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Salus populi suprema lex esto in Jan Marquart's 1650 Dissertation

Salus populi suprema lex esto w dysertacji Jana Marquarta z 1650 r.

ABSTRACT

In May 1650, a dissertation by Jan (Ioannes) Marquart titled *Dissertatio iuridica De damno iniuriae* was published in the academic printing house in Vilnius. From the information presented on the title page of the dissertation, we can surmise that it was the basis for awarding the author a doctorate. Jan Marquart was sometimes mentioned as one of the first graduates of the Faculty of Law of the Vilnius Academy from the early period of its functioning, namely 1644–1655. For the author of *De damno iniuriæ*, the Latin paremia *Salus populi suprema lex esto* was to be the keynote of the dissertation, the guideline for further considerations. Its uniqueness for Jan Marquart can be evidenced by the way it is cited in the dissertation and the special font size used to highlight it. The paremia was also intended to justify the need for a synthetic discussion of regulations regarding the protection of the state and its interests, for which the author of *De damno iniuriæ* devoted several editorial units bearing the Roman numerals: I through VI. Jan Marquart recognized that Justinian I the Great, in codifying the law and adapting it to changing socio-economic relations, was guided in his codification endeavor by the principle that the welfare of the republic is the supreme law. On the other hand, it is

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surprising that the author of *De damno iniuriæ* cited the Law of the Twelve Tables, without specifying a particular table, as an indication of the origin of this fundamental principle, which is a guarantor of the proper exercise of power. It is difficult to say whether he consciously overlooked the fact that several centuries later, in Cicero's *De legibus*, we can find this paremia as an indication of the duties of citizens to the state. Perhaps Jan Marquart's reference precisely to the Law of the Twelve Tables was intended to raise the profile of the cited maxim and indicate its statutory, fundamental nature.

Keywords: Jan Marquart; paremia; Law of the Twelve Tables; Cicero; *De legibus*

INTRODUCTION

In May 1650, a dissertation by Jan (Ioannes) Marquart titled *Dissertatio iuridica de damno iniuriae*[1] was published in an academic printing house in Vilnius. From the information presented on the title page of the dissertation, we can infer that it was the basis for the author's doctorate. Jan Marquart has been mentioned as one of the first graduates of the Faculty of Law of the Vilnius Academy in the early period of its existence, namely the years 1644–1655.[2]

It would thus be appropriate to present the only doctorate in Roman (civil) law defended in Vilnius during this period. In particular, it is worth examining its content, especially the *fontes iuris* cited by the author of the dissertation.

The aim of this study is to analyze the Latin maxim *Salus populi suprema lex esto*, which serves as the motto of the dissertation *Dissertatio iuridica de damno iniuriae*. The considerations, therefore, focus on the need for Jan Marquart to invoke this Roman legal principle on the first page of his work.[3]

Based on the above, the following research hypothesis has been formulated: Jan Marquart made this maxim the source of his research inspiration by seeking

[1] *Dissertatio iuridica de damno iniuriae, quam praeside Nobili et Clarissimo D[omino] Simone Dilger Morenweisensi Bavaro, I[uris] U[triusque] Doctore, et in Alma Universitate Vilnensi Soc[ietatis] Iesu Pandectarum Professore Ordinario defendendam suscepit pro obtinenda Doctoratus in eadem Facultate Laurea Ioannes Marquart A[rt]a[s] L[Ibera]l[es] et Philosophiae Magister Iuris Utriusque Auditor, Vilnae [Vilnius], Typis Academiciis S[ocietatis] I[esu]. Anno D[omin]ai. M.DC.L.(1650) Mense Maii Die* (= Ioannes Marquart, *Dissertatio iuridica de damno iniuriae*, Vilniae 1650).

[2] P. Niczyporuk, *Dissertatio iuridica de damno injuriae Jana Marquarta, Vilnae 1650, pierwszym doktoratem z zakresu prawa rzymskiego w Akademii Wileńskiej*, [in:] *Semper fidelis. Prace dedykowane pamięci Profesora Janusza Sondla, legendzie krakowskiego fakultetu prawniczego*, eds. D. Malec, Ł. Marc, T. Palmirski, Kraków 2017, pp. 279–287. See also K. Čepienė, I. Petrauskienė, *Vilniaus akademijos spaustuvės leidiniai 1576–1805*, Vilnius 1979, p. 96; P. Niczyporuk, *Promocje doktorskie obojga praw w Akademii Wileńskiej*, "Miscellanea Historico-Iuridica" 2004, vol. 2, p. 21. In contrast, R. Plečkaitis (*Stopnie naukowe w dawnym Uniwersytecie Wileńskim*, [in:] *Studia z dziejów Uniwersytetu Wileńskiego 1579–1979*, Warszawa–Kraków 1979, p. 31 ff.) did not mention Jan Marquart among those promoted.

[3] About the *regulae iuris*, see H. Kupiszewski, *Prawo rzymskie a współczesność*, Warszawa 1998, pp. 131–175.

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analogies between the Polish-Lithuanian Commonwealth and ancient Rome. In connection with this hypothesis, two research problems requiring analysis have been identified.

First, it is necessary to verify whether it was a mistake on the part of the dissertation's author to attribute this fundamental principle, referring to the duties of citizens toward the state, to the Law of the Twelve Tables. Depending on whether this issue is confirmed or refuted, the next research problem should be analyzed, namely: Why was it so important for Jan Marquart to link the maxim *Salus populi suprema lex esto* with the provisions of the oldest recorded source of Roman law?

