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1. An introduction to pragmatism in the Roman Law of Secured Credit

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1.1 Introduction

Modern systems of security rights on the European continent and elsewhere are deeply rooted in the tradition of the Roman law of secured credit. Due to a strong path dependency, contemporary rights of pledge and hypothec in Europe seem to possesses a timeless and immutable character. However, Roman rights of pledge and hypothec did not suddenly emerge; in their entirety in the form in which they were ultimately adopted across most of Europe and as we know them. They are the outcome of a development that unfolded in the first centuries of the common era. This development reveals the principles underlying the Roman law of secured credit, the considerations legislators have made, and the interests they sought to protect.

While Roman security law came to fruition some 2000 years ago, its relevance endures, marking it as a perennially engaging topic. In the last decade, various scholars have shed light on the development of *pignus* and *hypotheca* in the early centuries of our era. In 2022, the book *Security and Credit in Roman Law: The Historical Evolution of Pignus and Hypotheca* by Professor Hendrik Verhagen was published, followed by the release of the *Handbuch des Römischen Privatrechts* in 2023, featuring a contribution on *pignus* and *hypotheca* authored by Professor Dietmar Schanbacher.

In the preceding decade, a number of Dutch legal historians have conducted research on the development of Roman security rights. This research, including doctoral theses and other publications, has yielded interesting and innovative insights.[1] The dissemination

[1] A selection of the dissertations in which security rights play a prominent role: JC Out, *Vormen van Accessoriëteit: Een Romanistische Studie over het Verschijnsel Accessoriëteit bij het Goederenrechtelijke Zekerheidsrecht* (GNI 2005); E Koops, *Vormen van Subsidiariteit: Een Historisch-Comparatistische Studie naar het Subsidiariteitsbeginsel bij Pand, Hypotheek en Borgtocht* (Boom Juridische uitgevers 2010); VJM van Hoof, *Generale Zekerheidsrechten in Rechtshistorisch Perspectief* (Wolters Kluwer 2015); ES Daalder, *De Rechtspraakverzamelingen van Julius Paulus* (Boom Juridische uitgevers 2018); AJH Smit, *Pignus Nominis: De Verpanding van Vorderingen naar Romeins Recht* (Boom Juridische uitgevers 2020); JJ van Kralingen, *De Ondeelbaarheid van het Pand- en Hypotheekrecht; Deconstructie van een Leerstuk: Een Historisch-Comparatieve Studie* (Boom Juridische uitgevers 2020); R Bobbink, *Antichresis en Pandgebruik* (Wolters Kluwer 2021); WDM Rijnenberg, *Zekerheid en Faillissement* (Wolters Kluwer 2025).

of these insights has mainly been limited to the Dutch-speaking area. We considered this a shortfall for the international discourse. We therefore invited our Dutch colleagues to contribute to a book on the theme of security rights in classical Roman law, borrowing the idea from Jan Dirk Harke's *Fazetten des Römischen Pfandrechts*, a German collection of contributions on *pignus* and *hypotheca*.[2]

A common thread and recurring theme in the studies of this book is the pragmatic nature of the Roman law of secured credit. In the evolution of *pignus* and *hypotheca* the interests of legal practice play a prominent role. It's not dogmatic or theoretical solutions that have advanced the development of the law of secured credit, but primarily practical ones. Transactional practices clearly led to the further development of *pignus* and *hypotheca*.[3] The evolution of the Roman law of secured credit was largely triggered by transactional practices, which were accommodated into the existing legal framework by the jurists and supplemented or corrected by the imperial chancery.[4] As Verhagen notes, the correction or supplementation of the results of spontaneous evolution triggered by transactional practices was often driven by the chancery's desire to impose 'certain duties upon "stronger" parties (...) or invalidating certain transactional practices (...) in order to protect structurally weaker parties.'[5] He argues that the '*ius honorarium* created the path for the evolution of Roman law from a static law for an agrarian society primarily based on land tenure and personal relationships, to a more dynamic law facilitating the free circulation of goods and the availability of credit.'[6] This interpretation of the development of *pignus* and *hypotheca* is beautifully echoed in the contributions of this book.

