used for accumulation but to help those in need[53]. In other words, according to Chrysostom, labor alone, if regardless of how the wealth rewarded is used or whether any injustice may get involved, can never legitimate the acquisition of property.

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[48] *Digesta* 41, 1, 31, 1, tr. A. Watson, *The Digest of Justinian*, v. 4, Philadelphia 1998, p. 9. Also see *Codex Theodosianus* 10, 18, 2: "Quisquis thesauros et condita ab ignotis dominis tempore vetustione monilia quolibet casu reppererit, suae vindicet potestati"; *Codex Iustinianus* 10, 15, 1: "Thesaurum (id est condita ab ignotis dominis tempore vetustiore mobilia) quaerere et invento uti liberam tribuimus facultatem".

[49] Joannes Chrysostomus, *Homiliae de Lazaro* 2, 4, PG 48, 988.

[50] Pierson, *Just property*, p. 65.

[51] Joannes Chrysostomus, *Homiliae in Matthaeum* 56, 6, PG 58, 557: "ὅτι τὸ ἐκ δικαίων πόνων συλλεγὲν ἀργύριον πολλάκις ποιεῖ εἶναι παράνομον διὰ τὰ πονηρὰ γεννήματα".

[52] Joannes Chrysostomus, *De decem millium talentorum debitore* 4, PG 51, 22: "Οὐχ ὑπὲρ τῆς δαπάνης δὲ μόνον, ἀλλὰ καὶ ὑπὲρ τῆς κτήσεως ἀπαιτηθήσῃ λόγον, πότερον ἐκ δικαίων πόνων, ἢ ἐξ ἁρπαγῆς καὶ πλεονεξίας συνέλεξας".

[53] Joannes Chrysostomus, *Homiliae in Mattaeum* 56, 5, PG 58, 556: "Οἱ γὰρ μηδὲ ἐκ δικαίων πόνων θησαυρίζειν κελευόμενοι, ἀλλὰ τὰς οἰκίας ἀνοίγειν τοῖς δεομένοις, τὴν ἑτέρων καρποῦνται πενίαν, εὐπρόσωπον ἁρπαγὴν, εὐπροφάσιστον πλεονεξίαν ἐπινοοῦντες".

Nevertheless, in Roman law, there lacks a principle that a person can always acquire ownership only through expending time and labor on the property of others[54]. Conventionally labor is never listed as an individual mode of acquisition by modern legal scholarship. Comparatively speaking, probably only in the *Specificatio*, "the acquisition of ownership by creating a new thing out of materials which belonged wholly or partially to another"[55], labor plays somehow an essential role since it is one's labor that changed the economic value or social function of the thing[56]. But disputes are still raised relating to whether the newly created thing belongs to the owner of the materials as supported by the Sabinians or belongs to the maker as held by the Proculians[57]. We cannot conclude with solid evidence that Chrysostom knew the concept *Specificatio*[58]. However, a passage from his homily *In epistulam I ad Corinthios* alludes to this legal concept. Having refuted the distinction between "yours" and "mine", Chrysostom developed his argument as follows "For even you say that the house is yours, (yours) is a word without true fact, since the air, the earth, and the material are of the Creator, even you yourself build it, and all the other things"[59]. By refusing to grant the ownership of the house to the builder notwithstanding the latter's labor, Chrysostom highlighted once more the ultimate ownership of God over the whole material world, including anything fabricated by human beings. He might not have the intention to take side with the Sabinians, but his way of arguing here would have found an echo in this school.

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[54] C. Van der Merwe, *Nova Species*, "Roman Legal Tradition" 2 (2004) p. 102.

[55] Thomas, *Textbook of Roman Law*, p. 174.

[56] B.C. Stoop, *Non Solet Locatio Dominium Mutare: Some Remarks on Specificatio in Classical Roman Law*, "Tijdschrift voor Rechtsgeschiedenis" 3 (1998) p. 3.

[57] For the debates between the two schools and the views of other Roman jurists, see Gaius, *Institutiones* II 79; *Digesta* 41, 1, 7, 7; *Iustiniani Institutiones* II 1, 25; W. Osuchowski, *Des études sur les modes d'acquisition de la propriété en droit romain: Recherche sur l'auteur de la thèorie* éclectique *en matière de la spécification*, in: *Studi in onore di Vincenzo Argangio-Ruiz nel XLV anno del suo insegnamento*, v. 3, Napoli 1953, p. 37-50; Stoop, *Non Solet Locatio Dominium Mutare*, p. 5-17.

[58] The term "Specificatio" coined in the 12th century, is not a Roman creation, see Stoop, *Non Solet Locatio Dominium Mutare*, p. 5, n. 10. So what concerns us here is not whether Chrysostom knew this particular technical term or not, but whether he knew the legal concept contained in this term.

