**STUDIA PRAWNICZE KUL**
4 (104) 2025

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The long-awaited monograph by Joanna Kulawiak-Cyrankowska, entitled *Utilitas in Roman Jurists' Legal Interpretation*, has just been published by the renowned Franz Steiner Verlag as volume 88 in the series *Potsdamer altertumswissenschaftliche Beiträge* (PawB), since 1999 has been devoted to broadly conceived studies of antiquity.

Anyone who is familiar with the author's scholarly work will easily recognise that the book under review is the English-language version of her doctoral dissertation, which she successfully defended under the title: *Iusti prope mater et aequi. Utilitas a interpretacja prawa rzymskich jurystów* (Łódź 2022).[1] The original title of the dissertation (in Polish, as edited) already conveyed a certain message and revealed one of the research goals the young Romanist set for herself: to determine whether Horace was indeed right in calling *utilitas* "the mother of what is *iustum et aequum*"? (p. 11). The author deserves immediate praise for the idea of publishing her doctoral dissertation in this form, i.e. in the language of international scholarship. For years, the desirability of publishing in languages that allow a wider audience, including

[1] The author's doctoral dissertation was prepared at the Department of Roman Law under the supervision of Prof. Dr. habil. Anna Pikulska-Radomska and assistant supervisor Dr. Przemysław Stanisław Kubiak.

ISSN: 1897-7146; eISSN: 2719-4264;
https://doi.org/10.31743/sp19117

those abroad, to become acquainted with the many valuable works of Polish scholars of Roman law has been rightly emphasised. Such a practice, in turn, allows them to build a strong position in the international academic community.

In Joanna Kulawiak-Cyrankowska's book, Roman *utilitas* has acquired a new, perhaps even multidimensional, character written reliably and with undoubted expertise in the subject. This characteristic, it should be added, departs quite significantly from associations with Ulpian's well-known dichotomy of dividing law into *ius privatum* and *ius publicum* according to the criterion of interest (benefit). The work, of course, confirms the prevailing view in scholarship that *utilitas* appears as an evaluative and differentiating criterion in the argumentation of Roman jurisprudence. Its additional undeniable merit, however, is its comprehensive approach to the nuanced matter under examination, allowing for the discernment of the relationship between *utilitas* and other ethical values attributed to Roman law.

Moreover, the analysis presented in the book argues that a correct understanding of the meaning of *utilitas* in Roman law requires a combination of juridical perspectives (as expressed by Roman jurists' arguments), philosophical, and rhetorical perspectives. The author is aware that she has entered difficult terrain by undertaking research on a legal category that requires excellent erudition and competence, even to engage with the extensive literature on *utilitas*. The list of this literature, including works by eminent authorities such as H. Ankum, U. Leptien, M. Kaser, M. Navarra, T. Giaro, E. Seidl, W. Selb, T. Honoré, J. Gaudemet, A. Watson, and D. Nörr, underscores the importance of the subject itself, but also demonstrates the author's intellectual courage to revisit this important topic.

The monograph has a clear, uncomplicated structure. It consists of three distinct chapters, each concluding with a summary. The first chapter addresses essential terminological and axiological issues. From the outset, it states that although *utilitas* is an ambiguous concept, it should primarily engage associations with ethical values. After a brief reference to non-legal sources – Cicero and Horace – the narrative quickly moves on to Roman law, situating the concept of *utilitas* among the timeless, enduring values of Roman jurisprudence. The second chapter, dealing with *utilitas* as a "guideline for the interpretation of law," attempts to present the legal category in question against the background of "general principles of legal interpretation." This provides, firstly, an opportunity to explore the meaning that should be assigned to *utilitas* within Ulpian's textbook exposition, in which the jurist lists *utilitas* as a criterion for dividing law (D.1.1.1.2). The author rightly believes that the meaning of *utilitas* should be clearly derived from its connection with values such as *bonitas* and *aequitas* (*ius est ars boni et equi*). She appropriately (pp. 72 et seq.) asks about the context in which Ulpian's statements – the one on *utilitas* (D.1.1.1.2) and the

