

PLATO AND ULPIAN'S *PRAECEPTA IURIS*

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1. Introduction

The purpose of this contribution is to throw some light on the Platonic foundations of Ulpian's famous *praecepta iuris*. I dedicate it to my revered and beloved Laurens Winkel, whose comprehensive studies over the last several decades on the influence of Greek philosophy on Roman law have greatly increased our knowledge of the subject.

In the first book of his work *Regulae*, the great classical Roman jurist Ulpian (AD 170-228)¹ pronounced the three fundamental precepts of law (*tria praecepta iuris*) to be: *honeste vivere, alterum non laedere, suum cuique tribuere*: “to live honestly, not to harm others, to render to each his own”. Closely related to the third precept (*suum cuique tribuere*), he formulated the famous definition of justice, the only one from Roman legal sources that has come down to us: *iustitia est constans et perpetua voluntas ius suum cuique tribuendi*: “justice is the steady and enduring will to render everyone his right”. Justinian placed these definitions at the very beginning of the *Digesta seu Pandectae* (D. 1,1,10 pr 1), the most important part of his codification of Roman law, containing the law of classical Roman jurisprudence.

2. Ulpian's *praecepta iuris* in Western legal and philosophical tradition

Through Justinian's *Corpus iuris civilis*, these definitions have retained their extraordinary importance in the Western legal tradition². Ulpian's *praecepta iuris* are

1 For Ulpian's life and work, see T. Honoré, *Ulpian, Pioneer of Human Rights*, Oxford, 2002.

2 On the meaning and importance of Ulpian's definition of *iustitia* and *praecepta iuris* see e.g. F. Senn, *De la justice et du droit. Explication de la définition traditionnelle de la justice*, Paris, 1927. W. Waldstein, “Zu Ulpian's Definition der Gerechtigkeit (D. 1,1,10 pr.)” in: H.H. Jakobs, B. Knobbe-Keuk, E. Picker, J. Wilhelm (eds.), *Festschrift für Werner Flume zum 70. Geburtstag*, Köln, 1978, pp. 213-232; M. Diesselhorst, “Die Gerechtigkeitsdefinition Ulpian's in D. 1,1,10 pr. und die *Praecepta iuris* nach D. 1,1,10,1 sowie ihre Rezeption bei Leibniz und Kant” in: O. Behrends, M. Diesselhorst, W.E. Voß (eds.), *Römisches Recht in der europäischen Tradition. Symposium aus Anlaß des 75. Geburtstages von Franz Wieacker, Ebelsbach, 1985*, pp. 185-211; F. Gallo, “Diritto e giustizia nel titolo primo del Digesto” in: *Studia et documenta historiae et iuris*, 54, 1988, pp. 1-36; L.C. Winkel,

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still the fundamental principles of the modern law of obligations. In particular, the precept *alterum non laedere* as the articulation of corrective justice and the precept *suum cuique tribuere* as the articulation of distributive justice, form the indispensable basis of contemporary theory and practice in the law of delict and contract law³.

However, it is not only in the legal sphere that these classical Roman definitions of *praecepta iuris* and *iustitia* are relevant. They undoubtedly constitute part of a shared Western cultural heritage. One finds, for example, a paraphrase of Ulpian's third precept and his definition of justice in Shakespeare's *Titus Andronicus*: "Suum cuique is our Roman justice: This prince in justice seizeth but his own"⁴.

Throughout the centuries, the content of Ulpian's definitions has also been subject to in-depth interpretation by some of the greatest philosophers. For example, Saint Thomas Aquinas dedicated one whole article of his *Summa theologiae* to this classical Roman definition of *iustitia*, interpreting all its aspects in the light of the concepts of justice of Aristotle and Saint Augustine⁵.