The resolution of these research problems and the verification of the hypothesis are based on historical-legal and dogmatic-legal methods, which allow for the scholarly analysis of preserved manuscripts and university documents, as well as functional and teleological methods.

DOCTORATES IN LAW AT THE ACADEMY OF VILNIUS

Following the example of other universities, the Vilnius Academy also conferred a combined degree of doctor of "both laws": civil and canon law, which was pursued primarily by future law professors and also by high ecclesiastical dignitaries performing public functions.[4] A few years after the Faculty of Law was established,[5] there were already several completed doctoral dissertations by candidates for the degree of doctor of both laws. In 1647, three *utriusque iuris* doctors were promoted at the Vilnius Academy. On 22 June 1647, there was a public defense of the doctorate of Andrzej Markwart (Marquart), a native of Samogitia, one of the first

[4] Romanas Plečkaitis claimed that until 1677 only the degree of doctor of canon law was conferred at the Vilnius Academy. Thus, Academia Vilnensis was an exception to this rule among Polish universities, as it awarded, in addition to doctorates of both laws, also doctorates only in canon law. Cf. R. Plečkaitis, *Stopnie naukowe…*, pp. 31ff. However, L. Piechnik (*Dzieje Akademii Wileńskiej*, vol. 2: *Rozkwit Akademii Wileńskiej w latach 1600–1655*, Rome 1983, p. 186) believed that doctorates in civil (Roman) law were also conferred at the Vilnius Academy. Presumably, doctorates were not conferred exclusively in canon law or civil law. Specialists in these fields could only earn the degree of bachelor or doctor *utriusque iuris*. The claim that the combined degree of doctor of canon law and civil law began to be conferred at the Vilnius Academy only from 1677 seems dubious. See P. Niczyporuk, *Promocje doktorskie…*, pp. 17 ff. See also the considerations of R. Plečkaitis, *Stopnie naukowe…*, p. 31 ff.; M. Dyjakowska, *Prawo rzymskie w Akademii Zamojskiej w XVIII wieku*, Lublin 2000, p. 193 ff.

[5] By virtue of a privilege granted by King Władysław IV on 11 October 1644, a Faculty of Law was opened with two chairs of canon law and two of Roman (civil) law: *concedimus ut in praenominata Akademia Vilnensi Societatis Jesu Ius Canonicum ae Civile et Medicina publice praelegi possint, et ut quiennque digni iudicati fuerint in eisdem omnibus facultatibus … promoveri valeant ad gradus omnes in aliis Academiis et Universitatibus solitos conferri*. Cf. J. Bieliński, *Uniwersytet Wileński (1579–1831)*, vol. 2, Kraków 1899, p. 476; P. Niczyporuk, *Wstęp*, [in:] *Aaron Aleksander Olizarowski. De politica hominum societate libri tres*, vol. 1, Warszawa 2022, p. 101 ff.

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alumni of the Faculty of Law of the *Alma Mater Vilnensis*.[6] The future doctor of both laws presented a dissertation titled *Dissertatio iuridica e iure canonico, civili et regio Poloniae, Magniq[ue] Ducatus Lithuaniae nec non Saxonico et municipali Magdeburgensi*.[7] Andrzej Marquart's dissertation, written under the direction of Jan Schauer, was devoted to the law of inheritance.[8] It was a work in comparative law, which took into account the basic legal orders in force in the Grand Duchy of Lithuania.[9] On the other hand, on 30 July 1647, there was a public defense of the doctoral dissertation of another alumnus of the Faculty of Law, Józef Butkiewicz Popuciewicz, titled *Assertiones ex iurisprudentia ecclesiastica*,[10] which the future doctor of both laws wrote under the direction of Aaron Aleksander Olizarowski.[11]

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[6] Title card of *Dissertatio iuridica e iure canonico*. Cf. J. Bieliński, *Uniwersytet Wileński (1579–1831)*, vol. 3, Kraków 1900, p. 442.

[7] *Dissertatio iuridica e iure canonico, civili et regio Poloniae, Magniq[ue] Ducatus Lithuaniae nec non Saxonico et municipali Magdeburgensi decisa quam sub felicissimis auspiciis Illustrissimi Domini D[omino] Casimiri Leonis Sapieha, M[agnique] D[ucatus] L[ithuaniae] Procancellarii, Słonimensis, Volpensis, Luboszanensis etc Gubernatoris in Alma Universitate Vilnensi Soc[ietatis] Jesu, Facultatis Iuridicae Fundatoris, praeside Nobili et Clarissimo D[omi]n[o] Joanne Georgio Schaver de Augenburg I[uris] U[triusque] Doctore et in eadem Universitate S[anti]s[ime] Canon[um] Ordinario Professore, / defendendam suscepit Andreas Marquart, A[rt]a[s] L[ibera]l[es] et Philosophiae Magister et I[uris] U[triusque] Auditor*. *Vilnae* [Vilnius], *Typis Academicis Soc[ietatis] Iesu, Anno Domini MDCXLVII [1647]. die [22] Iunii* (= A. Marquart, *Dissertatio juridica e jure canonico, civili et Regio Poloniae Magnique Ducatus Lithuaniae nec non Saxonico et municipali Magdeburgensi*, Vilnae 1647).

