

## ECONOMIC UNDERSTANDING OF THE PROPERTY RIGHT WITHIN STATE ADMINISTRATION OF FOREIGN ECONOMIC ACTIVITY

*Purpose.* The article is devoted to researching the theoretical economic grounds and understanding of the property right in different directions and conditions in order to use the obtained results for further research, in particular, within the area of the state regulation of foreign economic activity.

*Methods.* The main scientific methods are widely used in the research. Among them the methods of analysis and synthesis, logical search, abstraction and concretization, analogies, modeling are mostly used.

*Results.* The primary essence, key attributes, typical peculiarities and constituent elements of the property right are researched. Herewith, the corresponding concepts of the property itself and the property relations are analyzed and studied in details.

*By that means, the basis and reasons for emergence of the property rights are followed by and shown both in theory and in real practical situations.*

*Use of the classical Honoré's theory of ownership in modern economic life is examined and exemplified.*

*Particular attention is paid to applying the above-mentioned concepts connected with the property right theory into the area of interaction between the state and the subjects of the foreign economic activity.*

*Accordingly, some specific features of the concept of property right and concept of property relations are demonstrated in terms of the state administration of foreign economic activity.*

*Conclusions.* The modern understanding of the concept of property and the concept of property rights is based on a significant theoretically reasoned foundation, that contains numerous results of research conducted.

*The most important aspects regarding the economic perception and use of the concept of property rights should relate to: characteristics inherent in the property right; opportunities that provide the property right; and a set of specific elements of the property right.*

*When using the concept of full property right, it is advisable to take into account the limits and degrees of access to specific property objects and property rights to them.*

*In area of the state regulation of foreign economic activity it's not necessary to use the detailed bunch of the property right elements but paying attention mostly to the standard set, i.e. controlling the rights of possession, use and disposal.*

**Key words:** ownership; property rights; full property right; attributes and elements of the property right; applying of Honoré's theory of ownership; state regulation of foreign economic activity.

**JEL Classification:** D23, F00, F52, G28, H10, K11, O34, P14, P26, P48.

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**Introduction.** The property issue is one of the most important aspects for social and individual life in modern civilized conditions. The world experience of the historical development of mankind demonstrates, in particular, that private property has a decisive influence on the efficiency of organization of business processes, which is a kind of 'engine' for any market economy, as well as motivation of useful human activity.

It should be emphasized that modern economic theory allows us to consider property as a complex system of rights. It involves complexity of the modern property systems, based on a diverse combination of rights of various subjects, as well as the diversity and complexity of real forms of realization of such rights. Therefore, the concept of ownership is complex and ambiguous and can be considered and interpreted from different angles depending on specific situations and directions of research.

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It should be noted that certain aspects related to the theoretical study of the concept of relations and property rights were highlighted by many scientists, for instance, A. A. Alchian, L. C. Becker, H. Demsetz, R. I. Kapelyushnikov, A. M. Honoré, S. Pejovich, J. Waldron, E. G. Furuboth and others. The issue of property rights is especially important in the area of intersection of private and state interests, which do not always coincide in real life, and therefore can have a rather drastic effect on the final result of economic activity. In this direction, as a separate group of issues the various aspects of property rights in terms of state regulation of international economic activity can be considered, but receive little attention in practice, unfortunately. Taking this into account, the attempt of a detailed analysis of the application of the property rights theory within the mentioned limits of state administration, raised in this article, has a topical significance in modern practice of economic activity.

The main task of current paper is to determine the theoretical foundations for the economic understanding of the concept of ownership itself, as well as the property rights and relations in order to use the obtained results for further research of the possibilities to influence and manage the transformation of the system of property rights, in particular, within the state regulation of foreign economic activity.

To complete the assigned task, the main scientific methods are widely used in the current research. Among the most important ones there are the methods of analysis and synthesis, logical search, abstraction and concretization, analogies, modeling, etc.

**The essence and reasons for emergence of the property rights.** Among researchers and scientists in modern literature, there are many options for defining the 'property' term, which vary depending on the directions, specifics and goals of the relevant research.

The modern encyclopedic understanding of property (Hrytsenko, 2005) is based on the fact that it is a historically determined social form of distribution (appropriation) of material goods, which expresses social and industrial relations between people and classes in the process of social production, distribution, exchange and consumption. In the economic dictionary, property is understood as an economic category that reflects the belonging of values to one or more persons with the corresponding rights to own, dispose and use them (Zavads'kyy, 2006, P. 48).