[59] Joannes Chrysostomus, *Homiliae in epistulam I ad Corinthios* 10, 3, PG 61, 85, "Καὶ γὰρ εἰ τὴν οἰκίαν σὴν εἶναι φής, ῥῆμά ἐστι πράγματος ἔρημον. Καὶ γὰρ καὶ ὁ ἀὴρ καὶ γῆ καὶ ὕλη τοῦ Δημιουργοῦ, καὶ σὺ δὲ αὐτὸς ὁ κατασκευάσας αὐτὴν, καὶ τὰ ἄλλα δὲ πάντα".

3. The Distinction between δεσποτεία and χρῆσις

Based on the belief that God is the true owner of the universe, Chrysostom's challenge of various modes of acquisition of ownership under Roman law may beg the question: Compared to God, do human beings have any rights over material things? If they do, what kind of rights? To answer these questions, we will analyze two passages of his homilies:

> The loving Lord, you see, instructing the human being in the beginning and from the very outset, and wanting to teach him (Adam) that he has a creator and a craftsman who produces all the visible realities and shapes him as well, wished to reveal to him his own dominion through this slight command. To make a comparison with a generous master who provides a great home full of wonders for someone's enjoyment: he is prepared to take not the due price but some small part so as in his own interests to protect his title of dominion (*δεσποτείας*) and to ensure that the person may have a precise understanding that he is not the owner of the property but enjoys its use (*χρῆσεως*) out of his grace and beneficence. In just the same way does our Lord entrust everything to the human being, providing him with a way of life in the garden and enjoyment of everything in it[60].
>
> I often laughed when reading wills saying that let this man have the *δεσποτείαν* of the lands or that man have the *χρῆσιν* of the house. For we all have *χρῆσιν*, no man has the *δεσποτείαν*. Even if the wealth has suffered no change and remained with us all our lifetime, unwillingly or not, we will hand it over to others at our death, so we enjoy only the *χρῆσιν* of it, and we are bereft of the *δεσποτείας* when going on a journey to afterlives[61].

Although these two passages dealt with the right of human beings over things in different states, namely the states before and after the Fall respectively, the conclusion drawn by Chrysostom remained the same: human beings do not have the *δεσποτείαν* but only the *χρῆσιν*. Before the Fall, just like in the "house owner" parable, the first man Adam enjoyed the *χρῆσιν* of all the created things as divine gifts. But being a creature, he did not have the *δεσποτείαν* which belonged exclusively to the Creator; after the Fall, human beings have only *χρῆσιν*, and cannot have *δεσποτείαν* either, mainly due to the mortality of mankind as well as to the fact that all material pos-

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[60] Joannes Chrysostomus, *Homiliae in Genesim* 16, 6, PG 53, p. 133, tr. R.C. Hill, *St. John Chrysostom, Homilies on Genesis 1-17*, Washington 1999, p. 219.

[61] Joannes Chrysostomus, *Homiliae ad populum Antiochenum* 2, 6, PG 49, 42.

sessions are liable to change and to be perishable[62]. What concerns us here is the distinction between *δεσποτεία* and *χρῆσις* , adopted by Chrysostom to illustrate the different rights of God and human beings over property. Especially in the second passage, as he claimed, this preaching was inspired by some wills made by his contemporaries in which the *δεσποτεία* and the *χρῆσις* of one's property were left to different persons. The property arrangement mentioned here was not an uncommon legal practice among the Romans of his day[63]. So it is evident that these two Greek words used here are legal terms, and this could be the case in other similar passages of Chrysostom's homilies[64].

These two Greek words (*δεσποτεία* and *χρῆσις*) in numerous Roman legal texts were used as the equivalents to the Latin terms *dominium* (or *proprietas*)[65] and *usus*. As evidence of papyri in Egypt demonstrates, in the Roman era, *δεσποτεία* was equivalent to *dominium*[66]. Other Greek Church Fathers besides Chrysostom also used this legal term with the meaning of ownership[67]. As for *χρῆσις*, in the *Paraphrase of Justinian's Institutes* attributed to Theophilus Anteccesor, it was employed to interpret *usus* when

