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Preface: Ideas and Society on the 150th Anniversary of the Birth of Leon Petrażycki

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Abstract:

It is a Preface to Volumes 7:3 and 7:4 (2018) consisting of articles presented at the International Interdisciplinary Conference *Ideas and Society* on the 150th anniversary of the birth of Leon Petrażycki, held on November 24, 2017, in Rzeszów, Poland.

Keywords: Leon Petrażycki, cognitive science, law, philosophy.

The International Interdisciplinary Conference *Ideas and Society* (held on November 24, 2017, in Rzeszów, Poland) has been organized by dr. Andrew Schumann, dr. Włodzimierz Zięba, dr. Andrzej Dąbrowski, dr. Paweł Balcerak on the 150th anniversary of the birth of Leon Petrażycki (born 13 April 1867 in Kołatajewo, Belarus, and died 15 May 1931 in Warsaw, Poland), who was a Polish lawyer, philosopher, law sociologist, and logician. He presented a naturalistic approach for different problems of cognitive nature which simultaneously emerge in law, philosophy, and ethics. It is possible to say that Petrażycki became the first Polish cognitive scientist. Within the conference we have discussed basic problems related to law philosophy, methodology of science, and to decisions and cognitive processes. For instance, which grounds are ascribed to law theory? Whether law is autonomous from philosophy? Which modern challenges of law philosophy are there? Which problems are faced by modern methodology of science? Is it possible to build a model of decision making founded on recent explications of cognitive process?

Law is an element of society and it is not possible to omit social contexts in studying law. So, we have put the question about real social functions of law and about legal consciousness and legal dysfunctions.

We have discussed many other questions, as well, which are accompanied within the subject of law and its philosophical reflexion, including general questions of methodology. These questions have been concerned by us from the point of view of behavioral sciences: behavioral economics, behavioral politics, etc. The aim of the conference has been to explicate possibilities of applying modern philosophical methods for analyzing some mechanism of making decisions in different contexts of individual and social lives. We have assumed that we need to make explanations of mechanism, activated in the course of making decisions, as well as contexts and conditions, which play role in these processes, to engage these mechanisms in a forecasting activity and social planning.

We have analyzed a lot of domains and spheres of lives, such as economy, society, culture, and politics. Especially, we have taken into our consideration some cultural contexts. For instance, in the problem of religious believes, we can analyze decision procedures and their societal effects.

Volumes 7:3 and 7:4 (2018) of *Studia Humana* are Postproceedings of the Conference described above. The majority of contributions, such as *What is Offered to the Modern Science by Leon Petrażycki?* by Sławomir Tkacz, *Intuitive Law in the Light of Independent Ethics* by Małgorzata Obrycka, *Falsification of the Theory of Legal Rules and Legal Standards of Ronald Dworkin Using the Methodological Foundations of the Theory of Law and Morality of Leon Petrażycki* by Krzysztof Majczyk, *Genesis and Nature of Moral and Legal Norms. Leon Petrażycki's Naturalistic Solution* by Andrzej Dąbrowski, *Truth and Adequacy. Remarks on Petrażycki's Methodology* by Jan Woleński, and *Leon Petrażycki on Norms and Their Logical Study* by Elena Lisanyuk and Evelina Barbashina, are devoted to different methodological questions in the modern perusal of Petrażycki's works. Another part of contributions, such as *Expert Knowledge: Its Structure, Functions and Limits* by Marek Hetmański, *The Knobe Effect From the Perspective of Normative Orders* by Andrzej Waleszczyński, Michał Obidziński, Julia Rejewska, *The Emotivism of Law. Systematic Irrationality, Imagined Orders, and the Spirit of Decision Making* by Adrian Mróz, and *Creative Reasoning and Content-Genetic Logic* by Andrew Schumann, is devoted to different cognitive aspects in decision making.

What is Offered to the Modern Science by Leon Petrażycki? (Following Three Descriptions of Legal Principles)

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Abstract:

The aim of this paper is to outline the general oversight of the concept of law in Leon Petrażycki's legal theory. On the example of the principles of law, an attempt was made to answer the question, what Petrażycki's theory proposes to modern science. In the first part of the presentation, the Author presented the current state of theoretical knowledge in the field of principles of law. The attention was paid to the problem of various characteristics of legal principles. In further considerations, an attempt was made to answer the question about adoption of models proposed by Petrażycki in the contemporary theoretical discourse. The summary presents general conclusions of the paper.

Keywords: Leon Petrażycki, legal principles, official law, intuitive law, scientific policy of law.

1. Introductory Remarks

Józef Zajkowski wrote in 1936 that the modern science would not be able to sum up everything that have been developed directly or indirectly under the impact of Leon Petrażycki's views. Lawyers are not always even aware of this what they owe to Petrażycki [26, p. 4]. The purpose of this presentation is to illustrate the thesis stated here [9]. I will do it following the issues addressed in the law regulations.

I'm going to present the latest condition of theoretical and legal knowledge in the first part. I will pay attention to the issue of various features of legal rules. I will attempt to answer the following question: Which constructions offered by Petrażycki are present in the contemporary theoretical and legal discourse during my presentation. Authors, who undertake the issue of legal principles are often unaware of it. General conclusions will constitute the summary of the presentation.

