

# A Time-Travel to 'Nova-Species': Influence of Naturalism in Roman Law on the Ownership in Modern Copyrights Law

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**Abstract** – This research aims at analysing the impact of Naturalism-based Roman Law principles on certain concepts in modern Intellectual Property Law (IPL). Roman civilization was historically at its peak in literature and artistic creations. Therefore, an effective legal framework was much needed, for the well-being of society. Based on the roots of Naturalism, it explores how modern concepts of IPL are influenced by Naturalistic ideologies such as in acquiring the ownership of artistic creations. The main objective of this research is to seek how morality-based Naturalism shaped modern IPL principles such as originality in determining the ownership of copyright. The secondary objective is to examine whether the academic and judicial interpretations of determining the claims on copyright ownership could go back to their roots based on Naturalistic Roman Law principles. The research methodology is based on the legal research methodology; a library-based secondary data analysis. The expected outcome is of the nature of policy research, in order to guide more progressive approaches on academic and judicial interpretations through exploring the Naturalistic roots of the modern laws on copyright. **Keywords:** Intellectual Property Law, Principles of Roman Law, Naturalistic School of Thoughts.

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## I. INTRODUCTION

Ancient Roman Law plays a key role in shaping civil law tradition in Roman-Dutch law influenced countries. For example, countries such as Sri Lanka in which has a legal system influenced by both Roman Dutch Law and English Law, continue to be influenced by the ancient Roman Law principles. One of the main reasons for the above facet is that the basis of Roman Law is strongly underpinned by the Naturalistic Philosophical School of thoughts. Therefore, it is inevitable to find between Naturalistic ideologies and Roman Law of Property. The above connotation is highly significant in the areas on ownership of artistic nature and literature.

On the other hand, Intellectual Property Law (Herein after referred to as IPL) could be simply recognized as the guardian for protection of artistic creations, literature and other types of intellectual goods and services by granting them a certain period of protected timeframe to control the use made of those products. Modern IPL is enclosed with

strong protection mechanisms to ensure the legal safeguards for the original authors/artists and inventors.

In the contemporary discourses on artistic creations to artificial intelligence, it is not over-laudatory to state that the importance between the ownership of tangible and intangible things becoming very thin. Therefore, as one of the main legal frameworks to protect the modern sense of ownership on intangible nature, modern IPL has to overcome several complex hurdles.

To overcome such challenges in modern IPL, it is important to travel back to the ancient Roman Law principles which were based on Naturalism to seek the foundational origins of such laws. Naturalism is based on divine morality, justice, natural law and on purposiveness. Naturalism entails both dimensions of utilitarianism and morality. Therefore, the analysis of the above indicated roots could be utilised to clarify complexities of the modern legal ownership on artistic creations in IPL.

## II. Role of Naturalism in the Ownership in Roman Law

As a result of the colonization of three European nations in different eras in the history, Sri Lankan legal system is contained with English Law principles and Roman Dutch Law principles. Influence of Roman Law could be considered as one of the focal points in the Sri Lankan legal system due to the above indicated aspects. Not only in Sri Lanka, but strong Roman Law tradition also still influence the legal systems in the world. Roman ownership - *dominium* - is conventionally one of the hallmarks of the civil-law tradition prevalent in the legal systems of continental Europe, one of the points upon which it can be fundamentally distinguished from the Anglo-American common-law tradition.' (Godly, 2006). Therefore, the concept of modern ownership in different legal systems in the world have been considerably influenced and shaped by the ancient Roman Law Principles.

Things in Roman Law was called 'Res'. Among the several classifications of *Res* by Eminent Roman Jurists such as Gaius and Justinian, tangible and intangible things were important as literature and artistic creations are of intangible nature. Commonly, the attention was paid to the ownership of the tangible natured things. However, in the latter stages, it was drawn to the ownership of the artistic creations.

Naturalistic School of Thought is considered as the oldest school in legal philosophy. Divinity, Morality and natural laws are the key concept of the Naturalism. When living as groups in ancient times human beings started to understand they have certain responsibilities over the members of the group and after they formed communities this responsibility has extended as a moral obligation (Radin,1950). Therefore, Religious teachings on morality play a key role in Naturalism. Righteousness, justice and natural rights became the cornerstones of such origins.

*Jus Naturale* could recognize as the most ancient form of Naturalism which was originally came into limelight of academic circles in ancient Roman Law tradition. Roman Law roots on ownership, possession and acquisition of properties were mainly based on Natural methods (*Naturalis modi*). For example, *Usucapio* meant that the legitimate possessor in good faith (*bona fides*) of a thing for one or two years (movables/immovables respectively) became dominus (Scott, 2011).

Morality based good faith and natural rights were the key foundations of such traditions. Civil Law methods were followed extensively later Roman eras, yet Naturalism was not entirely ousted in the guise of positivist approaches based on statutes.