[8] A.B. Jocher, *Obraz bibliograficzno-historyczny literatury i nauk w Polsce, od wprowadzenia do niej druku po rok 1830 włącznie, z pism Janockiego, Bentkowskiego, Ludwika Sobolewskiego, Ossolińskiego, Juszyńskiego, Jana Winc. i Jerz. Sam. Bandtków itd.*, vol. 3, Vilnius 1857, p. 299; J. Bar, W. Zmarz, *Polska bibliografia prawa kanonicznego od wynalezienia druku do 1940 r.*, vol. 1: *Od wynalezienia druku do 1799 r.*, Lublin 1960, p. 119, item 961; K. Estreicher, *Bibliografia polska*, part 3: *Bibliografia wieków XV–XVIII w układzie abecadłowym*, vol. 22, Warszawa 1977, p. 186, currently in Estreicher's Electronic Bibliography Database (EBBE) http://www.estreicher.uj.edu.pl/staropolska/baza/wpis/?id=156078 (access: 15.12.2025); L. Piechnik, *op. cit.*, p. 172. See also J. Kodrębski, *Prawo rzymskie w Polsce XIX wieku*, Łódź 1990, p. 32.

[9] P. Niczyporuk, *Promocje doktorskie…*, p. 18 ff.; M. Tarkowski, *Wydział Prawa i Nauk Społecznych Uniwersytetu Stefana Batorego w Wilnie w latach 1919–1939*, Gdańsk 2015, p. 28, especially note 55.

[10] *Assertiones ex iurisprudentia ecclesiastica de iure non scripto, iure personarum, et immunitate ecclesiastica, sub felicissimis auspiciis Illustrissimi Domini D[omino] Casimiri Leonis Sapieha*, *Procancellarii M[agnique] D[ucatus] L[ithuaniae], Słonim, Volpen, Luboszan etc etc etc Gubernatoris, / per Iosephum Butkiewicz Popuciewicz, Art et Philosophiae Magistrum, Iuris Utriusq[ue] Auditorem publica disputatione propugnatae; praesidente Nobili et Clarissimo et Magnifico D[omino] Alexandro Aarone Olizarovvski, Juris utriusq[ue], Doctore Principis Neoburgensis Consiliario Iuris Canonici Ordinario Professore, in Alma Academia Vilnensi Soc[ietatis] Iesu die [30] mense [Iunio] Anno Domini MDCXLVII [1647]* (= I. Butkiewicz Popuciewicz, *Assertiones ex iurisprudentia ecclesiastica de iure non scripto, iure personarum, et immunitate ecclesiastica*, Vilniae 1647).

[11] A.B. Jocher, *op. cit.*, p. 286, item 7302; K. Estreicher, *Bibliografia polska*, part 3: *Bibliografia wieków XV–XVIII w układzie abecadłowym*, vol. 13, Warszawa 1977, p. 470, currently available at http://www.estreicher.uj.edu.pl/staropolska/baza/wpis/?sort=nazwisko_imie&order=1&id=62003&of-

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Also in the same year, Józef Konstantynowicz defended his doctoral dissertation titled *Decisio controversiae iuris canonici*.[12] The dissertation in canon law was presented before a committee chaired by Aaron Aleksander Olizarowski – the supervisor of the doctoral dissertation.[13] Other further information about the author is not known, although he was undoubtedly an educated person,[14] as were other candidates for the degree of doctor of both laws.[15] Presumably, the common practice was that the supervisor also headed the doctoral committee.[16]

The topics of doctoral dissertations can testify to the scientific interests of their authors and supervisors. Nevertheless, it is likely that canon law was more popular among doctoral students for practical reasons, as doctorates of both laws were conferred on church dignitaries and other distinguished persons.[17] Therefore, the first graduates of the Faculty of Law at the Vilnius Academy also mostly chose this discipline of law to write their dissertations that were the basis for the *utriusque iuris* degree. Nevertheless, Jan Marquart chose Roman (civil) law, and it was in this field that he defended his doctoral dissertation.

UTRIUSQUE IURIS DOCTOR AND HIS WORK

The graduate of the Faculty of Law, Jan Marquart, was not a well-known person in the Polish-Lithuanian Commonwealth. Apart from his first and last name, we do not know any of his other biographical data. From the information highlighted

fset=0&index=2 (access: 15.12.2025). See also R. Plečkaitis, *Teisės filosofija senajame Vilniaus universitete*, "Problemos" 2001, vol. 60, p. 90.

[12] *Decisio controversiae iuris canonici, sub felicissimis auspiciis Illustrissimi Domini D[omino] Casimiri Leonis Sapieha, M[agnique] D[ucatus] L[ithuaniae] Procancellarii, Słonimensis, Volpensis, Luboszanensis etc Gubernatoris, Facultatis Iurium in Alma Academia Vilnensi Soc[ietatis] Iesu munificentissimi Fundatoris / a Iosepho Konstantynowicz, Artium et Philosophiae Magistro, Sacrae Teologiae et Iuris Utr[usque] Auditore, nec non Academicarum Disputationum Moderatore, Publice Disputationi Proposita, praesidente Clarissimo et Magnifico D[omi]no Alexandro Aarone Olizarowski Iuris Utriusq[ue] Doctore, Serenissimi Principis Neoburgensis Consiliario et Canonum Ordinario Professore in Alma Acad[emia] Vilnen[si] S[ocietatis] I[esu]*, *Vilnae* [Vilnius], *Typis Academiciis S[ocietatis] Iesu [1647]]* (= I. Konstantynowicz, *Decisio controversiae iuris canonici*, Vilniae 1647).