The assumptions developed by Petrażycki's psychological theory of law, whose legal order is characterised by the categories of the mental experiences, are known and there is no need to refer to them here in this presentation [16], [17], [11]. In the paper entitled *About law principles in the theory of Leon Petrażycki*, which was published in Russian in the volume prepared by the Warsaw

University and Justice Academy in Krasnodar, I undertook the issue of characterising the law principles in Petrażycki's theory [21]. This paper continues the previously completed deliberations.

To start with the conclusions which ended the previously performed research. It has been established that the term of "law principles" belongs to Petrażycki's terminology. However, the author uses this term rarely, often during the other issues discussed. It then difficult to establish the way he defines the term. Petrażycki pays attention consequently to dangers waiting for the lawyers who use professional legal terminology (which "legal principle" belongs to). At that point, there is no doubt that to analyse "legal principles" as theoretical category in Petrażycki's perspective, similarly to the other cases we "get" – following Zajkowski's words – into "the notional maze." We can get lost in this maze and we can also overcome it. I will attempt to overcome it during my presentation.

2. Legal Principles as a Special Type of Regulation

Legal principles have been the subject matter of numerous publications in Polish literature. Yet, the issue has remained a matter of interest and controversy, as evidenced by works published in the period 2011-2014 [6], [8], [24]. Paradoxically, although it is indeed difficult to find a monograph which would not use the term legal principles, there is no consensus as to the substance of this notion.

The term legal principle is not unambiguous in jurisprudence, and discussions on this matter are accompanied by conceptual confusion [28, p. 21]. It is pointed out that the term legal principle "is attributed not one, but several fundamentally different meanings, and yet attempts to arrive at a definition are made as if in each case it is just one, always the same, concept" [27, p. 59]. It is also noteworthy that various representatives of dogmatic disciplines formulate differing catalogues of legal principles and attribute various characteristics to them. Speaking of such discrepancies, we can identify the following groups of issues: a) understanding of legal principles; b) criteria for segregation of legal principles; c) relation legal principle-legal text; d) validity of legal principles; e) characteristics of legal principles; f) functions of legal principles and ways of using them in the process of application of the law.

Legal principles are mandatory legal norms characterised by certain features, which make it possible to segregate them and set them against those norms within the system, which are not considered to be legal principles. We shall leave outside the scope of our analysis these characteristics which use the notion of legal principles to describe the way legal concepts are formed or to present the leading ideas within a legal system [25, pp. 28-52].

In the Polish legal culture the term legal principle is traditionally reserved for norms which are of a fundamental (underlying for the system) character. They are distinguished by an exceptional axiological, functional and hierarchical significance [7, p. 81]. The proposed criteria for selecting legal principles are diverse. However, it is stressed that their character is different from that of other norms and that the role they play in the system is special. It is emphasised that legal principles express (formulate the obligation to realise) values. For the most part, these are indeterminate norms, characterised by a high degree of generality.

In the literature written after the system transformation of 1989, authors have also referred to characteristics of legal principles proposed by Ronald Dworkin, Robert Alexy, Manuel Atienza and Juan R. Manero, and Humberto Ávila [1]. It is stressed that it is necessary to accept the differentiation between principles and rules. Principles are norms that are used to a larger or smaller extent in accordance with the maxim *more or less* [4], [5]. There are different ways to classify legal principles. In particular, complex divisions of principles, whereby in addition to principles in the strict sense of the word policies are selected, are meeting with acceptance [2, pp. 6-11]. Another point raised is that the legal text is merely a starting point that is supposed to be used in a specific way in the process of application of the law [3, p. 2]. Whether a given norm will be considered a principle is determined by how it is used in the discourse. Principles, as opposed to rules, which determine the contents of the decision, make it possible to conduct the argumentative process that

leads to the issuance of the decision. They offer arguments for adopting a specific decision, or alternatively encompass merely part of the aspects that are important for the issuance thereof [3, pp. 133-134].

The very fact that views like the ones I have discussed above exist makes it legitimate to conclude that there is indeed significant conceptual confusion surrounding legal principles. The fact that there are multiple views on this matter does not make the decision-making process easier. Since the various authors adopt different theoretical assumptions, their views are on many occasions incomprehensible for legal practitioners. Also, the situation is not made any better by the fact that authors of theoretical works use different sets of tools, which results in this complex matter being even more difficult to understand.

3. Three Understandings of Legal Principles in Petrażycki's Theory

It should be accepted that the issue of legal principles is not an isolated notion from the other author's theoretical and legal theses. Here first I think about Petrażycki's essential concept which involves the description of law and its divisions (positive law – the intuitive law and the official one or the unofficial one) as well as the programme for the scientific policy of law.