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62 Chrysostom repeated this theme in many other homilies, also see *Homiliae in Genesim* 30, 3, PG 53, 276: "νομίζοντες δεσποτείαν τινὰ κεκτῆσθαι, οὐκ εἰδότες ὅτι μόνον τῆς χρήσεως ἀπολαύομεν, καὶ ἑκόντες καὶ ἄκοντες ἑτέροις τούτων παραχωροῦμεν"; *Homilae in Matthaeum* 59, 6, PG 58, 583-584: "πλοῦτον ἑτέροις ἀφῶμεν, κἀκεῖνοι πάλιν ἄλλοις, καὶ οἱ μετ'ἐκείνους τοῖς μετ' αὐτοὺς, παράπομποί τινες τῶν ἡμετέρων γινόμενοι κτημάτων τε καὶ χρημάτων, ἀλλ' οὐ δεσπόται"; *Homiliae in epistulam I ad Corinthios* 10, 3, PG 61, 85: "Εἰ δὲ ἡ χρῆσις σὴ, ἀλλὰ καὶ αὐτὴ ἄδηλος, οὐ διὰ τὸν θάνατον μόνον, ἀλλὰ καὶ πρὸ τοῦ θανάτου διὰ τὸ τῶν πραγμάτων εὐρίπιστον".

63 The similar property arrangement was included in one of the most famous wills of late antiquity, the will of the Cappadocian father Gregory of Nazianzus: "Τὰ δὲ φορβάδια καὶ τὰ πρόβατα, ὅσα ἤδη αὐτοῖς παρὼν ἐκέλευσα δοθῆναι, ὧν καὶ τὴν νομὴν αὐτοῖς καὶ τὴν δεσποτείαν παρέδωκα […], ἥνπερ οἰκίαν ἕξει δηλαδὴ ἀνενοχλήτως εἰς χρῆσιν καὶ καρπείαν μέχρι βίου ζωῆς, μετὰ δὲ ταῦτα ἀποκαταστήσει τῇ ἐκκλησίᾳ" (Gregorius Nazianzenus, *Testamentum*, ed. J.B. Pitra, *Iuris ecclesiastici Graecorum historia et monumenta*, v. 2, Rome 1868, p. 156).

64 See note 62.

65 *Δεσποτεία* was also regarded as an equivalent of the Latin term *proprietas,* as indicated in Theophilus's *Paraphrasis institutionum* 2, 1, 4; 2, 1, 5; 2, 1, 9; 2, 1, 30 etc. However, there is no essential difference between *dominium* and *proprietas*, the latter could be a synonym of the former, for the different technique terms of ownership, see Bonfante, *Istituzioni di Diritto Romano*, p. 242; Kaser, *Das Römische Privatrecht*, p. 401.

66 R. Taubenschlag, *The Law of Greco-Roman Egypt in the light of the Papyri,332 B.C.-640 A.D.*, Warszawa 1955, p. 231.

67 *A Patristic Greek Lexicon*, ed. G. Lampe, Oxford 1961, p. 339.

the legal concepts *usus* and *habitatio* were discussed[68]. Therefore, it could be inferred that the word *χρῆσις* at that time was the conventional translation for the Latin term *usus*, which in turn was used on most occasions in the Latin translation of *Justinian's Novellae*, the so-called *Authenticum* as the Latin equivalent to *χρῆσις*. There were a few exceptions in which *χρῆσις* was translated with *usufructus*[69], which means, in certain legal contexts, *χρῆσις* could also mean *usufructus*.

Adopting this pair of legal terms with which his congregation was possibly familiar, it seems that Chrysostom sought to lay much more emphasis on the stark contrast between human and divine rights over wealth: one is restricted and inferior, while the other is absolute and boundless. Even though *dominium* in Roman law was never so unfettered as the later Latin maxim "jus utendi, fruendi, abutendi" depicted, and generally speaking, there was no explicit definition of *dominium* in the Roman legal sources[70], the Romans still understood well that the property right embodied in *dominium* was normatively absolute[71]. Modern scholarship has reached, to some degree, a consensus on the nature of this right. It is defined either as "the ultimate right, that which has no right behind it"[72], or "die privatrechtliche Vollherrschaft, die innerhalb der von der Rechtsordnung und der Privatautonomie gezogenen Grenzen jede rechtliche und tatsachliche Verfugung uber die Sache gestattet"[73], or as "a normatively absolute right over a thing because this statement does not allow

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68 Theophilus Antecessor, *Paraphrasis institutionum* 2, 2, 3: "ἔτι δὲ καὶ USOS. καὶ τί ἐστιν USOS; USOS ἐστὶ χρῆσις, δίκαιόν τι φανεροῖς τρόποις συνιστάμενον νῷ καταλαμβανόμενον ὃ ποιεῖ με κατὰ τῆς ἑτέρου δεσποτείας ἔχειν χρῆσιν μόνην". According to N. Van Der Wal, "Die ziemlich seltenen Fachworte, die der lateinischen vierten Deklination angehörten, deklinierte man in ihrer griechischen Form nach der zweiten Deklination: so bildete man aus *usus* ὁ *usos und aus ususfructus* ὁ *usufructos*" (N. Van der Wal, *Die Schreibweise der dem lateinischen entlehnten Fachworte in der frühbyzantinischen Juristensprache*, "Scriptorium" 37 (1983) p. 40, n. 28).