[13] P. Niczyporuk, *Aaron Aleksander Olizarowski profesorem prawa Akademii Wileńskiej*, "Miscellanea Historico-Iuridica" 2015, vol. 14(2), p. 190.

[14] He completed studies in liberal sciences, philosophy, and law – *Artium et Philosophiae Magistro, Sacrae Teologiae et Iuris Utr[usque] Auditore*. Cf. J. Konstantynowicz, *op. cit*., p. 1.

[15] Like other *utriusque iuris* doctors, Andrzej Marquart completed studies in liberal sciences, philosophy, and law (J. Bieliński, *op. cit.*, vol. 3, p. 442). In addition, he held a doctorate in theology. Cf. I. Butkiewicz Popuciewicz, *op. cit*.

[16] P. Niczyporuk, *Aaron Aleksander Olizarowski…*, p. 190.

[17] Cf. idem, *Romaniści Akademii Wileńskiej w latach 1644–1655*, [in:] *Ad laudem magistri nostri. Mistrzowie. Dzieła polskiej romanistyki*, ed. E. Gajda, Toruń 2018, pp. 169–188.

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on the first page of the dissertation, we can conclude that he was undoubtedly a comprehensively educated person.[18] Jan Marquart completed studies in liberal sciences, philosophy, and law – *A[rt]a[s] L[ibera]l[es] et Philosophiae Magister et I[uris] U[triusque] Auditor*. On the other hand, the supervisor of his doctoral thesis, Szymon Dilger, was the first Dean of the Faculty of Law of the Vilnius Academy.[19] In addition, he headed the chair of Roman (civil) law at the Vilnius Academy and came to Vilnius from Ingolstadt, where he studied with Aaron Aleksander Olizarowski and received his *utriusque iuris* doctorate.[20] At the time of the defense of his student's doctoral thesis, Szymon Dilger was no longer the Dean of the Faculty of Law, as his place had been taken over by Jan Jerzy Schauer.[21] Jan Marquart's dissertation, unlike those of the graduates promoted in 1647, did not include a dedication to Kazimierz Leon Sapieha, the Vice-Chancellor of the Grand Duchy of Lithuania.[22]

The dissertation written by Szymon Dilger's student was undoubtedly a *utriusque iuris* doctor. This is the only known doctorate exclusively in Roman (civil) law at the Vilnius Academy in the early days of the Faculty of Law. Jan Marquart's dissertation is a rather small publication, as it consists of 29 parts, which could be considered small chapters. The entire work is preceded by an interesting introduction, although not separated by any editorial unit. Jan Marquart's dissertation was carefully written and provided with numerous footnotes. It shows the author's good knowledge of the issues analyzed. The doctoral dissertation dealt with unlawful damage; however, Jan Marquart began to properly consider the research topic presented only in Part VII of his dissertation. This was done deliberately by

[18] I. Marquart, *Dissertatio iuridica De damno iniuriæ*, Vilnæ 1650, p. 1. Admittedly, the original does not have page numbers and it is therefore unclear where the numbering should start; therefore, for the purpose of this article, the author has made his own page numbering starting from the title page.

[19] L. Piechnik, *op. cit.*, p. 169. See also J. Jaroszewicz, *Obraz Litwy pod względem jej cywilizacji od czasów najdawniejszych do końca wieku XVI*, vol. 3, Wilno 1844, p. 94 ff.; J. Bieliński, *op. cit.*, vol. 1, p. 476; S. Kot, *Aron Aleksander Olizarowski, profesor prawa Akademii Wileńskiej*, [w:] *Księga pamiątkowa ku uczczeniu CCCL rocznicy założenia i IX wskrzeszenia Uniwersytetu Wileńskiego*, vol. 1: *Z dziejów dawnego Uniwersytetu*, Wilno 1929, p. 7; J. Wisłocki, *Prawo rzymskie w Polsce*, Warszawa 1945, p. 52. Cf. J. Kodrębski, *op. cit.*, p. 32; P. Niczyporuk, *Nauczanie prawa rzymskiego w Akademii Wileńskiej*, [in:] *Wielokulturowość polskiego pogranicza. Ludzie – idee – prawo. Materiały ze Zjazdu Katedr Historycznoprawnych Augustów 15–18 września 2000 r.*, eds. A. Lityński, P. Fiedorczyk, Białystok 2003, p. 152 ff.

[20] P. Niczyporuk, *Wstęp…*, p. 72 ff.

[21] This is evidenced by the approval of the dissertation, which was signed by *Albertus Koiałowicz Soc. Jesu i Joannes Georgius Schauer de Augenburg Juris Utr. Doctor et SS. Canonum Ordinarius Professor atque Juridici Collegii Sapiehani pro tempore Decanus*.

[22] Cf. Józef Konstantynowicz: *… sub felicissimis auspiciis Illustrissimi Domini D[omino] Casimiri Leonis Sapieha, M[agnique] D[ucatus] L[ithuaniae] Procancellarii, Słonimensis, Volpensis, Luboszanensis etc Gubernatoris, Facultatis Iurium in Alma Academia Vilnensi Soc[ietatis] Iesu munificentissimi Fundatoris*. Cf. I. Konstantynowicz, *op. cit.*, p. 1.