We will now briefly discuss the contributions of this book. Each contribution in its own way shows how legal pragmatism and transactional practices helped to shape the Roman law of secured credit.

1.2 *Pignus nominis*

As Gaius pointed out, anything that could be sold could be pledged. In case of *pignus nominis*, the pledged object was a claim held against a debtor who was bound to provide or perform something for the pledgor based on an obligation. A claim was essentially a debt owed by someone, neither a tangible thing nor a right over such a thing. Many 19th-century scholars have argued that a secured creditor had a right in rem (*ius in re aliena*) over claims just like one had a right in rem over tangible things.

2 Jan Dirk Harke, *Facetten des Römischen Pfandrechts: Studien zur Geschichte und Dogmatik des Privatrechts* (Springer-Verlag Berlin 2015).

3 cf Dietmar Schanbacher, '§ 48 Pfandrecht' in Ulrike Babusiaux and others (eds), *Handbuch des Römischen Privatrechts I* (Mohr Siebeck 2023) para 48, no 9, 1185.

4 Hendrik LE Verhagen, *Security and Credit in Roman Law: The Historical Evolution of Pignus and Hypotheca* (Oxford University Press 2022) 366.

5 ibid 2.

6 ibid 4.

In her contribution, Smit challenges the 19th-century approach to understanding *pignus nominis* as a right in rem (*ius in re*). Through a critical examination, she reevaluates the conventional perspectives on *pignus nominis*, shedding light on potential shortcomings and proposing a more nuanced understanding.

The contentious discussion stems from a specific excerpt from Gaius's Institutes (Gai. Inst. 2.12-14) in which he distinguished between corporeal and incorporeal things. He defined corporeal things as those that could be touched, in contrast to incorporeal things that were intangible and existed only *in iure*. Obligations 'however contracted' were considered incorporeal, regardless of whether or not a corporeal thing was owed. By characterising the *ius obligationis* as a *res incorporalis*, Gaius recognised the economic value represented by a claim. He predominantly used the concept of intangibles to describe the differences between tangibles and intangibles. For example, he explained that tangibles could be possessed, whereas the possession of intangibles could not. After the reception of Roman law in the Middle Ages in Europe, the *ius commune* applied legal rules regarding tangibles more frequently to intangibles due to clear advantages, such as with regard to assignment. The analogy reached its culmination in the writings of several Pandectists, who explained that it was possible to have *iura in re* over *res incorporales*, just like it was possible to have rights over *res corporales*.

Contrary to the beliefs of the Pandectists, Smit argues that Gaius's dichotomy did not concern rights. In Gaius's classical Roman law, a right was merely the result of the availability of an action: '*ubi actio, ibi ius*'. Individuals did not ask themselves whether they had a right, but rather whether there was an action available to their case. This procedural approach meant that the Romans did not need a construction in which an intangible was encumbered with another right. The Romans did not allow the pledging of a claim because it was an intangible; instead, they recognised that a claim, like many other assets, had economic value that could be used as security to obtain credit. *Pignus nominis* was not the result of an analogous application of the legal rules regarding tangibles to intangibles; it became an accepted security interest in Roman law due to the fact that an action was made available. The availability of a legal remedy was all that mattered.

