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Bożena Czech-Jezierska
The John Paul II Catholic University of Lublin, Poland
ORCID: 0000-0002-0735-8166
bozena.czech-jezierska@kul.pl

In Search of the Boundaries of Roman Public Law: Some Remarks on Polish Compendia of the Subject

W poszukiwaniu zakresu rzymskiego prawa publicznego. Uwagi na tle polskich podręczników przedmiotu

ABSTRACT

Roman public law is a source of knowledge about the relations between the state and the individual, the family, or, more generally, the society in ancient Rome. However, this concept is often viewed as somewhat vague, especially when trying to grasp its actual scope based on the research literature on the subject. Things are getting even more complicated due to the mutual permeation of Roman public law and private law, the latter prevailing in source texts. Speaking of the research literature, authors seem to offer no more than a skin-deep analysis of both the concept and the content of Roman public law. Consequently, the topics and content of works on Roman public law vary substantially in terms of scope. Jurists and Roman law experts most often attempt to reconstruct the history of the Roman political system, and the historians of antiquity are more inclined to explore the social history of Rome, so the balance happens to be far from even. However, are these two domains fundamentally different from each other, or do they intersect anyway? What do we expect from research publications on Roman public law? Presentation of the political history of Rome? Attempts to reconstruct the public law system? Or maybe a clearer picture of the relations between the Roman state and its people as a community of citizens? The author's point of departure for consideration of the actual scope of Roman public law is recent studies on the subject published in Poland.

Keywords: concept of Roman public law; Polish compendia of Roman law; divisions of Roman law

CORRESPONDENCE ADDRESS: Bożena Czech-Jezierska, PhD, Assistant Professor, The John Paul II Catholic University of Lublin, Faculty of Law, Canon Law and Administration, Institute of Legal Sciences, Racławickie 14, 20-950 Lublin, Poland.

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INTRODUCTION

While the scope of Roman private law has essentially been agreed,[1] it is certainly not the same thing with Roman public law. From the beginning of the 21st century, Polish Roman law studies have evinced an apparently greater interest in this field.[2] Many new synthetic works have been published on the subject.[3] Yet, after having a closer look, they often seem to pursue completely different approaches to this concept. The scope of Roman public law discussed therein, and its clear separation from private law, are far from accurate; moreover, a review of the texts reveals differences in perceiving the actual content of this branch of law. At the same time, the viewpoints adopted by the authors are not homogeneous.

This is what inspired this article. It aims to highlight the existing discrepancies and attempts to tell where they come from and whether they are legitimate. Further questions also arise, such as: Should the scope of Roman public law be unified, and if yes, what criterion should be applied to do so? Should we follow the criterion of the

[1] The differences are seen in the sequence of discussing specific issues within the sections of law, or sometimes in the sequence of sections: property law, law of succession, liabilities. See recent works on the subject, i.a., M. Kuryłowicz, R. Świrgoń-Skok, *Systematyka polskich podręczników prawa rzymskiego*, [in:] *Ad laudem magistri nostri. Mistrzowie. Dzieła polskiej romanistyki*, ed. E. Gajda, Toruń 2018, pp. 129–154. Cf. M. Kuryłowicz, *Prawo osobowe*, [in:] *Czterdzieści lat kodeksu cywilnego. Materiały Ogólnopolskiego Zjazdu Cywilistów w Rzeszowie (8–10 października 2004 r.)*, ed. M. Sawczuk, Kraków 2006, pp. 339–350; idem, *Prawo spadkowe w systematyce rzymskiego prawa prywatnego*, [in:] *Rozprawy z prawa prywatnego oraz notarialnego. Księga pamiątkowa dedykowana Profesorowi Maksymilianowi Pazdanowi*, eds. A. Dańko-Roesler, A. Oleszko, R. Pastuszko, Warszawa 2014, pp. 170–180; idem, *Kilka refleksji nad systematyką rzymskiego prawa prywatnego*, "Studia Prawnicze KUL" 2024, no. 3, pp. 67–83; B. Czech-Jezierska, *Miejsce procesu cywilnego w systematyce prawa rzymskiego*, "Zeszyty Naukowe KUL" 2017, vol. 60(3), pp. 427–448.

[2] Indeed, Polish jurists' research on Roman public law boast a much longer tradition going back to the interwar period. Still, there has been more attention attached to various problems in this field since the 1980s. See M. Zabłocka, *Romanistyka polska po II wojnie światowej*, Warszawa 2002. H. Kupiszewski (*Prawo rzymskie a współczesność*, Kraków 2013, p. 30) spoke of the tradition of exploring private law in ancient Roman studies. See also introductory remarks to the history of studies on Roman public law: K. Kłodziński, *Wybrane dzieła Teodora Dydyńskiego jako przykład prekursorskich badań nad rzymskim prawem publicznym w Polsce*, "Czasopismo Prawno-Historyczne" 2012, vol. 64(2), pp. 405–406.

[3] B. Sitek, P. Krajewski (eds.), *Rzymskie prawo publiczne*, Olsztyn 2006; J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie. Skrypt z wyborem źródeł*, Warszawa 2005; eidem, *Publiczne prawo rzymskie*, Warszawa 2011; A. Tarwacka, J. Zabłocki, *Rzymskie prawo publiczne*, Warszawa 2021; T. Palmirski, *Publiczne prawo rzymskie. Zarys wykładu. Skrypt dla studentów prawa i administracji*, Kraków 2006; A. Dębiński, J. Misztal-Konecka, M. Wójcik, *Prawo rzymskie publiczne*, Warszawa 2010; eidem, *Prawo rzymskie publiczne*, Warszawa 2017; A. Jurewicz, R. Sajkowski, B. Sitek, J. Szczerbowski, A. Świętoń, *Rzymskie prawo publiczne. Wybrane zagadnienia*, Olsztyn 2011; K. Wyrwińska, *Civis romanus sum. Rzymskie prawo publiczne. Wybrane zagadnienia*, Kraków 2015. Cf. M. Zabłocka, *Romanistyka polska w pierwszym dziesięcioleciu XXI wieku*, Warszawa 2013, p. 75. See also M. Kuryłowicz, [rev.] *M. Zabłocka, Romanistyka polska w pierwszym dziesięcioleciu XXI wieku, Warszawa 2013, pp. 209*, "Czasopismo Prawno-Historyczne" 2015, vol. 67(1), p. 404.

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contemporary scope of public law (which, by the way, is not strict either), or perhaps seek ways to understand Roman public law as the Romans did? Or else, should we let authors be completely free in deciding the content of this law and abandon attempts to seek uniformity? Below are some thoughts and views to consider when trying to tackle these questions. For the purposes of this article, only works published within or slightly more than 10 years ago were selected for review. They serve as a representative point of reference for analysis, as provided for in the title of the article.