I shall give another example: in his work *De notionibus juris et iustitiae*, a prologue to his *Codex juris gentium diplomaticus*, Gottfried Wilhelm Leibniz reinterpreted Ulpian's *praecepta iuris* as follows:

*Ex hoc jam fonte fluit jus naturae, cujus tres sunt gradus: jus strictum in iustitia commutativa, aequitas in iustitia distributiva, denique pietas (vel probitas) in iustitia universali: unde neminem laedere, suum cuique tribuere, honeste (vel potius pie) vivere, totidem generalissima et pervulgata juris praecepta nascuntur*⁶.

"Die stoische *οικείωσις*-Lehre und Ulpian's Definition der Gerechtigkeit" in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung, 105, 1988, pp. 669-679; U. Manthe, "Beiträge zur Entwicklung des antiken Gerechtigkeitsbegriffes II: Stoische Würdigkeit und die *iuris praecepta* Ulpian's" in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung, 114, 1997, pp. 1-26, here pp. 12 sqq.; V. Scarano Ussani, *L'ars dei giuristi. Considerazioni sullo statuto epistemologico della giurisprudenza romana*, Torino, 1997, pp. 121 sqq.

3 On the precept *alterum non laedere* as the fundamental principle of the contemporary law of delict see e.g. R. Savatier, *Traité de la responsabilité civile en droit français*, Paris, 1939, pp. 50 sqq; E. Picker, "Vertragliche und deliktische Schadenshaftung" in: *Juristenzeitung*, 1987, pp. 1041-1058; cf. also (for European Union law) R. Knütel, "*Ius commune* und Römisches Recht vor Gerichten der Europäischen Union" in: *Juristische Schulung*, Heft 9, 1996, pp. 768-778, here pp. 768 sq. On the importance of the precept *suum cuique tribuere* as the expression of distributive justice in contemporary contract law see e.g. H. Honsell, "*Iustitia distributiva – iustitia commutativa*" in: M.J. Schermaier, J.M. Rainer, L.C. Winkel (eds.), *Jurisprudentia universalis*. Festschrift für Theo Mayer-Maly, Köln-Weimar-Wien, 2002, pp. 287-302; cf. also H. Collins, *Distributive Justice through Contracts*, Oxford, 1992; C.W. Canaris, *Die Bedeutung der iustitia distributiva im deutschen Vertragsrecht*, München, 1997.

4 W. Shakespeare, *Titus Andronicus* I, 280 sq. in: *The Complete Works of William Shakespeare*, London, 1962, p. 741; cf. U. von Lübtow, "Zum Begriff 'suum cuique'" in: H. Thieme (ed.), *Humanismus und Naturrecht in Berlin – Brandenburg – Preußen*, Berlin, 1979, pp. 39-42, here p. 39.

5 On the interpretation of Ulpian's definition of *iustitia* in the *Summa Theologiae* (II-2,58,1), see J-M. Aubert, *Le droit romain dans l'oeuvre de Saint Thomas*, Paris, 1955, pp. 88-91; M. Beck-Mannagetta, "Mittelalterliche Gerechtigkeitslehre" in: M. Beck-Mannagetta, H. Böhm, G. Graf (eds.), *Der Gerechtigkeitsanspruch des Rechts*. Festschrift für Theo Mayer-Maly zum 65. Geburtstag, Wien-New York, 1996, pp. 74-80.

6 This passage from *De notionibus juris et iustitiae*, work reprinted in *God. Guil. Leibnitii opera philosophica quae extant Latina, Gallica, Germanica omnia* (instructit J.E. Erdmann, Berolini MDCCCXL), is reproduced in: M. Diesselhorst, op. cit., p. 202.

According to Leibniz, these three precepts – *alterum non laedere, suum cuique tribuere, honeste vivere* – are fundamental principles of law. In the following passage, a reinterpretation of Ulpian's *praecepta iuris* in the context of Aristotle's ethical concepts, and also of the work of the famous Dutch jurist Hugo Grotius (1583-1645), Leibniz stressed that the first precept, *neminem laedere*, is the basis of commutative justice, that the second, *suum cuique tribuere*, is the basis of distributive justice and that the third, *honeste vivere*, is the highest principle of universal justice as the greatest virtue of all⁷.

