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THE PRINCIPLE *ALTERUM NON LAEDERE*
IN BOGIŠIĆ'S CODIFICATION (ART. 998)
GREEK PHILOSOPHICAL ORIGINS AND
BYZANTINE LEGAL TRADITION

1. INTRODUCTION

Art. 998 of the *General Property Code for the Principality of Montenegro* (*Opšti imovinski zakonik za Knjaževinu Crnu Goru — OIZ*) (1888), created by Baldo Bogišić (1834–1908), an eminent lawyer and polymath from Cavtat (*Ragusa Vecchia*)¹, contains the following legal maxim:

Dok nepravo drugome štete ne činiš, koristi se čim god možeš i koliko god možeš.
(Unless you unjustly injure others, make use of whatever you can as much as you can/for as long as you can).

Like many other Bogišić's legal maxims ("zakonjače") as the final and probably the most important part of his Code, the quoted one is also a paraphrase of the following Roman law *regula* disguised in the folk language:

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¹ The list of secondary literature related to Bogišić and his Code is becoming more and more extensive. Therefore, we will refer here only to the most important books published so far, which also contain numerous further references to the literature on his *vita et opera*: N. Martinović, Valtazar Bogišić, I. Istorija kodifikacije crnogorskog imovinskog prava (Valtazar Bogišić, I. The History of the codification of Montenegrin property law), Cetinje, 1958.; W. Zimmermann, Valtazar Bogišić 1834–1908. Ein Beitrag zur südslavischen Geistes- und Rechtsgeschichte in 19. Jahrhundert, Wiesbaden, 1962.; S. Pupović, Valtazar Bogišić, Podgorica, 2004.; J. Kregar et al. (eds.), Bogišić i kultura sjećanja. (Bogišić and the culture of remembrance), Zagreb, 2011.; Z. Rašović, Bogišićeve pravne izreke. Skladnosti između rimskopravnog i crnogorskog narodnog vrela (Bogišić's legal maxims. The parallels between Roman law and Montenegrin folk law), Podgorica, 2016.

neminem laedit qui suo iure utitur (“he who exercises his right injures no one”). Thus, as it was already pointed out in scholarly contributions on the Roman origins of Bogišić’s legal maxims, Art. 988 of Bogišić’s Code has its conceptual foundation in the famous Roman precept of law *alterum non laedere* or *neminem laedere*².

Starting from the aforementioned facts, the purpose of this contribution is to shed some light on the ancient origins — especially Greek philosophical ones — of the *alterum non laedere* principle in the context of Roman *praecepta iuris*, as well as on its reception in the medieval Byzantine-Slavonic legal sources which were used in Montenegro as some kind of written law predecessors of Bogišić’s Code.

The concept of the *praecepta iuris* — according to *Digesta* 1.1.10.1. — is originally contained in the first book of the *Regulae*, written by the great classical Roman jurist Ulpian (170–228 A. D.).³ Ulpian determined the fundamental precepts of law (*iuris praecepta sunt haec...*) as follows: *honeste vivere, alterum non laedere, suum cuique tribuere*: “to live honestly, not to harm any other person, to render to each his own”. In a strong connection with 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. 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 tradition⁴. Ulpian’s

² See Z. Rašović, op. cit., pp. 283 sqq.; N. Bogojević-Glušćević, “Rimska pravna pravila u zakonjačama Opšteg imovinskog zakonika za Knjaževinu Crnu Goru” (Roman legal rules in the “zakonjače” of General Property Code for the Principality of Montenegro), *Istorijski zapisi* (78) 1–4/2005, pp. 16 sq.; M. Petrak, *Imovinskopravne regulae iuris* u Bogišićevu zakoniku i njihovo aktualno značenje (*Regulae iuris* of property law in Bogišić’s Code and their contemporary significance), in: J. Kregar et al., op. cit., pp. 100 sq.

³ For Ulpian’s life and work see T. Honoré, *Ulpian, Pioneer of Human Rights*, Oxford 2002.

⁴ 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.

praecepta iuris are 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 law⁵.

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"⁶.

