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UNIVERSALITY OF THE RHODIAN MARITIME LAW FROM THE STANDPOINT OF NEOEVOLUTIONISM[1]

There is no dispute that the many solutions developed in Roman law, and especially in the Western European Roman tradition following the codification of Justinian the Great, have been a source of inspiration as well as tried and tested reference points for the contemporary legal deliberation, in the very least providing arguments in favour of increased flexibility of the law in the future; some, one the other hand, remain a monument of timeless values.[2]

The same is frequently said about the Rhodian law concerning jettison, i.e. throwing goods overboard in order to lighten and consequently save the vessel, described and detailed in the opinions of Roman jurists, which have been preserved mostly in Justinian's Digest from 533 AD, under the title *De lege Rhodia de iactu* (D. 14.2).[3]

The Rhodian custom or more precisely the Rhodian principle, based on equity which requires joint contribution to offset damage, is considered to be a primary source of knowledge of the terms of jettison and other risks associated with navi-

[1] I am grateful for the critical remarks on the preliminary draft of the paper, presented at *International Seminar "Roman maritime law" November 18–19th, 2017, Gdańsk*, and its more elaborated version at *IX. Rechtshistorikertag im Ostseeraum/9th Conference in Legal History in the Baltic Sea Area 16–20 May 2018 in Tallinn/Reval and Tartu/Dorpat, Estonia – "Recht und Wirtschaft in Stadt und Land Law and Economics in Urban and Rural Environment."* – especially Professors Albrecht Cordes (Goethe-Universität, Frankfurt am Main) and Anton Rudokwas (Saint Petersburg State University).

[2] On the modern discussions about the place of Romanistics in legal studies see e.g. Zimmermann (2015), esp. 466–470; Dajczak (2018).

[3] For details see Wagner (1997); Aubert (2007), with previous studies. In Polish scholars, see still partly valid Płodzień (1961) and in short: Benincasa (2011), 91–98 (see also previous studies concerning *Lex Rhodia de iactu*, compiled *ibidem* in note 14 on page 18). About *Digesta Iustiniani* in general *cf.* only from recent studies Honoré (2010); Lovato (2013).

gation. The rules are supposed to have originated at least around 1000–800 BC and, as early as the fourth century BC, they were applied in the Mediterranean, also supplanting the customary *ius naufragii*, which allowed the inhabitants to seize all that washed ashore from the wreck of a ship along its coast (*cf.* Purpura, 2002).[4] It was then adopted and elaborated by the Romans since the late Roman Republic, when slave trade and food supply for Rome – apart from luxury goods – became vital for the Roman state, becoming an integral part of the contractual relations between the parties to a contract of carriage by sea (see e.g. Benincasa, 2011, 35–47, with previous studies). One of the crucial issues in this regard was the transportation of *annona* for the inhabitants of Rome, conducted by private shipowners and controlled by the state, a practice which lasted until the Vandal occupation of North Africa in 442 and then after 500 AD, possibly as late as the Arab conquest of North Africa in the end of the seventh century (in the East, the supply for Constantinople continued from 332 until the collapse of the Roman rule in Egypt in 642 AD) (for details see Sirks, 1991, esp. 161–168, 191–239).

The Rhodian principle was so easily adopted by the Romans because it "was a sort of common *lex mercatoria maritima* for the states bordering on the Mediterranean Sea" (Zimmermann, 1996, 407–408). They acknowledged it as a part of the natural law, which they readily recognized as a vital component of the *ius gentium*,[5] while its implementation is an illustration of the limited reception of foreign rules in Roman private law.[6] It happened, as Reinhard Zimmerman aptly observed, because "the idea of the community of risk and emanating from the principle of *aequitas*, late Republican jurisprudence received the lex Rhodia into Roman Law, not by way of legal surgery, but in a most natural or homeopathic manner" (Zimmermann, 1996, 408). According to Roman law, the practical application of the principle known as *Lex Rhodia de iactu* was ensued exclusively in the framework of the *locatio conductio* (*operis*), the contract of good faith of Roman law,[7] where the *vector* was the *locator* and the *magister navis,* who saved "the vessel from foundering by throwing goods overboard and thus lightening the ship", was the *conductor* (Zimmermann, 1996, 407). The former was entitled to sue the latter for the value of his property that had been jettisoned but minus his own share in the loss, while the *magister navis* in turn would sue cargo owners for their pro rata contribution. *Lex Rhodia de iactu* also applied in cases where a part of the cargo was used to ransom a ship from pirates, who despite the efforts of the Ro-

[4] Gomes (2014) provides an outline of historical development of the concept of limitation of liability in maritime transportation until the modern times. See also Nawrot (2019) [in this volume], quoting *inter alii* the instructive sketch of Gaca (2016).

[5] The meaning of *ius gentium* and its relation to nature and natural law is discussed in detail in: Kaser (1993). Also, listen to the lecture by Humfress (2017).

[6] Disputes concerning the origin and the place of *lex Rhodia de iactu* in Roman law has recently been summarized by Chevreau (2005), esp. notes 7–8. See also Sánchez-Moreno Ellar (2013); Söğüt (2017), esp. note 10.

[7] Concerning *bona fides* in Roman law see in detail: Dajczak (1997); Dajczak (1998); Dajczak (1999).

mans were a real threat to naval transport, especially in late antiquity (*cf.* e.g. de Souza, 1999, 228–240; Gruenewald, 2004; Drinkwater, 2015; Caldwell, 2015).