Based on this, ownership is actually related to social commodity and property relations between subjects. In other words, according to this approach, property is a set of relations between parties regarding the appropriation of conditions and results of production, i.e. material and spiritual things or values.

Herewith, it is believed that for the first time the most comprehensive description of different aspects of property rights was provided by American economists (Furuboth, 1988; Pejovich, 1990). Western scientific opinion when considering the essence of this concept is inclined to the fact that property is a general term for the rules that regulate the level of access and control over various material and non-material resources (Waldron, 2004), which are limited with a few alternatives due to the scarcity (rarity) of these resources (Pejovich, 1990). These rules are the subject of controversy both as to their general form and as to their specific application. At the same time, separate attention is drawn to the fact that under normal conditions subjects retain these rights regardless of how they dispose them (Breakey, 2012). For example, even if a person wastes his own life, he retains these rights, because these are his own rights, and not those of someone else, society, community, tribe or ethnic group.

**Analysis of the economic theory of property.** It should be noted that the scientific developments and results obtained by various scientists and researchers over the years were laid in the foundation for the modern economic theory of property. As a result, a generalized interpretation of the concept of property rights was created.

Nowadays, the economic theory of property understands the property rights as sanctioned behavioral relations between people that arise in connection with the existence of goods and concern their use (Kapelyushnikov, 1990). These relations determine the norms of behavior regarding goods that any person must comply in his interactions with other people or take the costs of not complying them. The term 'goods' is used in this case to denote everything that brings utility or pleasure to a person.

Based on the fact that the main ideas of the modern economic theory of property are concentrated in this definition, it is necessary to consider more carefully a number of essential points present in this interpretation in order to understand better the existing trends and views.

First, given that property is not the material thing or resource itself, but a share of the rights to use it, the term 'property right' is used to emphasize this nuance and to prevent misinterpretation of the meaning of the term 'property'. A similar opinion is followed by modern Ukrainian scientists (Petrunia, 2011, p.

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63), believing that property (or ownership) is the fixing of the right to control economic resources and life benefits for certain subjects.

Second, taking into account the fact that goods are understood as everything that brings utility or pleasure, property rights extend to both tangible and intangible objects. At the same time, as intangible ones there could be thought, in particular: any intellectual property objects, for example, brand names, trademarks, works of art, inventions (Furuboth, 1988); information space, for example, radio communication frequencies (Alchian, 1973, p. 18); or even inalienable personal freedoms (Kapelyushnikov, 2004). Nevertheless, the traditional object of ownership is still considered to be a material object.

Third, property rights are accepted as sanctioned ones, that is, permitted or approved (Kim, 2005, p. 226). At the same time, there is no doubt that the state must perform the formal authorization function, ensuring certain rights by law and controlling their compliance with the help of its own system of executive bodies, including the field of international economic activity (Oleksiienko, 2012, p. 42). However, it should be agreed that property rights can be fixed and protected not only by the power of the state, but also by the authority of traditions, unwritten customs, moral norms, religious commandments (Kapelyushnikov, 2004), etc.

Fourth, under the words ‘behavioral relations’ it is necessary to clearly understand the relations between people precisely, or socio-economic subjects, arising around the realization of property rights as to certain goods and resources. Such behavior authorizes people to have the right to use resources within the limits of permissibility, based on the fact that these rights are always limited, most often by the prohibition of certain actions (Alchian, 1973, pp. 16-17). Obviously, the limitation applies not only to property rights, but also to property objects in the form of certain resources, benefits, assets and so on. This can be explained by the fact that any resources in the world are exhaustible, and therefore limited in one way or another. Moreover, the rarer they are, or the smaller their number, the greater the effort of certain subjects to own and dispose them. Therefore, property rights as sanctioned behavioral relations actually arise between different subjects, primarily around more or less limited resources, and fix the opportunities regarding the use of these property objects.

Fifth, according to the theory, relations regarding the possession and use of certain goods directly depend on the existing norms of behavior. It is clear that these norms of behavior of subjects regarding the realization of property rights provide both main possible options: compliance and violation the established rules and norms (Oleksiienko, 2013, p. 44). There’s no doubt, this essential point is particularly important in the scope of researching the issue of the state regulation of property relations and rights, for instance, as to situations related to possible violations of established customs rules and smuggling, as a result of which the property rights of subjects can be transformed and become limited.