RESEARCH AND RESULTS

1. The concept of public law in Roman sources

When attempting to reconstruct the Roman concepts related to the content of public law, some clues, though few, can be found in the oldest Roman sources. It is known that Titus Livius (*Ab urbe condita* 3.34.6) named the Laws of the Twelve Tables the source of all public and private law (*fons omnis publici privatique iuris*). However, as A. Watson has recently found, in fact "the Laws did not contain either public law or religious law".[4] Watson further points out that this was the result of a conflict with the plebeian class, which indeed resulted in the adoption of the Laws of the Twelve Tables, but without actually giving the plebeians more competence. "The patricians controlled all public offices and priestly positions. The plebeians wanted to have access to them, too, so they fought bitterly. Eventually, the patricians agreed to draw up a code, it was the Laws of the Twelve Tables. What I am going to say now is very egalitarian: the Laws did not contain either public law or religious law. In other words, the plebeians did not get what they really wanted. That precedent set a certain model of approach. Public law was referred to rarely, and religious law is actually absent from the works of jurists of the classical period".[5] By the way, it is to be noted that Watson clearly separates religious law from public law.[6] His view of the absence of public law in the first written collation of Roman law does not come as a novelty; in fact, the literature on Roman law has

[4] In a conversation with M. Jońca (*Zapożyczenia to droga, na której rozwija się prawo*, [in:] *Personae – res – actiones. Rozmowy o prawie rzymskim i historii prawa*, ed. M. Jońca, Lublin 2021, p. 318).

[5] *Ibidem*.

[6] F. Zoll (*Rzymskie prawo prywatne (Pandekta)*, vol. 2A: *Część ogólna*, Warszawa 1920, p. 4) apparently followed a similar understanding and advocated the dichotomy: public and private law plus religious law. H. Müllejans shared a similar view. He pondered upon the legitimacy of the division into public, private, and religious law. He was of the opinion that religious law cannot be embedded only in public law. Cf. A. Wiliński, [rev.] *Hans Müllejans, Publicus und privatus im römischen Recht und im älteren kanonischen Recht unter besonderer Berücksichtigung der Unterscheidung ius publicum und ius privatum, München 1961*, "Helikon" 1963, no. 3, p. 664.

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noted earlier that Livius's opinion is somewhat exaggerated.[7] The firm statement of Prof. Watson is probably too radical as well; still, he points out that the Law of the Twelve Tables failed to contain a thorough regulation of public law but offered only some of its elements.

More than four centuries after the Laws of the Twelve Tables, in his *De partitione oratoria* (37.130), Cicero says that written law is divided into private and public, the latter further covering, e.g. *lex*, *senatusconsultum*, *foedus*.[8] Roman laws, among them *leges rogatae* or *plebiscita*, are listed in the first place, certainly due to the high importance of people's assemblies in the state and the leading position of these laws in the hierarchy of normative measures applicable to all citizens, at least in the period of the Republic.[9] Resolutions of the Roman Senate, due to their equal rank with statutes (G. 1.4) and the importance of this legislative body, were an accepted source of law, on a par with *leges* and, as *leges*, ranked among *ius civile.*

[7] This was the opinion of A. Guarino, also endorsed by, e.g., M. Zabłocka. B. Albanese adhered to an opposite view. The content of public law in the Laws of the Twelve Tables can be identified, e.g., when analysing attempts at their reconstruction. Interesting seems the Tripartite proposal by J.F. Hotman, who isolated *ius sacrum*, *ius publicum*, and *ius privatum* from the Laws of the Twelve Tables. Also, when examining the publication of the reconstruction of the Laws included in the *Corpus Iuris Civilis* of 1600 by Lugduni in the form of a three-section appendix: *De lure Sacrorum*, *De Iure Publico*, *De Iure Privato*. For more, see M. Zabłocka, *Pierwsza palingenezja ustawy XII tablic*, "Prawo Kanoniczne" 1993, vol. 36(3–4), p. 152, footnote 17 and the literature cited therein (pp. 149–155). See also eadem, *Nowożytne próby rekonstrukcji ustawy XII tablic*, "Prawo Kanoniczne" 1993, vol. 37(3–4), pp. 63–66. Cf. M. and J. Zabłoccy, *Ustawa XII tablic. Tekst, tłumaczenie, objaśnienia*, Warszawa 2000.

[8] Cicero, *De partitione oratoria* 37.129–131: *XXXVII. C.F. Habeo ista; nunc ea quae cum quale sit quippiam disceptatur quaeri ex utraque parte deceat velim audire.C. P. Confitentur in isto genere qui arguuntur se id fecisse ipsum in quo reprehenduntur, sed quoniam iure se fecisse dicunt, iuris est omnis ratio nobis explicanda. Quod dividitur in duas partes primas, naturam atque legem, et utriusque generis vis in divinum et humanum ius est distributa, quorum aequitatis est unum, alterum religionis. Aequitatis autem vis est duplex, cuius altera directa et veri et iusti et ut dicitur aequi et boni ratione defenditur, altera ad vicissitudinem referendae gratiae pertinet, quod in beneficio gratia, in iniuria ultio nominatur. Atque haec communia sunt naturae atque legis, sed propria legis et ea quae scripta sunt et ea quae sine litteris aut gentium iure aut maiorum more retinentur. Scriptorum autem privatum aliud est, publicum aliud: publicum lex, senatusconsultum, foedus, privatum tabulae, pactum conventum, stipulatio. Quae autem scripta non sunt, ea aut consuetudine aut conventis hominum et quasi consensu obtinentur, atque etiam hoc in primis, ut nostros mores legesque tueamur quodammodo naturali iure praescriptum est*.

[9] On the enactment of Roman *leges*, see T. Dydyński, *Historia źródeł prawa rzymskiego*, Warszawa 1904, pp. 37–46; W. Litewski, *Historia źródeł prawa rzymskiego*, Warszawa 1989; A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, 2010, pp. 89–90. See the compilation of *leges* with a commentary by G. Rotondi (*Leges publicae populi Romani. Elenco cronologico con una introduzione sull'attivita dei comizi romani*, Milano 1912, reprint 1962). See also D. Flach, *Die Gesetze der frühen römischen Republik. Text und Kommentar*, Darmstadt 1994; M. Elster, *Gesetze der späten römischen Republik*, Göttingen 2020; P. Kołodko, *Ustawodawstwo rzymskie w sprawach karnych. Od ustawy XII tablic do dyktatury Sulli*, Białystok 2012.

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They primarily concerned public law.[10] Cicero mentions them alongside *foedus*, a peace treaty contracted by Rome with foreign allied or communities. It was an important tool in Rome's diplomacy and international relations.[11] Peace and allied treaties contained public law provisions regulating, but not only, state-to-state relations.[12] Hence, ignoring these relations when discussing the scope of public law is completely unjustified, especially keeping in mind Cicero's statement. Therefore, research works that aspire to cover the subject of Roman public law exhaustively should not omit the concept of *foedus*.

On the other hand, sometime later, Ulpian wrote about two *positions* in addressing the subject of Roman law: private and public. In his famous sentence (D. 1.1.1.2: *Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam privatim* – "Public law is that which has reference to the administration of the Roman government; private law is that which concerns the interests of individuals; for there are some things which are useful to the public, and others which are of benefit to private persons"),[13] he pointed to *utilitas* as a criterion which sets the dividing line. According to Ulpian's

[10] K. Kolańczyk (*Prawo rzymskie*, Warszawa 1973, p. 58) notes that no more than a dozen of resolutions passed by the Roman Senate in the 1st and 2nd centuries A.D. were of some relevance to Roman private law. The traditional position of the Roman Senate, which at the end of the Republic would repeatedly claim legislative powers by passing resolutions on matters reserved for the plebeian assemblies, declined in the 3rd century AD. For more, see T. Dydyński, *op. cit.*, pp. 67–105. About the Roman Senate as legislator and the relationship between *senatus consulta* and *leges*, see W. Litewski, *Historia…*, pp. 62, 89; F. Schulz, *Principles of Roman Law*, Oxford 1956, pp. 11–14. See also comments on this subject from the analysis of J. Zamojski's work on Roman public law: M. Kuryłowicz, W. Witkowski, *Rozprawa Jana Zamoyskiego o senacie rzymskim*, Lublin 1997.