In my opinion, legal principles in Petrażycki's perspective can be linked both with the postulates of law as well as with the legal norms applied. As far as the postulates of the system are concerned, the program of "the scientific policy of law" should be stressed. Following Lande's writing, development of such policy has remained Petrażycki's beloved idea. The subject of the legal policy is to establish findings referring to the future law. The policy of law as science aims to solve *de lege ferenda* principles in the scientific manner. Here an extremely interesting issue of the policy relation towards the natural law appears just in Petrażycki's understanding. The author points clearly that a postulate to develop the policy of law would be a renewal for the dualistic division of jurisprudence, which was in the period so called the natural law. Petrażycki's motto of "rebirth of natural law" (*Wiedergeburt des Naturrechts*) was presented and justified in the work entitled *Die Lehre vom Einkommen* [14, p. 579]. As it was written in the study entitled *O ideale społecznym i odrodzeniu prawa naturalnego* (*About social ideal and rebirth of natural law*), the motto was understood in a sense of "developing the science for the policy of law based on the scientific and psychological research on casual ownership of law (...) [15, p. 28]. The author points *expressis verbis* that the policy of law, among others, develops principles scientifically that should have been introduced into a system of law [19, p. 3]. The law legally binding should be based on these principles. They do not have the character of the norms in the law legally binding. At this point they are legal principles as the so-called postulates of the legal system for example the policy of the law does not investigate what the law is like but what the law should be like to as to fulfil the goals of the law and its aspiration for ideal.

More difficult seems to be an analysis of the legal principles as the norm legally binding. Since legally binding law is not a notion on which Petrażycki focused on, he offered an introduction of construction for the official law instead. However, its description is extremely laconic. The official law is the applied law and supported by the representative governing authorities of the states. Taking into consideration the issues linked with the legislative principles, types of norms included in the official law achieve a special importance. I stress that content of the official law can be construed in various countries. The official law can include:

- a) various types of the positive law
- b) considerable amount of facts with the intuitive law in nature [12].

Ad a) I would like to remind that the positive law includes a reference to the normative facts (experience of facts), which outline a specific convention of procedure, in its structure [18, p. 303]. This convention can be composed by the facts with various nature. The author lists the legislative law, customary law and the court practice as well as a legal doctrine and legal dicta (are the so-called "varieties of the positive law") [18, p. 320]. Here the attention should be paid to a very wide range of the positive law in Petrażycki's perspective not compatible with a definition of the law

origin understood in the traditional manner [22]. Undoubtedly, the positive and legislative convention of procedures may be also established by the legal principles which play the integrating function in a discourse. It seems that in this perception of the legal principles they are the closest ones to the description most often accepted in Polish legislative culture.

Ad b) Petrażycki, presenting the characteristic features of the official law, focuses especially on the phenomena being intuitive and legal in nature and involved in its composition. As the author writes, the official law includes not only various types of the positive law but the intuitive one as well [18, pp. 451-452]. Decisions of the intuitive law are adjusted in a free way to the specific and individual circumstances. It differentiates it from the positive law, which is hindered by the convention established in advance [18, pp. 250-251].

Following the views in the analyses dedicated to the description of the intuitive law, which has been conducted in Polish theoretical and legislative rules, the concluding was justified that Petrażycki links the intuitive law with justice. Józef Nowacki points *expressis verbis* that “justice identified by Petrażycki with the intuitive law becomes the key concept in the theory of law developed by him” [10, p. 79]. He focuses foremost on the role of the outside factors (upbringing, education, religion, etc.) that have an impact on the content of the intuitive law leading to the uniformity in the content of intuitional and legal beliefs [10, pp. 83-84].

The intuitive law understood in this way (justice) constitutes a criterion for evaluation of positive law [18, p. 291]. Petrażycki indicates directly that various types of the positive law are subject to criticism from the point of view of justice (the intuitive law) as superior criterion [18, p. 291]. It changes the positive law into the basic element of the official law.

The so-called axioms of the positive law possess the extraordinary meanings (among others justice, impartiality and good faith, etc.) [18, pp. 452-453]. These are the universal and consolidated beliefs of the intuitive law, according to which some principles and duties cannot be open to doubt [18, pp. 452-453].

Due to the presence of the suitable axioms of the intuitive law, nobody who is serious argues about that a human being has got the responsibility to refrain from killing other people or whether s/he has got the right on her/his side not to be killed by the others, etc. [18, pp. 452-453]. I would like to stress that axioms of the intuitive law, on condition that they are related to the matters from the sphere of the official law, are accepted both by the courts and other governing authorities. It seems that a following view can be presented: under the pre-arranged Petrażycki’s term of “axioms of the intuitive law” hides a set of universally accepted (introduced) values (under the form of principles), which are supported institutionally. They are so obvious that nobody strives for the introduction of positive and legal conventions (norms of the positive law) in this subject.

I think that Petrażycki’s description for the axioms of the positive law is very close to Dworkinowski’s perspective of legal principles. Since they are legally binding due to its authority which leads to the universal acceptance by the state governing authorities and judiciary. Consequently, they are the criteria for the evaluation of the positive law, leading to the fair decision (the only and correct one) in the individual case investigate by the state governing authorities particularly courts. Following the analysis mentioned above, a question must appear: is the description of the official law in Petrażycki’s definition possible to maintain viewing the assumptions of psychological theory. Various interpretations of this issue are expressed in writings. Detailed analyses of this matter were presented in different stadium of mine [23]. They led to a conclusion that Petrażycki, defining the official law, transfers his reflections on law unconsciously from the sphere of psychical experience into the sphere of real and social practice. Norms at that point remaining in the individual psyche must exist socially in some way [20, pp. 289-290]. Here as a matter of fact a concept of the official law is getting close to the views, which are linking the notion of law with development of specific convention. A definition of law described within the category of social fact can be found in many current concepts both in Polish and international literature.