The Rhodian Code of Jettison influenced maritime law since the Middle Ages, via the Byzantine version preserved in *Basilica*, a collection of laws published by the emperor Leo VI in the late ninth century AD, though particular contribution should be attributed to the *Nomos Rhodion Nautikos*, probably dating in the same period.[8] However, the latter described mutual relations between the parties as part of the contract of *societas* (*koinonia*), adding some specific details concerning the jettison while, as already noted, Roman law relied on the contract *locatio conductio* in this regard.[9] Thanks to the text of Justinian's codification and, even more prominently, due to Roman customary law,[10] the Roman variant – the Byzantine understanding of *lex Rhodia* aside – inspired the development of maritime and commercial practices in the Mediterranean. It manifested first in the Italian and Croatian cities from eleventh century onwards, and then re-emerged in the famous Catalonian *Llibre del Consolat del Mar* from the fourteenth century, which enjoyed the same status as the Rhodian law had done in its day.[11] The rules of the Rhodian Code of Jettison were brought by the Crusaders – thanks to the Maritime Assizes of the Kingdom of Jerusalem and especially the French *Rôles d'Oléron* (1160) – to the Anglo-Norman world as well.[12] The compilation known as the *Black Book of the Admiralty*, possibly from the early fourteenth century quoted the *Rôles d'Oléron* in the beginning, which means that the rules concerning jettison in English maritime law partially followed ancient traditions in this regard (on the other hand, the Court of Admiralty was the most powerful English judicial institution using the rules of Roman law in its practice).[13] The rules governing average rooted in the Mediterranean traditions inspired to some degree the customary law concerning jettison in the Baltic Sea; since the fourteenth century, the Laws of Visby were particularly important in that area, including Gdańsk.[14] The issue of the seventeenth-century national maritime codes in Sweden (1667),[15] France (1681) and Denmark (1683) (see in details Gaca, 1992) was the next step in the development of maritime law; the most important of the enactments was

[8] See about some aspects of maritime law in Basilica Kofanov (2014).

[9] See details Andrés Santos (2019) [in this volume]. See also about the manuscripts of *Nomos Rhodion Nautikos* e.g. Burgmann (2009).

[10] As correctly noticed Berman (1983), 340.

[11] See in general e.g. Purpura (2013). About *Llibre del Consolat del Mar* see Chiner Gimeno – Galiana Chacón (2003); Klimaszewska (2011), 32–37. For the Polish reader available is edition of Libera (1957). Concerning Croatian examples see details in: Đukić (2016).

[12] *Cf.* Klimaszewska (2011), 26–32, with previous studies. *Cf.* also Böhm (2019) [in this volume].

[13] *Cf.* the edition of Twiss (1871). See Marzec (2004) concerning the Court of Admiralty.

[14] *Cf.* from recent studies Frankot (2007); Frankot (2012), esp. 27–42, 81–109. See also in general Zimmermann (1996), 411–412. From Polish authors still valid are remarks of Matysik (1958), 44–46; Matysik (1960). Maciejewski (2000) discussed other sources of maritime law in medieval Gdańsk.

[15] About the legal enactments in Sweden in the early modern times see: Kotkas (2014), esp. 151–152.

Jean-Baptiste Colbert's *Ordonnance de la Marine*.[16] The substantive law embodied in the ordnance was very closely emulated in the French *Code de Commerce*, whose adoption in 1807 meant that maritime law in France and the countries influenced by this code – as well as separately by the German enactments, including the cardinal and still applicable *Handelsgesetzbuch* of 1897 – was thereafter considered as a branch of commercial law, at the expense of importance previously attached to custom and usage.[17] However, the international nature of naval transportation caused it to be recognized as a supranational issue, resulting in the introduction of the important York Antwerp Rules of 1890 concerning general average – last updated in 2004 – whose spirit recalls the Rhodian legal antecessor.[18] At the same time, the Roman understanding of the Rhodian principle of jettison inspired the doctrine concerning the compensation for any damage incurred in joint interest or in other people's interest. The concept was developed gradually since the discovery of Justinian's Digest in Italy and the establishment of the medieval school of glossators in the eleventh century; it may still be encountered in a number of present-day civil codes.[19]

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Roman Law, which itself depends on previous concepts regarding jettison, played the main role in civilian legal tradition, but the problem of how to handle the issue was solved independently in similar way by later customary law as well.

Consequently, looking for a direct inspiration of the Roman *lex Rhodia de iactu* seems therefore to be a case of cognitive bias, i.e. an error in thinking in which the context and the framing of information influence individual judgment and decision-making.[20] An intuitive, common understanding of the principles of general

[16] General overview of early modern regulations till 1681 is given by Gormley (1961). *Cf.* also Allaire (2015) about the development of French maritime law between 1500–1800. See also Warlamont (1955) for the possible inspirations of the *Ordonnance de la Marine* of 1681.

[17] For details see Klimaszewska (2011), esp. 200–215, concerning the importance of the *Code de Commerce* of 1807. About further history of commercial law in Europe see e.g. Flume (2014). Poland possesses its own *Maritime Code Act* from 2001 (Journal of Laws No. 138, item 1545, with further amendments; concerning the general average see Articles 250–256), which replaced the former enactment of 1961. The history of maritime law in Poland is however much more complex. See e.g. Młynarczyk (2012).

[18] *Cf.* Cornah (2004). For the outline of later development see Kruit (2017), 25–31. *Cf.* also https://www.britannica.com/topic/maritime-law#ref39237 [access: 15.03.2019].

[19] The foremost of those is the Austrian *Allgemeines Bürgerliches Gesetzbuch* of 1811, still remaining in force. Besides Austria, the enactment is also the basic civil code of Liechtenstein, while its influence persisted in other successor states of Austria-Hungary (along with the Polish Civil Code of 1964); the concept is also shared by Roman-Dutch Law. See Zalewski (2016); Zalewski (2019) [in this volume] and briefly Zimmermann (1996), 409–411. On the discover of *Digesta Iustiniani* and the school of glossators see e.g. Lange (1997); Brundage (2008), esp. 219–282; Ascheri (2013), esp. 105–242 and briefly Meuller (1990); Dondorp, Schrange (2007); Pennington (2007). According to Schiavone (2012) it was only then that the modern concept of law was born.