69 For the cases in which the Greek term *χρῆσις* was translated with *usufructus*, see *Novellae*, ed. R. Schöll – G. Kroll, Berlin 1928, p. 176, line 1; p. 347, line 21; p. 348, line 6; p. 371, line 42.

70 Kaser, *Das Römische Privatrecht*, p. 400.

71 For the normative absoluteness of the ownership in Roman law, see F. Giglio, *The Concept of ownership in Roman Law*, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung" 135 (2018) p. 96-97.

72 Buckland, *A Text-Book of Roman Law*, p. 188. The definition of Buckland was also cited by Thomas, *Textbook of Roman Law*, p. 134.

73 Kaser, *Das Römische Privatrecht*, p. 400.

for any reductive interpretation"[74]. As observed, all the modifications "Vollherrschaft", "ultimate", and "normatively absolute" devoted to *dominium* highlight its absolute character, though in a relative sense[75]. So when using the *δεσποτεία* (*dominium*) to define the right of the God over things, Chrysostom also attributed to it the absoluteness contained in this legal concept.

As for *χρῆσις*, as mentioned above, in some legal texts this term could be the equivalent to either *usus* or *usufructus*. Coming back to Chrysostom, however, at least in his texts examined here, he did not make explicit differentiation between these two rights under the single term *χρῆσις*, especially when this term is used in comparison with δεσποτεία[76]. It seems that Chrysostom gave much more attention to the inferiority and the finiteness shared by these two rights (*usus* and *usufructus*) than to the conceptual nuances between them. Compared to *dominium*, either *usufructus* or *usus* is merely the right to use but not to own the property. If human beings, as Chrysostom pointed out, were originally entitled only to the right to use, they should be bereft of true ownership over any property even if it was later granted and secured by the secular Roman law. As in his own phrase, the worldly "ownership is just words (ρήματα)!"[77]. Given the non-existence connoted in the word *ῥῆμα* in the aforementioned difference between "yours" and "mine", the worldly ownership is also deemed by Chrysostom ontologically not existent. Moreover, both rights (*usufructus* and *usus*) must be subject to the following restrictions: (1) either *usufructus* or *usus* must be removed as long as the corporeal object no longer exists[78], (2) both must come to an end by the death of the right holder[79]. These restrictions remind us of the oft-repeated theme in Chrysostom's homilies: reluctantly

[74] Giglio, *The Concept of ownership in Roman Law*, p. 98.

[75] For the relativity of the absolute character of *dominium* in Roman law, see M. Kaser, Über 'relatives Eigentum' im altrömischen Recht, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung" 102 (1985) p. 1-39.

[76] To *usufructus*, there are other two Greek equivalents "καρπεία" and "ἐπικαρπεία", see R. Taubenschlag, *The Law of Greco-Roman Egypt*, p. 262, 263. In the corpus of Chrysostom, the former is never used, the latter (ἐπικαρπεία spelled as ἐπικαρπία) is used three times (PG 56, p. 97; PG 61, p. 694; PG 61, p. 787), but all in non-legal context, having nothing to do with the legal concept *usufructus*.

[77] Joannes Chrysostomus, *Homiliae in epistulam I ad Timotheum* 11, 2, PG 62, 556: "Ῥήματα μόνον ἐστὶν ἡ δεσποτεία· τῷ δὲ ἔργῳ πάντες τῶν ἀλλοτρίων ἐσμὲν κύριοι".

[78] *Iustiniani Institutiones* 2, 4, 1: "Usus fructus […] est enim ius in corpore: quo sublato et ipsum tolli necesse est.".

[79] *Iustiniani Institutiones* 2, 4, 3: "Finitur autem usus fructus morte fructuarii".

or not, we have to abandon our property either due to the instability of the things or to human mortality.

The different rights of God and humans over property are also vividly presented by Chrysostom with the Roman master-slave relationship in terms of property ownership: "Just like we demand an explanation from our slaves not only for their expenses but also for their incomes, examining (ἐξετάζοντες) where they got the property (χρήματα), from whom, how and how much. In just the same way God holds us to account not only for the expenditure but also for our way of acquisition"[80]. Here the property held by slaves could refer to the *peculium* in Roman law[81]. A *peculium* is a fund or a property granted by a master to his slave for the latter's use and free disposal[82]. It is managed by the slave but still remains under the ownership of the master who not only has the right to intervene in (or in Chrysostom's phrase to examine) the acquisition and diminution of the slave's *peculium*[83], but also to withdraw it[84], just like Chrysostom's statement that the master could claim what belongs to the slaves[85].