one citing Celsus' definition of law (D.1.1.1.pr.-1) – are placed. She rightly links this fragment with Quintilian, with moral philosophy (a synonym for ethics) derived from *bonos mores*, a counterpoint between the legal craft and the legal art (ars) practiced by the *sacerdotes iustitiae* ("priests of justice"). Finally, she is also right when she writes: "it is plausible to argue that Ulpian invoked the expression ius est ars boni et equi not to refer to the systematisation of the legal order but to the interpretation of the law" (p. 77). Also valuable is the discussion of the distinction between the terms *privatum* and *publicum*, closely related to *ius*, bringing the reader closer to the correct understanding of the term *positiones* in correspondence with rhetorical sources (Cicero). According to Ulpian, *publicum* (*utilitas publica*) and *privatum* (*utilitas privata*) were the two bases of jurists' arguments (*positiones*), on which all their attention should be focused (p. 88).The above considerations on the universal, purposive nature of jurists' interpretations based on *utilitas* also provided an opportunity to neatly separate this matter from the next subject of research in the monograph. This one is formed by the interpretive decisions contained in the rulings of Roman jurists of the classical period. These decisions – made *utilitatis causa* – are fully covered in the work's most extensive, third chapter. Drawing her arguments once again from the inspiring works of Roman rhetoricians, particularly Cicero's doctrine, the author discerns in most jurisprudential decisions on the *utilitatis causa* a pattern similar to that in rhetorical interpretation of law, where the jurist interpreted contrary to the literal meaning of a legal provision (*contra scriptum*), thus giving the category of *utilitas* a normative character. *Utilitas* then helped resolve the conflict between the letter and spirit of the law. Furthermore, as with the Roman rhetoricians, jurists also employed *supra scriptum* interpretation when legal provisions remained silent on the issue at hand. The author's main conclusion, which can be broadly shared, is the final statement that "considering both patterns of interpretation, it can be stated that the full nature of the decisions adopted *utilitatis causa* is expressed in the tension between the literal and teleological interpretation, and its purpose is to break the unambiguous results of the literal interpretation" (p. 191). The book thus provides further evidence, complementing many studies already undertaken in the literature, that Roman law was thoroughly "jurisprudential," and concepts such as *iustitia*, *bonitas*, *aequitas, voluntas*, *honestas*, *humanitas*, or *utilitas*, became a permanent part of the arsenal of Roman jurists, determining the ethical image of Roman law.

One must agree with the view, repeatedly suggested by the author, whether directly or "between the lines," that excessive importance is attached in contemporary Roman law studies to the division of law into private and public law, especially since the criterion for this division, namely the titular *utilitas*, is not well suited to either

delineating the boundary between private and public law or precisely defining what these areas of law actually concern. However, doubts may arise not so much about the failure to explore more deeply into the issues of Roman public law, but rather about the incomplete use of Ulpian's well-known division of law into *ius privatum* and *ius publicum* (D.1.1.1.2). This could enrich arguments even in those discussions clearly focused on private law (*utilitas privata*).[2] The deliberate limitation of research – without delving into the problematic aspects of *utilitas publica*, as well as limiting it to tracing the presence of *utilitas* in the writings of jurists of the classical law, was supposed to result from the studies already written on this subject (pp. 12–13 footnote 7–8 in the first case, p. 13 footnote 10 in the second).

Ulpian's criterion of division, *utilitas*, should, however, prompt us to ask many more significant questions about the nature and scope of this criterion and its true usefulness in separating private law from public law. It was not, after all, the case that jurists were always interested only in *utilitas privata* or only in *utilitas publica*. The latter, in particular, had various connotations. Nor can it always be assumed that *utilitas publica*, understood as the "common good" or "public interest," was consistent with the good of the individual. Just to spark an interesting discussion on one such area, it would be worthwhile to delve deeper into Cassius's arguments, speaking in the Senate in favour of the absolute application of the provisions of the Senatus Consultum Silanianum. He clearly opted for *utilitas publica* over *utilitas privata*.[3] Although the case of praetor Pedanius appears in the monograph (p. 91), it is without the proper elaboration, taking into account both the legal context (the SC Silanianum was a resolution of the Roman Senate from 10 AD) and the social context (riots in Rome broke out, which may seem surprising, upon the news of the intention to enforce such a severe law).

While searching for any imperfections in the work, one can slightly criticise the author for not ensuring the balanced proportions of the chapters of her work: the first one has 40 pages, the second one 34, but the third and last one as many as 90. Dividing the last chapter, the most important for the results of the conducted research, into at least two independent chapters devoted to "jurisprudential decisions *contra scriptum*" and "jurisprudential decisions *supra scriptum*" would be

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2 Inspiring reflections on this subject were conducted by A. Kania-Chramęga, *Ius publicum a ius privatum – między kontradykcją a koherencją?*, Czasopismo Prawno-Historyczne 2021, vol. 73, no. 1, pp. 117–127.

3 The literature on SC Silanianum, including Polish literature, is extensive. For example, recently on the identification of *utilitas* in the case of Pedanius A. Chmiel, *Przykład zastosowania s.c. Silanianum, czyli o tym, dlaczego rzymska 'iustitia' stawała się niekiedy okrutna*, in: *Przemoc w świecie starożytnym. Źródła, struktura, interpretacje*, Lublin 2017, pp. 299–310.

substantively justified, and the structure of the work would become more transparent and balanced.

In conclusion, however, the greatest praise should be given, as J. Kulawiak-Cyrankowska's book undoubtedly merits it. The achievements of Polish Roman law scholarship have been enriched by this very thoroughly and competently written monograph, which will undoubtedly interest not only Roman law historians but also many other enthusiasts of Roman antiquity.