[20] *Cf.* https://www.interaction-design.org/literature/topics/cognitive-biases [access: 15.03.2019]. On the understanding of cognitive biases from an evolutionary perspective see e.g. Haselton, Nettle,

average existed in many legal sources since antiquity but opinions varied widely regarding the details of the procedure and the events covered by its provisions, therefore the scope of the law of jettison tended to vary over time (see correctly Ferrándiz, 2017). It must also be underlined that only since the Middle Ages has general average been approached as a separate subject, independent from contracts for the carriage of goods by sea and maritime insurance law. It was not the case with *Lex Rhodia de iactu* which, as underlined above, was understood by the Romans within the framework of the contract *locatio conductio* (*operis*). Apart from the historical examples discussed above, one cannot forget the Muslim concept of jettison, which also exerted considerably influence on maritime legal traditions: even the English *average* (from Latin *avaria/averia*) is derived in fact from Arabic *awar* (a defect, or anything defective or damaged, including partially spoiled merchandise).[21]

It seems therefore a little obsolete to assert today that "Rhodian principle has been the corner-stone upon which have rested through all the centuries, and still rest, the dealings of men of the sea with the innumerable cases of mishap which arise upon the sea" (Benedict, 1909, 241). These words may be treated as an example of invoking tradition (*argumentum ad antiquitatem*), which might be fallacious as such,[22] or even an example of authority bias, the tendency to attribute greater accuracy to the opinion of an authority figure.[23] On the other hand, the truth is that Rhodian principle represented time-tested wisdom and reflected sophisticated adaptation to the environment of maritime trade.

Therefore it seems to be an example of a principle of ancient origin which was so 'natural' that it continues to exists – although in a somewhat modified form – even today. What is more, an analysis of the various historic regimes concerning jettison shows that despite many differences all of them share a similar concept: if the income was common, so should be the loss, while the expenditure and sacrifices for the common safety of the parties interested in the maritime venture were to be borne and made by (some of) the parties who had benefited therefrom (Kruit, 2015, esp. 192 and 202). This means that fairness is at their core, regardless

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Andrews (2005); Haselton, Nettle, Murray (2015). Cognitive bias has led to many simplifications in modern Romanistics. *Cf.* Dajczak (2013), esp. 11, quoting Kahnemann (2012). Despite simplifications, the 'antique (also Roman) themes' continue to be exploited – albeit in quite a different vein – in modern political discourses too. See e.g. Morley (2009), esp. 141–163 and Mac Sweeney [*et al.*] (2019).

[21] *Cf.* https://en.wikipedia.org/wiki/List_of_English_words_of_Arabic_origin_(A-B) (s.v. *average*) [access: 15.03.2019]. In greeater detail see Khalilieh (1998), 87–105; Khalilieh (2006), esp. 150–194. *Cf.* also Paine (2015), 198–228.

[22] *Argumentum ad antiquitatem* – an argument in which a proposition is deemed correct on the basis that it is correlated with some past or present tradition. About its advantages and limitations cf. e.g. Harpine (1993).

[23] For details see e.g. Blass (1999). *Moral Foundation Theory* goes as far as claiming that the authority/subversion is one of pillars of human morality: it was shaped by our long primate history of hierarchical social interactions and underlies virtues of leadership and followership, including deference to legitimate authority and respect for traditions. *Cf.* studies quoted *supra* and remarks in note 33.

of the fact that it cannot always be conclusively stated whether the diffusion of the ancient Rhodian principle took place in reality or whether the different laws were the effect of parallel development.

The rules concerning jettison which developed in the past and still feature in modern legal enactments and international rules, perfectly correspond in this regard with human nature as described by modern evolutionary studies: it is underlined that it comprises a universal and innate concept of justice, which challenges the idea of seeing the people as autonomous individuals, free to make their own decisions.[24]

One of the leading approaches in modern evolutionary studies, namely evolutionary psychology, seeks to account for human actions from the standpoint of biological and cultural evolution (or more precisely positing their co-evolution within the *Dual inheritance theory*); it advances the research, or is a component part of sociobiology.[25] Evolutionary psychologists presume that much of human behaviour is the output of psychological adaptations that evolved to solve recurrent problems in human ancestral environments and therefore they may be viewed in the context of the forces of natural selection.[26] Their studies, combined with the findings of other evolutionary researchers, suggest therefore to a possible biological basis of many social norms that penalize (or reward) behaviour which benefits individuals, i.e. moral and legal norms too.[27] To put it briefly but aptly, "Contemporary humans inherit primitive predispositions to react positively to being treated fairly and negatively to being treated unfairly, to pass judgment on those who treat others fairly or unfairly, and to feel obliged to pay back others" (Krebs, 2008, 243).[28]

The discoveries of evolutionary psychologists and the data collected by researchers representing other branches of psychology led Jonathan Haidt,[29] an American researcher who combines evolutionary studies with social psychol-

[24] 'Free will' is well known concept promoted in Western philosophy. For details see O'Connor, Franklin (2019), with further literature. This approach avoids one of the basic issues correctly underlined by Shusterman (2006), p. 4: "Philosophers have emphasized rationality and language as the distinguishing essence of human kind, but human embodiment seems at least as universal and essential a condition of humanity."

[25] The term "sociobiology" originated at least as early as the 1940s but the concept did not gain major recognition until the publication of Wilson (1975), esp. 547–575 concerning its possible application to humans. On *Dual Inheritance Theory* in detail see: Henrich, McElreath (2007).