The recognition of the *pignus nominis* underlines the praetor's willingness to tailor to the needs of Roman economic practice. If the pledgor defaulted on the secured claim, the pledgee could bring an action against the debtor of the encumbered claim. The praetor adapted the formula of the direct action to align with the terms of the pledge agreement. He could use a technique frequently employed in *actiones utiles*, wherein he would substitute a party from the original action with the individual to whom the *actio utilis* was being given. In doing so, the praetor ensured that the pledgee acquired precisely the tools needed to exercise his security, while simultaneously safeguarding the interests of the pledgor and the debtor of the pledged claim. The actions and exceptions provided by the praetor defined the relationship between the parties involved in the pledge agreement and the debtor of the pledged claim. They were tailored to the needs of those involved and in alignment with the economic intent behind the pledge agreement. The pragmatic approach to *pignus nominis* once again shows the adaptability of the right of pignus in Roman law as a means of securing transactions.

The theme of *pignus nominis* and the Roman line of thinking on this topic have an ever increasing significance in modern legal practice. Receivables are often the most important category of assets of an enterprise. Therefore, the ability to pledge receivables is paramount to secured financing. Against this background the pragmatic approach of the praetor sets an inspiring example to modern jurists. In shaping the possibilities of pledging receivables and defining what powers and duties such a right confers to the parties involved, the dogmatic characterisation of the right of pledge over receivables does not have to be the defining factor. It is at least equally important to take into account that the right of pledge over receivables should make receivables a suitable collateral, so its economic value can be utilised.

1.3. General hypothecs

Creditors not only receive security over receivables – they often hold security rights over the debtor's entire estate. Since Roman times the debtor not only pledges his current estate, but also all assets he may acquire in the future. Papinian noted that an agreement in which a debtor pledged all of his assets at once was valid, even with regard to future assets (Pap. D. 20.1.1 pr.). This *conventio generalis in pignore dando bonorum* is a recurring phenomenon throughout the Digest and is referred to as *generalis obligatio rerum* by Ulpian (Ulp. D. 20.1.6), a *generalis hypotheca* by Justinian (Just. C. 8.16(17).9.1) and known in modern literature by translations such as general (right of) pledge, general hypothec, *Generalpfand*, and *generaal pandrecht*. Gaius mentioned that it was standard contractual practice for Roman debtors to describe some assets specifically and state that the rest of the debtor's present and future assets (*cetera bona*) were pledged 'as if specifically pledged' (Gai. D. 20.1.15.1). This practice has raised the question why the parties made such a distinction between specifically and generally pledged assets. For a long time, it has been the prevailing view that there were few material differences between general and special rights of pledge in Roman law.

In his contribution, Van Hoof takes recent discussions on the matter into account and examines the practical functions of the general hypothec by looking at the similarities and differences between general and special hypothecs. This analysis provides insights into how creditors and debtors could tailor the hypothec agreement to suit their needs by describing assets specifically, generally, or one or more assets specialiter and the remainder of the debtor's assets generaliter.

The most restrictive form of hypothec, known as a special right of hypothec, limited the chargor significantly in managing the encumbered assets. Under this arrangement, the chargor lost the ability to liberate specially hypothecated slaves and was prohibited from transferring encumbered assets without obtaining the chargee's consent. In the event of a transfer, the secured creditor had the right to take legal action against the chargor for breach of contract, theft, and asset recovery from the third party. On the other hand, a general right of hypothec provided the chargor with increased flexibility. In this scenario, the chargor retained the freedom to release hypothecated slaves and transfer encumbered assets without requiring the chargee's permission. Depending on the terms agreed upon by the parties, the secured creditor could reclaim encumbered assets from third parties in the event of the chargor's default. Additionally, the parties might stipulate that the hypothec of cetera bona was subsidiary or conditional, becoming relevant only if the proceeds from specially hypothecated assets were insufficient to satisfy the secured debt.