A different issue is whether it is possible to develop a legally binding concept of law omitting real social practice. It can be stated carefully that even Petrażycki, who had attempted to

bring completely the legal phenomena to its psychological surface, was not successful in developing a concept of legally binding law. The law which assumed that it will be completely transferred into field of psychological experience [24, pp. 346-355]. Consequently, his reflections devoted to the official law focus in fact on functions of governing authority of states.

4. Conclusion

Aleksander Peczenik paid attention to Petrażycki's research results which modern theory of law has been filled deeply with [13, p. 13]. I have no doubts that this statement can be referred to the issue of legal principles. We can find a division into legal principles as norms of binding law and its postulates (in the form of the scientific policy of law) in Petrażycki's statements. Still, the most inspiring part of the author's concept related to legal principles is the notion for the composition of the official law. It seems that Petrażycki has been a precursor of the view that the legally binding law (in the form of the official law) can be perceived narrowly. Consequently, it involves norms of various nature. If we add to it that axioms of the intuitive law are surprisingly like Dworkin's legal principles, the composition of the official law (including both positive-legal norms as well as intuitive-legal norms) becomes extremely close to the concepts differentiating rules and principles. Certainly, Petrażycki tries to remain loyal to his assumptions of his theory, transferring the official law in the sphere of psychical experience. However, the opportunity to defend psychological criterium for the definition of official law is terribly dubious. Concerning this support, is this legally binding and accepted by the representatives of the governing state authorities different than the institutional support, which was described by Dworkin analysing the legal principles. Simultaneously, his theory evolves in this place towards the concept of social facts. In the last words of my presentation I underline that the reflections here described are only the interpretation of Petrażycki's statements. It is because of his definitions with the designing nature, the analyses based on his theory of many views, which are traditionally implemented by jurisprudence, are the subjective interpretation of the author's words. It is just like they are understood by a researcher entering the maze, which was mentioned earlier in the introduction.

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Expert Knowledge: Its Structure, Functions and Limits

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Abstract:

Expert knowledge – a concept associated with Ryle’s distinction of knowledge-that and knowledge-how – functions in distinct areas of knowledge and social expertise. Consisting of both propositional (declarative) and procedural (instrumental) knowledge, expertise is performative in its essence. It depends not only on expert’s experience and cognitive competences, but also on his or her social and institutional position. The paper considers the role of heuristic and intuitional abilities, including particular experts’ cognitive biases, as the vital and indispensable part of expertise. On the basis of selected managerial and juridical examples (procedures, standards, norms and institutional regulations) it analyzes the epistemological issues: the autonomy *versus* dependence of expert knowledge as well as the influence of social-cognitive circumstances on expertise.

Keywords: expert knowledge, expertise, intuition, biases, heuristics, Daniel Kahneman.

1. Introduction

The issue of expert knowledge belongs to the domain of epistemology and cognitive psychology, cognitive science, methodology of sciences as well as the theory and practice of management. It refers also to those scientific disciplines which have practical applications and assume the shape of specialized cognitive abilities as well as their results take on the form of expert judgements; the natural and social sciences such as biology, genetical engineering or economics and psychology imply expert knowledge and expertise in specific domains and their respective practices. It is also a practical issue in the social functioning of institutions, associations or professional corporation which deliver specialized skills and knowledge (expert judgments) in particular domains of life. Expertise, broadly perceived, is not only knowledge as well as a skill, but also social role of those who have it. Generally speaking, expert knowledge – according to the differentiation introduced by Gilbert Ryle, who said that knowing how appearing next to knowing that [9, pp. 28-32] – is a sort of *propositional* (theoretical, declarative) knowledge closely connected with elements of *procedural* (instrumental) knowledge.

Expert knowledge is usually analyzed from the perspective of its *structure* (i.e. the data at one’s disposal, the collected information, types of exact knowledges) as well as the act of its

acquisition and realization. What is no less important is its realization and performance, for it is connected through procedures and specialized activities with the practical application of declarative knowledge as well as the social functioning of the expert a person of authority in a particular domain of knowledge, stating judgements, opinions and verdicts. The performative character of expert knowledge, transgressing beyond the classical understanding of knowledge (as principally, or even exclusively, propositional) implies many meaningful (epistemological) issues [cf. 8, pp. 103-108].

This article examines the issue of heuristic and intuitive rules that lie at the foundations of expert knowledge; the theoretical and performative character of expertise is considered in an equivalent degree as two complementary functions of knowledge in general. A thesis is formulated that heuristic and intuitive cognitive actions – different than algorithmic ones – are essential elements of expertise and are simultaneously present in every type of expert knowledge. A few cases from financial expertise and juridical procedure are also discussed, where the thematic and methodological autonomy of expert knowledge is limited by both psychological and institutional factors.