[26] On evolutionary psychology in detail see e.g. Barkow, Cosmides, Tooby (1992); Buss (2005); Dunbar, Barret (2007); Buss (2012); Buss (2015). On different branches of sociobiology see Alcock (2001), 8–21.

[27] For summaries concerning both issues see: Jones (2005); Krebs (2005); Jones (2015); Kurzban, DeScioli (2015). Also, on the use of evolutionary psychology in the study of modern social issues: Barkow (2006); Craig Roberts (2011). Among Polish scholars *cf.* also Załuski (2009).

[28] On the vision of 'human nature' in the light of evolutionary psychology see detailed discussion in Pinker (2002), with further literature.

[29] However, the evolutionary approach seems to be the leading one in modern psychology. *Cf.* Budzicz (2018).

ogy, to a more complex idea concerning the roots of morality among humans (*cf.* Haidt, 2012, esp. 111–218). According to Haidt, as representatives of the species *Homo sapiens* we share six innate moral foundations, upon which cultures have developed their various moralities just as there are five innate taste receptors on the tongue, which human cultures have used to create many different cuisines.[30] The six building blocks are care/harm, fairness/cheating, liberty/oppression, loyalty/betrayal, authority/subversion, and sanctity/degradation. *Moral Foundations Theory*, which Haidt co-developed with Craig Joseph and Jesse Graham (see Graham [*et al.*], 2012),[31] promoted the idea that fairness/cheating foundation, related to the evolutionary process of reciprocal altruism,[32] generates ideas of justice, rights, and autonomy, not just the need of equality but rather the expectation of justice in social dimensions.[33]

Humans are in fact hardwired with a sense of morality, together with the basic sense of justice and what is more, we certainly share that last trait with chimpanzees, representatives of *Pan*, humans' closest living relative.[34] It means that human at least the last common ancestor of chimpanzees and humans, who lived ca 6–7 million years ago, was probably also sensitive with regard to justice.[35] Consequently, it is nothing surprising that an intuitive, common understanding of just/unjust, which constitutes the basis of the concept of general average whose

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[30] The phenomenon of culture, defined as a process which involves social transmittance of a novel behavior, both among peers and between generations is possibly not an exclusive human domain and this behaviour is shared by many members of the animal kingdom (Primates; *Cetacea* - whales, dolphins, and porpoises; rats; birds, fishes). See https://en.wikipedia.org/wiki/Animal_culture [access: 15.03.2019]. *Cf.* also the comparison between the cultures of humans and chimpanzees: Boesch (2012).

[31] *Cf.* also http://www.moralfoundations.org/ [access: 15.03.2019].

[32] Trivers (1971) developed the original theory of reciprocal altruism, proposed by Hamilton (1964) who based it on 'kin selection' theory to explain the altruistic behaviours among unrelated organisms. See e.g. Hames (2015) about the value of both approaches for evolutionary psychology. According to a debatable view, group selection might have been equally important to kin selection among humans, because models based on the dominant significance of kinship do not account for all the aspects of human behaviour. *Cf.* Nowak, Tarnita, Wilson (2010) but *contra* Pinker (2015).

[33] Boehm (1999) came forward with a comprehensive vision of why a more egalitarian social organisation emerged and persisted among the traditional societies before the Neolithic revolution (whereby the social organisation was based on reverse dominance hierarchy where the pyramid of power is turned upside down, with a politically united rank and file decisively dominating the alpha-male types). The concept was developed in Boehm (2012), esp. 75–87. The hierarchical ordering of social structures is thus more characteristic of human societies; however, all human societies, large or small, wealthy or poor, industrialized or subsistence based, have at least status hierarchies. For details see Vugt, Tybur (2015). As a result political flexibility of our species is formidable: we can be quite egalitarian but we can be quite despotic as well.

[34] *Cf.* Mendes, Steinbeis (2018), with previous studies. See also Bloom (2013), concerning the innate sense of justice among human children.

[35] To date, there no consensus has been achieved as to whether it should include the genus *Pan* (i.e. common chimpanzees and bonobos) into the *Hominini*. On the modern discussion concerning the relation between evolution of humans and chimps see overview in: Muller, Wrangham, Pilbeam (2017). *Cf.* also preliminary remarks concerning the place of humans among primates from the standpoint of modern palaeontology: Begun (2016), 1–26.

development owed to some extent to the Rhodian principle concerning the jettison played some role, caused the latter to be appreciated in the past and today.

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As previously noted, modern legal national enactments and international rules concerning general average are only in part an effect of social engineering on the part of lawmakers. Quite contrary, they are mainly the upshot of social experience and long-lasting legal tradition. However, this is not the only reason why historically developed provisions concerning jettison are still valid today. As it was deduced, it happens also because they are founded on fairness, which corresponds with the paradigm of universality of human nature which, shaped in the course of the evolution of the *Homo sapiens*, incorporates an innate sense of justice.