The distinction between general and special rights of hypothec closely mirrors the modern distinction between floating and fixed charges. The characterization of a floating charge hinges on the question of whether the chargor can freely deal with the charged assets, whereas the legal effects of a Roman general right of hypothec predominantly depended on party autonomy and the interpretation of the hypothec agreement. The analysis of general and special rights of hypothec demonstrates that the law of secured credit was flexible, allowing ample room for party autonomy. Both special hypothec and general hypothec have their place in modern secured transactions. Financiers tend to favour a general hypothec if the debtor sells the security object as part of his business. The secured creditor then allows the debtor to dispose of the security objects in the ordinary course of business. On the other hand, if a security object's purpose is not to be sold but to remain a part of the debtor's fixed assets, the pledgee favours a special hypothec. For such fixed assets the security documents tend to contain a stipulation of non alienation or encumbrance without prior consent of the secured creditor.

1.4. Fiscal hypothecs

One special application of the general pledge is the fiscal hypothec. Under Roman law, the fiscus (tax collector) secured due tax claims by a general right of pledge over the debtor's estate. Initially, this right of pledge had to be expressly created. At a later point in history this general pledge came into being by operation of law – it became an implied right of pledge. Daalder writes about this implied general pledge. She studies at what time the implied fiscal general pledge came into existence, and how the jurist Paul dealt with cases concerning the fiscal pledge in court cases heard by emperor Septimius Severus.

A lot of modern legal systems grant implied security to the fiscus for unpaid taxes – either through a right of pledge or through priority rights. Since the fiscus is part of the government, the legislator may be induced to strengthen the fiscus's position in ways that would not be possible for regular private parties. It is often debated how far a state should go in granting priority rights to the fiscus at the expense of other creditors. In The Netherlands for example, the fiscus has a general right of priority over the debtor's entire estate. This priority has a higher rank than hypothec over certain types of movables, and the fiscus is protected against dispositions that would undo its priority. Fiscal priority rights like this have been challenged up to the European Court of Justice and the European Court of Human Rights, but to no avail. In *Gasus*[7] the ECHR ruled the Dutch fiscal priority right compatible with the first protocol to the European

7 *Gasus v The Netherlands* (1995) 20 EHRR 403.

Convention on Human Rights, and in *Krantz*[8] the European Court of Justice ruled that the Dutch fiscal priority right was compatible with European Law. However, these rulings have not silenced criticism to overextension by the fiscus. One may even wonder whether the European courts would arrive at the same answer if it had to answer the same question today.[9]

Against this background, Daalder's study shows an alternative pragmatic approach by the Roman fiscus. Paul and emperor Septimius Severus showed restraint in fiscal matters – they tried to treat the treasury in a way similar to private secured creditors, and did not wish to overextend the fiscal security. For instance, the emperor respected the limited liability of sureties laid down in the surety contract, and held that the proceeds of the sale of pledged goods should be applied in accordance with daily private law practice. Furthermore, he respected the legal status of property in the fiscal debtor's estate, as well as any dispositions concerning the property of the fiscal debtor that were completed before fiscal debts arose. If emperor deviated from regular private law at all, he would often do so at the expense of the fiscus, in favour of the interests of other stakeholders. For example, he ruled that the fiscus should refrain from executing pledges in possession of third parties as long as the fiscal debtors themselves were solvent. With this approach Septimius Severus sought to accommodate the interests of his subjects. However, the emperor did not just show restraint out of charity – it also served the emperor to live up to the expectations to live up to expectations regarding the administration of justice in fiscal cases. Judging fiscal cases in a fair and objective manner helped him to be seen as a benevolent ruler. Still, emperor Septimius Severus's pragmatic approach may still inspire legislators, judges and other jurists in finding the right balance between optimising the revenue of the treasury and respecting the interests of other stakeholders.

1.5. Real Security in the Hellenistic East

Emperors like Septimius Severus ruled over a vast empire, where Roman law applied in every corner. Many legal questions asked to Roman jurists took place in the Roman East, which had a distinctly Hellenistic legal culture. Thus, a substantial part of the Roman legal texts have a Hellenistic background. Mauer gives an overview of real security law in the Hellenistic Roman East, and analyses several Roman texts on real security law in their Hellenistic context. Understanding the Hellenistic legal culture provides a deeper understanding of these texts. For instance, a legal problem might have an obvious solution in the mind of a Roman lawyer. This same problem turns into a complex matter if

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8 Case C-69/88 *Krantz/Ontvanger der Directe Belastingen and Staat der Nederlanden* [1990] ECR I-583.