Throughout the centuries, the content of Ulpian's definitions has also been subject to in-depth interpretation by some of the greatest philosophers.

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, "Die stoische *οικειωσις*-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.

⁵ 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.), *Iurisprudentia 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.

⁶ 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.

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 Augustine⁷.

I shall give another example: in his work *De notionibus juris et justitiae*, 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 justitia commutativa, aequitas in justitia distributiva, denique pietas (vel probitas) in justitia universali: unde neminem laedere, suum cuique tribuere, honeste (vel potius pie) vivere, totidem generalissima et pervulgata juris praecepta nascuntur*⁸.

According to Leibniz, these three precepts — *alterum non laedere, suum cuique tribuere, honeste vivere* — are fundamental principles of law. In the following passage, a revision 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 all⁹.

⁷ 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.

⁸ This passage from *De notionibus juris et justitiae*, work reprinted in *God. Guil. Leibnitii opera philosophica quae extant Latina, Gallica, Germanica omnia* (instruxit J. E. Erdmann, Berolini MDCCCXL), is reproduced in: M. Diesselhorst, op. cit., p. 202.

⁹ 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 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 verstaten 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 tribue)¹⁰.

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, ensuring the understanding of these classical Roman precepts in mediaeval and modern legal practices¹¹.

3. GREEK PHILOSOPHICAL FOUNDATIONS OF 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: 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.

¹⁰ 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.

¹¹ 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. Hattenhauer, *Grundbegriffe des Bürgerlichen Rechts. Historisch-dogmatische Einführung*, München, 2000, pp. 114 sqq.

in *De officiis* he writes: “*fundamenta iustitiae, primum ut ne cui noceatur*” or “*violare alterum naturae lege prohibemur*”¹². In his *De finibus*, one also finds statements such as “*alienumque esse a sapiente non modo iniuriam cui facere, verum etiam nocere*”¹³. 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 *fines bonorum* are to various philosophers and philosophical schools. He pointed out that according to Stoic teaching *fines bonorum* is “*consentire naturae, quod esse volunt e virtute, id est honeste vivere*”¹⁴. 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 virtue¹⁵. 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*”¹⁶. In this context, it is

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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 Dianémetikon* 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.

¹⁶ 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*

also very important to note Cicero's definition of virtue in his *De legibus* as "*constans et perpetua ratio vitae, quae virtus est*"¹⁷. These 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*¹⁸. Furthermore, there is a very similar definition of justice in the anonymous work *Rhetorica ad Herennium*, which dates back to the first century B. C.: "*Iustitia est aequitas ius unicuique rei tribuens pro dignitate cuiusque*"¹⁹.

Most contemporary scholars consider that the origins of these definitions by Cicero and Ulpian are to be found in the writings of the Stoics²⁰. 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 Chrisippus' definition of *δικαιοσύνη* as "*ἕξις ἀπονεμητικὴ τοῦ κατ' ἀξίαν ἐκάστω*"²¹. 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*²².

iustitia, quae suum cuique distribuit, quid pertinet ad deos ..."; *De re publica*, 3,24: "*Iustitia autem praecipit ... suum cuique reddere ...*".

¹⁷ Cicero, *Leges*, 1,45; cf. F. Senn, op. cit., pp. 8 sqq.; W. Waldstein, op. ult. cit., pp. 186 sqq.

¹⁸ 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: *Acti del III Colloquium Tullianum*, Roma, 1978, pp. 131 sqq.

¹⁹ *Rhetorica ad Herennium*, 3,2,3; cf. L. C. Winkel, op. cit., pp. 672 sqq.

²⁰ 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.

²¹ 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.

²² 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. Forscher, *Die Stoische Ethik*, Darmstadt, 1995, pp. 183 sqq.; the philosophical roots of the

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 (δικαίον διανεμητικόν)²³.

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 ... ἕξις ἀπονεμητικὴ τοῦ κατ' ἀξίαν ἐκάστῳ"²⁴. 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 ἕξις τε καὶ πράξις δικαιοσύνην ἂν ὁμολογοῖτο")²⁵. Ingenkamp therefore stressed that the definition of justice could be ascribed, if not to Plato himself, then to the very early tradition of the Academy²⁶. 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*.