In addition, it should be mentioned that Immanuel Kant in *Metaphysik der Sitten* also based his theory of law on Ulpian's three precepts. Elaborating the general division of legal obligations (*allgemeine Einteilung der Rechtspflichten*) as the very substance of his *Rechtslehre*, he emphasised:

Mann kann diese Einteilung sehr wohl nach dem Ulpian machen, wenn man seinen Formeln einen Sinn unterlegt, den er sich dabei zwar nicht deutlich gedacht haben mag, den sie aber doch verstatten daraus zu entwickeln, oder hineinzulegen. Sie sind folgende: Sei ein rechtlicher Mensch (honeste vive) ... Tue niemanden Unrecht (neminem laede) und solltest du darüber auch aus aller Verbindung mit anderen heraus gehen und alle Gesellschaft meiden müssen (lex iuridica) ... Trit (wenn Du das letztere nicht vermeiden kannst) in einem Gesellschaft mit anderen, in welcher jedem das Seine erhalten werden kann (suum cuique tribue⁸).

As we can see, Kant reinterpreted the original meaning of the *tria praecepta* by adding his moral and legal concepts to Ulpian's words.

All these examples taken from the *opera* of Saint Thomas Aquinas, Leibniz and Kant show conclusively that Ulpian's definitions of *praecepta iuris* and *iustitia* are not at all irrelevant in the occidental tradition of ethics. Furthermore, philosophical reinterpretations of Ulpian's definitions exercised a strong influence on legal doctrine throughout the centuries and the understanding of these classical Roman precepts in mediaeval and modern legal practices⁹.

7 The first precept, *neminem laedere*, as the basis of commutative justice, Leibniz defined as follows: "*Juris merisive stricti praeceptum est neminem laedendum esse, ne detur ei in civitate actio extra civitatem, ius belli. Hinc nascitur justitia, quam Philosophi vocant commutativam, et jus quod Grotius appellat facultatem*"; on the second precept, *suum cuique tribuere*, as the basis of distributive justice, see e.g. the following passage: "*Itaque hujus loci est distributiva justitia et praeceptum iuris, quod suum cuique tribui jubet*"; on the third precept, *honeste vivere*, as the basis of universal justice see e.g. the following passage: "*Ex hac consideratione fit ut justitia universalis appellatur et omnes alias virtutes comprehendet ... Itaque hinc supremum illud juris praeceptum vim accepit, quod honeste (id est pie) vivere jubet*". The quoted Latin text from *De notionibus juris et justitiae* is also reproduced in: M. Diesselhorst, op. cit., pp. 202 sqq. For a comprehensive discussion of the importance of Ulpian's *praecepta iuris* for Leibniz' concept of justice see M. Diesselhorst, op. cit., pp. 204 sqq.; K. Luig, "Leibniz als Dogmatiker des Privatrechts" in: O. Behrends, M. Diesselhorst, W.E. Voß (eds.), *Römisches Recht in der europäischen Tradition. Symposium aus Anlaß des 75. Geburtstages von Franz Wieacker*, Ebelsbach, 1985, pp. 213-256.

8 I. Kant, *Werkausgabe*, vol. VII, Frankfurt, 1968, p. 344. For further discussion on the significance of Ulpian's *praecepta iuris* in the context of Kant's *Rechtslehre* see M. Diesselhorst, op. cit., pp. 208 sqq.; cf. also U. Manthe, op. cit., II, p. 23.

9 In particular, the interpretation of the precept *alterum non laedere* by Enlightenment philosophers and natural lawyers such as Samuel Pufendorf (1632-1694) and Christian Wolff (1679-1754), as well as Kant himself, considerably influenced the modern law of delict; cf. R. Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford 1996, pp. 1031 sqq.; H.