By adopting the roman legal concepts either *usus/usufructus* or *peculium*, Chrysostom managed to convey to his audience that human beings, having a limited existence, enjoy only limited rights over wealth.

If humans can obtain only limited right, namely the right to use the property, then how to use it? To illuminate, Chrysostom even reversed the worldly property right in a seemingly paradoxical way,

> So it is evident that only those who despise the use (*χρήσεως*) and laugh down the enjoyment have the ownership (*δεσποτεία*). The one who cast aside his property, gave it to the poor, and used the property for the people in need, when departed, he would have the ownership (*δεσποτείαν*) of property, not being deprived of the possession at death, but enjoying much more at that time when he needs to protect his property on the day of Judgment and when we all are accused of what we have done. So that if anyone wants to possess,

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80 Joannes Chrysostomus, *De decem millium talentorum debitore* 4, PG 51, 22.

81 K. Harper, *Slavery in the Late Roman World*, p. 127; For the *peculium* in Chrysostom's work, see. De Wet, *Preaching bondage*, p. 17, 22.

82 A. Berger, *Encyclopedic Dictionary of Roman law*, p. 624.

83 Buckland, *The Roman Law of Slavery*, p. 200-201.

84 Buckland, *The Roman Law of Slavery*, p.205.

85 Joannes Chrysostomus, *Homiliae in epistulam ad Philemonen* 2, 3, PG 62, 714. "τοῦτο δόξα δεσπότου, τὸ οἰκειοῦσθαι τὰ ἐκείνων".

> use and own his property, let him get rid of them all, otherwise, he will be separated from his property at death […][86].

For Chrysostom, the use of one's property is not only limited by the decay of the wealth, or has to be abandoned as a result of human mortal nature, but more importantly, as for Christians, it is determined and orientated by their eschatological expectation. That is to say, one's property should be used for almsgiving in this world in order to enjoy the treasure of the afterlife. The need of the Christians to practice almsgiving problematizes fundamentally any attempt to manipulate wealth exclusively for personal gain. Deprived of the ownership, the role the rich man plays, according to Chrysostom, is that of a steward, who temporarily holds and manages the wealth of the Lord for relieving the poor: "The rich man is a kind of steward of the money which is owed for distribution to the poor"[87]. "Those who have received this trust keep what has been given to them, and do not misuse the money, but distribute it where and when their master directs. You also must do this. For you have obtained more than others have, and you have received it, not to spend it for yourself, but to become a good steward for others as well"[88]. This is to say, as a steward, who disposes of the wealth of the Lord mainly for the benefit of others, there is certainly no chance for him to make all the property his own. But even granted with the right to use, the steward's right still differs dramatically from *ususfructus or usus* in the sense of Roman law, since the latter is strictly personal right over things and remains inalienable[89], accompanied by no obligation of sharing with others. Any yet, it is such an obligation that Chrysostom strives to promote with the steward parable.

4. The Things Shared in Common

As discussed above, Chrysostom maintained that in the beginning all things were created for common use. Private property arose later as a result of the Fall. So the question is: after the Fall, is there anything that can still be shared by all? Chrysostom's answer must be affirmative, as indicated in the things he lists for common use in the following passage:

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[86] Joannes Chrysostomus, *Homiliae ad populum Antiochenum* 2, 6, PG 49, 42-43.

[87] Joannes Chrysostomus, *Homiliae de Lazaro* 2, 4, PG 48, 988, tr. C. Roth, p. 50.

[88] Joannes Chrysostomus, *Homiliae de Lazaro* 2, 5, PG 48, 988, tr. C. Roth, p. 50.

[89] Cf. Thomas, *Textbook of Roman Law*, p. 205; Kaser, *Das Römische Privatrecht*, p. 448; Bonfante, *Istituzioni di Diritto Romano*, p. 327.

> All belong to the emperors are common, the cities, the market-places, and the public walks are common to all, we all share them equally. Behold the dispensation (οἰκονομίαν) of our God. He made certain things common so that even from these things, the human race might be put on shame, just like the air, the sun, the water, the earth, the heaven, the sea, the light, and the stars. He dispensed all these equally to us as brothers. He created to all the same eyes, the same body, the same soul, the similar structure in all respects, all from earth, all men from one Man, and all men in the same habitation. But none of these shamed us. He also made other things common, such as baths, cities, market-places, public walks[90].