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.

²³ 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. M. Salomon, *Der Begriff der Gerechtigkeit bei Aristoteles*, Leiden, 1937; P. Trude, *Der Begriff der Gerechtigkeit in der aristotelischen Rechts- und Staatsphilosophie*, Berlin, 1955.

²⁴ Plato, *Definitiones* 411 e; cf. W. Waldstein, op. ult. cit., p. 57; V. Scarano Ussani, op. cit., p. 124, n. 49.

²⁵ 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.

²⁶ H. G. Ingenkamp, op. cit., pp. 113 sq.

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, held to 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 concept²⁷.

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 ἀποδιδόναι*")²⁸. Socrates also asked his collocutors "is it for the just man to harm anyone at all?" and pointed out that it is never

²⁷ 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, nibilo 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. Gerken, H. Peter, P. Trenk-Hinterberger, R. Vigneron (eds.), *Mélanges Fritz Sturm*, Liège, 1999, 239–265; M. Bretone, *Storia del diritto romano*, Roma-Bari, 1999, pp. 346 sqq.

²⁸ Plato, *Respublica*, 331 e, 335 e; for details, see E. Wolf, op. cit., pp. 315 sqq.

just to do so (“οὐδαμοῦ γὰρ δίκαιον οὐδένα ἡμῖν ἐφάνη ὄν βλάπτειν”)²⁹. 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 δίκαια ψυχή και ὁ δίκαιος ἀνὴρ εὖ βιώσεται ...”)³⁰. It is evident that Socrates’ three statements on what is “just” have the exactly same meaning as Ulpian’s three precepts of law: *suum cuique tribuere, alterum non laedere, honeste vivere*. Of course, neither Socrates nor Plato “invented” these precepts. The earliest reference to the precept *suum cuique tribuere* may be ascribed — according to the first book of *Politeia* — to the lyric and elegiac poet Simonides (557–468 B. C.)³¹, 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 B. C.)³². 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 to mention that Plato was the first philosopher to distinguish and at the same time connect inextricably the two fundamental principles of justice — τὰ ὀφειλόμενα ἐκάστῳ ἀποδιδόναι 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 *suum cuique tribuere* and *alterum non laedere*³³.

As has previously been mentioned, these principles have up to this day continued to be of extraordinary importance in contemporary legal systems as the ethical foundations of the law of contract and delict. It is therefore not inappropriate to conclude that the Socratic dialogue on the foundations of justice — through the *medium* of the classical Roman *praecepta iuris*, including “our” starting point principle *alterum non laedere* — has been reverberating in the everyday legal life of ordinary people through the millenia.

²⁹ Plato, *Respublica*, 335 e; for details, see E. Wolf, op. cit., pp. 321 sq.

³⁰ Plato, *Respublica*, 353 e; for details, see E. Wolf, op. cit., pp. 331 sqq.

³¹ 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.

³² See Oxyrh. Pap. XV 120 (Pap. 1797).

³³ 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.

4. FROM JUSTINIAN TO BOGIŠIĆ: THE *ALTERUM NON LAEDERE* PRINCIPLE AND BYZANTINE-SLAVONIC LEGAL TRADITION IN MONTENEGRO

Were there any of the above mentioned “reverberations” of Roman *praecepta iuris* in the medieval and early modern legal history of Montenegro? One of the most important and widespread Byzantine legal collections translated into the Church Slavonic language in the Montenegrin context was undoubtedly the *Syntagma*, made by the Greek monk Matthew Blastares in 1335. It is an alphabetically ordered handbook of Byzantine canon and civil law that synthesizes legal material from previous collections³⁴. The collection was almost immediately translated into the Church Slavonic language³⁵. It is important to point out here that as many as three Montenegrin manuscripts of the Slavonic translation of *Syntagma* have been preserved. Two of them are still part of the extraordinary Church Slavonic manuscripts collection of the Monastery of the Nativity of the Virgin Mary in Cetinje, the first one dated in the year 1387³⁶ and the second one from the year 1558³⁷. The third one is kept today not in Montenegro, but in the Museum of the Serbian Orthodox Church in Belgrade, although it was commissioned by the Archbishop of Zeta Iosif and written by a scribe, deacon Damian, in the year 1453³⁸.