3. Platonic foundations of Ulpian's *praecepta iuris*

However, the question of the philosophical origins of these definitions is still unresolved. In the Roman world before Ulpian, elements of *tria praecepta iuris* can be found primarily in the writings of Cicero. For example, in *De officiis* he writes: “*fundamenta iustitiae, primum ut ne cui noceatur*” or “*violare alterum naturae lege prohibemur*”¹⁰. In his *De finibus*, one also finds statements such as “*alienumque esse a sapiente non modo iniuriam cui facere, verum etiam nocere*”¹¹. All these formulations undoubtedly have the same meaning as Ulpian's *alterum non laedere*. As far as the precept *honeste vivere* is concerned, it suffices to pay attention to a passage from *De finibus* in which Cicero tried to define what *finis bonorum* are to various philosophers and philosophical schools. He pointed out that according to Stoic teaching *finis bonorum* is “*consentire naturae, quod esse volunt e virtute, id est honeste vivere*”¹². One may conclude that Ulpian transformed the Stoic ethical concept of *honeste vivere* into the first precept of law. Apart from these two *praecepta iuris* in Cicero's writings, the precept *suum cuique tribuere* is also to be found in his various formulations of the definition of justice. It is obvious that in Ulpian's definition – *iustitia est constans et perpetua voluntas ius suum cuique tribuendi* – justice was seen as a virtue¹³. This formulation is evidently derived from Cicero's formulations, which are to be found particularly in the passages in which he elaborates on the notion of virtue and its divisions. So, for example, in his juvenile work *De inventione*, he defined justice as follows: “*Iustitia est habitus animi communi utilitate conservata suam cuique tribuens dignitatem*”¹⁴. In this context, it is also very important to note Cicero's definition of virtue in his *De legibus* as “*constans et perpetua ratio vitae, quae virtus est*”¹⁵. These

Hattenhauer, *Grundbegriffe des Bürgerlichen Rechts. Historisch-dogmatische Einführung*, München, 2000, pp. 114 sqq.

- 10 Cicero, *De officiis*, 1,31; 3,27; cf. E. Levy, “Natural Law in Roman Thought” in: idem, *Gesammelte Schriften*, Bd. I, Köln-Graz, 1963, pp. 3-19, here pp. 16 sq.; Diesselhorst, op. cit., pp. 196 sq.; W. Waldstein, *Teoria generale del diritto. Dall' antichità ad oggi*, Roma, 2001, p. 91.
- 11 Cicero, *De finibus bonorum et malorum*, 3,71; cf. C. Wollschläger, “Die stoische Bereicherungsverbot in der römischen Rechtswissenschaft” in: O. Behrends, M. Diesselhorst, W.E. Voß (eds.), *Römisches Recht in der europäischen Tradition. Symposium aus Anlaß des 75. Geburtstages von Franz Wieacker*, Ebelsbach, 1985, pp. 41-88, here p. 50.
- 12 Cicero, *De finibus bonorum et malorum*, 2,34; cf. E. Levy, op. cit., pp. 16 sq.; M. Diesselhorst, op. cit., pp. 196 sq.; V. Scarano Ussani, op. cit., p. 125, n. 53.
- 13 On this aspect of Ulpian's definition of justice see F. Senn, op. cit., pp. 8 sqq.; W. Waldstein, “Zu Ulpian's Definition der Gerechtigkeit (D. 1,1,10 pr.)”, op. cit., pp. 225 sqq.; idem, “Ist das *suum cuique* eine Leerformel?”, *Studia et documenta historiae et iuris*, 61, 1995, pp. 181-215 sqq., here pp. 186 sqq.; S. Tzitzis, “*Dikaion Dianēmetikon* et *ius suum cuique tribuens*. De la rétribution des Grecs à celle des Glossateurs”, in: O. Diliberto (ed.), *Il problema della pena criminale tra filosofia greca e diritto romano*, Napoli, 1993, pp. 221-241; U. Manthe, “Beiträge zur Entwicklung des antiken Gerechtigkeitsbegriffes I: Die Mathematisierung durch Pythagoras und Aristoteles”, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung*, 110, 1996, pp. 1-31.
- 14 Cicero, *De inventione*, 2,160; cf. also *De finibus bonorum et malorum*, 5,65: “... *animi affectio suum cuique tribuendi ... iustitia dicitur*”; *De officiis*, 1,42: “... *ut pro dignitate cuique tribuatur; id enim est iustitiae fundamentum ...*”; *De natura deorum*, 3,38: “*Nam iustitia, quae suum cuique distribuit, quid pertinet ad deos ...*”; *De re publica*, 3,24: “*Iustitia autem praecipit ... suum cuique reddere ...*”.
- 15 Cicero, *Leges*, 1,45; cf. F. Senn, op. cit., pp. 8 sqq.; W. Waldstein, op. ult. cit., pp. 186 sqq.