9 See for example *FNB v Commissioner*, [2002] *ZACC* 5. See about this case, among others, NL Sono, 'Re-Examining the Constitutional Approach to the Property Question since First National Bank of SA Ltd T/A Wesbank v Commissioner, South Africa Revenue Service: First National Bank of SA Ltd T/A Wesbank v Minister of Finance 2002 4 SA 768 (CC)', [2022] *Potchefstroom Elec. L.J.* 1. Criticism on the ECJ ruling was voiced by Bram Akkermans and Eveline Ramaekers, 'Free Movement of Goods and Property Law' [2023] *European Law Journal* 237.

one takes into account the perspective of the Hellenistic legal culture from which this question came. Some Roman jurists did not appreciate the complexities of legal cultures from the Roman East, resulting in an all too Roman answer which may not have been helpful to its recipient. Others, however, showed awareness of the different cultural background of the legal problem and took this into account in their response. Some even were willing to adapt aspects of Roman law to useful Hellenistic legal concepts they encountered.

Furthermore, his overview of Hellenistic secured credit practices provides valuable insights for modern lawyers. Hellenistic contracts contain multiple clauses which are still inserted in modern security documentation. For instance, when securing credit the debtor had to give a guarantee that the property he gave as collateral was unencumbered. Also, contracts forbade the debtor to alienate the security object without prior approval of the creditor. Such clauses are still used in modern practice to ensure that the secured creditor has the highest rank, and to protect him against later alienations or encumbrances by the debtor. Mauer also shows ancient methods of securing credit for a municipality: using future revenues as security.

In addition, Mauer's analysis of Roman texts with a Hellenistic reveals two legal problems that a lawyer may encounter today. The first text deals with the question what formalities parties should meet in order to create a real security right. Here, Roman law and the Hellenistic legal culture clashed. Roman law required no formalities, whereas Hellenistic culture demanded a written document, dated and signed by the contracting parties, so they could be registered in an official registry. Modern developments appear to favour the Hellenistic approach over the form-free Roman approach: an increasing number of jurisdictions requires public registration of non-possessory security rights. This approach is also endorsed by model laws. Mauer's second text deals with the question to what extent a secured creditor who has received security through fiduciary security transfer may deal with the collateral. This question is relevant to this date for every jurisdiction that recognises some form of fiduciary transfer of ownership by way of security.

Finally, Mauer's work provides inspiration for any lawyer who encounters cross-border transactions. The legal culture and way of thinking of both parties may vastly differ, but parties still have to reach a resolution. Mauer's work reflects how Roman jurists approached this dilemma when dealing with Greek parties, and how Greeks stuck to their own legal culture under Roman occupation.

1.6. *Antichresis*

One legal concept Roman jurists may have borrowed from Hellenistic legal cultures is *antichresis*, the topic of Bobbink's contribution. In general, a security right provides security to the creditor because he may sell the security object upon default and satisfy his claim from the proceeds. The right of *antichresis* gave the debtor the right to satisfy his claim by using the security object and drawing its fruits. *Antichresis* could be combined with pledge, so the creditor could either exploit the security object to satisfy his claim or to sell it, whatever resulted in higher proceeds. However, the right of *antichresis* could also exist independently, without a right of pledge. Such an independent right of *antichresis* gave the creditor the right to satisfy his claim by exploiting the security object, without a right of summary execution. *Antichresis* was mainly applied to objects that bore fruits or had a value in use, such as land, houses, cattle and slaves. These categories of goods were all of great importance to the Roman economy.