In the historical genesis, as a rule, two main traditions in the understanding of property rights are distinguished: continental, and Anglo-Saxon (Kapelyushnikov, 2004). The continental tradition, in contrast to the Anglo-Saxon one, imagined property rights as something single and indivisible. At the same time, it must be emphasized that it is the Anglo-Saxon tradition that currently prevails and is taken as a basis at the international level, since, as experts note, its inherent flexibility and plasticity are more correspondent with the complex economic, social and political realities of modern society. Ownership or property right is defined in it as a set of permissible economic decisions, or, in the full accordance with this tradition, as a bundle of partial permits.

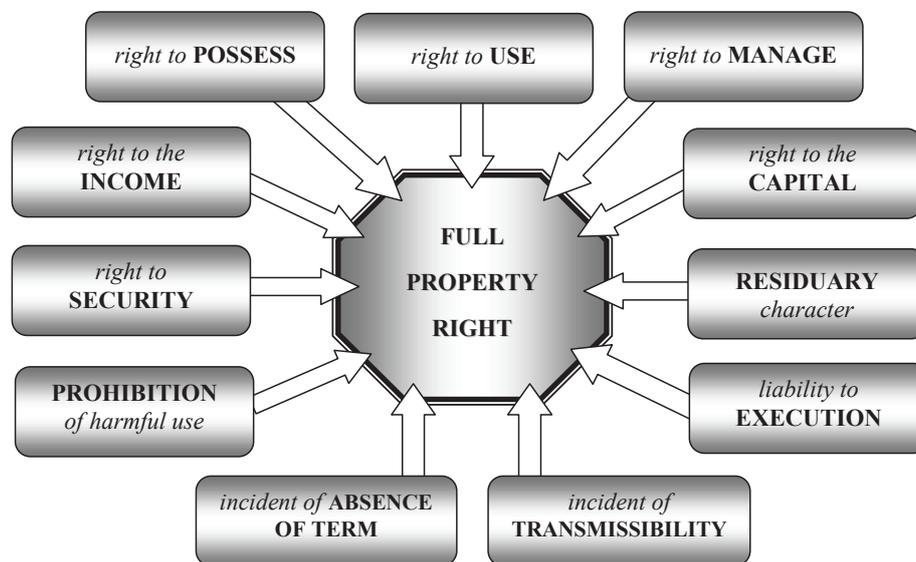
Therefore, from the understanding of property rights as a set of permissible economic decisions, it follows that any act of interaction between different subjects is nothing more than the interaction of bundles of partial permits. This statement can be considered the basis for the entire economic analysis of property rights, including the issue of the state regulation of property relations in the process of operations by the subjects of foreign economic activity regarding the movement of property objects across the customs border.

At the same time, it is important to emphasize that in order to define and analyze individual options for the existence and change of property rights, it is absolutely necessary to understand what elements are included in the entire property right. To do that properly we should single out the relevant characteristic constituent parts, which in their aggregate state make it possible to undoubtedly and fully identify the property right as such.

**Honoré’s theory of ownership.** Irreplaceable in the abovementioned intention there is the scientific work of the English researcher Anthony M. Honoré, who proposed an extended definition for understanding

the system of property rights, having highlighted 11 main elements (Honoré, 1961) that, in their essence and complex, make up a complete set of rights. In his opinion, full ownership consists of the following elements shown in the Figure 1.

Herewith, he explained all the proposed elements from the side of their possible application in usual practice of the real life, without paying particular attention to defining the specific economic grounds.



**Fig. 1. Elements of full ownership (according to A.M. Honoré).**

As a result, Honoré's vision found its realization in the following components of the ownership:

- the right to possess (some exclusive physical control over the property or the right to its exclusive use);
- the right to use (personal use of property, if it does not include the following two rights);
- the right to manage (the right to decide how and by whom the thing owned can be used);
- the right to the income (from the mentioned applying of the right to personal use of the property and permission to other persons to use it);
- the right to the capital (as to capital cost or capital value, i.e. the right to alienate, consume, spend, change or destroy property);
- the right to security (some guarantee against expropriation, i.e. forced deprivation of property);
- the incident of transmissibility (in particular, the right of inheritance or transfer by testament);
- the incident of absence of term (the right to perpetuity, without ownership terms);
- the prohibition of harmful use (the duty to prevent harm, i.e. the duty to maintain and prevent the use of property associated with the detriment of others; or the duty to prohibit harmful use);
- the liability to execution (the right to liability in the form of enforcement, which provides the possibility of seizing property to pay the debt);
- the residuary character (the right to a residual nature, that is, the existence of rules and procedures that ensure the restoration of the owner's violated rights).