The discussed example shows therefore that law studies, also those focusing on legal history, such as Roman law studies, can utilize some of the findings of modern evolutionary studies – especially those made by evolutionary psychologists – to their advantage (see Wiewiorowski, 2015, 19–21, 292, with further literature). The approach enables one to arrive at a more profound understanding why certain principles of law which have historical origins, including many principles of Roman law, are still recalled in legal practice or even exist in a modified form in modern law.[36] Studies carried out in such a fashion may demonstrate the actual, not declarative universality of historical experience afforded by the Roman law and legal tradition in general. Among other things, they permit one to establish the boundaries, already verified in the past, which delimit the scope of solutions chosen by the traditionally construed legislator and other entities which exert an influence on the shape of solutions in legal systems in various areas of social life. As the research of evolutionary studies indicates, these boundaries are universal and provide a basis for the system of values to which people adhere, despite the utterly different social realities of the contemporary and antique world, and despite the gradual and inevitable severing of the bonds between the contemporary legal institutions and their historical antecessors, occasioned by the turbulent cultural transformations. They are associated with biological, evolved components of human nature which register relatively minor change over time. Taking historical experience into consideration would thus be partly supported by the evidence provided by natural and social sciences, and therefore would be of paramount significance for legal studies. This approach would help to promote the idea of unity of knowledge – a consilience that attempts to bridge the culture gap between the sciences and the humanities promoted recently by biologist Edward

[36] *Cf.* Wiewiorowski (2018), where the perspective of evolutionary psychology are applied to different issues of the Roman law studies, focusing specifically on legal maxims (note 13 list previous papers in similar vein are quoted).

O. Wilson, which the dilemmas of the modern world acutely require (*cf.* Wilson, 1998; see also studies collected in: Slingerland, Collard, 2012; Carroll, McAdams, Wilson, 2016).

Secondary Sources

Alcock, J. (2001), *The Triumph of Sociobiology*, Oxford–New York.

Allaire, B. (2015), Between Oléron and Colbert: The Evolution of French Maritime Law until the Seventeenth Century, [in:] M. Fusaro, B. Allaire, R.J. Blakemore, T. Vanneste (eds.), *Law, Labour and Empire. Comparative Perspectives on Seafarers, c. 1500–1800*, London, pp. 79–89.

Andrés Santos, F.J. (2019), Los riesgos del mar en el *Nomos Rhodion Nautikos*, [in this volume].

Ascheri, M. (2013), *The Laws of Late Medieval Italy (1000–1500). Foundations for a European Legal System*, Leiden.

Aubert, J.-J. (2007), Dealing with the Abyss: The Nature and Purpose of the Rhodian Sealaw on Jettison (*Lex Rhodia de Iactu*, D. 14.2) and the Making of Justinian's Digest, (Rhodian), [in:] J.W. Cairns, P. Du Plessis (eds.), *Beyond Dogmatics Law and Society in the Roman World*, Edinburg 2007, pp. 157–172.

Barkow, J.H., Cosmides, L., Tooby, J. (eds.) (1992), *The Adapted Mind: Evolutionary Psychology and the Generation of Culture*, New York.

Barkow, J.H. (ed.) (2006), *Missing the Revolution: Darwinism for Social Scientists*, Oxford.

Begun, D.R. (2016), *The Real Planet of the Apes: A New Story of Human Origins*, Princeton (= *Prawdziwa planeta małp. Nowa historia człowieka*, trans. M. Ryszkiewicz, Warszawa 2017).

Benedict, R.D. (1909), The Historical Position of the Rhodian Law, *Yale Law Journal* 18.4, pp. 223–242.

Benincasa, Z. (2011), *Periculi pretium. Prawne aspekty ryzyka związane z podróżami morskimi w starożytnym Rzymie (II w. p.n.e. – II w. n.e.)*, Warszawa.

Berman, H.J. (1983), *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge, MA – London (= *Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej*, trans. S. Amsterdamski, Warszawa 1995).

Blass, T. (1999), The Milgram Paradigm after 35 years: Some things we now know about obedience to authority, *Journal of Applied Social Psychology* 29.5, pp. 955–978.

Bloom, P. (2013), *Just Babies: The Origins of Good and Evil*, New York (= *To tylko dzieci. Narodziny dobra i zła*, trans. E. Wojtych, Sopot 2015).

Boehm, Ch. (1999), *Hierarchy in the Forest: The Evolution of Egalitarian Behavior*, Cambridge, MA.

Boehm, Ch. (2010), *Moral Origins: The Evolution of Virtue, Altruism, and Shame*, New York.

Boesch, Ch. (2012), *Wild Cultures. A Comparison Between Chimpanzee and Human Cultures*, Cambridge.

Böhm, M. (2019), The Rolls of Oléron, Maritime Assizes of the Kingdom of Jerusalem as a heritage of Rhodian Sea Law in Anglo-Norman World in the cases of murders, robberies, and maritime piracy, [in this volume].

Brundage, J.A. (2008), *Medieval Origins of the Legal Profession. Canonists, Civilians, and Courts*, vol. 1, Chicago.

Budzicz, Ł. (2018), Ewolucjonizm w psychologii: dowody ilościowe i jakościowe, [in:] J. Polowczyk, H. Witczak, M. Błaszak (eds.), *Podejście ewolucyjne w naukach społecznych*, Warszawa, pp. 53–71.

Burgmann, L. (2009), Die *nomoi Stratiotikos*, *Georgikos* und *Nautikos*, *Zbornik Radova Vizantološkog Instituta* 49, pp. 53–64.

Buss, D.M. (ed.) (2005), *The Handbook of Evolutionary Psychology*, Hoboken.

Buss, D.M. (2012), *Evolutionary Psychology: The New Science of the Mind*, Austin.

Buss, D.M. (ed.) (2015) *The Handbook of Evolutionary Psychology*, vol. 1–2, Hoboken.

Caldwell, C.H. (2015), Piracy: Late Empire, [in:] Y. Le Bohec [*et al.*] (eds.), *The Encyclopedia of the Roman Army*, Chichester, vol. 3, pp. 753–754.

Carroll, J., McAdams, D.P., Wilson E.O. (eds.) (2016), *Darwin's Bridge: Uniting the Humanities and Sciences*, Oxford.

Chevreau, E. (2005), La *lex Rhodia de iactu*: un exemple de la réception d'une institution étrangère dans le droit romain, *RHD* 73.1–2, pp. 67–80 = Lex Rhodia de iactu: пример рецепции иноземного института в римском праве, *Ius Antiquum* 31 (2015), pp. 152–168.