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the author of *De damno iniuriæ*, who wanted to use the first editorial units of his publication to introduce the reader to the essential subject of the doctorate. At the end of his introductory remarks, Jan Marquart noted that he would deliberately conduct, as an introduction to the subject, a synthetic discussion of regulations that concern the protection of the state and its interests. This was intended to help the reader of his dissertation to better understand the issues associated with the causing of unlawful harm.

Jan Marquart, in the first editorial units of his publication, included information on the sources of Roman law in their historical development, the circumstances of the Laws of the Twelve Tables, and the purposes of drafting the Code of Justinian.[23] Also of interest is the Latin paremia cited by the author of *De damno iniuriæ* on the first page of the work (in the introductory deliberations): *Salus populi suprema lex esto*.[24]

THE LATIN MAXIM *SALUS POPULI SUPREMA LEX ESTO* IN THE DISSERTATION *DE DAMNO INIURIÆ*

Jan Marquart cited a purported passage from the Laws of the Twelve Tables as a warning to those in power, believing it to be a guarantee of the proper exercise of power. The *utriusque iuris* doctor of the Vilnius Academy did not make a deeper analysis of the quoted regulation, nor did he provide it with a footnote or a more profound commentary.[25] Jan Marquart linked the referenced Latin paremia to Aristotle's views on the society and the state.[26] The very way of quoting the *Salus populi suprema lex esto* maxim in the dissertation *De damno iniuriæ* can attest to more than its uniqueness. The significant boldness of the font and the use of italics may also indicate that this paremia served as a motto and leitmotif in the further deliberation. Therefore, the synthetic arguments about regulations that relate to the protection of the state and its interests were intended to help the reader of Jan Marquart's dissertation to better understand the issues involved in the causing of unlawful harm. The welfare of the people as the supreme law is a principle that was also valid in the times of the author of *De damno iniuriæ*. Jan Marquart concludes that the protection of the state is adequate when it is based on two pillars: the army

[23] I. Marquart, *op. cit.*, pp. 9–10.

[24] "The welfare of the people shall be the supreme law" (the Author's translation).

[25] I. Marquart, *op. cit.*, p. 1.

[26] *Summus Philosophorum Princeps Aristoteles* – this is the first sentence of Jan Marquart's dissertation (I. Marquart, *op. cit.*, p. 2). It is followed by references to the works of Aristotle: *Politics* and *Nicomachean Ethics* (cited by Jan Marquart as *Moralia*). The author of *De damno iniuriæ* quotes Greek writers and thinkers in Latin translations. Therefore, his familiarity with Greek literature may have resulted from his knowledge of Latin translations. Cf. J. Jaśtal, *Konstruktywizm w metaetyce — perspektywa Arystotelesowska*, "Diametros" 2015, no. 45, pp. 122–143.

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and the law. In his view, the ancient states Troy, Athens, and Carthage collapsed because they did not have adequate armed forces and, moreover, they did not abide by the treaties they signed. According to the author of *De damno iniuriæ*, there was also no adequate legislation aimed to strengthen the state in those countries. Jan Marquart believed that it would be necessary to curb three inclinations of citizens that are fatal to the state: lust, anger, and the desire to possess everything. Therefore, he argued that even disputes and quarrels between citizens weaken the state. Weakness and decline are evidenced by the spread of heresy, marital infidelity, oppression of widows and minors, and outright robbery. Consequently, only good regulations guarantee the security of transactions, the strength of the family, and the security of the state. Jan Marquart, when discussing Roman law in its historical development, pointed out its timelessness.

Et certe non auxilio tantùm armorum, sed et legum sapientiâ, diutius quàm Babylon in Chaldæa Persepolis in Persia, Alexandria in Græci, Urbs, alta ceruice Quirini aspexit domitum septem de montibus orbem.[27]

Ancient Romans perfected their legal order starting from the adoption of the Laws of the Twelve Tables, through plebeian resolutions, praetorian and aedile edicts, resolutions of the Senate, responses from legal scholars, and imperial constitutions. Jan Marquart believed that the Code of Justinian was a kind of culmination of the historical development of Roman law. The author of *De damno iniuriæ* cited Justinian's arguments taken from the *Tanta* constitution regarding the objectives of the drafting of the Code of Justinian.[28] These objectives, according to Jan Marquart, should guide all lawmakers seeking to ensure the security of the state and the well-being of citizens through properly enacted laws. Then the principle that the welfare of the people should be the supreme law will become a reality.

THE PAREMIA *SALUS POPULI SUPREMA LEX ESTO* IN THE SOURCES OF ROMAN LAW

Jan Marquart cites the Laws of the Twelve Tables as the source of the indicated paremia, without specifying further from which part of the *Lex duodecimo tabularum* it came.[29] The *utriusque iuris* doctor of the Vilnius Academy takes this information for granted, and perhaps this is the reason for the lack of at least a footnote

[27] "Surely, not only through the help of the army, but also through the wisdom of the laws, the proud City of Quirinus has looked down from the seven hills on the conquered world longer than Babylon in Chaldea, Persepolis in Persia, and Alexandria in Greece" (the Author's translation).