two Ciceronian definitions contain the elements on which Ulpian – obviously familiar with Cicero’s opus – could base his own formulation of *iustitia* or the precept *suum cuique tribuere*¹⁶. Furthermore, there is a very similar definition of justice in the anonymous work *Rhetorica ad Herennium*, which dates back to the first century BC: “*Iustitia est aequitas ius unicuique rei tribuens pro dignitate cuiusque*”¹⁷.

Most contemporary scholars consider that the origins of these definitions by Cicero and Ulpian are to be found in the writings of the Stoics¹⁸. There is no doubt that there is evidence of the Stoic philosophical tradition in Ulpian’s formulations of *praecepta iuris* and *iustitia*. It would suffice to compare Ulpian’s definition of *iustitia* as *suum cuique tribuere* with Chrissipus’ definition of *δικαιοσύνη* as “ἐξίς ἀπονεμητική τοῦ κατ’ ἀξίαν ἐκάστω”¹⁹. Some modern Roman-law scholars also believe that the Stoic ethical principle τὸ καλῶς ζῆν in the meaning of τὸ κατὰ φύσιν ζῆν is the oldest philosophical source of Ulpian’s *honeste vivere*²⁰.

I, however, believe that the origins of Ulpian’s definitions are older than the philosophy of the Stoa, for which reason I cannot quite agree with the prevailing opinion of modern Roman-law scholars on the issue.

Definitions, pre-dating the Stoics, of justice as a virtue can be found in Aristotle’s opus. For example, in his work *On Virtues and Vices*, justice is defined as follows: “δικαιοσύνη δ’ ἐστὶν ἀρετὴ ψυχῆς διανεμητικὴ τοῦ κατ’ ἀξίαν”. There are similar formulations in Aristotle’s *Topica*, *Art of Rhetoric* and particularly in the fifth book of *Nicomachean Ethics*, in the passages in which he elaborates on the notion of distributive justice (δίκαιον διανεμητικόν)²¹.

16 W. Waldstein, “Zur juristischen Relevanz der Gerechtigkeit bei Aristoteles, Cicero und Ulpian” in: M. Beck-Mannagetta, H. Böhm, G. Graf (eds.), *Der Gerechtigkeitsanspruch des Rechts. Festschrift für Theo Mayer-Maly zum 65. Geburtstag*, Wien-New York, 1996, pp. 1-71, here pp. 44 sq. The evidence for Ulpian’s being acquainted with Cicero’s work may be found in D. 42,4,7,4 where Ulpian quoted a work of Cicero that is unknown to us. For details, see D. Nörr, “Cicero-Zitate bei den klassischen Juristen” in: *Atti del III Colloquium Tullianum*, Roma, 1978, pp. 131 sqq.

17 *Rhetorica ad Herennium*, 3,2,3; cf. L.C. Winkel, op. cit., pp. 672 sqq.

18 Cf. e.g. F. Schulz, *History of Roman Legal Science*, Oxford, 1946, p. 136; M. Diesselhorst, op. cit., pp. 185 sqq., particularly p. 201; L.C. Winkel, op. cit., pp. 669 sqq.