In this passage, Chrysostom provided us with three categories of things that can be commonly shared: (1) natural elements, materials, or things; (2) human body and soul; (3) public buildings and facilities. In his view, the commonality of all these things derives from the providence of God the creator. However, at least in terms of the first and third category, Chrysostom's enumeration is not far distant from *Res communes* and *Res publicae* or *Res universitatis* in Roman law. In Gaius's *Institutes,* things under human law (*humani iuris*) were divided into private and public: "Public things are regarded as no one's property; for they are thought of as belonging to the whole body of the people"[91]. According to the definition of the late Roman classical jurist Marcianus: "Some things belong in common to all men by *jus naturale*, some to a community corporately (*universitatis*), some to no one, but most belong to individuals severally, being ascribed to someone on one of various grounds"[92]. The views of both jurists were adopted and developed later by the *Justinian's Institutes*, in which the classification of things started with the statement that things "are either in the category of private wealth or not. Things can be: everybody's (communia sunt omnium) by the law of nature (naturali jure); the state's (publicae); a corporation's (universitatis); or no-

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[90] Joannes Chrysostomus, *Homiliae in epistulam I ad Timotheum* 12, 4, PG 62, 563.

[91] Gaius, *Institutiones* 2, 10, 11, tr. W. Gordon – O. Robinson, p. 127. The public things of Gaius' division are not wholly coincident with those in the *Iustiniani Institutiones*, covered roughly *res publicae* and *res universitatis* of the latter, see Buckland, *A Text-Book of Roman Law form Augustus to Justinian*, p. 184; O. Behrends, *Die allen Lebewesen gemeinsamen Sachen (res communes omnium) nach den Glossatoren und dem klassischen römischen Recht*, in: *Festschrift für Hermann Lange*, ed. D. Medicus, Stuttgart 1992, p. 13.

[92] *Digesta* 1, 8, 2, v. 1, tr. A. Watson, p. 24.

body's"[93]. We could detect the same train of thought deeply ingrained in the Roman legal discourse of property: things, generally speaking, could be divided into two categories according to whether they can be appropriated privately or not (*res in patrimonio* or *extra patrimonium*)[94]. Either under natural law or human law, the enjoyment of certain things belongs to all. That is to say, in pre-Christian Roman legal thought, there had already existed a concept of commonality which, as pointed out by modern scholars, was influenced by Greek and Roman philosophy, and especially but not exclusively subjected to the noticeable impact of Stoic philosophy[95]. In this sense, Chrysostom did not bring ideas totally new to stun his audience but merely resonated with a well-accepted Roman tradition.

The *res communes*, were understood as the things that did not belong to any individual or community, but to humanity as a whole[96]. The Roman jurists' enumeration of *res communes* shared many similarities. Celsus conceived of sea and air for the common use of all humankind[97]. Marcianus listed air, flowing water, the sea, and the shores of the sea[98], and his enumeration was coincident with that in the *Justinian's Institutes*: "The things which are naturally everybody's are air, flowing water, sea, and seashore"[99]. In Chrysostom, it can be observed that he listed more items than the Roman jurists did in the category of *Res communes*; besides air, (flowing) water, and sea, he also added the sun, the light, the stars, the heaven, and the earth[100]. Although we cannot exclude the possibility that

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[93] *Iustiniani Institutiones* 2, 1, tr. P. Birks – G. Mcleod, *Digesta*, ed. P. Krüger – Th. Mommsen, Berlin 1928, p. 55.

[94] Cf. Thomas, *Textbook of Roman Law*, p. 127; Kaser, *Das Römische Privatrecht*, p. 377.

[95] For recent discussions on this topic, see M. Schermaier, *Res Communes Omnium: The history of an Idea from Greek Philosophy to Grotian Jurisprudence*, "Grotiana" 30 (2009) p. 40, 41-42; P. Lambrini, *Alle origini dei beni comuni*, "Iura" 65 (2017) p. 402-414.

[96] Cf. Thomas, *Textbook of Roman Law*, p. 129; Lambrini, *Alle origini dei beni comuni*, p. 394.

[97] *Digesta* 43, 8, 3, 1: "Maris communem usum omnibus hominibus, ut aeris […]".

[98] *Digesta* 1, 8, 2, 1: "Et quidem naturali iure omnium communia sunt illa: aer, aqua profluens, et mare, et per hoc litora maris".

[99] *Iustiniani Institutiones* 2, 1, 1, tr. P. Birks – G. Mcleod, p. 55.