Originally, Roman law probably did not know a legal concept of *antichresis*. Bobbink suggests that an economic depression in the 3rd century AD may have made its introduction a necessity. The high number of fragments on *antichresis* dating from the 3rd century may suggest an adaptation of Roman security law to the economic demand for *antichresis* as an alternative to execution sale. *Antichresis* was particularly useful in times of economic hardship – in such times the value of these goods could drop rapidly, so the creditor would end up with security objects that were worth less than his outstanding loan. This meant that the creditor would not completely recover his loan by execution sale. *Antichresis* could then enable the creditor to gradually recover the secured debt out of the fruits of the security object. *Antichresis* is therefore a testament to the adaptability of Roman law to changing circumstances. Perhaps it also shows that Roman jurists were prepared to look to other legal systems for inspiration in solving a legal problem.

Exploiting a security object, in particular real estate, is still a desirable alternative to execution sale in modern times. This is reflected in the private law of many jurisdictions, as well as in international treaties and model laws. Modern variants of *antichresis* have been recognised, among others, in England[10], Québec[11], South Africa[12], Germany[13], The Netherlands[14] and Belgium.[15] Furthermore, under the Convention on International Interests on Mobile Equipment the mortgagee of an aircraft may take possession or control of the aircraft and grant a lease of it.[16] In addition Drobnig & Böger recognised the secured creditor's rights to collect the fruits of a security object and to lease the security object as common principles of European Proprietary Security law in movable assets.[17] Lastly, the *UNCITRAL legislative guide on secured transactions* recommends lease as a method of execution.[18]

10 Law of Property Act 1925, s 99.

11 Code civil du Québec, art 2660 in conjunction with art 2737.

12 See for instance A Titus, 'The Different Permutations of CSARS v Brummeria: Was It Something Other than an Interest Free Loan?' [2012] SALJ 236; R Brits, *Real Security Law* (Juta 2016); *ABSA v Bisnath* [2008] ZASCA 23 (SCA); *Brummeria* 2007 (6) SA 601 (SCA).

13 Gesetz über die Zwangsversteigerung und die Zwangsverwaltung, para 146ff; H Haarmeyer and U Hintzen, *Handbuch zur Zwangsverwaltung* (CH Beck 2012); AK Christ, 'Zwangsverwaltung' in R Hock and others (eds), *Immobiliarvollstreckung* (Deutscher Anwaltsverlag 2018) 309-90.

14 BW, art 3:267.

15 Pandwet, art 51.

16 CIME, art 8.

17 Ulrich Drobnig and Ole Böger, *Proprietary Security in Movable Assets*, vol XI PEL Prop Sec (Sellier European Law Publishers 2015), 5:208, 655-59 and 7:207, 736-39.

18 UNCITRAL legislative guide on secured transactions 2010, 312, recommendation 141(b).

Modern jurists encounter the same legal problems concerning *antichresis* as Roman jurists did. What powers does *antichresis* confer to the creditor? What are the functions of *antichresis*? Does the creditor who exercises his rights of *antichresis* have a duty to maximise proceeds? The way Roman jurists solved these problems may still inspire us almost two thousand years later.

1.7. Accessory nature of *pignus* and *hypotheca*

As said, *antichresis* allowed the creditor to use and draw the fruits of an object. The rights to use and draw fruits are generally categorised as rights of enjoyment. The nature of these rights changed because of their connection to the secured debt. In modern terminology *antichresis*, and in fact the right of pledge as a whole, was an accessory (ancillary, dependent) right. The whole life of the right of pledge – from its inception to its end – would be determined by the existence of the secured debt. In his contribution, Verhagen investigates the concept of accessoriness and provides a comprehensive review of this concept. He argues that it is a useful concept in analysing and characterising the Roman right of pledge despite the fact that the Roman jurists never articulated a strict principle of accessoriness.