In our context, it is important to stress that the *praecepta iuris*, including the *alterum non laedere* principle, are contained in the Slavonic translation in the chapter Δ-8 of the manuscripts, together with the famous Ulpian's definitions of *iustitia* and *iuris prudentia*³⁹.

Sources which would testify to the application of the *Syntagma* in Montenegro in concrete legal cases have not been preserved. Still, we would like

³⁴ On Matthew Blastares and his *Syntagma*, see especially the detailed analysis recently carried out by V. Alexandrov, *The Syntagma of Matthew Blastares: The Destiny of a Byzantine Legal Code among the Orthodox Slavs and Romanians*, Frankfurt am Main, 2012., with further references to older relevant literature.

³⁵ On the Church Slavonic translation of *Syntagma* and the preserved manuscripts, see V. Alexandrov, *op. cit.*, pp. 59–98, pp. 187–199.

³⁶ Monastery of Cetinje, MS 57; on this manuscript see V. Alexandrov, *op. cit.*, pp. 80 sqq. and 189; P. Momirović/Lj. Vasiljev, *Ćirilske rukopisne knjige Cetinjskog manastira* (Cyrillic manuscript books of Monastery of Cetinje), Cetinje, 1991, pp. 213 sq.

³⁷ Monastery of Cetinje, MS 56; on this manuscript see V. Alexandrov, *op. cit.*, p. 93 and 196; P. Momirović/Lj. Vasiljev, *op. cit.*, pp. 211 sqq.

³⁸ Museum of Serbian Orthodox Church (Belgrade), MS 45; on this manuscript see V. Alexandrov, *op. cit.*, pp. 86 sqq. and 192.

³⁹ See M. Vlastar, *Sintagma*, Beograd, 2013, p. 162.

to draw attention to one of the most important books of Montenegrin literary history, *Primjeri čojstva i junaštva* (“Examples of humanity and bravery”), written by the famous Montenegrin chieftain, warrior and writer Marko Miljanov Popović (1833–1901), which depicts practical examples of ethical ideals of traditional Montenegro⁴⁰. According to Marko Miljanov, *čojstvo* (humanity or manliness) refers to defending another from oneself, while *junaštvo* (bravery or heroism) refers to defending oneself from another⁴¹. The virtue of *čojstvo*, “firmly rooted in the Christian tradition”, in the sense of “not to harm any other person”⁴², obviously embodies the same ethical principle as the ancient *alterum non laedere*. Even though there are no sources which could confirm the possible influence of the Roman *alterum non laedere* praecept — through the deeply Christian legal *medium* of Blastares’ Syntagma — on the Montenegrin customary virtue of *čojstvo*, a substantial correspondence between the two normative concepts is more than evident.

It must be emphasized, however, that Marko Miljanov was one of the closest Bogišić’s Montenegrin collaborators during the creation of his famous and unique Code, in the sense that it was he that collected the existing rules of customary law for Bogišić on the basis of the survey he had conducted among certain Montenegrin and Albanian tribes⁴³. Having that fact in mind, we would like to finish our contribution with one question as the starting point for possible future research: was the virtue of *čojstvo* — together with the classical *alterum non laedere* legal principle — also one of the traditional sources of Art. 998 of the *General Property Code for the Principality of Montenegro*?

⁴⁰ M. Miljanov Popović, *Primjeri čojstva i junaštva* (The Examples of humanity and bravery), Beograd, 1901.

⁴¹ On *čojstvo* & *junaštvo* as the cardinal virtues of the traditional Montenegrin ethics, see S. Tomović, *Moralna tradicija Crnogoraca* (Moral tradition of Montenegrins), Podgorica, 2006.

⁴² Cit. S. Tomović, op. cit., p. 268.

⁴³ See Z. Rašović, op. cit, p. 89.