[11] About *foedus* cf. initially W. Osuchowski, *Zarys rzymskiego prawa prywatnego*, Warszawa 1971, pp. 234–236; W. Litewski, *Podstawowe wartości prawa rzymskiego*, Kraków 2001, pp. 202–203. On the elements of the study of international law in Cicero's views, see I. Leraczyk, *Ius belli et pacis w republikańskim Rzymie*, Lublin 2018, pp. 36–47.

[12] However, they also contained regulations on, but not only, the status of the population, which would often fall within the scope of private law. On the significance of treaties concluded by the Roman state with allied states and about their content, see *ibidem*, pp. 165–182 and the literature cited therein.

[13] Translation according to *The Enactments of Justinian: The Digest or Pandects*, Book I, https://droitromain.univ-grenoble-alpes.fr/Anglica/D1_Scott.htm#I (access: 11.10.2025). Cf. *The Digest of Justinian*, ed. A. Watson, Philadelphia 1985, with translation: "Public law is that which respects the establishment of the Roman commonwealth, private that which respects individuals' interests, some matters being of public and others of private interests". Polish translation in: *Digesta Iustiniani. Digesta justyniańskie. Tekst i przekład*, ed. T. Palmirski, vol. 1, Kraków 2013, p. 159. In Justinian's *Institutions*, it is Title 1.1.4: *Huius studii duae sunt positiones, publicum et privatum. publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem pertinet* ("There are two branches of this study, namely: public and private. Public law is that which concerns the administration of the Roman government; private law relates to the interests of individuals". See *Preamble of the Institutes or Elements of Our Lord the Most Holy Emperor Justinian*, https://constitution.org/2-Authors/sps/sps02_j1-1.htm (access: 11.10.2025). There are other possible translations. We can understand *positions* as "branches" or "aspects", *utilitas* as "interest" or "utility". For Polish

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understanding, public law concerned the benefit (use, utility, interest) of the Roman state[14] or benefited the society as a whole. However, the interpretation of Ulpian's division criterion given in the literature is not straightforward. Some point to the "subject" of this regulation. For example, T. Mommsen found that public law was made up of regulations governing the community and private law individual citizens. Among Polish authors, R. Taubenschlag and W. Kozubski subscribed to a similar view. On the other hand, M. Kaser opined that public interest was not the most prominent attribute of Roman *ius publicum*. Other researchers claim to identify the source of the division in the link between legal norms and a specific subject, i.e. the state or the individual. According to this concept, private law covers the relations between private persons (and persons to things) with a view to safeguarding their interests. On the other hand, public law governs the relations of persons as members of the state and the relations of between states with a view to safeguarding the state's interest. Another popular criterion employed to identify the norms of public law is that they come from the state bodies; this being the case, private law is different as not being made by the state and as the law of jurists.[15]

Ulpian names further areas addressed by public law: *publicum ius in sacris, in sacerdotibus, in magistratibus consistit*, thus defining the reach of this branch of law dealing with religious affairs and matters related to the exercise of priestly and state offices. In Roman public law, the state authority seems to prevail, as noted, e.g., by Papinian (D. 2.14.38): *Ius publicum privatorum pactis mutari non potest*.[16]

M. Kuryłowicz commented on the two approaches as follows: "Cicero's and Ulpian's accounts offer a picture of public law as the entirety of norms on state bodies, the system of the state, and the state administration and its functions, also in the religious domain".[17] If, following Kuryłowicz's opinion, a unified criterion provided by the two ancient lawyers were to be adopted, the analysed research works on Roman public law should have addressed: the legislation and the history of the sources of law-making, the evolution of the administrative structures of the state (offices), concluded treaties and the international position of the Roman state and its

version see *Instytucje Justyniana*, translated from Latin and with a foreword by C. Kunderewicz, Warszawa 1986, p. 16. Cf. *Institutiones Justiniani. Tekst i przekład*, ed. T. Palmirski, Kraków 2018.

[14] Cf. K. Kolańczyk, *Prawo rzymskie*, Warszawa 2021, p. 44; M. Kuryłowicz, *Prawo rzymskie. Historia – tradycja – współczesność*, Lublin 2003, p. 38; J. Nowacki, *Prawo publiczne – prawo prywatne*, Katowice 1992, p. 8.

[15] T. Mommsen, *Römisches Staatsrecht*, vol. 1, Nachdruck Basel 1952, p. 3; R. Taubenschlag, W. Kozubski, *Historia i instytucje rzymskiego prawa prywatnego*, Warszawa 1945, p. 3. Cf. M. Kaser, *Ius publicum – ius privatum*, "Studia et Documenta Historiae et Iuris" 1951, vol. 17, p. 271; idem, *Das römische Privatrecht*, vol. 1, München 1971, p. 197; J. Nowacki, *op. cit.*, p. 10, footnote 8; A. Wiliński, [rev.] *Hans Müllejans…*, pp. 660–666.

[16] See also U. von Lübtow, *Das römische Volk*, Frankfurt 1955, p. 620; F. Schulz, *Principles…*, p. 177. Cf. also J. Nowacki, *op. cit.*, pp. 15–16.

[17] M. Kuryłowicz, *Prawo rzymskie…*, p. 38.

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military organisation, the economic structure and fiscal apparatus, religious law and the organisation of civil and criminal justice (exposing their links to private law).[18]

The contemporary approach, apart from constitutional, administrative, financial, and religious laws, would require penal law to be included, yet, with regard to ancient Rome, this is not so obvious. It is well-known that in ancient Rome, the administration of punishment also had a private dimension. Citizens were able to punish their slaves because they were their private owners.[19] On the other hand, the imposition and administration of punishment, including the carrying out of executions, were the exclusive competence of state bodies (from the emperor to municipal magistrates), i.e. the official authority; therefore, penal law largely fell within the scope of public law. It should also be kept in mind that Roman penal law was highly procedural: the statutes defined the scope of a *crimen* and the relevant procedure to be put in place, and procedures were always part of public law.[20] Even the recently published (and only one in Poland) monograph work on Roman penal law by M. Jońca has a subsection called *Roman Penal Law as Part of Public Law?*, with a question mark.[21] Jońca also avoids a straightforward answer to the question contained in the title, thus leaving the reader in a quandary. Besides, the Roman civil process, which contains elements of both private and public law anyway, cannot be completely ignored.[22]

The public law–private law dichotomy, however, was not as important for the ancient Romans as it is for the contemporary people. Today, this division is relevant not only from the theoretical but also from the practical point of view for law-making and control. Law enforcement authorities rely upon it as well. Based on the division, further branches of the law, legal disciplines, and even organisational units of legal departments at universities were identified. The blurred boundaries

[18] Cf. M. Kuryłowicz, [rev.] *Jan Zabłocki, Anna Tarwacka, Publiczne prawo rzymskie. Skrypt z wyborem źródeł*, *wyd. 1, Liber, Warszawa 2005, ss. 181*, "Czasopismo Prawno-Historyczne" 2005, vol. 57(1), p. 410.