Chiner Gimeno, J.J., Galiana Chacón, J.P., Del «Consolat de mar» al «Libro llamado Consulado de mar»: aproximación histórica, [in:] *iidem* (eds.), *Libro llamado Consulado de mar (Valencia, 1539)*, Valencia, pp. 7–42.

Cornah, R. (2004), The road to Vancouver – the development of the York-Antwerp Rules, *Journal of International Maritime Law* 10, pp. 150–166.

Craig Roberts, S. (ed.) (2011), *Applied Evolutionary Psychology*, Oxford.

Dajczak, W. (1997), L'uso della locuzione "bona fides" nei giuristi romani classici per la valutazione del valore vincolante degli accordi contrattuali, *RIDA* 44, pp. 71–84.

Dajczak, W. (1998), *Zwrot 'bona fides' w rozstrzygnięciach dotyczących kontraktów u prawników rzymskich okresu klasycznego*, Toruń.

Dajczak, W. (1999), Erklärungen römischer Juristen zur Funktion der Wendung ex fide bona in Klageformeln, *RIDA* 46, pp. 219–242.

Dajczak, W. (2013), Błędy poznawcze a tęsknota za użytecznością nauki prawa rzymskiego, *Forum Prawnicze* 17, pp. 9–20.

Dajczak, W. (2018), Współczesne wyzwania prawa rzymskiego, [in:] *idem*, T. Giaro, F. Longschamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2018, pp. 603–613.

de Souza, Ph. (1999), *Piracy in the Graeco-Roman World*, Cambridge.

Dondorp, H., Schrage, E.J.H. (2007), The Sources of Medieval Learned Law, [in:] J.W. Cairns, P.J. du Plessis (eds.), *The Creation of the Ius Commune. From Casus to Regula*, Edinburgh, pp. 7–56.

Drinkwater, J.F. (2015), Bandits: Late Empire, [in:] Y. Le Bohec [*et al.*] (eds.), *The Encyclopedia of the Roman Army*, Chichester, vol. 1, pp. 77–78.

Đukić, Z. (2016), Some Legal Questions Concerning Loans and Legal Disputes in the Roman and Medieval Commercial Navigation, *Pomorski Zbornik* 52, pp. 183–200.

Dunbar, R.I.M., Barret, L. (eds.) (2007), *Oxford Handbook of Evolutionary Psychology*, Oxford.

Ferrándiz, E.M. (2017), Will the Circle Be Unbroken? Continuity and Change of the Lex Rhodia's Jettison Principles in Roman and Medieval Mediterranean Rulings, *Al Masaq* 29.1, pp. 41–59.

Flume, J. (2014), Law and Commerce – The Evolution of Codified Business Law in Europe, *Comparative Legal History* 2.1, pp. 45–83.

Frankot, E. (2007), Medieval Maritime Law from Oléron to Wisby: jurisdictions in the law of the sea, [in:] J. Pan-Montojo, F. Pedersen (eds.), *Communities in European History. Representations, Jurisdictions, Conflicts*, Pisa, pp. 151–172.

Frankot, E. (2012), *'Of Laws of Ships and Shipmen' Medieval Maritime Law and its Practice in Urban Northern Europe*, Edinburgh.

Gaca, A. (1992), *Kodeks Duński króla Chrystiana V z roku 1683*, Toruń.

Gaca, A. (2016), Dawne wspólne źródła prawa morskiego stosowane w Europie, *Zeszyty Naukowe Wyższej Szkoły Administracji i Biznesu im. E. Kwiatkowskiego w Gdyni* 23, pp. 17–35.

Gomes, S.M. (2014), A origem e o desenvolvimento histórico do instituto da limitação de responsabilidade do transportador marítimo, *Revista Eletrônica Direito e Política* 9.1, https://siaiap32.univali.br/seer/index.php/rdp/article/view/5744.

Gormley, W.P. (1961), The Development of the Rhodian-Roman Maritime Law to 1681, With Special Emphasis on the Problem of Collision, *Inter-American Law Review* 3, pp. 317–345.

Graham, J., Haidt, J., Koleva, S., Motyl, M., Iyer, R., Wojcik, S.P., Ditto, P.H. (2012), Moral Foundations Theory. The Pragmatic Validity of Moral Pluralism, *Advances in Experimental Social Psychology* 47, pp. 55–130.

Gruenewald, P. (2004), *Bandits in the Roman Empire. Myth and Reality*, [trans.] J. Drinkwater, London–New York.

Haidt, J. (2012), *The Righteous Mind. Why Good People Are Divided by Politics and Religion*, New York (= *Prawy umysł. Dlaczego dobrych ludzi dzieli religia i polityka?* trans. A. Nowak, Sopot 2014).

Hames, R. (2015), Kin selection, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, vol. 1, *Foundations*, Hoboken, pp. 505–523.

Hamilton, D.W. (1964), The genetic evolution of social behavior, Part. I and II, *Journal of Theoretical Biology* 7, pp. 1–52.

Harpine, W.D. (1993), The Appeal to Tradition: Cultural Evolution and Logical Soundness, *Informal Logic* 15.3, pp. 209–219.

Haselton, M.G., Nettle, D., Andrews, P.W. (2005), The evolution of cognitive bias, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, Hoboken, pp. 724–746.

Haselton, M.G., Nettle, D., Murray, D.M. (2015), The evolution of cognitive bias, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, vol. 2, *Integrations*, Hoboken, pp. 968–987.