The accessory nature of *pignus* and *hypotheca* manifests itself, first and foremost, in that the right of pledge would come into existence as an actionable real right only if there was a secured debt. The existence of a secured debt was a requirement in the *formula* of the *actio Serviana* (*propter pecuniam debitam*). The other main feature of the accessory nature of the right of pledge is that once the secured debt had been paid or 'satisfaction' had been given the *actio Serviana* could no longer be successfully instituted: the right of pledge would effectively cease to exist. It all depended on whether or not the relevant events were within the scope of the 'discharge-clause' included in the formula of the *actio Serviana*. In addition, the accessory nature of the right of pledge is expressed in the requirement that it could only be granted to the creditor of the secured debt. The classical jurists did not systematically use the term 'accessory' (or derivations thereof) in order to comprehensively refer to all these legal consequences. It could even be questioned whether they thought in terms of the principle of 'accessoriness' at all. Nevertheless, as long as one realises that the Roman jurists never articulated a strict principle of accessoriness, one can use this concept in order to analyse and characterise the Roman right of pledge.

As explored through the lens of the formula of the *actio Serviana*, Verhagen's analysis reveals the nuanced sub-rules developed by Roman jurists regarding the intricate relationship between the origin, continuation and termination of the rights of *pignus* and *hypotheca* and the debts they secured. These sub-rules collectively reflect the principle of accessoriness. While the classical Roman legal framework did not explicitly endorse a strict accessoriness principle, the existence of the secured debt often correlated with the existence of the pledge. Exceptions did, however, exist. Notably, the termination of a pledge could occur independently of the ongoing existence of the secured debt, particularly when alternative security, such as formal guarantees, was provided. The discharge-clause in the *actio Serviana* formula played a pivotal role, expanding over time through extensive interpretations of '*solutio*' and '*satisfactio*'. Alternative arrangements aimed at discharging the debtor or satisfying the creditor could lead to pledge termination, sometimes with risks, especially in cases of novation. Roman jurists, aware of these complexities, found inventive solutions to mitigate risks. Certain situations, however, such as the assignment of secured claims through active novation, posed challenges for efficient resolution within the Roman legal system.

The Roman rules on the relationship between *pignus* and *hypotheca* and the debts they secure extend to modern legal systems. Roman law may inspire modern jurists to not apply the principle of accessoriness in a rigid or strict manner, but to take the interests of the parties involved into account. For instance, the creation of a right of pledge for future and contingent debts is still widely accepted and is critical to providing security for overdraft facilities. Furthermore, the pledgee is still protected against junior creditors if he acquires ownership of the pledged object, causing the extinction of the right of pledge. A new application of the principle of accessoriness are the (contractual or legal) duty of the pledgee to release security in the event of overcollateralization.

1.8. Concluding remarks

Contractual practices can initiate a process of legal evolution, ultimately resulting in the creation of legal rules. Understanding this dynamic across time is vital for analysing existing legal frameworks and predicting future legal developments. The evolution of *pignus* and *hypotheca* from their pragmatic origins in Roman private law to their contemporary status as a cornerstone of legal systems worldwide reflects a fascinating journey. Rooted in the practical needs of ancient Roman society, property law was initially shaped by pragmatic considerations and the exigencies of daily life. However, despite the pragmatic origins of Roman property law and security rights, their reception into modern legal systems often led to their perception as highly dogmatic and less practical. As property law further developed in the nineteenth and twentieth century, property law evolved into a complex and highly structured domain, characterised by intricate rules and principles. Today, legal scholars often approach property law and security rights with a dogmatic lens, meticulously analysing their doctrines and concepts within a systematic framework. The contrast between their pragmatic beginnings and their contemporary dogmatic interpretation underscores the dynamic nature of legal evolution. This awareness prompts us to recognise that modern thinking about property law is often significantly more dogmatic than the original Roman approach. With this insight, we should take contractual practices into account and feel empowered to prioritise practical considerations over certain dogmatic aspects in reforming the law of secured credit, allowing us to make independent choices in this matter. After all, the Romans themselves would likely have done the same.