[19] The right to punish free family members under the authority of *pater familias* required prior endorsement by a family court (*iudicium domesticum*). Cf., e.g., W. Mossakowski, *Iudicium domesticum w okresie republiki rzymskiej*, [in:] *Rodzina w społeczeństwach antycznych i wczesnym chrześcijaństwie*, ed. J. Jundziłł, Bydgoszcz 1995, pp. 85–95.

[20] For example, see M. Kuryłowicz, *Prawo rzymskie…*, pp. 48–49; W. Litewski, *Rzymski proces karny*, Kraków 2003, pp. 7–21; K. Amielańczyk, *Crimina legitima w rzymskim prawie publicznym*, Lublin 2013, pp. 11–17; M. Jońca, *Rzymskie prawo karne. Instytucje*, Lublin 2021, pp. 49–56; M. Jońca (ed.), *Leksykon rzymskiego prawa karnego*, Warszawa 2022, *s.v. crimen*; A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, 2010, pp. 185–192.

[21] M. Jońca, *Rzymskie prawo karne. Instytucje…*, pp. 21–22. See also idem, *Rzymskie prawo karne – wybrane problemy koncepcyjne*, "Edukacja Prawnicza" 2020, no. 1, pp. 57–61.

[22] It is, however, discussed in textbooks on Roman private law, though from the viewpoint of safeguarding private interests. Zob. K. Kolańczyk, *Über den Bildungswert der römischen Zivilprozesslehre für den sozialistischen Juristen*, "Acta Universitatis Szegediensis. Acta juridica et politica" 1970, vol. 27(22), pp. 92–93; B. Czech-Jezierska, *Miejsce procesu…*, pp. 427–448.

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of *ius publicum* and *ius privatum* are still disputed and raise controversies, as many legal domains reveal the features of both public law and private law, e.g. economic law, labour law, and international law.[23]

Besides Ulpian, other jurists of the classical period were not interested in separating public law from the structure of Roman law. No such separation can be found in Paulus. When describing the composition of Roman law (D. 1.1.11), he omits to mention public law. In his opinion, the law is defined through natural law, civil law, and praetorian law. The separation of *ius publicum* from *ius privatum* did not appear in the famous textbook by Gaius, either, and the triple systematics of his *Institutions* is rested on the division *personae-res-actiones*. As most Roman jurists, he linked *ius* to private law.[24] Roman jurists, such as Maecianus, Venuleius Saturninus, Marcianus, and Macer, however, wrote about public law[25] and also served in the state administration; this was the case of Ulpian and Paulus.[26] In Justinian's

[23] For example, see J. Helios, *Publicyzacja prawa prywatnego, prywatyzacja prawa publicznego w kontekście rozważań nad prawem europejskim*, "Przegląd Prawa i Administracji" 2013, no. 92, pp. 11–36; I. Zachariasz, *Prawo w ujęciu strukturalnym. Studium o dychotomicznym podziale prawa na prawo publiczne i prawo prywatne*, Warszawa 2016, p. 9; R. Szczepaniak, *Podział na prawo publiczne i prywatne. Uwagi na kanwie monografii Igora Zachariasza*, "Forum Prawnicze" 2016, no. 6, pp. 82–83; Z. Radwański, *Prawo cywilne. Część ogólna*, Warszawa 1993, pp. 26–27; T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, Warszawa 2003, pp. 122–123.

[24] Zob. M. Kuryłowicz, *Prawo rzymskie…*, p. 39, 66. In the interview cited above, A. Watson also notes that in later times, after the Laws of the Twelve Tables, this approach became commonplace, and classical jurists rarely spoke of public law. See M. Jońca, *Zapożyczenia…*, p. 319.

[25] The very origin of legal literature, as noted by W. Litewski (*Jurysprudencja rzymska*, Kraków 2000, pp. 61–63), can be attributed to religious law. During the Republic, some legal works in the field were published, and even a certain revival occurred in the period of the Principate. Litewski, however, draws a dividing line between religious law and public law. He points out that Roman jurists' writings on public law appeared during the early Republic, and the mid-2nd century A.D. is commonly considered the beginning of the science of administrative law. More or less from that time on, there was a mounting interest of jurists in the field of penal criminal law, too. When discussing the development of the science of Roman law, F. Schulz (*History of Roman Legal Science*, Oxford 1946, pp. 22, 36–37, 80–85, 90, 138–140) distinguishes some scientific activity of Roman jurisprudence in the field of public law, he also positions religious law beyond the scope of public law, which, as he put it, can be said almost nothing about in the context of the legal science of ancient Rome. The work of jurisprudence related to penal law is discussed by A. Chmiel (*Dzieła naukowe jurystów rzymskich w zakresie prawa karnego*, "Studia Iuridica Lublinensia" 2016, vol. 25(3), pp. 151–164).

[26] They both occupied the high position of praetorian prefect, and not only. Roman jurists, especially those of greater renown, were certainly involved in public life. In emphasising the great role of Roman jurists in state governance, W. Litewski (*Jurysprudencja…*, pp. 38–40) names those who held more prominent functions and titles: consul (at least 18), member of the imperial *consilium principis* with various emperors (12), praetor (at least 9), censor (at least 5), quaestor (at least 4), plebeian tribune (at least 3); many more were (also high) imperial officials. More guidance about individual jurists and their public functions can be found in F. Schulz, *History…*, p. 12 ff. (archaic period), 40 ff. (Hellenistic period), 103 ff. (classical period), 262 (the bureaucratic period of Roman jurisprudence), noting that bureaucracy began to grow especially since Diocletian's rule. See idem,

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Digest and *Institutions*, apart from the exception indicated above, public law was rather ignored, which can explain Prof. Watson's a bit too broad conclusion that public law is absent from the two sources.[27]

As follows, the very term "public law" was not absent from Roman sources; however, they fail to provide a unified conceptual framework of that law. It is worth recalling the observation of H. Kupiszewski that the legal terms frequently used by Roman jurists borrowed meanings from the colloquial speech. Kupiszewski gives an example of *ius publicum*, which "is *ius populicum*, the law of the whole *populus Romanus*. *Ius privatum* is *ius privi*, that is, the law of a single, 'isolated' person".[28] Only contemporary researchers have resumed interpretations of the scope and significance of Roman public law as their point of interest and have developed various concepts on the subject. Modern systematisation approaches, and particularly the evolution of public law in the 20th century, incentivised scientists to search for comparisons and interfaces between the two laws. However, they have also yielded to the temptation to fit ancient categories into contemporary systematics and terminology.

Classical Roman Law, Oxford 1951, p. 117; idem, *History…*, p. 262. See also K. Amielańczyk, *Udział jurystów w administracji rzymskiego wymiaru sprawiedliwości: upadek czy wzrost znaczenia rzymskiej jurysprudencji?*, "Gdańskie Studia Prawnicze" 2012, vol. 28, pp. 25–37.