[100] For some other similar enumerations of Chrysostom, see *Homiliae in Joannem* 15, 3, PG 59, 102: "Διὰ τοῦτο οἰκίαν μίαν τοῦτον ἡμῖν τὸν κόσμον ἔδωκεν ὁ Θεὸς, πάντα ἐξίσου διένειμεν,ἕνα ἀνῆψε πᾶσιν ἥλιον, ἕνα ἐξέτεινεν ὄροφον, τὸν οὐρανὸν […]"; *Homiliae in epistulam I ad Corinthios* 10, 3, PG 61, 86: "Κοινὰ γάρ ἐστι σὰ καὶ τοῦ συνδούλου,

Chrysostom's enumeration, which in many respects corresponds to that of other church fathers[101], might also be influenced by the Greek and Roman philosophy, it appears to result directly from the theology of creation. Regardless of its different origins, Chrysostom's opinion does not contradict that of the Roman jurists in essence: The light, the stars, the heaven, and the earth, because of their physical nature, cannot be under the exclusive private possession; nor are they available for individual economic management[102], just as air, flowing water, sea, and seashore cannot be appropriated privately according to the Roman legal logic. Moreover, besides the things mentioned, Chrysostom never included any other thing from nature that can be acquired privately according to Roman law into his list of things for common use or enjoyment.

Unlike *res communes, res publicae* do not belong to humanity as a whole, but to the Roman state[103], or in the word of Ulpian, to the Roman people (*populi romani*)[104], while *res universitatis* are the things owned by a particular community, such as a municipality[105]. With both having been designated for public use and consisted likewise of public roads, theaters, stadiums, marketplaces, and some other public buildings and places, there is no essential difference between the *res publicae* and *res universitatis*[106]. It is evident, therefore, that what Chrysostom enumerated in the third category, namely baths, cities, marketplaces, and public walks, were almost identical to those that fell into the *res publicae* and *res universitatis*. By re-

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ὥσπερ ἥλιος κοινὸς καὶ ἀὴρ καὶ γῆ καὶ τὰ ἄλλα πάντα"; *Homiliae in epistulam ad Ephesios* 20, 9, PG 62, 148: "καὶ ταῦτα οὐ κοινά; Οὐκ ἔστιν εἰπεῖν, τὸ ἐμὸν φῶς, ὁ ἐμὸς ἥλιος, τὸ ἐμὸν ὕδωρ".

[101] Cyprian and Ambrose had the similar enumeration, see Gonzalez, *Faith and Wealth*, p. 126, 191.

[102] It is acknowledged that *res communes* are the things that can't be managed economically by individual, see Bonfante, *Istituzioni di Diritto Romano*, p. 229; Lambrini, *Alle origini dei beni comuni*, p. 397.

[103] Cf. Buckland, *A Text-Book of Roman Law*, p. 183; Thomas, *Textbook of Roman Law*, p. 129; Kaser, *Das Römische Privatrecht*, p. 381.

[104] *Digesta* 50, 16, 15: "sola enim ea publica sunt, quae populi Romani sunt".

[105] Cf. Thomas, *Textbook of Roman Law*, p. 129.

[106] *Digesta* 41, 2, 1, 22: "Municipes per se nihil possidere possunt, quia universi consentire non possunt. Forum autem et basilicam hisque similia non possident, sed promiscue his utuntur"; *Digesta* 43, 7, 1: "Cuilibet in publicum petere permittendum est id, quod ad usum omnium pertineat, veluti vias publicas, itinera publica"; *Iustiniani Institutiones* 2, 1, 6: "Universitatis sunt, non singulorum veluti quae in civitatibus sunt, ut theatra stadia et similia et si qua alia sunt communia civitatium".

minding his audience of the commonality of the public buildings and places that were undoubtedly a familiar part of their daily experience, Chrysostom made a great effort to demonstrate that even after the emergence of private property, thanks to God's plan, there are still some things in human society that can be commonly enjoyed, a fact in his view sufficient to put shame on those who fight one another for the private property[107].

Moreover, he explicitly excluded property (χρήματα), which can definitely be in private ownership according to Roman law, from the things shared in common[108]. This position suggests that he never intended to challenge the established social-economic order. As he explained it:

> God gives all the things with abundance, those which are more necessary than property (χρήματα), such as the air, the water, the fire, the sun, and all things of this sort. It is not possible to say that the rich man enjoys more sunbeam, but the poor man less, nor is it possible to say that the rich man breathes more plentiful air than the poor, but all these are offered alike and common to all. Therefore, why does God make common more important and more necessary things which maintain our life, but more minor and less valuable things (I mean property) are not common? Why? In order that our life might be preserved and we might have the arena of virtue. For if these necessaries were not common, perhaps the rich men, practicing their accustomed covetousness, would strangle the poor […]. Again if property was also common and offered in the same way to all, the motive for almsgiving and the opportunity for benevolence would be taken away[109].