19 H. von Arnim (ed.), *Stoicorum veterum fragmenta* (SVF), vol. III, Stuttgart, 1979, 125; cf. SVF I 374; SVF III 262, 263 and 280; for a comprehensive discussion of these Stoic definitions and their influence on Ulpian, see L.C. Winkel, op. cit., pp. 672 sqq.; cf. U. Manthe, op. cit., II, pp. 1 sqq.; on the Stoic concept of justice generally, see e.g. M. Schofield, “Two Stoic Approaches to Justice” in: A. Laks, M. Schofield (eds.), *Justice and Generosity. Studies in Hellenistic Social and Political Philosophy: Proceedings of the Sixth Symposium Hellenisticum*, Cambridge, 1995, pp. 191-212; cf. also M. Pohlenz, *Die Stoa. Geschichte einer geistigen Bewegung*, Bd. I, Göttingen, 1978, p. 136, pp. 201 sqq.

20 SVF III 14 and 16; see e.g. F. Senn, op. cit., pp. 39 sqq.; U. Manthe op. cit., II, p. 12, n. 37; on the Stoic ethical principle τὸ κατὰ φύσιν ζῆν generally, see e.g. M. Forschner, *Die Stoische Ethik*, Darmstadt, 1995, pp. 183 sqq; the philosophical roots of the precept *alterum non laedere* may also be found in the writings of Stoics: see e.g. SVF III 178, 309, 345, 558 and 578; cf. C. Wollschläger, op. cit., p. 50, n. 72; U. Manthe, op. cit., I, p. 31, n. 96.

21 Aristoteles, *De virtutibus et vitiis* 1250 a 12; cf. *Topica* 143 a 16 sq., 145 b 35 sq.; *Rhetorica* 1366 b 9 sqq.; *Ethica Nicomachea* 1130 b 30 sqq., 1131 a 25 sq., 1134 a 1 sqq.; for a comprehensive discussion of Aristotle’s definitions of justice and their possible influence on Ulpian see e.g. U. Manthe, op. cit., I, pp. 2 sqq.; W. Waldstein, op. ult. cit., pp. 53 sqq. On Aristotle’s concept of justice generally, see e.g.

In my opinion, however, the oldest philosophical source of Ulpian's definition of justice, which included the precept *suum cuique tribuere*, is to be found in the Platonic *Definitions* (*Ὅροι*): “δικαιοσύνη ... ἔστις ἀπονεμητικὴ τοῦ κατ’ ἀξίαν ἐκάστω”²². Of course, the *Definitions* are not written by Plato himself, and at first glance it is debatable whether this definition of justice as a virtue can be ascribed to Plato. In his *Untersuchungen zu den pseudoplatonischen Definitionen*, published in 1967, Heinz Gerd Ingenkamp showed that the quoted Platonic definition of justice is clearly in accordance with a passage from the fourth book of Plato's *Politeia*, in which it is stressed that “possession of one's own and the performance of one's own task could be agreed to be justice” (“ἐαυτοῦ ἔστις τε καὶ πράξις δικαιοσύνην ἅν ὁμολογοῖτο”)²³. Ingenkamp therefore stressed that the definition of justice could be ascribed, if not to Plato himself, then to the very early tradition of the Academy²⁴. In any case, his conclusion is that the definition of δικαιοσύνη in the Platonic *Definitions* is the oldest traceable source of Ulpian's definition of *iustitia*.

However, one must not neglect an important difference between Ulpian's definitions of justice as a virtue and those of philosophers. According to the Greek philosophers, the criterion of just distribution is always the notion of ἀξία. Cicero adopted this philosophical concept and translated the Greek term ἀξία by the Latin word *dignitas*. Ulpian, on the other hand, used the notion of *ius* instead of *dignitas* as the criterion of just distribution. For that reason, Ulpian's definition of justice contains the formulation “*ius suum cuique tribuere*” instead of “*suam dignitatem cuique tribuere*”. In other words, one may conclude that in this fashion Ulpian transformed a Greek philosophical concept into a specifically legal concept²⁵.