[27] M. Jońca enquired Prof. Watson about this issue, referring to his lecture delivered at the Collegium Juridicum of the Jagiellonian University on 22 April 2008 and stating that he had challenged the existence of Roman public law. A. Watson protested and replied, "No, far from it. I just said that it was absent from Justinian's *Digest* and *Institutions*. (…) I am not purporting, however, that public law does not exist at all. In my view, it does not appear in the two sources". M. Jońca responded, "By making such claims, you are challenging the findings of many generations of researchers, including Mommsen and his conclusive work *Römisches Staatsrecht*. (…) When writing about the system of the Roman state, Mommsen also relied on the *Digest* and *Institutions*". Prof. Watson replied, "If you take a look at the index in Mommsen's work, you will see relatively few references to the *Digest* and *Institutions*. The author refers mainly to literary sources. By the way, when his work came out, one reviewer wrote, 'The Romans did not have public law, Theodor Mommsen invented it'. Of course, public law does exist. But you will not find much of it in the *Digest*. Again, please, look at the index. It goes without saying today that Roman law influenced many later legal systems. However, this was Roman private law, to be precise". See M. Jońca, *Zapożyczenia…*, p. 319. On some aspects of Roman public law in Justinian's *Institutions*, see, e.g., M. Kuryłowicz, *De publicis iudiciis. Instytucje justyniańskie o postępowaniach sądowych publicznych*, [in:] *Problemy stosowania prawa sądowego. Księga ofiarowana Profesorowi Edwardowi Skrętowiczowi*, ed. I. Nowikowski, Lublin 2007, pp. 561–572; idem, *Rzymskie ustawodawstwo karne w kodyfikacji justyniańskiej*, [in:] *Ius Romanum Schola Sapientiae. Pocta Petrovi Blahovi k. 70. narodeninám*, Trnava 2009, pp. 251–263.

[28] H. Kupiszewski, *op. cit.*, p. 207.

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2. Polish compendia of Roman public law – between the system of governance and social history

To begin with, public law can be hardly found in Roman law textbooks at universities, although most of them touch upon the Roman political system in sections devoted to the history of the sources of Roman law.[29] This can be attributed to the long tradition of teaching Roman private law in law programmes, especially highlighting its contribution to the understanding of contemporary civil law.[30] On the other hand, the introduction of Roman Public Law classes and other similar university subjects in the administration programme must have encouraged the publication of a remarkable number of textbooks providing a consolidated picture of Roman public law.[31]

The latest publication on the subject, inspired by teaching needs, is *Rzymskie prawo publiczne* (*Roman Public Law*) by A. Tarwacka and J. Zabłocki.[32] Despite the somewhat different title and more extensive content, this integrated work resembles the earlier script and later monograph work, *Publiczne prawo rzymskie*, authored by the same team of researchers.[33] In chronological sequence, the book discusses issues considered relevant for the subject indicated in the title. The following are covered in consecutive epochs[34] (although to a varied extent and in a different arrangement): sources of law, social structure, administrative structures of the state,

[29] It is rather of an integrated character, although can have a different reach. Cf. K. Kolańczyk, *op. cit.*, 2021, pp. 48–122; M. Kuryłowicz, A. Wiliński, *Rzymskie prawo prywatne. Zarys wykładu*, Warszawa 2021, pp. 33–68; A. Dębiński, *Rzymskie prawo prywatne. Kompendium*, Warszawa 2021, pp. 36–71; W. Wołodkiewicz, M. Zabłocka, *Rzymskie prawo prywatne. Instytucje*, Warszawa 2014, pp. 46–70.

[30] K. Kolańczyk, *op. cit.*, 2021, p. 39. It is worth noting that K. Kolańczyk's textbook, first published in 1973, adopted a pioneering approach of referring the institutions of Roman law to Polish civil law. For more on the subject, see W. Dajczak, *Wprowadzenie – pół wieku później*, [in:] K. Kolańczyk, *op. cit.*, 2021, pp. 21–25; W. Wołodkiewicz, M. Zabłocka, *op. cit.*, pp. 7–9.

[31] For example, at the John Paul II Catholic University of Lublin (Roman Public Law), Cardinal Stefan Wyszyński University in Warsaw (Public Roman Law), University of Warmia and Mazury in Olsztyn (Public Roman Law), in each case, in Administration as the major, first-cycle course, 1st year, 1st semester. In contrast, at the Marie Curie-Skłodowska University (Lublin), it is taught in Internal Security (Roman Public Law).

[32] A. Tarwacka, J. Zabłocki, *op. cit.*, p. 288.

[33] J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie. Skrypt…*; eidem, *Publiczne prawo…*

[34] Following the successive stages of the development of state models: kingdom, republic, principate, and dominate. This sequence primarily serves the presentation of the history of public law, as pointed out by K. Kolańczyk (*op. cit.*, 2021, p. 49). In older textbooks on private law, an even older method can be found of delivering the content according to the stages of development of the Roman state (R. Taubenschlag, W. Bojarski, W. Litewski). However, it was agreed that since the development of private law in ancient Rome had not been tied to the current model of the state, this way of presenting Roman private law was found ungrounded (K. Kolańczyk, *op. cit.*, 2021, p. 49). So, further textbooks, such as those by K. Kolańczyk and, e.g., W. Rozwadowski, W. Wołodkiewicz,

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individual offices, Roman religions and legal norms applicable to them, the finance of the Roman state and financial management, the Roman army, penal law, the economic situation of the state (only during the Principate and Dominate). Much space is devoted to social issues. A detailed explanation of the social structure and the situation of the individual strata of the Roman society makes the work a social history book rather than a lecture on public law. It is social history, not law, which focuses on social structures with their individual strata, the interplay among them, and changes that they are exposed to in a society.[35]

On the other hand, references to the system of organisation of the state made in the book, such as the formation of the republican system, specific attributes of the system of the Republic, the crisis of the Republic, the formation of the Dominate, or the republican traditions of the Principate, move the focus onto the history of the Roman system of governance. Moreover, the division of the structure and specific terms used in the book, such as political reforms, political system, political organisation of the plebs, or political powers, also make the work resemble a political history.

Relatively little does the reader learn about, e.g., Roman penal law (there are a few pages on the subject in the entire book).[36] In contrast, more attention is paid to the processes, phenomena, and events from the domain of general history, just to mention: the expulsion of kings, civil war, the dictatorship of Sulla or Caesar, slave rebellions, the Romanization of the empire, or the decline of the Roman Empire, which in fact tell more of the history of the Roman state than of the Roman political system. Consequently, the idea of Roman public law, although communicated in the title, is somewhat blurred.[37]

M. Zabłocka, M. Kuryłowicz, A. Wiliński, and A. Dębiński, abandoned this sequence in favour of a structure reflecting areas of private law.

