EDOARDO FITTIPALDI

Bonae fidei possessor fructus consumptos suos facit.
Tentative answers to one question left open by Petrażycki's economic analysis of law

L. Petrażycki towards the end of 19th century was dealing with economic aspects of Roman law, namely the apportionment of fructus between its owner and its possessor. Petrażycki's discussion of an apparent paradox in Roman law is then presented and commented. The analysis focuses on the question of relationship between the socio-economic functions of rules selected by case law and the cause of the fact that the rules have been selected. In the end two hypotheses are formulated, based on Patrażycki and Priest (1977): one that rule is selected that allows for more control or extension and second, that rules more balanced in regards to both parties. interests are selected. Author claims the hypotheses are falsifiable.

MAŁGORZATA FUSZARA

Leon Petrażycki's Theory and Women's Rights

L. Petrażycki belonged to the Petersburg group of Russian liberals of Jewish and Polish origin grouped around the first weekly "Pravo" dealing with legal culture in the Empire. Defending the rights of national minorities, he also upheld women's rights not only in the publications, but also as deputy to the first Russian parliament (Duma) elected in 1905 and as a teacher at women's university courses. On the other hand, his socio-psychological theory of law (which leaves room for analysis of women's discrimination that survived in the unofficial law of family as well as in the concept of legal emotions) makes it possible to distinguish three stages in the development of women's legal status.

JACEK KURCZEWSKI

Bronisław Malinowski Misunderstood-or How Leon Petrażycki's Concept of Law Is Unwittingly Applied in Anthropology of Law

E A. Hoebel and others seem to have had difficulty in understanding B. Malinowski .s account of the Trobrianders' civil law which, being alien to British or continental positivism, actually is simply an invocation of Petrażycki's concept of law. The distinction between official and unofficial law, so crucial in Petrażycki's pluralist theory of law - despite the widespread ignorance of this theory – finally has taken root in the anthropological study of law. This is amply evidenced in B. Oomen's recent book on "customary law" in the Republic of South Africa. I will discuss this book as well as another recent book by B. Tamanaha (1999) on the non-essentialist study of law to show that both studies in fact are best understood by reference to Petrażycki's perspective and also that they help to clarify and to refine an original theory that unwittingly functions in the practice of sociological and anthropological empirical studies of law.

ALEKSANDRA NIŻYŃSKA

Masoch, Ehrlich and Petrażycki: literature and law as a framework for analysis of sado-masochistic relations in the XIXth century

Likhovsky (2009) proposed recently a reading of the story of a sado-masochistic contract described by Sacher-Masoch in his "Venus in Furs", which proved a good example of the "living law" as it was presented by Eugen Ehrlich. Both of them lived in the Eastern provinces of the Austro-Hungarian Empire where several local types of legal conduct used to be active. The writings of L. Petrażycki - who proclaimed a pluralist legal theory - seem however to give a better grasp of the idea of such contract. In accordance with Petrażycki's sanctionless concept of law, the said contract is a good illustration of this type of unofficial and intuitive law, as it would be classified in Petrażycki's theory. In contrast to Likhovsky the author claims that Masoch managed to create a wholly different contract from that described by Hobbes.

CAROL WEISBROD

Petrażycki According to Pound: A Note on an American Discussion of Legal Pluralism.

This paper raises some general issues relating to the reception of Petrażycki's work in America and then describes the role of Roscoe Pound, long time Dean of the Harvard Law School, in creating a narrative about the meaning and American reception of Petrażycki's work. That narrative, like the one Pound produced on Eugen Ehrlich, is limited in various ways, not least in that it minimizes the issues of legal pluralism.

MASAKI ABE

Citizens. Evaluations of Institutionalized Advice Providers Used for Dealing with Everyday Problems in Japan

In Japan, there are various professionals, governmental organs and non-governmental organizations which provide citizens who are caught up in conflicts or problems potentially relating to law with advice about how to deal with the matters. Lawyers occupy only a small part of the whole universe of these institutionalized advice providers. In most cases, advice is provided by non-lawyers for free or for only a small amount.