We may believe that by now this expanded definition of property rights has actually become one of the classical ones.

It is important to emphasize that in order to consider ownership of a certain thing as complete one, according to Honoré's theory, the subject must possess most (but not necessarily all) of the above-mentioned elements in relation to the given thing (Journal of Medical Ethics, 2007). But it is obvious that these individual deeds can have by themselves some different levels of importance and impact on the possibility of property right to be sufficient to be called complete. Therefore, in our opinion, when determining the completeness and effectiveness of the property right for a specific object, it is advisable to approach the understanding of individual constituent elements of this right in a differentiated manner, highlighting the key and the most important of them.

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There is no doubt that combinations with different applying of the rights listed above can be numerous and varied. However, according to Laurence Becker, not all of these combinations deserve the title of the property right. Any combination involving at least one of the first five Honoré's elements in a connection that could constitute ownership may be recognized as such property right (Becker, 1977). At the same time, the researcher considers the right for the capital value (or capital cost) of the resource to be the most important and fundamental. All other components of the property right, in his opinion, are derived from the right for capital value, that is, they are some partial examples of protection, expansion, limitation or development of this basic deed. As we understand, that position can be based on the fact that the right for capital actually allows economic subjects at their own discretion not only to change, destroy and use the resources belonging to them in the process of production and consumption, not only to transfer or lease them, but also to receive their full value upon alienation in the deed of exchange.

**Property rights in terms of state regulation of international economic activity.** Based on the conducted research and the given arguments, it becomes an obvious fact that not all of the above listed deeds connected with ownership are equally relevant for the field of foreign economy. In such a situation, there is an urgent need to create, adapt and use a specific system of full property right for this area of economic activity.

We propose the following example of the interaction of various elements within the area of full property right in the plane of international economic activity (as shown in Fig. 2).

For a holistic understanding of the potential opportunities for access to full property right, the particular importance and primary value obtains the defining of the most important characteristics that extend to the concept of property rights and property relations.

In the economic theory of property rights, in relation to the concept of property, in particular, such basic qualities as exclusivity, alienability, divisibility and extensibility are fixed (Kapelyushnikov, 2004). Exclusivity means that everyone except the owner is excluded from accessing the resource. Alienability implies the absence of restrictions on free sale and transfer of powers. Divisibility allows to split the property right into separate deeds and to form new combinations from them. Extensibility refers to the spreading of ownership over all existing resources both current and future.