[35] In the well-known *Historia społeczna starożytnego Rzymu* by G. Alföldy (Polish translation – Poznań 1998, pp. 16–17), the author explains the adopted thematic scope of the publication as follows: "Following the concept of this book, the focus of social history is on social structures, that is, fixed factors that define the character of a given society. They surface (i) in the foundations and criteria of the division of a society into individual segments, (ii) in the very system of division covering individual social strata, groups, or classes, and finally (iii) in mutual relations between individual groups within a society, determined by social ties, conflicts and tensions, the penetrability of the strata system, as well as the existing political system and valid axiology". T. Łoposzko pointed to social structures and their changes, as well as to class struggle and great social movements, as "two elementary lines of problems" in social history, albeit by no means exhausting the subject. See T. Łoposzko, *Historia społeczna republikańskiego Rzymu*, Warszawa 1987; idem, *Zarys dziejów społecznych cesarstwa rzymskiego*, Lublin 1989.

[36] In his review of the previous edition, S. Stankiewicz ([rev.] *Jan Zabłocki, Anna Tarwacka*, *Publiczne prawo rzymskie*, *Warszawa: Liber 2011*, *ss. 340*, "Palestra" 2013, no. 9–10, pp. 274) already noted "a certain degree of dissatisfaction" after reading the subchapters on penal law.

[37] See M. Kuryłowicz, [rev.] *Jan Zabłocki, Anna Tarwacka…*, pp. 408–410.

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Some similarities can be tracked in the publication by A. Dębiński, J. Misztal-Konecka, and M. Wójcik, *Prawo rzymskie publiczne* (*Roman Public Law*),[38] where the authors adopted a relatively different organisation of the content. Unlike in the work discussed above, the authors are more precise in outlining the scope of their monograph work, as they are inspired directly by the contemporary approach to the scope of public law. "Public law, which mirrored the dominant and superior nature of the state, incorporated norms that we would classify as constitutional, administrative, penal, religious, and fiscal in contemporary times. These norms were intended to organise the rules of state governance".[39] Next, the authors classify their work in a way that departs from the prior declaration and the title on the cover: "Textbooks on the history of the system of governance the Roman state [underlined by B.C.J.] may rely both on the model of content arrangement by the subject matter, which enables a comprehensive coverage of individual institutions of the state system, and on a chronological sequence that permits the presentation of the evolution of the state organism as a whole. This work follows a mixed approach". Hence, the first four chapters follow the traditional division of the history of ancient Rome into four periods marked by profound changes to the system of governance (kingdom, republic, principate, dominate), and each of them covers social issues (social structure), politics, and system of governance, including Roman offices. This part of the work, in fact, offers a narrative on the history of the system of the Roman state and its social relations. At the same time, the following chapters (from 5 to 10) address the sources of law, the organisation of territorial administration, the army, state finance, religion, as well as penal law and penal procedure. It should be noted at this point that discussing the sources of Roman law always poses a challenge, as the periodisation of their history and the corresponding division of the law concern the sources of Roman law in general, that is, both public and private law,[40] and there is no clear dividing line between them.

However, neither of the two textbooks discussed above addresses the international position of the Roman state and its contracted treaties. The subject is also absent from a comprehensive work co-authored by A. Jurewicz, R. Sajkowski,

[38] A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, 2017, p. 300.

[39] *Ibidem*, p. IX. T. Palmirski ([rev.] *Antoni Dębiński, Joanna Misztal-Konecka, Monika Wójcik*, *Prawo rzymskie publiczne*, *Wydawnictwo C.H. Beck, Warszawa 2010, ss. XXI+217*, "Zeszyty Prawnicze" 2012, vol. 12(2), p. 208) shares this view in his review of the first edition of this work: "In general, the content of the reviewed work coincides with what was considered public law in ancient Rome, and what is today classified as constitutional, administrative, penal, religious, and fiscal law". By the way, the concept of religious (sacred) law is long gone; instead, there is ecclesiastical law and canon law.

[40] T. Palmirski (*ibidem*, pp. 218–219) draws attention to this in his review. As the reviewer also points out, the part of the reviewed work covering the sources of law is essentially a description of the sources in general, including those predominantly concentrating on private law, such as the operation of Roman jurisprudence or a large part of Justinian codification. Therefore, the reviewer suggests that the chapter be reorganised.

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B. Sitek, J. Szczerbowski, and A. Świętoń, *Rzymskie prawo publiczne. Wybrane zagadnienia* (*Roman Public Law: Selected Issues*).[41] It does not offer many facts about Roman religions (only a paragraph on religion in the period of the Dominate), the finance of the Roman state (one section on municipal finance in the chapter *Local Autonomies: Municipalities*), and penal law (no catalogue of offences is provided, only a description of the organisation of penal procedure). On the other hand, the book has separate sections devoted to Roman citizenship, voting rights, corruption in the administration, municipalities, and the organisation of the judiciary, and, most interestingly, a chapter on morals and ethics. This latter chapter explains, e.g., *The Importance of Custom and Roman Law in Citizen's Private Life* (this is the title of sub-chapter 5.2). This may be somewhat confusing because, given the subject of the publication, the reader expects to read about customs "in public life", or simply "in life" of Roman citizens. At the same time, the authors rightly point out that "a Roman was guided by *mos maiorum* in public and private life", and if they "diminished or lost their civic dignity (*existimatio*), this could really impair their legal position, both under public law and private law".[42] The law-making role of *mores*, a vital element of the Roman legal order in Roman society, indeed embraced the public and private spheres, as was the case with other sources of law.[43] Next, the authors discuss *The Legal Consequences of Loss of Good Name as a Result of Pursuing an Unworthy Profession* and *Legal Acts Contrary to the Law or Customs: Private Delicts*, which suggests a departure from the scope of Roman public law. By the way, the authors aptly indicate in this sub-chapter that "the problems addressed in this part of the book belong to the province of Roman private law". They cover the following: insult, legal acts, and customary law, *conditio ab turpem causam*, and the prohibition of gifts between spouses. It should be added that *delicta privata* were handled in a civil trial; admittedly, the very distinction between *delicta private* and *crimina publica*, frequently made in the literature, was not made in Rome, neither was the distinction between civil law and penal law.[44] In this context, however, the proposal based on the opinion by K. Amielańczyk that, in simple terms, "we can, however, speak of Roman private penal law (concerning *delicta privata*) and Roman public penal law (concerning *crimina publica*) seems attractive".[45]

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[41] A. Jurewicz, R. Sajkowski, B. Sitek, J. Szczerbowski, A. Świętoń, *op. cit*.

[42] *Ibidem*, p. 202.

[43] For more, see M. Kuryłowicz, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 2020, pp. 19–26.

[44] See M. Jońca (ed.), *op. cit.*, *s.v. delicta* and *criminaliter/civiliter agere*; M. Jońca, *Rzymskie prawo karne. Instytucje…*, p. 50; W. Litewski, *Rzymski proces…*, pp. 15–16; K. Amielańczyk, *Prawo karne i polityka. Czy rzymscy prawodawcy prowadzili ukierunkowaną politykę karną?*, [in:] *Prawo karne i polityka w państwie rzymskim*, eds. K. Amielańczyk, A. Dębiński, D. Słapek, Lublin 2015, pp. 29–32.

[45] K. Amielańczyk, *„De accussationibus et inscriptionibus" (D. 48,2). Kilka uwag na temat crimen i accusatio w prawie rzymskim*, "Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza" 2018, vol. 22, p. 11, footnote 2.