2. Origins, Structure and Functions of Expert Knowledge and Expertise

The specificity of expert knowledge is determined by its history and the way of its functioning in European civilization. Various forms of specialized expert knowledge as well as the institutional forms in which it was demonstrated, decided about the manner of defining, examining and evaluating this form of knowledge. Already in antiquity, within its intellectualist and absolutist framework of perceiving cognition and knowledge (the primacy of reason over empiric data), an opinion about the useful character of practical knowledge was construed, nevertheless, it did not measure up to the status of the cherished *episteme*. This view was preserved in the middle ages, with the economy being based on manual labor; the concept of craftsmanship competence was developed in guilds, trade unions and professional corporations. These institutions brought together people specialized in handicrafts as well as their adequate knowledge on the objects and phenomena which became socially significant and cognitively important to such an extent that they became subdued to strict procedures of gaining, preserving, transmitting and certifying them; scientific knowledge at medieval and early modern corporate universities was treated according to identical rules. Members of crafts guilds were the first experts due to the knowledge and competences that they possessed and evaluated on the basis of their utilitarian significance. Early modernity has even more so amplified the processes of monopolization and rigorous (competitive) protection of multi-generational expert knowledge in such fields as medicine, law, crafts and natural science. The practice of qualifying and certifying expert knowledge and skills also appeared, as well as the competition, in this respect, of the state, academies of arts and sciences, and professional corporations. In the early capitalist era, when empirical and scientific knowledge found their broad application in industry and everyday life, the state, in the public interest, started to play a major role in certifying expertise through the establishment of standards, examination forms and confirming expert knowledge. Expertise itself became the subject of teaching, training and it gained the status of a *profession* and important social role; expert knowledge remained in close relations with scientific knowledge as its theoretical background. Expertise became also in modern times the topic of independent methodological, psychological, sociological, science studies and epistemological inquiry, within which theoreticians and scholars try to consider and examine an array of important problems.

Considering the problem of expert knowledge and expertise from a cognitive perspective, an array of significant questions arise [cf. 3]. What is the nature of the cognitive activities that lie at the foundations of the general disposition of issuing expert judgements? Is expertise an innate or acquired cognitive competence; to what degree can it be improved – can it, on the other hand, deteriorate and vanish? Can anybody be taught it or is it accessible only to a select few; what role does intuition play in it? Is expert knowledge a different, specific epistemic category than the

general and universal knowledge coming from particular scientific disciplines; is it a type of meta-knowledge or is it distinct (dependent) only for a particular discipline or competence? Can expert knowledge be automated and function independent from human knowledge as an autonomous system; can artificially intelligent system be better than human experts?

3. Types and Degrees of Expert Knowledge and Competences: from Novice to Master

Expert knowledge, especially, the action (abilities and skills) that accompanies it, such as acquiring experience, inferring, justifying as well as communicative skills, do not assume a homogenous form. The diversity within the field of expert knowledge and skills assumes the form of degrees, levels of complexity and sophistication. Generally, in the already elaborated classifications [5], [2] several degrees and types of experts are distinguished: from the complete ignoramus through a novice, trainee to a full expert or even a master; these classifications correspond partially with historical stages (periods and epochs) of the emergence of expertise as such in the Western world and also its institutionalized forms.

In this classification I assume three criteria that determine, and at the same time differentiate, expertise as well as the types of cognition which are appropriate for it: (1) the field of *knowledge* and *experience* which is distinguishable due to the discipline of knowledge and science, to which expert knowledge refers to; (2) *actions* and *dispositions* which the subject (expert) has got; (3) forms of *action* and *institutions* (meaning modes of behavior and social organization) co-creating expert knowledge in a particular environment. The initial level of an expert is a *novice* – someone who obtained elementary knowledge (“introductory”, “school” knowledge) in a given domain and is endowed with the typical and sufficient cognitive and communicative capabilities (inborn intelligence) enabling him or her to obtain expert knowledge to which he or she is only yet aspiring. One can consider an *aspiring* expert as somebody who is acquainted in a minimal degree with the specifics of a particular domain (initially “informed” and undergoing the stage of “initiation”), who passively acquires knowledge, usually by imitating standardized expert procedures. The next stage, a *trainee*, is already subject to a learning process that is spread out in time, multi-stage, in which the personal relation student-master is crucial, because it provides the appropriate opportunity for the trainee to imitate the knowledge and competence patterns of his or her master; such practice is strongly connected with a particular institution (e.g. guild, a chamber of crafts, a professional corporation with a distinctly “familiar” character). An *apprentice* could have been considered such an expert that has standardized and specialized knowledge in a given field as well as knows the rules and principles of making it, at the same time is efficient in carrying out tasks (orders and instructions), but is not necessarily self-reliant, he or she is an apprentice that is just becoming self-reliant in relation to institutions that certify (approve and guarantee) expert status.

An *expert*, in the basic meaning of the term, (as an *ideal type*) is distinguished on account of his or her knowledge correlated with a particular domain of arts and science, has got knowledge that is built upon the experience of a trainee and apprentice (whom he or she must have been earlier). He or she is already fully proficient in all the cognitive dispositions specific for a particular domain, knows them all as well as uses them freely and interchangeably depending on a particular task. Apart from that, he or she is authorized to formulate (relatively) constant and credible opinions and expert judgements accepted by the general public and other experts; in this respect he or she is a licensed and certified expert. He or she approximates the level of (relative) excellence in his or her area of expertise; specializes in various subdomains of expert knowledge, issuing not only standard but also atypical expert judgements. He or she conducts a calculation of his or her cognitive efforts, minimalizing it and maximizing the intended effects; sometimes he or she overestimates this “calculus”, underestimating especially the mistakes committed. His or her specialized skills and dispositions – more and more general, yet at the same time becoming narrow and routine – become at times the source of distinct cognitive errors. His or her social position, that is licensed as well as certified by specialized institutions (state-run and/or autonomous, corporate), becomes a factor no

less important than the content and scope of his or her knowledge; one also becomes an expert on the basis of tradition and custom, not only one's knowledge by itself. Competing with other experts, including those with other methodologies, standards and values, becomes a factor that determines the essence of complete expert knowledge.