M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, Leiden, 1937; P. Trude, *Der Begriff der Gerechtigkeit in der aristotelischen Rechts- und Staatsphilosophie*, Berlin, 1955.

22 Plato, *Definitiones* 411 e; cf. W. Waldstein, op. ult. cit., p. 57; V. Scarano Ussani, op. cit., p. 124, n. 49.

23 Plato, *Respublica*, 433 e.; for details, see H.G. Ingenkamp, *Untersuchungen zu den pseudoplatonischen Definitionen*, Wiesbaden, 1967, pp. 28 sq.; on Plato's concept of justice in *Politeia* generally, see e.g. E. Wolf, *Griechisches Rechtsdenken*, Bd. IV, 1, Frankfurt am Main, 1968, pp. 295 sqq.; G. Vlastos, “Justice and Happiness in Plato's Republic” in: G. Vlastos (ed.), *Plato: A Collection of Critical Essays II*, London, 1971, pp. 35-51.

24 H.G. Ingenkamp, op. cit., pp. 113 sq.

25 It is worth mentioning in this context that Roman jurists sometimes referred directly to the classical definition of justice in arguing legal cases; see D. 16,3,31,1 (Tryph. 9 disp.): “*Incurrit hic et alia inspectio. bonam fidem inter eos tantum, quos contractum est, nullo extrinsecus adsumpto aestimare debemus an respectu etiam aliarum personarum, ad quas id quod geritur pertinet? exempli loco latro spolia quae mihi abstulit posuit apud seium inscium de malitia deponentis utrum latroni an mihi restituere seius debeat? si per se dantem accipientemque intuemur, haec est bona fides, ut commissam rem recipiat is qui dedit si totius rei aequitatem, quae ex omnibus personis quae negotio isto continguntur impletur, mihi reddenda sunt, quo facto scelestissimo adempta sunt. et probo hanc esse iustitiam, quae suum cuique ita tribuit, ut non distrahatur ab ullius personae iustiore repetitione. quod si ego ad petenda ea non veniam, nihilo minus ei restituenda sunt qui deposuit, quamvis male quaesita deposuit*”. Thus we see that according to the late classical Roman jurist Tryphonin, in some situations it is just – contrary to the general rule – not to return the deposited thing to the depositor. It is of interest that the same ethical and legal problem relating to deposit had already been analysed by Plato (*Respublica* 331 c - 332 b) and Cicero (*De finibus bonorum et malorum* 3,95); on Tryphonin's solution see further P. Cerami, “‘Ordo legum’ e ‘iustitia’ in Claudio Trifonino” in: *Annali del Seminario giuridico della Università di Palermo* 40, 1988, pp. 5-35; M. Kaser, *Ius gentium*, Köln-Weimar-Wien, 1993, pp. 121 sqq.; R. Knütel, “Zum Pflichtenkonflikt des Verwahrers” in: J.F. Gerkens, H. Peter,