Henrich, J., McElreath, R. (2007), Dual Inheritance Theory: The Evolution of Human Cultural Capacities and Cultural Evolution, [in:] R. Dunbar, L. Barret (eds.), *Oxford Handbook of Evolutionary Psychology*, pp. 555–570.

Honoré, T. (2010), *Justinian's Digest. Character and Compilation*, Oxford.

Humfress, C. (2017), *Natural Law and Casuistic Reasoning in Roman Jurisprudence*, Lecture at Institute of Intellectual History. University of St. Andrews, 11th April 2017, https://www.mixcloud.com/lecturesinintellectualhistory/natural-law-and-casuistic-reasoning-in-roman-jurisprudence/ (text is available at: https://www.academia.edu/38457353/Humfress_Natural_Law.pdf).

Jones, O.D. (2005), Evolutionary Psychology and the Law, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, Hoboken, pp. 953–974.

Jones, O.D. (2015), Evolutionary Psychology and the Law, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, vol. 2. *Integrations*, Hoboken, pp. 1180–1203.

Kaser, M. (1993), *Ius gentium*, Köln–Weimar–Wien.
Kahnemann, D. (2012), *Pułapki myślenia. O myśleniu szybkim i wolnym*, [trans.] P. Szymczak, Poznań (original: *Thinking Fast and Slow*, New York 2011).
Khalilieh, H.S. (1998), *Islamic Maritime Law. An Introduction*, Leiden–Boston–Köln.
Khalilieh, H.S. (2006), *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800–1050): The "Kitāb Akriyat al-Sufun" vis-à-vis the "Nomos Rhodion Nautikos"*, Leiden–Boston.
Klimaszewska, A. (2011), *Code de commerce – Francuski kodeks handlowy z 1807 r.*, Gdańsk.
Kofanov, L.L. (2014), *Nomos Rhodion Nautikos*, 53-я книга Василик и проблема содержания античного *Lex Rhodia* (Nomos Rhodion Nautikos, i Basilici, il libro 53 e il problema del contenuto della lex Rhodia antica), *Ius Antiquum* 30, pp. 133–154.
Kotkas, T. (2014), *Royal Police Ordinances in Early Modern Sweden. The Emergence of Voluntaristic Understanding of Law*, Leiden.
Krebs, D.L. (2005), The Evolution of Morality, [in:] D.M. Buss, (ed.), *The Handbook of Evolutionary Psychology*, Hoboken, pp. 747–771.
Krebs, D.L. (2008), The Evolution of Justice, [in:] J. Duntley, T.K. Shackelford, *Evolutionary Forensic Psychology. Darwinian Foundations of Crime and Law*, Oxford, pp. 229–245.
Kruit, J. (2015), General average – general principle plus varying practical application equals uniformity?, *The Journal of International Maritime Law* 21, pp. 190–202.
Kruit, J. (2017), *General Average, Legal Basis and Applicable Law the Overrated Significance of the York-Antwerp Rules*, Zuthpen.
Kurzban, R., DeScioli, P. (2015), Morality, [in:] D.M. Buss, (ed.), *The Handbook of Evolutionary Psychology*, vol. 2, *Integrations*, Hoboken, pp. 770–787.
Lange, H. (1997), *Römisches Recht im Mittelalter*, vol. 1, *Die Glossatoren*, München.
Libera, K. (1957), *Konsulat morski: według wydania barcelońskiego z r. 1494*, Warszawa.
Lovato, A. (2013), Giustiniano e la consummatio nostrorum digestorum, *MEFRA* 125.2, [available at: http://mefra.revues.org/1842?lang=en].
Mac Sweeney, N. [*et al.*] (2019), Claiming the classical: The Graeco-Roman world in contemporary political discourse, *Council of University Classical Departments Bulletin* 48, https://cucd.blogs.sas.ac.uk/bulletin/.
Maciejewski, T. (2000), Gdańskie źródła średniowiecznego prawa morskiego, *Studia z Dziejów Państwa i Prawa Polskiego* 5, pp. 61–69.
Marzec, Ł. (2004), Kilka uwag o sądownictwie Admiralicji w Anglii, *Zeszyty Prawnicze* [UKSW] 4.1, pp. 75–89.
Matysik, S. (1958), *Prawo morskie Gdańska. Studium historycznoprawne*, Warszawa.
Matysik, S. (1960), Wspólne źródła prawa morskiego stosowanego na Bałtyku w przeszłości, *Czasopismo Prawno-Historyczne* 12.1, pp. 165–200.
Mendes, N., Steinbeis, N. (2018), Preschool children and chimpanzees incur costs to watch punishment of antisocial others, *Nature Human Behaviour* 2, pp. 45–51.
Młynarczyk, J. (2012), Ze studiów nad historią polskiego prawa morskiego, *Zeszyty Naukowe Wyższej Szkoły Administracji i Biznesu im. E. Kwiatkowskiego w Gdyni* 19, Prawo 3, pp. 13–26.
Morley, N. (2009), *Antiquity and Modernity*, Chichester.
Muller, M.N., Wrangham, R.W., Pilbeam, D.R. (2017), *Chimpanzees and Human Evolution*, Cambridge, MA – London.
Mueller, W.P. (1990), The Recovery of Justinian's Digest, *Bulletin of Medieval Canon Law* 20, pp. 1–29.

Nawrot, J. (2019), The Maritime Safety Model According to Regulation by the Ancient Law, [in this volume].

Nowak, M.A., Tarnita, C.E., Wilson, E.O. (2010), The evolution of eusociality, *Nature* 466, pp. 1057–1062.

O'Connor, T., Franklin, Ch. (2019), Free Will, [in:] E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), https://plato.stanford.edu/entries/freewill/.

Paine, L. (2015), *The Sea and Civilization. A Maritime History of the World*, New York.