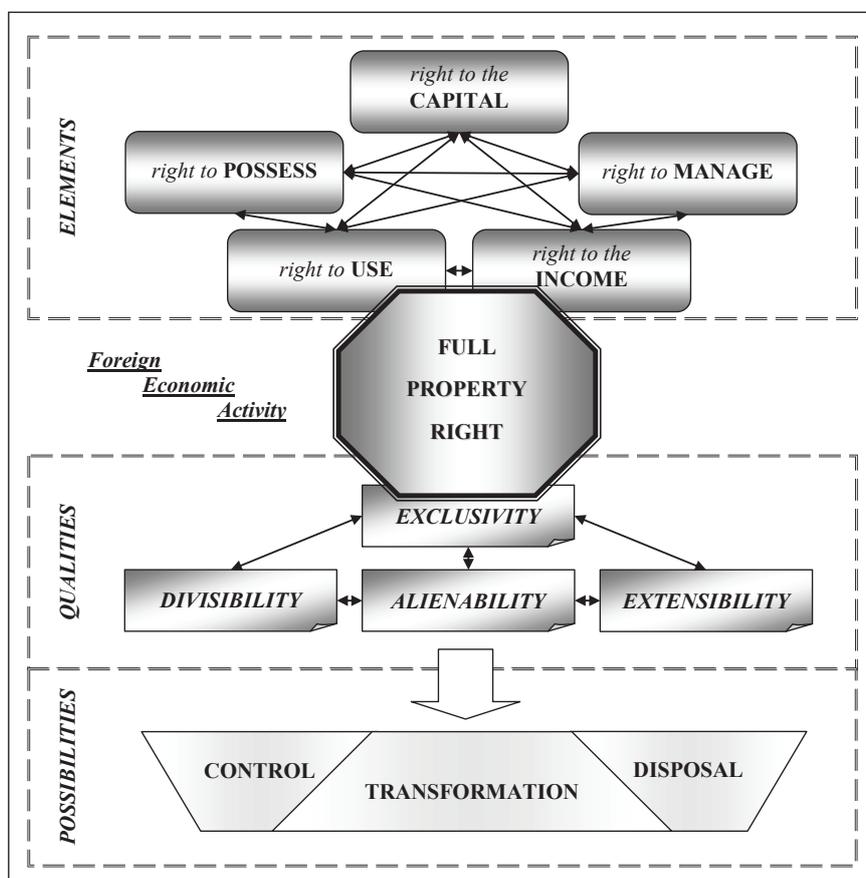
Having analyzed all these characteristics, we tend to conclude that the key peculiarity of the property rights is their exclusivity, i.e. specific privacy. This attribute actually serves as the primary basis for all other characteristics of ownership which can be considered as derived ones from it and each of which contains a part of exclusivity. After all, the essence of all other properties leads down to some of the most important cases of the practical implementation of the exclusivity concept.

At the same time, all these attributes of the property right also arise in the process of state regulation of foreign economic activity, which takes place during the customs control. In particular, the owner of goods who intends to cross the state border, using the exclusivity and alienability granted to him by the right of ownership, at his discretion, may make a decision either to move the given object with his own hands, or to transfer this right and obligation to another person, or to actually sell the property to a foreign entity even before it crosses the border, in accordance with the concluded agreement (Oleksienko, 2012, p. 51). In the next stages during the execution of customs control, some elements of the property right, due to divisibility, can be freely differentiated and temporarily or permanently belong to different subjects. And along that period, the extensibility characteristic guarantees the relevant property right for this object and for future results from its use, etc.

Apart from that, in our opinion, a complete understanding of the right for capital value in the field of the foreign economic activity really distinguishes this element from all others. That's because in the above-mentioned understanding, the right for capital theoretically combines separate parts of the right of possession, use, management and income from the property. Therefore, this deed in the system of full property right should be considered as the key one, on an equal level with the right of possession. It actually determines the possibility of independent decision-making regarding the use of the property object, i.e. it guarantees a sufficient degree of privacy within certain authorized limits of the subject's actions. Accordingly, it can be considered that this privacy attribute is one of the main criteria that determine the essence of ownership, as well as the rights and relationships surrounding it.

Thus, it should be noted separately that it's not by chance that the starting point in the development of the theory of property rights was the appeal to the 'pure' regime of private property (Kapelyushnikov, 2004). Although, despite the selection of this particular form of ownership, the principled approach to the property right as a set of partial deeds remained the same. But, when defining the right of private

property, economists usually limit themselves with a shorter list of its constituent elements, operating with the rights of possession, use and disposal (Furuboth, 1988), which essentially represent a typical set of property rights. Therefore, such a list can be considered as standard both for the theory of property rights and for the practice of state regulation of international economic activity.

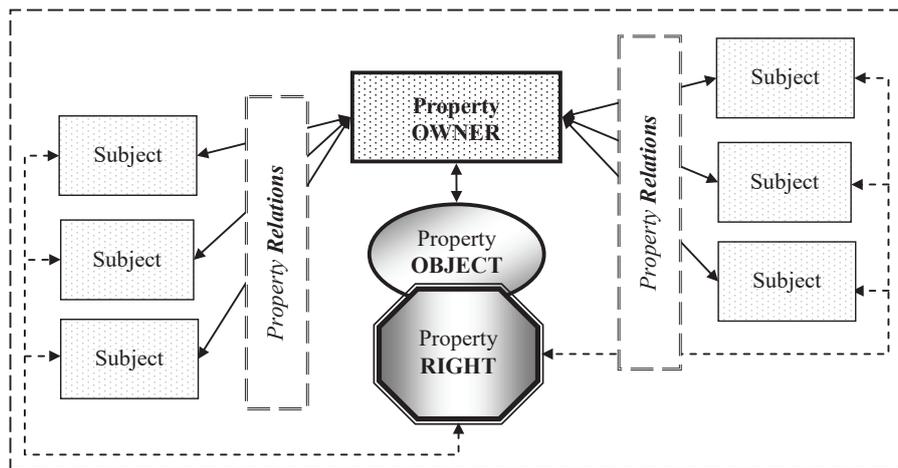


**Fig. 2. The interconnection between the main components of full property right in the field of foreign economic activity.**