Based on a national survey conducted in 2006, this paper examines how citizens who used these advice providers evaluate their experience and why they do so. Whether the users' initial expectations of what institutionalized advice providers they used would do for them were realized, as well as whether their problems were settled with satisfaction after consulting with the advice providers, has significant influence on their evaluation of the advice providers. In addition, the evaluation of some features of an advice provider is correlated with the evaluation of other features of the same institutionalized advice provider. Based on those findings, a psychological structure of citizens' evaluation of institutionalized advice providers can be depicted.

MAŁGORZATA FUSZARA AND JACEK KURCZEWSKI

Disputes and Courts in Poland 25 Years Later

In order to detect the effects of the regime change from Communist Party dictatorship into the parliamentarian legal state research findings from late '70s are compared with research done 25 years later. The authors relate separately their findings J. Kurczewski, examining the questionnaire surveys in a few localities observes that the sense of private rights has been strengthened but this was accompanied by an increase in the privatization of disputes, except for disputes with official agencies. M. Fuszara, repeating her interviews with parties to disputes on bodily integrity, libel and verbal abuse, where in Polish law criminal proceedings may be initiated by the wronged party, looks for explanation of the overall decline in number of such cases. Special attention is given to the "notorious litigant's" role in the everyday functioning of justice. At the end, J. Kurczewski analyzes the statistical data on civil litigation in Poland after 1989 and points out that despite the privatization of interpersonal disputes, the volume of the litigation recorded has risen dramatically. This is explained by the growth of the legal formalities and procedures that are a necessary vehicle of the economic transactions in a market economy.

GRZEGORZ MAKOWSKI

Global Anticorruption Policy: A New Better Law or Construction of a Social Problem (Polish Case)?

Corruption is one of the most important issues in recent Polish public debate. Does the immense interest in this issue, manifested especially by politicians and in the media, result from the huge scale of corruption? Public opinion polls and official data do not give a clear answer to this question, because they cannot show the real scale of this phenomenon. Nonetheless, new measures are being implemented to limit corruption. Most of them have been worked out under the influence of and in accordance with patterns promoted by the World Bank, International Monetary Fund, United Nations and European Union. This paper asks whether efforts undertaken by international

organizations bring really effective legal and institutional solutions to the problem of corruption.

VITTORIO OLGIATI

The Notion of Legal Pluralism: A Theoretical Assessment

The paper aims to provide a general theoretical assessment of the notion of "legal pluralism" by taking seriously historically-determined evidence about the variety of evolutionary patterns and multiple structural dimensions of law. A basic analytical distinction is made between the theory and practice of "legal pluralism" (as a result of simultaneous co-existence of different legal layers running according to different values, techniques, rules, etc.), and the sociolegal experience of the "plurality of laws" (as a mere result of the life-span of any sort of law as a human artifact). In turn, empirical evidence of the diffusion of different forms of "legal pluralism" in ancient and modern social and legal systems in all continents is discussed in order to cast light the kind of functions, tasks or peculiar problems and unexpected side. effects they actually imply. Finally, the a-synchronous, a-systemic and a-symmetric co-evolutionary trend of a plurality legal orders, typical of contemporary socio-legal dynamics, is outlined to show the rise of increasingly imprecise and unstable models of "legal pluralism" and to reject the idea of the spreading of an overwhelming "global law".

PIERS PIGOU

Truth Recovery and Accountability in the South African Transition: Challenges and Opportunities

The process of truth and reconciliation in Republic of South Africa encountered obstacles in its development, which are described in some detail in the article. Though TRC is presented as a successful compromise, the author claims that over 90% of those who brought their cases did not obtain any further information but only official notification that they were victims. The political stake in further disclosure is lacking and what is called truth recovery process has been a hybrid of approaches. It is suggested that exigencies of everyday struggle for survival tend to prevent victims from pressing for justice so the sense of injustice remains.

JOLANTA ARCIMOWICZ

Civil Service in Poland - Regulatory Framework, Political Conflicts

This article describes the frustrated process of creating a new Civil Service (CS) in Poland after 1989. Despite the 1996 Civil Service Act, CS had been only partially established. Each political party running the government successively introduced the amendments into the 1996 Act. In 2006 there were more than 100,000 people in the CS Corps. However, only a minority of them are civil servants proper, meaning people who underwent a special qualifying procedure. Legal solutions mix two models: career-oriented (closed) and position-oriented (open) model of CS. Political disputes have concerned mainly eligibility for the new CS corps. Post-communist and post-solidarity governments in fact abused the recruitment procedures due to their political interests. Politicization, low remuneration, low motivation to become CS, and low public interest limit the chances of successful completion of the initial project.