[28] I. Marquart, *op. cit*., pp. 9–10.

[29] *Ibidem*, p. 2.

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or a deeper analysis of the cited regulation.[30] The quoted paremia appears in various versions, such as *Salus rei publicae suprema lex esto* and *Salus publica suprema lex esto*.[31] However, this fundamental principle referring to the duty of citizens to the state is known from Cicero's account in *De legibus*.

Marcus Tulius Cicero, *De legibus* 3.8: *Regio imperio duo sunto, iique a praeeundo, iudicando, consulendo praetores, iudices, consules appellamino; militiae summum ius habento, nemini parento; ollis salus populi suprema lex esto*.

The passage comes from Cicero's statement (*De legibus* 3.8), in which he speaks of the power of Roman officials, for whom the highest law and duty should be the welfare of the country.[32] In Roman political literature, the terms *Populus Romanus* and *Res publica Romana* were used interchangeably.[33] The dialogue on law is a natural complement to the books of *On the Republic*. The purpose of the dispute written by Cicero is to develop a model system of law that, "by design, resembles Roman laws, but is free from their shortcomings and is intended for all nations that count in the political arena".[34]

Cicero, starting from his first court speech, considered it most important to present the situation in which the Republic was at the time. He also tried to explain what had brought it to such a state and advised what measures should be taken to prevent further deterioration of the state.[35] It is astonishing to learn that Cicero, taking his first steps in the Forum, had a very sophisticated view of the state and "almost from his first court appearance, he believed that it was the *res publica* that was most important".[36] For him, it was not an abstract concept, but "a form of life and order formed in the historical process, with specific tasks, institutions, values, and obligations".[37] Among the most constitutive elements of this *res publica*, Cicero included *leges* and *iudicia*.[38] Already in his speech in defense of Roscius, showing

[30] *Ibidem*, p. 1.

[31] W. Wołodkiewicz (ed.), *Regulae iuris. Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej*, Warszawa 2001, p. 104.

[32] For information on the circumstances of the drafting of the treatise, see K. Kumaniecki, *Cyceron i jego współcześni*, Warszawa 1959, p. 353 ff.

[33] Cf. W. Wołodkiewicz (ed.), *op. cit.*, p. 104; M. Jońca, *Prawo rzymskie. Marginalia*, Lublin 2012, p. 35.

[34] I. Żółtowska, *Wstęp*, [in:] Marek Tulliusz Cyceron, *O państwie, O prawach*, Kęty 1999, p. 5.

[35] Cf. C. Wirszubski, *Libertas as a Political Idea at Rome During the Late Republic and Early Principate*, Cambridge 1968, p. 61; J. Bleicken, *Lex publica. Gesetz und Recht in der römischen Republik*, Berlin 1975, pp. 490–491; A. Lintott, *The Constitution of the Roman Republic*, Oxford 2023, p. 92.

[36] H. Appel, *Calamitas rei publicae. Cyceron o nadużyciu prawa w mowie wygłoszonej w obronie Roscjusza z Amerii*, [in:] *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin 2007, p. 27 [25–36].

[37] H. Diehl, *Sulla und seine Zeit im Urteil Ciceros*, Olms 1988, p. 25.

[38] H. Appel, *op. cit.*, p. 27 [25–36].

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the relationship between *ius* and *res publica*, he stated: "as long as there is a state, there will be courts".[39]

Thus, in *De legibus*, Cicero, already a mature politician, in his argument on law, recognized that *constat profecto ad salutem civium civitatumque incolumitatem vitamque hominum quietam et beatam inventas esse leges*.[40] As a result, he formulated the idea that the welfare of the Republic shall be the supreme law, especially for officials – those who are supposed to serve the state.

In Roman law textbooks, such as Władysław Rozwadowski's,[41] the paremia formulated in Cicero's *De legibus* is combined with the division between public and private law. He argues that in ancient Rome, decisions were made for the benefit of public interest and in view of this the highest duty of the law is the prosperity of the Republic (state). The Romans, while considering the public interest important, did not forget the interests of the individual.[42] The Roman legal order "was also concerned with the protection of the interests of the individual citizen, and one of the merits of Roman law was the correct association of the interest of the individual with the interest of the society".[43]

It should also be noted that Cicero's work, written during the final period of the Republic, presents an ideal, almost unattainable model of government, which left a profound and lasting imprint on the Roman consciousness for centuries. Perhaps for this reason, in seeking analogies between the Polish-Lithuanian Commonwealth and Rome, Jan Marquart made this maxim the foundation of his research inspiration.

THE INFLUENCE OF THE MAXIM *SALUS REI PUBLICAE SUPREMA LEX ESTO* ON THE 17TH-CENTURY CONCEPT OF CITIZENSHIP IN THE POLISH-LITHUANIAN COMMONWEALTH

Roman dilemmas did not lose their relevance in the 17th century, although the reasons for locating the fundamental principle referring to the duty of citizens to the state in the Laws of the Twelve Tables were unknown. This was not likely a mistake.[44]

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[39] Cicero, *Pro Roscio Amerino* § 91: *dum civitas erit, iudicia fient*.

[40] Cicero, *De legibus* 2.11: "laws were made for the good of citizens, for the preservation of states, and for the purpose of ensuring that the life of the people is peaceful and happy".