Following his interpretation, the commonality of some things and the private appropriation of other things are just irresistible parts of the divine plan: for the survival of the poor, God grants the *res communes*; for the salvation of the rich, He provides them the opportunity to practice the virtue of almsgiving by using their property under their stewardship. It is evident that Chrysostom understood this well-balanced "divine" property

[107] Joannes Chrysostomus, *Homiliae in epistulam I ad Timotheum* 12, 4, PG 62, 563: "Θέα γάρ μοι Θεοῦ οἰκονομίαν· Ἐποίησεν εἶναί τινα κοινὰ, ἵνα κἂν ἀπ' ἐκείνων καταιδέσῃ τὸ ἀνθρώπινον γένος".

[108] Except the following quotation, for the same view of Chrysostom, also see *Homiliae ad populum Antiochenum* 2, 6, PG 49, 43: "ἵνα ἔχωμεν στεφάνων καὶ εὐδοκιμήσεων ἀφορμὴν, οὐ κοινὰ γέγονε τὰ χρήματα"; *Homiliae in epistulam I ad Corinthios* 10, 4, PG 61, 86: "μηδὲ ἐπὶ τῶν χρημάτων τοῦτο σὺ λέγε, τοῦ γὰρ δεχομένου, τὸ μεταδιδόναι"; *Homilae in epistulam ad Ephesios* 20, 9, PG 62, 148: "τὰ δὲ χρήματα οὐ κοινά".

[109] Joannes Chrysostomus, *Homiliae ad populum Antiochenum* 2, 6, PG 49, 43.

arrangement between the rich and the poor not from the purely economic or legal viewpoint but rather from a theological and ethical perspective. His argumentation, nevertheless, not only reconciled with but also, to a great degree, justified the Roman property order secured and bound by Roman law.

5. Conclusion

Holding to the belief that at the creation things are common to all and God is the ultimate owner of the world, Chrysostom conducted a paradoxical dialogue with Roman law concerning property ownership: Emphasizing the original property order of the created world, he rejected the widely accepted ways of acquiring ownership under Roman law, including inheritance, the "natural" *thesauri inventio* and the debatable *specificatio*, with the purpose of constructing the proper Christian concept of ownership. However, in the process of defining and elaborating this Christian concept, he did not hesitate to use the Roman legal concepts *δεσποτεία* (the right to own), *χρήσις* (the right to use) and *peculium*, attributing absoluteness and the finiteness inherent in these terms to the right of God and the right of human beings respectively. But the right to use in Chrysostom's view was quite different from that under Roman law, it meant first the duty to use one's property for the benefit of others. A similar effort to adapt and even to transcend Roman legal thought is also noticeable in his investigation of the moral origin of private property. Chrysostom expanded such an inquiry to every inherited property, far beyond the scope of *usucapio*.

Although Chrysostom often repeated the commonality of the created order and the different rights of God and Human-beings over property, it seems that he never attempted to overthrow the economic order of Roman society. He restricted his enumeration of the things shared in common merely to those that fit well into *Res communes* and *Res publicae* or *Res universitatis* under Roman law, claiming that the common use of these things and the worldly private acquisition of other property is an indication of God's providence.

In a profoundly Romanized world, either in Antioch or Constantinople, where his homilies studied above were preached, Roman law as a set of social rules was of great interest to the majority of people and became an indispensable part of their daily life. Therefore, Chrysostom's manipulation of the Roman legal language and thought made his preaching much more accessi-

ble to audience from broader social strata. This must be a well-aimed and effective rhetorical strategy. Despite the complexity of his treatment of Roman property law, Chrysostom's purpose was obvious: to promote almsgiving, "the queen of virtues" (ἡ βασίλισσα τῶν ἀρετῶν), among his audience[110].

John Chrysostom's Discourse on Property Ownership: An Analysis from the Perspective of Roman Law

(summary)

Unlike the dominant but simplified view of previous scholarship that Chrysostom stands in opposition to Roman property law, his attitude towards Roman law concerning property ownership is quite complicated. Insisting on the belief that things are created for common use and God is the ultimate owner of the world, Chrysostom rejected various modes of property acquisition approved by Roman law (inheritance, *thesauri inventio*, and *specificatio*). But when clarifying the limited and inferior human right over things in comparison with that of God, he never hesitates to use the Roman legal concepts *χρῆσις* (*usus/usufructus*), *δεσποτεία* (*dominium*) and *peculium*. Moreover, based on the conviction that the worldly economic order derives from divine providence, he confines his enumeration of the things shared in common mainly to *Res communes* and *Res publicae* or *Res universitatis* under Roman law and persuades his audience to help those in need with the wealth temporarily under their stewardship. Chrysostom's manipulation of Roman legal language and thought, as a rhetorical strategy, serves to promote almsgiving.

Keywords: John Chrysostom; Property ownership; Roman law

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