### III. Concept of Ownership in Artistic Creations in ancient Roman Law and its impact on Modern IPL

Roman law precepts can clearly be seen in numerous aspects of copyright doctrine: the essence of copyright as intangible property; the nature of the public domain; different types of copyrightable works (works of authorship) and the sale of them (VerSteeg,2000). In this aspect, it must be examined whether the rights related to copyrightable ownership was recognized as a natural right. It seems to be quite clear that the ancient Romans did not develop a law of copyrights (VerSteeg,2000). Generally speaking, authors, painters and sculptors were funded by wealthy patrons or worked on municipal projects funded by the governments (VerSteeg,2000).

However, one could not debate completely that ancient Roman society was out of copyrights law related claims. The logic here is that there was no developed jurisprudence on intellectual property law natured copyright ownership claims in comparison to that of on the tangible 'res'. The best example is the different ideologies on the ownership of the copy-rightable material/ subject matter between the *Proculians* and the *Sabinians*. *Proculians* and *Sabinians* were the two prominent juristic schools of thoughts prevailed in the ancient Roman juridical culture (VerSteeg,2000). The new creation called '*Nova Species*' and the *Proculians* believed that the ownership should goes to the person who made the new creation and on the other hand, *Sabinians* were of the opinion that it belonged to the owner of the material.

Furthermore, the third opinion or *media sententia*, which was on emphasizing whether the *Nova Species* could be restored to the original state the material owner becomes the original owner of the *nova species* and if not the creator becomes the owner, however, the approach taken by the Justinian as if the sculptor had contributed 'any part of the material, the *nova species* should belong to him' (VerSteeg,2000).

Furthermore, it could be evaluated in a manner that Roman Law recognition of 'res' might have been misinterpreted referring only to the tangible things. There can be little doubt that initially the term res ("thing") referred to physical things, *res corporales*. (VerSteeg,2000). But over time, Roman law came to recognize the existence of intangibles *incorporales*, as well. (VerSteeg,2000). Therefore, it could be indicated that intangibles were also considered as 'Res'.

The above concepts could be recognized as the ancient jurisprudential underpinnings of the modern copyrights law discourse. Ancient Roman Law principles were on avoiding of any unjust enrichment to protect and balancing the rights of both parties involved in artistic or literature creations. These ideologies on unjust enrichment, *bona-fide* possession (*bona-fide* means in good faith) are of the main features in morality. Therefore, it is evident that, in an era of absence of written laws specifically on the copyrights law, Naturalistic jurisprudence had played a key role in shaping the modern law concepts.

### IV. Core-concepts of Naturalism and its impact on Modern IPL

A theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among persons, and in individual conduct (Finnis,2011). The artistic creations were made by those who had artistic abilities to do so. As a result, people used to spend their leisure time enjoying such hard work created by others who utilized their creative minds time and energy.

On the other hand, unjust enrichment was to be avoided. Thus, the root of IPL is also focused on such principles, therefore, it could be argued that principles of IPL based on Naturalism. In these aspects, 'Common good of the society through divine morality' could be recognized as the utilitarian element in Naturalism. Therefore, it is relevant to focus on the above aspect while balancing the rights between original author/s and the other parties involved in ownership related claims.

Furthermore, the Natural Rights theory in IPL developed by John Locke argued in support of individual property rights as a natural right. Locke thinks that until labored on, objects have little human value, at one point suggesting that labor creates 99 percent of their value. (Hettinger, 1989). Locke further stated that the labour of the author

contributed to producing a work that created natural ownership over the property. In addition, the knowledge theory developed by John Locke recognizes that ideas come through sensations and emotions. In the first instance, the mind remains blank as a white paper. Hence how is it to be furnished? It is furnished through observations and reasoning gathered from experiences which increased the author's knowledge and subsequently, it enables them to deliver and make that knowledge available to others. Therefore, John Locke in his Labour and knowledge theory, recognized the natural ownership of an intangible intellectual creation which ultimately secured the rightful share in the marketplace. This argument also supports strong naturalist underpinnings on copyright ownership.

## V. RECOMMENDATIONS AND CONCLUSIONS

In comparison to ancient branches of law such as Roman Law and Naturalism, IPL is relatively new yet highly an emerging branch of modern law. On a surface observation, it could be sought as solely based on the treaty based-positivist approaches; however, this research establishes that copyright law has been strongly influenced by the Naturalism based Roman Law principles. Naturalistic approaches taken by philosophers in later stages including John Locke established this approach by certain theories such as the labour theory.

Therefore, it could be recommended that when IPL related claims should not solely seek limiting to the statute and to related common law provisions. For broader interpretations by judiciary, IPL's Naturalistic roots could also be evaluated thoroughly. Specifically, the naturalistic roots recognized by this research through roman law principles could be utilized and further elaborated through multi-disciplinary legal writings by academia who have expertise in different disciplines such as in Copyrights Law, legal philosophy or in other related areas. Further, through progressive interpretations on IPL disputes on copyrights law, judiciary could adopt creative yet utilitarian approach in resolving IPL and copyrights law related issues.

## ACKNOWLEDGEMENT

Authors thank Dr Darshana Sumanadasa, Senior Lecturer, Faculty of Law, University of Colombo.

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