[41] W. Rozwadowski, *Prawo rzymskie. Zarys wykładu z wyborem źródeł*, Poznań 2006, p. 25.

[42] Cf. J. Zajadło (ed.), *Łacińska terminologia prawnicza*, Warszawa 2020, p. 66 ff.

[43] W. Rozwadowski, *op. cit.*, p. 25.

[44] Not only Jan Marquart pointed out that the principle *Salus rei publicae suprema lex esto* had its origins in the Law of the Twelve Tables. Cf. A.R. Paolone, *Citizenship, Values and Social Orders: The Assessment System of Census and Ritual Education in Ancient Rome*, [in:] *Empires, Post-Co-*

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From the beginning of the 16th century, various quotations and excerpts from the works of Roman jurists, historians, grammarians, and philosophers, mainly Cicero, began to be collated to get an idea of what this monument to Roman law, shrouded in legend, looked like. This work was undertaken by representatives of legal humanism who were interested (unlike their predecessors) not only in writing commentaries and critical editions of Justinian's *Corpus*, but also in searching for older sources that would shed new light on the history of Roman law.[45] However, in the reconstructions of the Renaissance era, the principle *Salus populi suprema lex esto* is absent as one of the regulations of the Law of the Twelve Tables.[46]

Maria Wichowa believes that "the classical legacy of Antiquity and then the Middle Ages and Renaissance was the formation of civic humanism among the youth of the Baroque era. This involved situating the Roman *virtutis* in the new political conditions, which boiled down to a command to act for the common good, and for the benefit of fellow citizens and the state as a whole. The Roman maxim from the Law of the Twelve Tables, *Salus reipublicae suprema lex esto* (3.3.8) (the welfare of the Republic shall be the supreme law), which was somewhat 'modernized' by Cicero in his work *On the Laws* into the following form: *Salus populi suprema lex (esto)* (for consuls). The very idea of love of the homeland, of devoting one's entire strength to it, was particularly vibrant in the Polish-Lithuanian Commonwealth of the 17th century, which was the age of wars for independence, most importantly with the menacing Swedish Deluge. The educational model formed in schools placed high moral demands on the citizen. Parents and educators invoked the ancient Roman *virtus*".[47] Andrzej Bryk, too, notes that "the Law of the Twelve Tables stipulated that the welfare of the people was the supreme law (*salus populi romani suprema lex esto*) or as Gaius put it, *Lex* is the command of the people, *Lex*, from *ligare* – to bind – was contrasted with *rex* from *gerere* – to rule".[48]

The Polish nobility was particularly eager to turn to antiquity and adopted from that period not only a system of values, but also patterns of behavior, both in private life and, perhaps most importantly, in the public forum. A characteristic feature of Sarmatian culture was the identification of the Commonwealth with Rome, and

loniality and Interculturality: New Challenges for Comparative Education, ed. L. Vega, Rotterdam 2014, p. 76.

[45] M. Zabłocka, *Nowożytne próby rekonstrukcji ustawy XII Tablic*, "Prawo Kanoniczne" 1994, vol. 37(3–4), pp. 59–67, especially p. 61.

[46] Eadem, *Ustawa XII Tablic. Rekonstrukcje doby Renesansu*, Warszawa 1998, passim.

[47] M. Wichowa, *Klasycyzm jako element światopoglądu twórców literatury polskiego baroku*, "Wschodni Rocznik Humanistyczny" 2010–2011, vol. 7, p. 75.

[48] Cf. A. Bryk, *Konstytucjonalizm. Od starożytnego Izraela do liberalnego konstytucjonalizmu amerykańskiego*, Kraków 2013, p. 143, note 192.

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its citizens with the ancient Romans.[49] The very rich aristocratic ideal of a citizen and human being was shaped according to the Roman model.[50] It mandated the devotion of all forces to the service of the state, putting the family second, and the individual only third.[51] Most valued were military service, holding office and other public occupations, bringing the reward of *honor*, *gloria*, *dignitas*, and *auctoritas*.[52]

Jan Marquart's pointing to the Law of the Twelve Tables may have had another purpose: the proper formation of citizens' duties to the state in legislation that has never been repealed, which is a guarantee of the proper exercise of power.

CONCLUSIONS

In May 1650, the Faculty of Law at the Vilnius Academy conferred the combined degree of doctor of "both laws": civil and canon, on Jan Marquart on the basis of the publication *Dissertatio iuridica De damno iniuriæ*. Thus, the Vilnius Academy, following the example of other European universities, had the right to confer academic degrees and promote its own doctors. In the first years of the Faculty of Law (1647–1650), four *utriusque iuris* doctors were promoted, including Jan Marquart, a person not very well known in the Polish-Lithuanian Commonwealth. A doctor of "both laws" was a comprehensively educated person for his time, as he completed studies in liberal sciences, philosophy, and law. The supervisor of the doctoral thesis, Szymon Dilger, was the first Dean of the Faculty of Law of the Vilnius Academy and a professor of Roman (civil) law. The topics of doctoral dissertations can testify to the scientific interests of their authors and supervisors. It was in the field of Roman (civil) law that Jan Marquart wrote his doctoral thesis, and it was one of the few dissertations in this field.

The dissertation *De damno iniuriæ* was carefully written and provided with numerous footnotes, which demonstrates the author's good knowledge of the issue he analyzed. The work dealt with unlawful damage; however, Jan Marquart began to properly consider the research issue presented only with Part VII of his dissertation.