MARIUSZ CICHOMSKI

From "Benkiel" to "Mafia": On the Transformation of Local Crime Groups into Developed Structures: A Case Study

An ethnography of an old Warsaw bazaar is presented providing a reconstruction of the pattern of development of so-called localized "mafia" group. The beginning is in the illegal game played with participation of hidden accomplices of the player, making it impossible for a naive customer to win. This game was played for decades on the market and once Supreme Court of Poland was forced to interpret its legality, showing good knowledge of the facts of bazaars The game required permanent and complex

organization. Once the economic crisis in the socialist state economy made the illegal transactions at the bazaar crucial, the organization was ready to move to other, more lucrative and more serious types of criminal economic activity.

ANETA GAWKOWSKA

New Feminists and Their Vision of Rights and Law

This paper descvibes the vision of rights and law present in the writings of some key figures of "new feminism". New feminists are here understood as the writers analyzing the women's issues and activists promoting female dignity in society, motivated by John Paul II's teachings on women. The proponents of new feminism, like Janne H. Matlary, Helen Alvare, Mary Ann Glendon, or Mercedes Gutierrez, postulate various practical measures which pertain to the areas of law, political, social, and economic rights. They emphasize the need for public (political, legal, and economic) recognition of significance of the female (and male!) work in the family and at home (e.g. paid home labor included in GDP and contributing to one's retirement and social security, flexible work hours, long and paid maternity leaves, guaranteed work for mothers, right to the support of the state for parents), the need for guaranteed protection of the most vulnerable members of society (the poor, unemployed, homeless, unborn), legal promotion of self-giving rather than self-seeking, legal stimulation of women's enlarged participation in politics and international relations, measures to protect and promote communitarian elements of social life, linking politics with ethics, legal measures to promote the father's responsibility for the family, etc. The article analyzes these proposals in order to understand an interesting social phenomenon which responds to many problems of not only European societies of the 21st century.

PAWEŁ KOCISZEWSKI

The Institution of the Witness in Legal Practice in Ancient Mesopotamia

The institution of a witness in the process of application of the law in Ancient Mesopotamia played a substantial role. Witnesses appeared in private legal documents and in court documents, which both in their content and function had a public character. They included people who were present at or participated in situations that had legal consequences. The witness's testimony was the most popular and most credible evidence in a case. These were mostly men, although there were many women, too, and sometimes even slaves. It is possible that there were two categories of witnesses.

This paper will characterize the institution of the witness in the practice of law in Mesopotamia and try to answer the question whether the institution of the witness plays the same function in contemporary Middle East Islamic law.

ANNA KRAJEWSKA

Mediation in Poland: The Prospects

In the last few years, the need for developing dispute resolution forms that could relieve the judiciary system and provide Poles with efficient protection of their rights has been acknowledged and various alternative dispute resolution forms referring to different types of disputes have been introduced, including mediations in criminal cases (in 1997), in disputes between the citizens and public administration (2002), and in civil law cases (2005). The significance of mediation is constantly increasing due to Poland's accession to the European Union and the need to adapt the Polish legal system (and the legal assistance system) to European standards. The use of mediation though developing and appreciated - is still limited due to problems in the organization of the mediation services, its relation to the court, prejudice and reluctance of the professional lawyers and lack of knowledge about mediation in Polish society. When used, mediation proves to be efficient and satisfactory, resulting in agreement and thus ending the dispute. The paper explores the limitations and suggests ways to overcome the problems in the use of mediation in the resolution of legal disputes.

BEATA ŁACIAK

Children's Rights in Polish Families - Theory and Practice

Legal provisions concerning children's rights in Polish law are described in the first part of the article. In the second the available data on actual practice are presented, ranging from the public opinion surveys to official statistics about child abuse. Author then presents her own study of children's opinions about children's rights from which emerges a clear picture of the widespread awareness among the ten-year olds of their rights but lack of knowledge to whom they may apply for help and assistance in case of abuse.