**Property relations in the area of state regulation of foreign economic activity.** All variations of belonging, interaction and transfer of individual elements of property rights in certain situations to certain specific subjects, in our opinion, can be considered as appropriate property relations. At the same time, it is logical to consider the concept of property relations as secondary, derived from the concept of property rights and the concept of ownership, in general (Oleksiienko, 2013, p. 47).

This can be explained that, in fact, relations as such reflect certain connections between subjects (at least two) regarding the realization of relevant real and potential opportunities. Transferring this statement to the concept of ownership in the field of foreign economic activity, we can note that in this case, property relations will represent a kind of network of interconnections between various subjects, within which their opportunities to make certain decisions as to certain property objects can be realized (Fig. 3). Herewith, these opportunities are the rights that individual subjects have regarding to the relevant objects. In other words, we may consider that the property rights are those opportunities that allow the owner to make the desired decisions within the boundaries defined by the border of these rights.

At the same time, the objects of property relations in theory mean a set of material and immaterial goods that can be appropriated or alienated (Pejovich, 1990). They include, in particular, the production facilities of branches of the national economy, real estate, natural resources, items of personal consumption and household use, money, securities, precious metals, labor, satellites of the Earth, scientific inventions, works of art, etc. In turn, the subjects of property relations represent specific carriers of these interconnections. They can be some private persons and legal entities, the state in the form of its governing bodies and local self-government authorities, the union of states or all the states of the world.



**Fig. 3. Simplified scheme of interaction between subjects within property relations.**

Concerning the foreign economic activity, it is known, that it's based on material processes appearing along with exchange of certain objects, primarily goods and the results of industrial, scientific and technical cooperation. Herewith, these same objects can be considered as the corresponding objects of property right for the participants of the foreign economy, since in the foreign economic space the concept of ownership is actually equated with the concept of goods, and goods are understood as any products, services, works, intellectual property rights and other immaterial rights intended for sale (Oleksiienko, 2012, p. 39). Of course, in addition to manufactured products, any means of production, vehicles, cash, shares, other securities, as well as other consumer and production property can be also considered as the property objects in the international economy. At the same time, the possibility for sale or alienation refers to the very concept of the property right.

An important moment of the real existence of the property right is the determination of the limits and degree of use of a certain resource as an object of ownership. In such a case, if there is a hundred percent probability (equal to one) that the owner's choice about how a particular right should be applied actually affects the decision-making process as for its real use, then we can say the owner has that particular right. For example, a person may have the right to pick apples from a tree, but not to cut the tree (Alchian, 1973, p. 17). That is, it is possible to speak of absolute property right only in the case when the owner himself determines how his right will actually be fulfilled. Herewith, it is important to take into account the possible relationships surrounding this right, which may affect its completeness.

From this point of view, in the most general form, the property relations could be defined as a system of exclusions from access to material and non-material resources actually operating in society. At the same time, access should mean all the multitude of possible solutions regarding the resource, including those not necessarily related only to the physical impact on it (Kapelyushnikov, 1990). In other words, taking into account the number and variety of potential decisions regarding the realization of property rights, we can say that in the process and in the result of the analysis of property relations, some kind of matrix of all possible interactions can be formed, in particular, between those subjects who do not have access to this or that resource or property, and those whom it is open for.

Accordingly, it can be assumed that free access to a resource or property, when there are no restrictions and prohibitions regarding access to this object, actually means that anyone can use this resource and make any decisions at his own discretion as for it. In this case, it can be declared that this resource does not belong to anyone. But if a specific owner of this resource does not exist in principle, then it can be stated that this resource can theoretically belong to anyone who wants to own it, and therefore it can belong to everybody. In turn, 'belonging to everybody' in practice comes down to the use of resources and benefits that are unlimited, available and sufficient for everyone, in particular, the absorption of oxygen, applying the solar energy and wind power, etc. It is fair to believe that such resources do not need to be distributed among subjects, since they are enough for everybody. Therefore, there is no need to establish any property rights and control over them.