In specific cases, though rather infrequent ones, after a long period of functioning, the expert reaches the level of *mastery* and then he or she has the complete knowledge about a given domain with the awareness of its complexities and limitations. His or her judgements and opinions become rules, standards and ideals of expert knowledge. He or she is authorized to tutor both an apprentice and an expert as well as to license their knowledge and competence; he or she supervises institutions of general certification and is an expert for experts, approved by the vast majority of specialists.

4. The General Definition and Epistemological Model of Expert Knowledge and Expertise

The historical analysis of the epistemic side of expert knowledge and its institutional functioning (the creation and evolution in society and culture) shows that one cannot encompass it in a general definition as well as a homogenous epistemological model; one can find significant examples of that in literature [1], [2]. In this article I propose to extend such a model by factors endowed with an essentially cognitive and performative nature. Apart from the analysis of propositional knowledge, it is important to examine cognitive activities and dispositions, i.e. heuristic and intuitive rules. Besides the standard rules of algorithmic acquisition, inference, argumentation or communicating the propositional side of expert knowledge, these factors play an equally important and in many cases, even a dominating role. Their specificity, including unreliability and falsity – which is on the other side of the coin of expertise – because it, nonetheless, is not a shortcoming of expertise, for in particular situations it leads to beneficial cognitive solutions; this factor must irrefutably find itself in the model of expert knowledge.

In the newest inquiries [1, p. 21-30], two approaches on expert knowledge and cognitive dispositions that condition it, as well as the social position and role of an expert, are dominant. In the first one, based on empirical and laboratory quantitative methods (e.g. questionnaires), selected experts are examined in comparison with other specialists from the same or another, even very different, realm of knowledge. The assumption in this research is the thesis that expertise is rather a unique sort of knowledge and cognitive ability, different than the methods and epistemic qualities typical for scientific knowledge. A comparison of knowledge and competence of the experts is made, from the side of one or several criteria, such as the time required to resolve a problem, memory resources and the ability to operate it, the range of the received results, the level of acceptance by others, etc. In this approach one formulates the thesis about the innate disposition for becoming an expert; this approach basically *absolutizes* expertise as such. In the second approach (also empirical) the experts are examined in comparison with non-experts like novices, apprentices, regular, naively thinking people. The initial assumption in this case is that expertise is gradable and essentially grows out of the novice's knowledge. Studies show that there is a continuum of expert knowledge and competences; most people capable of learning can achieve that. The purpose of this inquiry and theoretical approach is to elaborate the methods and rules of teaching and improving expertise; this approach *relativizes* expertise. Both approaches, if one does not seek for as many differences as there are similarities, are not targeted as such at recognizing the otherness of expert knowledge, but rather at the factors which decide about its development and improvement. As Chi writes: “[T]he goal is to understand how experts become that way so that others can learn to become more skilled and knowledgeable” [1, p. 23]. It is more crucial to answer the question, how does expert knowledge function and develop, not only what it is *per se*.

In the inquiry on expertise the issue is not only about its general definition; what is much more important is the issue of apprehending the phenomenon from the perspective of the practical application of the hitherto acquired *knowledge* about expertise. What is the *prototype* of expertise, what is the *model* on account of its general character that shall allow the improvement of the

analyzed phenomenon? These are the questions posed by many scholars. Which of these most essential traits, despite their natural differentiation with respect to the conditions of functioning of the specific types of expertise, can be, nonetheless, susceptible to modelling and operationalization in order to improve it in a practical and socially significant manner? What conclusions may be inferred from the expert knowledge for its own benefit? “[T]he prototype view of expertise maintains that expertise is relatively domain specific and that the attributes of experts may be specific to a time and place. (...) Importantly, the prototype view of expertise recognizes the diversity of skills that can lead to successful performance, and that expertise can be thought to exist in degrees rather than in an all-or-none fashion” [2, p. 614]. The versatility of levels of sophistication and differentiation of knowledge and expertise as well as their continuity, points to the fact that in the framework of the epistemic and institutional conditions in which one makes the expert judgements, one can construe a prototype and a model of expertise as such; one must only define its boundary conditions, including, especially, its general advantages and disadvantages.

5. Cognitive Errors and Illusions Accompanying Expert Cognition

Among the most interesting epistemological issues connected with the specificity of expert knowledge is the problem of cognitive mistakes distinct for some of the actions of acquiring it, as well as illusions about these errors in which many experts participate. Errors and illusions accompanying expert activity, examined empirically and generalized theoretically, assume a more or less homogenous form, relatively independent from the domain of expert knowledge or practice. Such mistakes characterize especially expert judgments in the situation of incomplete or uncertain knowledge as well as complex degree of probability of events that are the object of the expert judgments and prognoses issued. The nature and role of these errors are the subject of research in cognitive science, especially the analyses of cognitive heuristics.