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K. Wyrwińska's work *Civis romanus sum. Rzymskie prawo publiczne. Wybrane zagadnienia* (*Civis Romanus sum. Roman Public Law: Selected Issues*)[46] explores a much narrower spectrum of problems. In the opening section, the author discusses Roman citizenship; next, she covers the subject of Roman offices and officials during the Republic and the requirements to be met by future officials; finally, she devotes some space to *cursus honorum*. In fact, the publication offers an in-depth analysis of exercise of only one of the rights of Roman citizens: the right to hold offices, *ius honorum*.[47]

Wybrane problemy rzymskiego prawa publicznego (*Selected Problems of Roman Public Law*)[48] by W. Mossakowski is the most compact (107 pages) of the analysed works. As intended by the late Prof. Mossakowski, the book was to provide an introduction to Roman public law, and therefore, it offers the reader, as the author put it himself, "a very general outline",[49] an insight into some basic topics, such as: the Roman state and nation, Roman society, the principles of state control, protection under public law, religious elements in Roman public life, urban planning in ancient Rome, and the Roman military. Despite such an integrated and review-like approach, the proposed selection of problems falling within Roman public law is not exhaustive, either; in fact, the work deals more with the Roman statehood and society than with the law as such.

As demonstrated above, the analysed publications on Roman public law differ in terms of the range of problems addressed in the content, sometimes quite significantly. Some of them focus on presenting, first of all, the evolution of the Roman system of governance[50] (sometimes even with more emphasis put on a political

[46] K. Wyrwińska, *op. cit.*, p. 194.

[47] The author explains that the book is intended for students majoring in Administration at the Faculty of Law and Administration of the Jagiellonian University in Kraków, as well as for students attending lectures in Roman Administrative Practice and Comparative History of the Roman System. Therefore, the work does not aspire to be regarded as a textbook on public Roman law (*ibidem*, p. 7).

[48] W. Mossakowski, *Wybrane problemy rzymskiego prawa publicznego*, Toruń 2013, p. 107.

[49] *Ibidem*, pp. 9–10.

[50] Or Roman state law, whose origins are primarily linked to T. Mommsen and his comprehensive work, *Römisches Staatsrecht*, vol. 3, Leipzig 1887–1888 (the latest edition available: 2017). The most extensive study of Roman law in the 20th century is F. De Martino, *Storia della costituzione romana*, vol. 1–2, Napoli 1951–1955. Polish reviews highlighting the use of the Marxist method of analysis in the work: M. Staszków, [rev.] *Francesco De Martino, Storia della costituzione romana*, *vol. 1–2, Napoli 1951–1955*, "Czasopismo Prawno-Historyczne" 1956, vol. 8(1), pp. 351–356; A. Wiliński, *Początki i wczesne dzieje ustroju rzymskiego (na marginesie książki Francesco De Martino, Storia della costituzione romana*, *vol. I, Napoli, E. Jovene, 1972, wydanie drugie)*, "Czasopismo Prawno-Historyczne" 1975, vol. 27(1), pp. 295–306. Interestingly enough, such phrases as "storia della costituzione Romana", "the Constitution of Rome" (see A. Lintot, *The Constitution of the Roman Republic*, Oxford 1999) or, e.g., "Die Verfassung" (see the next footnote) refer to the system of governance (*constitutio*) of the Roman state, and not to its constitution, as Rome did not have a constitution within the meaning of today's constitutional law.

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history rather than on the legal system), covering the history of legislation and the development of the sources of law throughout the evolution of Roman law. Some intend to draw the reader's attention to a social history by devoting more space to the social structure of the ancient Roman state.[51] Some offer an insight into Roman penal law and penal procedure; others do not explore this problem at all. What is more, the subject of religious law, as well as international treaties and the international position of the Roman state or fiscal law, are ignored, and the organisation of the judiciary, both civil and penal, is handled differently. This "discretion" as to the defining of the scope of Roman public law seems to be mainly driven by teaching purposes, as these works are mainly intended for non-law students, primarily of Administration. Admittedly, the tradition of research in this field is not very long. Roman law researchers would more often explore Roman private law, which meant less interest in Roman public law on the part of legal scholars[52] and, in contrast, a greater interest in the same among the historians of antiquity.[53] B. Sitek refers to the opinions of A. Torrent and P. Koschaker. They maintain that the crisis of teaching Roman public law unfolded in the 20th century along with the emergence of totalitarian systems. For example, they pointed to the communist ideology, which countered "Roman law as a manifestation of bourgeois society".[54] Still, some Roman law experts of that period (M. Bartošek, E. Pólay), relying on Marxist theory, suggested that the study of Roman public law should be given priority, which was partly intended as a response to attempts to downplay the role of Roman private law and also an outcome of the prevailing trend of exploring class-related aspects in the history of law. In their view, it was public law that fully exposed the characteristic qualities of Roman law and its class features.[55]

[51] The German historian of ancient Rome, J. Bleicken, attempted to combine the history of the Roman system and society in his *Die Verfassung der römischen Republik. Grundlagen und Entwicklung* (Paderborn 1982) and *Verfassungs- und Sozialgeschichte des Römischen Kaiserreiches* (Paderborn 1978). Across two volumes, the author offers a systematic overview of the political system, administration, and social and economic reality of the Roman Empire, as well as Roman religions, with special emphasis on the emergence and significance of Christianity, and the city of Rome as the heartland of social life.

[52] An overview of the state of research in this area is available in B. Sitek, *Wprowadzenie*, [in:] A. Jurewicz, R. Sajkowski, B. Sitek, J. Szczerbowski, A. Świętoń, *op. cit.*, pp. 17–21.

[53] For example, the works by T. Łoposzka mentioned elsewhere. K. Kolańczyk (*op. cit.*, 1973, 1975) noted that the history of Roman law after the 6th century (after Justinian's legislation) were, in terms of classification, ranked as "the universal history of state and law", which caused the author to reduce the content of the first edition of his well-known textbook to pre-Justinian times. In the second edition, he added "a concise note on the post-Justinian history of our system", as he found that the reader deserved as such an explanation. On the consequences of this limitation, cf. W. Dajczak, *op. cit.*, pp. 22–23.

[54] *Ibidem*, p. 20.

[55] For more, see B. Czech-Jezierska, *Ius publicum i ius privatum w metodologii tzw. romanistyki marksistowskiej (przykład Czechosłowacji)*, "Studia Prawno-Ekonomiczne" 2018, vol. 108, pp. 53–54.

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The leading representative of the research stream known as Marxist Roman law studies, M. Bartošek, would often emphasise in his writings that Roman public law in fact featured many private elements, sometimes even more than Roman private law itself, and that it was, in its origin, also public because the two laws shared a common source, namely the state legislation.[56] Evidently, the approach to Roman public law in the Polish Roman law studies of the 20th century was not uniform and firmly established; therefore, the authors of today's integrated works on Roman law seek their own ways to address the matter.

DISCUSSION AND CONCLUSIONS

The extent of the works reviewed in this article is adjusted to the teaching objectives that they attempt to achieve. However, there are significant differences between them, which lead to questions about the actual content of Roman public law, and selection criteria that should be applied in similar publications addressing this area. Given the circumstances, the Polish Roman law literature still lacks a work that would cover the problem comprehensively and conclusively. If such a work were to be penned and its author were not confined by any teaching considerations, it should provide a complete picture of the ancient approach to Roman public law, set against the background of the contemporary social and political reality and put in the context of the relations between the Roman state, on the one hand, and the community of citizens and private persons, on the other. It appears that attempts to employ modern terminology and the present-day understanding of the scope of public law only obscure the genuine image of the Roman reality and legal system, which, by the way, is already imprecise given the relative shortage of sources. The blurred boundaries between the public and legal spheres, which is not unseen today, encourage researchers to look back into the ancient past when the two legal domains were not so clearly separated, either.