Thus, based on the possible options within the matrix of access to resources, the main element for determining the need to secure the property rights should be considered the criterion of real sufficiency of a given resource. It is then the state authorities should weigh the dependence of degree of rarity of a certain resource and the establishment of property rights for it.

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**Conclusions.** The modern understandings of the concept of property and the concept of property rights are based on a significant theoretically reasoned foundation, that contains numerous results of grounded research conducted by many scientists and explorers. Consequently, having started from the point of legal meaning, now those concepts are spread to different branches and scopes, including the economic one.

The most important aspects regarding the economic perception and use of the concept of property rights should relate to: characteristics inherent in the property right; opportunities that provide the property right; and a set of specific elements of the property right, which may differ depending on the existing conditions of its application in practice.

All the main aspects which are typical for the theoretical and economic understanding of property rights, as a result of appropriate adjustments and clarifications, can be applied for researching the possibilities to impact the system of property rights under the state regulation of foreign economic activity. Herewith, in this area it's not necessary to use the detailed bunch of the property right elements but paying attention mostly to the standard set, i.e. controlling the rights of possession, use and disposal.

When using the concept of full property right, it is advisable to take into account the limits and degrees of access to specific property objects and property rights to them.

That way or another, the property right should provide the owner with a complete and comprehensive bundle of deeds that are available in a clearly defined space and protected from unwanted influence. Entering into property relations within such a space, the subject-owner must be independent of outside influence when making his own decisions and obtaining appropriate results from their implementation. Only in this case it is possible to assert the reality and effectiveness of the property right.

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## ЕКОНОМІЧНЕ РОЗУМІННЯ ПРАВА ВЛАСНОСТІ ПРИ ДЕРЖАВНОМУ УПРАВЛІННІ ЗОВНІШНЬОЕКОНОМІЧНОЮ ДІЯЛЬНІСТЮ

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**Мета.** Стаття присвячена дослідженню теоретичних економічних засад та розуміння права власності в різних напрямках та умовах з метою використання отриманих результатів для подальших досліджень, зокрема, у сфері державного регулювання зовнішньоекономічної діяльності.

**Методи.** У проведеному дослідженні широко використовуються основні наукові методи. Серед них переважно застосовуються такі методи як: аналіз та синтез, логічний пошук, абстрагування та конкретизація, аналогія, моделювання, тощо.

**Результати.** У роботі досліджено первинну сутність, основні ознаки, типові особливості та складові елементи права власності. При цьому детально аналізуються та досліджуються відповідні поняття власності, як такої, та поняття відносин власності.

У тому числі, аналізуються основи і причини виникнення права власності, і доводиться їхнє застосування як в теорії, так і в реальних практичних ситуаціях.

Розглянуто та наведено приклади використання класичної теорії власності Оноре в сучасному економічному житті.

Особливу увагу приділено застосуванню вищезазначених понять, пов'язаних із теорією права власності, у сфері взаємодії держави та суб'єктів зовнішньоекономічної діяльності.

Відповідно, продемонстровано деякі особливості поняття права власності та поняття відносин власності з точки зору державного управління зовнішньоекономічною діяльністю.

**Висновки.** Сучасне розуміння поняття власності та поняття права власності базується на значній теоретично обґрунтованій базі, яка містить численні результати проведених досліджень.

Найважливіші аспекти щодо економічного сприйняття й використання концепції прав власності мають стосуватися: характеристик, притаманних праву власності; можливостей, які забезпечує право власності; та сукупності конкретних елементів права власності.

Використовуючи поняття повного права власності, доцільно враховувати межі та ступені доступу до конкретних об'єктів власності та майнових прав на них.

У сфері державного регулювання зовнішньоекономічної діяльності не обов'язково використовувати деталізований пакет елементів права власності, запропонований свого часу Оноре, а звертати увагу здебільшого на стандартний набір, тобто здійснювати контроль за правами володіння, користування та розпорядження.

**Ключові слова:** власність; права власності; повне право власності; ознаки та елементи права власності; застосування теорії власності Оноре; державне регулювання зовнішньоекономічної діяльності.