Daniel Kahneman created the general concept of two cognitive systems constituting the structure of human cognition. He proposed a model of cognition consisting of two levels, two modes of thinking [7, pp. 19-30]: System 1, which functions quickly and automatically, without a significant intellectual effort as well as without the feeling of conscious control, and System 2, which in turn requires rather high intellectual effort, acts in stages and rather slowly, engages substantial mental resources (e.g. memory) and is connected with the subjective feeling of being focused, having free choice and conscious action. Dedicating the most attention to System 1 (contrary to traditional research on reasonableness/rationality attributed exclusively to the first system), Kahneman states that indeed it is that system “effortlessly originating impressions and feelings that are the main sources of the explicit beliefs and deliberate choices of System 2.” Both modes of cognition are equally important and one must “think of the two systems as agents with their individual abilities, limitations, and function” [7, p. 31]. Human action is the effect of the co-occurrence of both systems. These systems are equivalent and in many cognitive situations they cooperate, indicating at the same time the autonomy of action.

In the analysis of the effectiveness of both systems Kahneman distinguishes an array of cognitive mistakes which accompany their realization. They are also appropriate for describing the work of experts. He analyses in particular financial advisors, whose routine cognitive and institutionalized actions (i.e. defined by corporations to which hire them) such as issuing judgments and predictions are, admittedly, signified by effectiveness as well as specific, surprising lack of understanding of expertise itself. Financial experts take advantage of System 1 as well as System 2, but in the case of judging and assessing random events, such as investing at the stock market or advising other people in this respect, they fall into a mental trap of “quick and slow thinking”. Having at their disposal thorough and objectivized knowledge about complex financial processes, experts commit significant mistakes, especially in the predictions they make.

In this case, the issue is not about knowledge itself, but rather about the limitations in experts’ competences. Cognitive errors and illusions that accompany them most often relate to random events; experts have the most problems with such cases, even those most skilled in their

profession. Financial experts and advisors act on the market, where the riskiness of events (e.g. accuracy of investments) and the degree of unpredictability (of expected profits or losses) is particularly high. Such a state of affairs, nonetheless, does not correspond with the state of awareness and self-cognition on the part of the experts. Due to the randomness of events, their actual competences and cognitive capabilities play an insignificant role; they themselves succumb, however, to the feeling of their own competence, accuracy and usefulness of the formulated predictions. They believe that they achieve in financial consulting better results than the market itself (and corresponding objective, scientific knowledge about it), despite this being contrary with the economical theory that they take into consideration. It is not their knowledge (or rather the lack of it) plays a key role here, but a cluster of emotional-cognitive feelings and illusions, which accompany it. This is demonstrated by the research on their expertise in the sort of that, which was carried out by Kahneman himself, being a kind-of “expert of experts”. “There is general agreement among researchers that nearly all stock pickers, whether they know it or not – and few of them do – are playing a game of chance” [7, p. 215]. Financial experts and advisors, similarly to their employers as well as the general population (who remain impressed with the complexity with expert judgments in the financial sector), are convinced that the level of competence required to predict and assess risk of anticipated results is high and amazing (to a similar extent as their paycheck). The analysis of the statistical correlations of values of expert predictions and knowledge, from which they are derived shows, however, as Kahneman notes, that the accuracy of such predictions – meaning the repeatability of the result, its increase or improvement – is generally close to zero. Despite this, these experts do not take into consideration this fact from the realm of the theory of probability, they rather live in the illusion of the reliability of their knowledge. „The illusion of skill is not only an individual aberration; it is deeply ingrained in culture of the industry. (...) Their own experience of exercising careful judgments on complex problems was far more compelling to them than an obscure statistical fact” [7, p. 216]. The trust in the infallibility of expertise is stronger than facts. There is a shift in the awareness of experts with respect to the rank attributed to objectified expert knowledge for the sake of skills alone; these lead to knowledge or not. An illusion of knowledge appears to exceed the significance of knowledge itself; it is a feature characterizing financial experts, whose position distinguishes them in an unfavorable manner in comparison with other types of experts.

The actual component of the work of an expert, in every sphere of social life, as Kahneman notices, is, firstly, the broad knowledge about the mechanisms and processes ruling a particular sphere of a particular reality and, secondly, specialized skills of recognizing, calculating and predicting. Skills alone are not enough to make an accurate decision; relying on routine skills without referring to knowledge, as well as without their correction and being aware of them, is illusive. When this takes place, as it is demonstrated by Kahneman’s research, yet another phenomena occurs that has the properties specific of a cognitive mistake – the replacement of the ability to objective assess by the sole feeling (impression) of the appropriateness and correctness of one’s own skills. This second skill – subjective, not objective – is overestimated and it replaces (admittedly crowds out) objective skills and knowledge; this is the condition which afflicts the financial experts subject to this attitude. “[S]ubjective confidence of traders is a feeling, not a judgment” [7, p. 211].

This type of feeling experienced by experts – an impression, not conviction; skill, not knowledge – is contradictory to objective knowledge which characterizes the realm of their activity, both factors are situated in a paradoxical relation to each other. The first one, belonging by definition to System 1, appears in System 2 in the form of the self-awareness of experts; however, it is illusory, because it is uncontrolled and non-reflective. The actions of experts are accompanied by the feeling of confidence in their own skills, not fully backed by reliable knowledge. The sources of such a feeling are essentially subjective (psychological, dependent on personality), but they are determined and also conserved by the social situation in which the experts subject to the illusion act. A significant role is played especially by corporate structures, in which these experts formulate and develop their predictions and evaluations. “[I]llusion of validity and skill are supported by a

powerful professional culture” [ibidem]. The feeling of being part of an intellectual and financial elite of liberal society fuels this illusion. There is also another determining (falsifying) factor, Kahneman notices, namely, a sort of “consulting in the field of political and economic trends” connected with mass-media (television and specialized press), which both created the category of media experts as well as they fuel the social interest in them, conserving the inclination of some of the experts themselves to delude themselves. Under the influence of the media-promoted vision of the reliability of particular expert judgments (e.g. in the realm of finances), the natural illusiveness of certain experts becomes even more amplified.

