

# STUDIA PRAWNO-EKONOMICZNE

## Streszczenia / Summary

### PRAWO – THE LAW

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#### THE LEGAL FICTIONS IN THE MODERN COMMON LAW – THE JURISDICTIONAL COMPETITION AMONG THE WESTMINSTER COURTS

( Summary )

Starting with the Middle Ages, the system of writs (forms of actions) began to dominate the English law. Like Roman actiones which may be regarded as equivalents of writs, thus also the latter allowed to determine the circumstances in which an individual was guaranteed to protection of law. The list of writs was exhaustive while the law was considered to be something that was not subjected to changes. Therefore the legal fictions were found to be the only mechanism that made it possible to adapt the common law to the evolving socio-economic circumstances.

Thanks to these fictions the parties involved in the litigation could reach the objectives that they desired and that otherwise (without resorting to the fiction) might be unattainable by them. The exploitation of the fiction consisted in the invoking by the trial participant the circumstances that notoriously were not true, the adversary party being simultaneously prevented from proving the opposite.

In the course of time the fictions became a characteristic feature of the common law. It was thanks to their application that in the 15<sup>th</sup> through 17<sup>th</sup> centuries the scope of the Westminster courts' jurisdictional competence became enlarged. The fictions enabled these courts to settle matters that originally were beyond the scope of their jurisdiction. The application of fictions resulted also in the broadening of the scope within which the particular writs could be resorted to. This consequently led to the extension of legal protection to the situations with respect to which the earlier common law proved helpless for the lack of any legal remedy.

**Keywords:** legal history, England, English law, common law, legal fiction

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**LITURGICAL LAW OF THE LATIN CHURCH AND THE CODE OF CANON LAW  
OF 1983. SELECTED PROBLEMS**

(Summary)

In this article Author is attempting to answer on question referring to the category and character of liturgical norms embodied in the Code of Canon law of 1983. In the first part of the article Author has outlined the main factors of the development of liturgical legislation since the Apostolic times until the promulgation of the Codex Iuris Canonici 1917. In the second part of his article Author has analysed the rule of law contained in can. 2 of the modern Code of Canon Law of 1983 as well as the vision of liturgical law introduced in this Code. Finally, in the third part of the article Author has discussed the actual examples of the liturgical provisions embodied in the Code.

The examination of those provisions enables Author to proclaim that the Code of Canon law contains three types of rules referring to the liturgy: (1) administrative rules that describe the responsibilities of the Church authorities to act in the liturgical matters, (2) provisions that contain cross-references to the liturgical books and (3) provisions that contain “pure” liturgical norms.

**Keywords:** Canon law, Liturgical law, Code of Canon Law, Roman Catholic Church

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**POLITICAL RESOLUTIONS IN THE TIME OF ACTIVITY OF PROVINCIAL LANDTAG  
ON LOWER SILESIA IN TIME OF WEIMAR REPUBLIC**

( Summary )

Article describes debates and political resolutions that result from them and took place during deliberations of the most important council body on Lower Silesia, which was provincial sejm (Provinziallandtag) in a period of Weimar republic. Course of these provincial sejms when political resolutions were adopted is talked over in this article. Main theme is analysis of deliberation's course with the benefit of shorthand notes of clerks of the court. Thanks to the notes it is possible to acquaint oneself with political views of main political groups. The debates were often demagogic, especially these of NSDAP's KPD's parliamentary representatives. These political groups became gravediggers of Weimar republic. Article shows how deepened economic crisis influenced political views of parliamentary representatives, who belonged to political groups of the interwar years.

