

The definition of *populus* given at *Rep.* 1.39 is one of the most discussed passages in Cicero. In particular, the positive terms by which a *populus* is necessarily characterized (*iuris consensu et utilitatis communione sociatus*) have not yet received a generally accepted explanation. The expression *iuris consensus*, practically unparalleled in Latin, has been the principal locus of disagreement. This paper offers a different approach to a solution: the apparently unproblematic phrase *utilitatis communio* may bear an unexpected meaning. Recognizing this possibility allows a clearer understanding of *iuris consensus* and removes other difficulties of interpretation.

Considered in isolation from their context, the meaning of *iuris consensus* and *utilitatis communio* seems straightforward. The twin concepts, “justice” and “advantage,” were ubiquitous in ancient political thought, and the relationship between them a favorite topic for debate. However, this interpretation does not fit *Rep.* 1.39, because the idea of “common advantage,” putatively a necessary element of this fundamental definition, does not reappear in pertinent sections of the subsequent argument. Cicero seems to have dropped “advantage” to speak only of “justice.” Many scholars have tried to account for this distortion in Cicero’s presentation by finding a corresponding imbalance in the definition at its base: To ignore *differentia* among its proponents, this approach sees *ius* and *utilitas* as “polar” aspects of a community; Cicero may without offense omit *utilitas* from later discussion because it is very much the less important of the two (Suerbaum, 1961, 25 n. 68; Büchner, 1962, 78–79 and 1984, 124; Schofield [in Powell, 1995] 70–71).

Others doubt that Cicero would have introduced his definition with such fanfare (cf. *Rep.* 1.38), only to drop half of it from consideration. They see *iuris consensus et utilitatis communio* as a kind of hendiadys joining two very similar concepts. Consequently, Cicero may afterwards refer to the whole theoretical complex by metonymy (Stark, 1966, 338–339 n. 18; Mayer–Maly, 1971, 382, Kohns *Gymnasium* 1974, 494). However, this line of interpretation introduces as many problems as it solves. Most importantly, it unifies Cicero’s definition by assimilating *ius* to *utilitas*, making the whole refer to a contractual basis for justice and community. This view runs afoul of the immediately succeeding sentence, where Cicero explicitly rules out *imbecillitas* (and therefore *utilitatis communio* understood as “mutual advantage”) from the causes of human society. To restore harmony, this latter sentence must be reinterpreted as well, and so on.

Accordingly, I suggest that the better tack is to assimilate *utilitas* to *ius*. Such a move is certainly consistent with Cicero’s thought elsewhere: *Rep.* 1.39 indicates that both terms of the definition are products of innate human tendencies (*naturalis hominum quaedam quasi congregatio*). At *Fin.* 5.65 Cicero refers to this instinct by the significant collocation *communicatio utilitatum et ipsa caritas generis humani*. Best taken as another hendiadys, these words once again cause surprise, since it is unlike Cicero to equate *caritas* with “mutual advantage.” Nevertheless, if we trace the relationship between *caritas naturalis* and *utilitas*, we find (at *ND* 1.122) that the former makes constant reference *ad illius commoda quem diligemus* rather than *ad fructum nostrum*. Should it do otherwise, it would become *mercatura quaedam utilitatum suarum*.

At *Rep.* 1.39, therefore, *utilitatis communio* need not refer to “shared advantage” in the sense of “safety in numbers” and the like. The expression may have a meaning that we may paraphrase “reciprocal recognition of the importance of others’ advantage.” In other words, we are *directly* affected by the success of others in our community in that it is an immediate cause for *our own* satisfaction. Thus, in our natural disregard of our own advantage, humans are like the gods, *qui nulla re egentes ... hominibus consulunt* (*ND* 1.122). Likewise, *iuris consensus* is not “a common idea of what is right” implying “a contractual theory of the state” (*pace* Zetzel, 1995, 128–129), but the sharing of an unmediated *feeling* (hence *con-sensus*) that injustice against certain others is injustice against us.

It may seem perverse to reject the usual meaning of *communis utilitas*, but *Fin.* 5.65 and *Off.* 1.53 make it clear that the archeology of justice that has been lost in the lacuna at *Rep.* 1.40 is just the context in which Cicero was apt to explain the paradoxical nature of his definition.

If time permits, possible Greek antecedents, Aristotelian or otherwise, will be discussed.