It should be kept in mind that the division of Roman law into *ius publicum* and *ius privatum* in the ancient Roman state did not mean a fixed distribution of relevant legal norms between these two domains.[57] The absence of such an ex-

Cf. eadem, *Prawo rzymskie w Polsce Ludowej (1944–1989). Edukacja, polityka naukowa, ideologia, Lublin 2024*, pp. 435–451. On Roman law studies based on this ideology, see M. Kuryłowicz, *Szkic do dziejów tzw. romanistyki marksistowskiej*, "Z Dziejów Prawa" 2019, no. 12, pp. 933–950.

[56] For example, see, M. Bartošek, *Come si dovrebbe studiare attualmente il diritto romano – alcune idee*, [in:] *Studi in onore di Vincenzo Arangio Ruiz*, vol. 1, Napoli 1952, p. 331. More on the subject, see B. Czech-Jezierska, *Ius publicum…*; M. Kuryłowicz, *Szkic do dziejów…*

[57] This view in the study of Roman law has been well established, at least since the mid-20th century. For example, see M. Kaser, *Ius publicum…*, pp. 267–279; idem, *Das römische Privatrecht…*, p. 198. Cf. A. Wiliński, [rev.] *Hans Müllejans…*, pp. 663–664. Similar opinions were also popular

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plicit compartmentalisation was one of the characteristic qualities of the law at the time and stemmed from the casuistic inclinations of Roman jurists and their reluctance to systematize the legal matter. When discussing Roman jurisprudence, H. Kupiszewski maintained that it focused mainly on matters of private law, *ius civile*; he also noted that it was within the confines of private law that the Romans "discussed problems that currently fall under penal or administrative law, just to mention *delicta* and *libri officiis*, i.e. works defining clerical competence". For Kupiszewski, the reluctance of Roman jurisprudence could have explained the lack of systematic divisions.[58] Legal science, as practised by jurisprudence, was mainly focused on private law, albeit Roman law constituted a well-organised body of norms that helped reconcile general and personal interests.[59]

Interestingly, in the present day, "the existing division (separation) between the public sphere and the private sphere in the law is being abandoned". In the aftermath of the mutual correlation of public and private law, "there is a public-private sphere emerging in the law which can be considered a hybrid. It creates a space 'between' public law and private law, in which the public and private interests come together, and the benefit of the individual overlaps with the benefit of the public".[60] It is also emphasised that instead of linking a specific branch of law to public law or private law, "it would be more appropriate to include certain norms, bodies of norms, and legal institutions in these two subsets of the legal system" because in particular branches of law there are often elements of both public law and private law.[61] An ambitious, yet challenging, proposal would be to employ this method in publications on Roman public law and to make them cover selected norms or institutions of that law. This, however, should be decided by the authors of future studies on Roman public law; it is to be hoped that such works will be written.

The highlighted difficulties in drawing a fixed borderline between *ius publicum* and *ius privatum* do not necessarily mean that further research into Roman public law and its likely scope should be abandoned. B. Sitek opines that the pursuit of an idea known as *Romidee*, i.e., searching for the roots of contemporary political, cultural, and religious concepts in Roman culture, affords a great opportunity for this.[62]

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in the science of the socialist period, i.e., based on Marxist ideology, as was the case of the authors named above.

[58] A much-telling example of this aversion was, according to the author, when Emperor Hadrian tasked Salvius Julian with drafting a Praetor's Edict. It was a perfect opportunity to introduce a new order into the edict; the jurist did not seize it, thus leaving such an order in which "the matter contained therein has grown for more than four centuries" (H. Kupiszewski, *op. cit.*, pp. 112–113).

[59] M. Kaser, *Das römische Privatrecht…*, p. 278; M. Kuryłowicz, *Prawo rzymskie…*, pp. 38–39.

[60] W. Dziedziak, B. Liżewski, *Hybrydowe gałęzie prawa*, [in:] *Wstęp do prawoznawstwa*, eds. A. Korybski, L. Leszczyński, Lublin 2021, p. 171.

[61] W. Dziedziak, *Podstawowe podziały oraz struktura gałęziowa prawa*, [in:] *Wstęp do prawoznawstwa…*, p. 164.

[62] This is B. Sitek's proposal (*op. cit.*, p. 25).

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At the same time, the still valid concepts (such as of the state, sovereignty, legality, legitimacy, constitution) or many aspects of public law with ancient roots should be brought to light without ignoring the fact that they emerged in a very diverse setting.[63] They stem from the Roman law milieu, which was, as K. Kolańczyk put it brilliantly, not a landscaped garden but rather a natural reserve "in which many species of trees of different age and height grow side by side", and "old and almost corroded institutions coexisted with completely new and fresh ones".[64]

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[63] According to T. Giaro, micromodels of public law should be explored, and contemporary lawyers should be shown, even for the sake of academic satisfaction, that many aspects of public law have Roman roots (cited after *ibidem*, p. 23).

[64] K. Kolańczyk, *op. cit.*, 2021, p. 77.

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ABSTRAKT

Źródłem wiedzy o relacjach między państwem a jednostką, rodziną czy – ogólniej – społeczeństwem w antycznym Rzymie jest rzymskie prawo publiczne. To pojęcie bywa jednak nieostre, zwłaszcza gdy zaczniemy analizować jego zakres na podstawie poświęconych tej tematyce publikacji. Sprawę utrudnia jeszcze wzajemne przenikanie się rzymskiego prawa publicznego oraz prawa prywatnego, z przewagą tego ostatniego, w tekstach źródłowych. Autorzy przedmiotowych publikacji zazwyczaj nie zatrzymują się dłużej nad kwestią pojęcia oraz zakresu treści rzymskiego prawa publicznego. Skutkuje to bardzo zróżnicowaną rozpiętością tematyki i treści opracowań dotyczących rzymskiego prawa publicznego. Prawnicy romaniści najczęściej zajmują się odtworzeniem historii ustroju rzymskiego, a historycy starożytności bardziej skłaniają się ku historii społecznej Rzymu, chociaż proporcje bywają zmienne. Czy jednak obszary te różnią się zasadniczo od siebie, czy też może są w istocie ze sobą zbieżne? Czy od publikacji prezentujących rzymskie prawo publiczne należy oczekiwać przedstawienia historii politycznej Rzymu, próby rekonstrukcji systemu prawa publicznego czy może raczej naświetlenia relacji pomiędzy państwem rzymskim a jego społeczeństwem jako wspólnotą obywateli? Punktem wyjścia analiz oraz bazą do rozważań nad zakresem rzymskiego prawa publicznego w artykule są polskie opracowania z ostatnich lat poświęcone tej tematyce.

Słowa kluczowe: pojęcie rzymskiego prawa publicznego; polskie podręczniki prawa rzymskiego; podziały prawa rzymskiego