**Keywords:** Lower Silesia, Weimar Republic, Provincial Landtag, political parties

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## LEGAL ASPECTS OF THE SITUATION OF ETHNIC MINORITIES IN UPPER SILESIA IN 1918–1939

### (Summary)

This paper discusses the legal situation of German and Polish ethnic minorities in Upper Silesia, which was divided between Germany and Poland in the wake of uprisings (1919–1921) and the plebiscite of March 1921. The discussion concentrates on the provisions of the Upper Silesia Convention (known also as the Geneva Convention) concluded by the German Reich and the Republic of Poland for fifteen years under the auspices of the League of Nations in May 1922. Emphasis is laid on the main provisions, including the so-called fundamental rights of minorities (Art. 64–68), which were meant to ensure equal treatment and free development in the spheres of language, education, religion, etc. to ethnic minorities. The discussion also touches upon other issues – which were not fully regulated by the Convention – concerning the interpretation of the term “ethnic minority” at the League of Nations and the other organizations and institutions (Inter-Allied Mixed Commission for Upper Silesia), as well as in the prevailing legal opinions in Germany and Poland at the time. On the example of the views of such jurists as Bruns, Flachtbarth, Walz, Cybichowski, Kierski and Kostanecki, arguments and controversies are shown which surrounded the criteria for defining ethnic minorities. Over this matter two views clashed. The first and more popular held a person to be member of an ethnic minority if he or she expressed their *bona fide* will to be counted as one (subjective criterion). The second was based on the assumption of objective membership in an ethnic minority (criteria of language, religion, culture and tradition). In the author’s opinion, the Upper Silesia Convention contributed to the reduction of ethnic tensions in the area where it was enforced.

**Keywords:** ethnic minority, law, convention, Poland, Germany

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## **POLISH CONSERVATIVE THOUGHT ABOUT THE “UKRAINIAN ISSUE” IN THE INTERWAR PERIOD**

(Summary)

The Second Polish Republic faced many problems, one of them was the nationality issue. One of the main problems was the so-called “Ukrainian issue”. It is worth noting that Polish politicians often searched for the solutions, which were aimed to create conditions for peaceful coexistence of different nations, living in one country. Conservatives were among those politicians. The position of Polish conservatives to the issue of an agreement with the Ukrainian people can be called conciliating. They repeatedly clamored about honoring of rights and cultural equality for Ukrainians. After World War II concepts developed by conservatives found their followers and supporters among Polish emigration. Both the founder of the Parisian “Kultura”, Jerzy Giedroyc and his colleague, also a major thinkers of the postwar Polish political thought Julius Mieroszewski continued intellectual heritage of the Polish political elite.

**Keywords:** idea, Ukraine, Poland, conservatives, agreement Aleksandra Surma

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## THE GLORIOUS REVOLUTION AND THE LEGAL STRUCTURE OF THE ENGLISH CROWN DOMINION IN AMERICA

(Summary)

According to the “ancient constitution” of the Kingdom of England, the overseas dominions fully belonged to the king’s prerogative (*dominium regale*). For that reason, the legal structure of the seventeenth century American colonies was shaped independently by the Crown. The first Stuarts limited themselves only to establish the legal frames of the private colonies, making them nearly sovereign entities. In order to strengthen the navigation system, introduced by the republican government (1651), Charles II created the base for the centralized royal Dominion in America. Subsequent Crown’s endeavors managed by the Committee of Privy Council for Trade and Plantations (Lords of Trade), which was organized in 1675, brought to the settlement of James’s II Dominion of New England (1686–89). This process was suddenly broken by the events of the Glorious Revolution of 1688/89, which led to the fall of the Dominion of New England and significantly diminished the Crown oversight of the colonies. As far as this paper is concerned, in opposition to the situation in England, the constitutional effects of the Glorious Revolution in America were not longstanding. Because the victorious Parliament was aware mainly for maintenance of the navigation system, the colonies were left under the king’s prerogative. Owing to that, in 1696 William III nominated royal Commissioners for Trade and Plantations (Board of Trade) to govern the overseas dominions. In that way, Parliament consented for the exclusion of the American colonists from the privileges guaranteed by the new constitutional rules. Such a policy occurred to be the cause for their future mutiny, which led to the fall of the First British Empire.