Pennington, K. (2007), The "Big Bang". Roman Law in the Early Twelth-Century, *Rivista internazionale di diritto comune* 18, pp. 43–70.

Pinker, S. (2002), *The Blank Slate. The Modern Denial of Human Nature*, New York (= *Tabula rasa. Spory o naturę ludzką*, trans. A. Nowak, Gdańsk 2005).

Pinker, S. (2015), The False Allure of Group Selection, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, vol. 2, *Integrations*, Hoboken, pp. 867–880.

Płodzień, S. (1961), *Lex Rhodia de Iactu. Studium historyczno-prawne z zakresu rzymskiego prawa handlowo-morskiego*, Lublin (reed. Lublin 2011).

Purpura, G. (2013), Alle origini delle consuetudini marittime mediterranee. *Symbola, sylai* e *lex Rhodia*, [in:] A. Lavato (ed.), *Atti Convegno "Ordinamenta Maris" Trani, 30/31 maggio 2013*, Trani, pp. 1–20.

von Rohr, A. (2001), *Evolutionsbiologische Grundlagen des Rechts. Zum Einfluss neurogenetischer Information auf das Recht. Ein Beitrag zur Rechtsethologie unter besonderer Berücksichtigung des Vertrauens im Recht*, Berlin.

Sánchez-Moreno Ellar, C. (2013), Lex Rhodia, [in:] R.S. Bagnall [*et al.*] (eds.), *The Encyclopedia of Ancient History*, Malden, MA, pp. 3970–3972.

Schiavone, A. (2012), *The Invention of Law in the West*, [trans.] J. Carden, A. Shugaar, Cambridge, MA – London.

Shusterman, R. (2006), Thinking Through the Body, Educating for the Humanities: A Plea for Somaesthetics, *Journal of Aesthetic Education* 40, pp. 1–21.

Söğüt, S.İ. (2017), A Synoptic Overview of the 'Lex Rhodia de Iactu', *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 23.3, pp. 209–234.

Sirks, B. (1991), *Food for Rome: the Legal Structure of the Transportation and Processing of Supplies for the Imperial Distributions in Rome and Constantinople*, Amsterdam.

Slingerland, E.G., Collard, M. (eds.) (2012), *Creating Consilience. Integrating the Sciences and the Humanities*, New York.

Trivers, L.R. (1971), The evolution of Reciprocal Altruism, *The Quarterly Review of Biology* 46.1, pp. 35–57.

Twiss, T. (1871), *The Black Book of the Admiralty*, vol. 1, London.

van Vugt, M., Tybur, J.M., The Evolutionary Foundations of Hierarchy: Status, Dominance, Prestige, and Leadership, [in:] D.M. Buss (ed.), *The Handbook of Evolutionary Psychology*, vol. 2, *Integrations*, Hoboken, pp. 788–809.

Wagner, H. (1997), Die 'Lex Rhodia de iactu', *RIDA* 44, pp. 357–380.

Warlomont, R. (1955), Les sources néerlandaises de l'Ordonnance maritime de Colbert (1681), *Revue belge de Philologie et d'Histoire* 33.2, pp. 333–344.

Wiewiorowski, J. (2015), *The Judiciary of Dioecesan Vicars in the Later Roman Empire*, Poznań.

Wiewiorowski, J. (2018), Paremie prawnicze w zwierciadle ewolucji, [in:] J. Polowczyk, H. Witczak, M. Błaszak (eds.), *Podejście ewolucyjne w naukach społecznych*, Warszawa, pp. 121–151.

Wilson, E.O. (1975), *Sociobiology: The New Syntesis*, Cambridge MA (= *Socjobiologia*, trans. M. Siemiński, Poznań 2001).
Wilson, E.O. (1998), *Consilience. The Unity of Knowledge*, New York (= *Konsiliencja. Jedność wiedzy*, trans. J. Mikos, Poznań 2002).
Zalewski, B. (2016), Creative interpretation of *lex Rhodia de iactu* in the legal doctrine of *ius commune*, *Krytyka Prawa* 8.2, pp. 173–191.
Zalewski, B. (2019), Od rzymskiego prawa morskiego do polskiego prawa zobowiązań. Kilka uwag na temat historycznej genezy art. 438 k.c., [in this volume].
Załuski, W. (2009), *Ewolucyjna filozofia prawa*, Warszawa (= *Evolutionary Theory and Legal Philosophy*, Cheltenham 2009).
Zimmermann, R. (1996), *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford.
Zimmermann, R. (2015), Roman Law in the Modern World, [in:] D. Johnson (ed.), *The Cambridge Companion to Roman Law*, Cambridge, pp. 452–480.

Websites

https://www.interaction-design.org/literature/topics/cognitive-biases
http://www.moralfoundations.org/
https://en.wikipedia.org/wiki/Animal_culture
https://en.wikipedia.org/wiki/List_of_English_words_of_Arabic_origin_(A-B)

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UNIVERSALITY OF THE RHODIAN MARITIME LAW FROM THE STANDPOINT OF NEOEVOLUTIONISM

The article is devoted to the Rhodian maritime law (i.e. *lex Rhodia de iactu* [Rhodian law about jettison]), which is considered to be a primary source of knowledge about the terms of jettison and other risks associated with navigation in maritime law. First, the Author presents general information concerning the issue and the impact of law in legal history. Then, he draws on the findings of sciences with regard to the roots of the sense of justice among humans and points out their correspondences with solutions adopted in Rhodian law about jettison. In conclusion, the Author advocates the need to resort to the achievements of evolutionary psychology in studies devoted to Roman law and modern legal studies as well. In his opinion, this would serve to verify and support the thesis that certain solutions developed by Roman law are universal as well as to promote the idea of returning to the unity of knowledge (consilience).