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[49] B. Milewska-Waźbińska, *„Vera nobilitas". Etos szlachecki na podstawie herbarzy staropolskich*, [in:] *Etos humanistyczny*, ed. P. Urbański, Warszawa 2010, p. 177.

[50] Cf. M.T. Lizisowa, *Modelowanie treści pojęć prawo – własność – władza w języku prawnym Korony i Wielkiego Księstwa Litewskiego*, [in:] *Litwa w epoce Wazów*, eds. W. Kriegseisen, A. Rachuba, Warszawa 2006, pp. 97–112.

[51] Cf. D. Pietrzyk-Reeves, *Ład Rzeczypospolitej. Polska myśl polityczna XVI wieku a klasyczna tradycja republikańska*, Kraków 2012, p. 241; B. Szlachta, *W poszukiwaniu istoty wolności. Polski dwugłos z siedemnastego stulecia*, "Myśl Polityczna" 2020, no. 2, pp. 71–92; idem, *Dwa wymiary filozofii politycznej. Na marginesie debaty dwóch polskich filozofów XVII w. Wprowadzenie: zarys problemu*, "Roczniki Filozoficzne" 2022, vol. 70(2), pp. 116–118.

[52] J. Korpanty, *Obraz człowieka i filozofii życia w literaturze rzymskiej epoki augustowskiej*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Historycznoliterackie" 1985, no. 59, p. 7.

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This was done deliberately by the author of *De damno iniuriæ*, who wanted to use the first editorial units of his publication to introduce the reader to the essential subject of the doctorate. The author of *De damno iniuriæ* invoked on the first page of his work the Latin paremia *Salus populi suprema lex esto*, which was to be a signpost for further synthetic considerations of regulations for the protection of the state and its interests. They were intended to help the reader of Jan Marquart's dissertation to better understand the actual subject matter of the dissertation.

The quoted maxim was meant to be an alleged passage of the Law of the Twelve Tables, quoted as a warning to those in power, as a guarantee of the due exercise of power. The *utriusque iuris* doctor of the Vilnius Academy did not make a deeper analysis of the quoted regulation, nor did he provide it with a footnote or a more profound commentary. The cited principle *Salus populi suprema lex esto*, was not a provision of the Law of the Twelve Tables, and it is not found in reconstructions of the oldest written source of Roman law during the Renaissance. Therefore, the passage certainly comes from Cicero's statement, in which he speaks of the power of Roman officials, for whom the highest law and duty should be the welfare of the country. Thus, the injunction to act for the common good and for the benefit of fellow citizens and the state as a whole was a manifestation of the idea of love of the homeland, of devoting all one's energy to it, which was particularly vibrant in the Polish-Lithuanian Commonwealth of the 17th century. Basing the statutory duties of citizens to the state on legislation that has never been repealed is a guarantee of the proper exercise of power, and this was the goal that guided Jan Marquart's dissertation.

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ABSTRAKT

W maju 1650 r., w drukarni akademickiej w Wilnie, opublikowano rozprawę Jana (Ioannesa) Marquarta zatytułowaną *Dissertatio iuridica de damno iniuriae*. Z informacji przedstawionych na stronie tytułowej dysertacji możemy domniemywać, że była ona podstawą do nadania jej autorowi doktoratu. Jan Marquart bywał wymieniany jako jeden z pierwszych absolwentów Wydziału Prawa Akademii Wileńskiej z początkowego okresu jej funkcjonowania, a mianowicie z lat 1644–1655. Autorowi *De damno iniuriæ* łacińska paremia *Salus populi suprema lex esto* miała być myślą przewodnią dysertacji, wskazówką do dalszych rozważań. O jej wyjątkowości dla Jana Marquarta może świadczyć chociażby jej sposób zacytowania w dysertacji doktorskiej oraz użyta szczególna wielkość czcionki, by ją wyeksponować. Paremia miała również za zadanie uzasadnić potrzebę syntetycznego omówienia regulacji odnośnie do ochrony państwa i jego interesów, na które autor *De damno iniuriæ* przeznaczył kilka jednostek redakcyjnych, opatrzonych rzymskimi cyframi od I do VI. Jan Marquart uznał, że dokonując kodyfikacji prawa oraz dostosowując go do zmieniających się stosunków społeczno-gospodarczych, Justynian I Wielki kierował się w swoim przedsięwzięciu kodyfikacyjnym zasadą, iż dobro Rzeczypospolitej jest najwyższym prawem. Natomiast zdziwienie budzi okoliczność, że autor *De damno iniuriæ* podał Ustawę XII Tablic, bez określenia konkretnej tablicy, jako wskazówkę na pochodzenie tej fundamentalnej zasady, będącej gwarantem właściwego sprawowania władzy. Trudno powiedzieć, czy świadomie pominął fakt, że kilka wieków później w *De legibus* Cycerona możemy odnaleźć tę paremię jako wskazówkę w zakresie powinności obywateli względem państwa. Być może odwołanie przez Jana Marquarta właśnie do Ustawy XII Tablic miało podnieść rangę cytowanej maksymy oraz wskazać na jej ustawowy, fundamentalny charakter.

Słowa kluczowe: Jan Marquart; paremia; Ustawa XII Tablic; Cicero; *De legibus*