**Keywords:** Glorious Revolution, Dominion, American colonies, Lords of Trade, Board of Trade

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## THE DISPUTE OVER THE POLISH-TEUTONIC CHRONICLES OF JAN DŁUGOSZ

### (Summary)

For the present in the *Annales* point of view on the Polish-Teutonic dispute, the primary importance was the victorious ending of the Thirteen Years' War, which Długosz had witnessed, and additionally – a decades-distance in time between the baptism of Lithuania and Samogitia as well as the Grunwald victory and Council of Constance, and the period of writing of the *Annales*. These two circumstances led the canon of Cracow to present the events from the perspective of the sustainability of the effects of Polish Christianization, as well as military and political successes, opening the history of Poland becoming more powerful and acceding to fulfill its historical mission in that part of Europe (“rampart”). From this perspective, the Polish-Teutonic dispute was significant, but belonged to the past.

In Długosz's depiction the durability of Lithuanian and Samogitian Christianization, which finalized Polish-Teutonic relations in the “christanitas”, resulted in focusing attention on territorial matters (Conciliar so-called legal process), and not on the issue of Christianization (Conciliar so-called doctrine process). For a historian, the most important matter is not missionary activity, but Teutonic aggression causing Polish territorial losses and The Recovery action.

For Jan Długosz – a man of the late Middle Ages, the most important values were piety and patriotism. The first manifested itself in the vision of God punishing those who appropriate the property of others, and a God who is showing his mercy through the victorious for the Polish side result of Thirteen Years' War. The value of the second manifested itself in making the interest of the Polish state, from public-law perspective, the most important criterion for assessing people and events. The outcome of these values was a two-fold depiction of the parties in the Polish-Teutonic conflict. This was reflected in the writings with the portrayal of the Teutonic Knights as insidious aggressors, of the judges adjudicating in their favor as being biased, and in criticizing Polish rulers and their advisers who abandoned efforts to recover lost lands. Another manifestation involved praising the rulers aiming at the recovery of losses, that is proceeding in accordance with the interests of Poland, and the depiction of so ruling judges as conscientious and reliable. The indicated twofoldedness was also reflected in Długosz's account of peace treaties and verdicts.

**Keywords:** Polish-Teutonic dispute, Jan Długosz

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## LOCKE'S SOCIAL CONTRACT WITHIN THE LEGAL PERSPECTIVE

(Summary)

The paper provides systematic analysis of the Locke's social contract theory with the legal means of construction. The analysis is performed within the context of Hobbes' theory which is believed to be opposed by Locke in his *Second Treaties*. The paper focus on two specific questions: 1) whether the social contract, as conceptualised by Locke really allows to dispose with natural freedom only to certain extent?; 2) whether the Sovereign, as created by the social contract, is really bound by its provisions? Detailed analysis of the Locke's *Second Treaties of Government* ends with negative answer to both above asked questions. Locke had acknowledged (although in a slightly hidden way) that in order to build a society by means of voluntary agreement, individuals must dispose of all the natural freedom they possess. It is also to be accepted that political power created by means of social contract, being not a party to the contract, is not bound by its conditions. Locke appears to be unsuccessful in inventing a social contract which would considerably differ from the one proposed by Hobbes. There are even premises allowing to assert, he was aware of that.

**Keywords:** Locke, Hobbes, social contract



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**ATTEMPTS OF THE REGULATION OF THE SOCIAL MOBILITY IN THE LATE ROMAN EMPIRE  
IN RELATION TO THE *CORPORATI OBNOXII* AND THEIR PROPERTY**

( Summary )

The main legal source for the post-classical Roman imperial law – *Codex Theodosianus* – contains many interesting regulations about social and economic issues. Among them there are constitutions devoted to the property rights of the specified social groups. In the 4th century Roman authorities reformed administrative, social and economic system of the state in order to soften the effects of the “crisis of the 3rd century” and restore the public order and efficiency of the economy and taxation. The essential aspect of the reform was the introduction of the many restrictions in relation to the various groups of population which had important position in the social and economic structure of the late Roman Empire. In the paper Author discusses some Roman imperial constitutions that imposed some restrictions on the property rights of the members of the Rome corporations (like *pistores*, *suarii* etc). These regulations strengthened the legal ties between the corporation and its members by the restriction of the alienation of the property that were shares of the *corpora*. Moreover similar regulations related to the imperial craftsmen are discussed.