Furthermore, it is necessary to corroborate the hypothesis that Ulpian's *praecepta iuris* also have their origins in Plato's concept of justice. The first vestiges of these *praecepta* are in the first book of Plato's *Politeia*, namely, in the significant dialogue on some fundamental ethical precepts in the context of the virtue of justice. In his maieutic manner, Socrates, together with Glaucon, Cephalos, Polemarchos and the sophist Trasimachos, asserts that it is just (*δίκαιον*) to give each what is owed to him (*“τὰ ὀφειλόμενα ἐκάστῳ αποδιδόναι”*)²⁶. Socrates also asked his collocutors “is it for the just man to harm anyone at all?” and pointed out that it is never just to do so (*“οὐδαμοῦ γὰρ δίκαιον οὐδένα ἡμῖν ἐφάνη ὃν βλάπτειν”*)²⁷. Finally, at the end of the dialogue in the first book of *Politeia*, Socrates concluded that the just soul and just man will live well, while the unjust man will live badly (*“Ἡ μὲν ἄρα δικάια ψυχὴ καὶ ὁ δίκαιος ἀνὴρ εὖ βιώσεται ...”*)²⁸. It is evident that Socrates' three statements on what is “just” have the exact same meaning as Ulpian's three precepts of law: *sum cuique tribuere*, *alterum non laedere*, *honeste vivere*. Of course, neither Socrates nor Plato “invented” these precepts. The earliest reference to the precept *sum cuique tribuere* may be ascribed – according to the first book of *Politeia* – to the lyric and elegiac poet Simonides (557-468 BC)²⁹, and one possible formulation of the precept *alterum non laedere* is also traceable in the fragments of a contemporary of Socrates, the sophist Antiphon (fifth century BC)³⁰. However, all three precepts are to be found together for the first time in the same context in the first book of Plato's *Politeia*. It is also worth mentioning that Plato was the first philosopher to distinguish and at the same time connect inextricably the two fundamental principles of justice – *τὰ ὀφειλόμενα ἐκάστῳ αποδιδόναι* and *οὐδένα βλάπτειν* – as the lapidary terms for what Aristotle would later call distributive justice (*δίκαιον διανεμητικόν*) and corrective justice (*δίκαιον διορθωτικόν*), and Ulpian would concisely formulate in the legal precepts *sum cuique tribuere* and *alterum non laedere*³¹.

As has previously been mentioned, these principles have up to this day continued to be of extraordinary importance in modern legal systems as the ethical foundations of the law of contract and delict. It is therefore acceptable to conclude that even today some aspects of Plato's concept of justice, through the *medium* of the Roman legal tradition, determine the everyday legal life of ordinary people.

P. Trenk-Hinterberger, R. Vigneron (eds.), *Mélanges Fritz Sturm*, Liège, 1999, 239-265; M. Bretonne, *Storia del diritto romano*, Roma-Bari, 1999, pp. 346 sqq.

26 Plato, *Respublica*, 331 e, 335 e; for details, see E. Wolf, op. cit., pp. 315 sqq.

27 Plato, *Respublica*, 335 e; for details, see E. Wolf, op. cit., pp. 321 sq.

28 Plato, *Respublica*, 353 e; for details, see E. Wolf, op. cit., pp. 331 sqq.

29 Plato, *Respublica*, 331 e; cf. E. Wolf, op. cit., pp. 315 sq.; W. Waldstein, *Saggi sul diritto non scritto*, Padova, 2002, p. 98, n. 30.

30 See Oxyrh. Pap. XV 120 (Pap. 1797).

31 This concept of two fundamental aspects of justice was developed in another manner in Plato's *Laws*, where he distinguished two forms of equality, the arithmetical and the geometrical; cf. Plato, *Leges*, 757; *Gorgias*, 507 seqq.; see M. Salomon, op. cit., pp. 27 sq. who pointed out the considerable influence of these elements of Plato's concept of justice and equality on Aristotle's thought.

Abstract

The purpose of this contribution is to analyse the Platonic foundations of Ulpian's famous *praecepta iuris* (*honeste vivere, alterum non laedere, suum cuique tribuere*) (D. 1,1,10,1). Ulpian's *praecepta iuris* embody the fundamental principles of the modern law of obligations. They are the indispensable basis of contemporary legal theory and practice in the law of delict and contract law. Some modern scholars believe that the sources of these precepts are the writings of Stoic philosophers. In the author's opinion, however, Ulpian's *praecepta iuris* have their origin in Plato's concept of justice. These *tria praecepta* may be traced to the first book of Plato's *Politeia* and specifically the maieutic dialogue between Socrates and his collocutors on the foundations of justice, where all three precepts are to be found together for the first time in the same context.