**Keywords:** Theodosian Code, *corporationes*, Roman economy, property rights

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## **MATERIAL STATUS MARIA KAZIMIERA SOBIESKA, AFTER HER CORONATION**

( Summary )

The coronation of Maria Kazimiera Sobieska in 1676 has not substantially changed her economic status. The parliament endowed on her a lifelong right to hold the crown lands, for which she previously obtained *ius communicativum* jointly with her husband. The custom that the royal couple cannot own inheritable his has been abandoned. She won the dispute about the inheritance from her first husband. The advantages of being king's wife included entitlement to a housing aid, traditionally granted to kings' spouses. Consequently, Maria Kazimiera Sobieska was granted three housing aids: one after the death of her first husband, Jan Zamoyski, a second after the death of Jan Sobieski, and a third – as the wife of the king of Poland. Maria Kazimiera Sobieska was actively trying to create strong financial fundamentals for her and her family, taking advantage of her position as the queen. She was obtaining revenue from illegally giving away crown lands and offices by her husband Jan the Third. After the death of the king, she divided her assets between her and her sons. The revenue coming from goods accrued by her allowed her to maintain royal status after leaving the Polish-Lithuanian Commonwealth.

**Keywords:** the economic status of the Queen, the dowry of Queen, dispute over drop

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**THE DUKE, THE KING AND THE POPE. A FEW COMMENTS  
ON THE DISCUSSION CONCERNING LEGITIMACY OF WILLIAM THE BASTARD SUCCESSION  
TO THE THRONE OF ENGLAND IN THE YEAR 1066 (PART I)**

(Summary)

It is not a secret that the war between Harold II and William the Bastard, who eventually became William the Conquer, belongs to the most discussed topics. This statement applies especially to the English scholars, who treat the issue as one of the key events in the history of their nation. However, while reading the works of these excellent scientists, one can have the impression that the topic in question was utilized to strengthen the traditional, post-Wig historiosophy. According to its propagators Edward the Confessor neither designated William as his heir, nor did he have power to do so. In addition to that there is an opinion that the last Anglo-Saxon king chose Harold as future king on his death bed. In this part of the paper I raise a few arguments against the traditional interpretations of the sources. In my opinion the thing may well have been different, since Edward was brought up in Normandy and had personal reasons to fight off Harold's aspirations.

**Keywords:** England, Normans, succession, conquest

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**THE DUKE, THE KING AND THE POPE. A FEW COMMENTS ON THE DISCUSSION CONCERNING  
LEGITIMACY OF WILLIAM THE BASTARD SUCCESSION TO THE THRONE OF ENGLAND  
IN THE YEAR 1066 (PART II)**

(Summary)

It is not a secret that the war between Harold II and William the Bastard, who eventually became William the Conquer, belongs to the most discussed topics. This statement applies especially to the English scholars, who treat the issue as one of the key events in the history of their nation. However, while reading the works of these excellent scientists, one can have the impression that the topic in question was utilized to strengthen the traditional, post-Wig historiosophy.

It is a very popular belief that papacy (in person of pope Alexander II) supported the Norman conquest of England in 1066. According to some of the Norman sources, William even received a papal banner which he took for his expedition. In opinion of many scholars, there are grounds to treat the invasion of Norman duke as a first crusade (mainly due to character of Alexander II support). However, both nations were Christian, so the assessment of the pope's statement in modern history is explicit. In the second part of this paper, arguments will be given, that the Apostolic See didn't support the Normans at the time of the conquest. The paper also examines the evolution of church' approach towards war in early middle ages.

**Keywords:** England, Normandy, papacy, penance