6. Expert Intuitions: its Advantages and Limitations

Intuition in expertise – on the skill level – does not lead to mistakes in of itself; it is not only intuition that contributes to exaggerated confidence of experts referring to their own level of competence. It is an actual factor of expert judgments, it takes place, however, on multiple levels, it is a kind of game played between both of Kahneman’s cognitive systems.

Herbert Simons’s view is generally accepted (Kahneman also refers to him) – he states that expertise is a mode of decision making in which a significant role is played by intuition. In the decision making schema (model) several activities take place which depend on using basic cognitive skills of the deciding subject – intuition is one of them. The model of decision making is always realized in a specific environment; expert actions, including intuitions, should be, therefore, analyzed in a particular context, it can be examined as a reaction of the decident to the signals (hints) of a particular environment. The expert’s action is the recognition of appropriate hints (information) both in the environment and the hitherto acquired knowledge; recognizing hints takes place within the framework of the hitherto obtained cognitive resources – propositional knowledge, memory and skills, including intuition. Simon states: “The situation has provided a cue; the cue has given the expert access to information stored in memory, and the information provides the answer. Intuition is nothing more and nothing less than recognition” [10, p. 155]. A key role in expert intuition, apart from recognizing, is played by memory in which the basic information/knowledge is stored and that the expert communicates in reply to a question/problem situation. One remembers much more than one knows in a particular moment (than one can be aware of and that one can verbalize) and because of that intuitive referring to appropriate hints does not have anything mysterious connected to it, as Simon states, because it is based on hitherto acquired knowledge. A key factor in expert judgments are also association mechanisms, characterized by that that one recalls from his or her memory, in general, consistent and obvious information and ideas. Nonetheless, this generates a feeling of the ease of formulating beliefs and their consistency, but they are not, however, (what Kahneman also indicates) a sufficient condition for the reliability of expert knowledge. The intensity and the clarity of the feelings accompanying the belief in the expert judgment does not guarantee its accuracy, adequacy or greater truth value.

What, therefore, justifies the value of expert predictions based, among other things, on intuition? What is the appropriate schema (model, pattern) of a problematic situation for an effective resolution of a problem that is minimally burdened with errors? If not the subjective factor itself – certainty or the ease of formulating opinions and decisions – then what guarantees this value? The objective factor – the adequate recognized principle in a complex (indeed, very complex) reality as well as the specialized knowledge acquired on this topic – on its own, it is not a solution for the aforementioned problem/question. Kahneman notices that in the case of interrogated financial experts, this factor is not only the financial services market itself, understood as an ultimate reality. None of the abovementioned factors in of itself, only their joint cooperation, is a basis for issuing expert predictions and making decisions on their basis. A model and pattern for expert judgments as such is the game of chess, bridge or poker, as well as situations which are encountered by (and are used in the form of simple rules of functioning) diagnostic physicians, clinicians, nurses, some athletes and firefighters. In each example of such actions there is one common pattern and model (demonstrated already by Simon), it is simple, it does not have to be

fully made aware of and named, it functions quickly and generally reliably. “The accurate intuitions (...) are due to highly valid cues that expert’s System 1 has learned to use, even if System 2 has not learned to name them” [7, p. 240]. Environments in which financial experts and advisors as well as political scientists and experts (“who make long-term forecasts [and] operate in zero-validity environment”) are not environments of this type, hence the inadequacy of their predictions, combined, nonetheless, with a strong feeling of being accurate and an illusion of skillfulness.

What plays a key role is a strong and unambiguous hint from the environments which is crucial for a particular challenging situation, which guides the expert to the appropriate schemas and programs for action that were hitherto collected in his or her memory; hints are integrated in to the existing patterns of knowledge and action. Combined with prior experience, they constitute expert knowledge. Fully developed and effective expert knowledge (in a propositional form) appears as an effect of hitherto preserved simple cognitive schemas which lay at their foundation that function to a large extent intuitively. As much as mature expert knowledge can consider very complex situations and problems, intuitive skills emerged and function in simple situations and schemas. “The acquisition of skills requires a regular environment, an adequate opportunity to practice, and rapid and unequivocal feedback about the correctness of thoughts and actions. When these conditions are fulfilled, skill eventually develops, and the intuitive judgments and choices that quickly come to mind will mostly be accurate. (...) A marker of skilled performance is the ability to deal with vast amount of information swiftly and efficiently” [7, p. 416]. Expertise considered as a subjective competence and social role is a complex cognitive disposition, but it functions based on simple schemas and cognitive patterns.

7. Limitations of Expert Judgments in Judicial Practice

Susan Haack [4] analyzes from an epistemological point-of-view the American judicial system and indicates the correlation in judicial expert judgments, used especially in the criminal procedure, of objective (methodological) and subjective (personal) factors. The first type includes, in general, the incomplete knowledge of judicial experts or faulty results of forensic tests or experiments, the second one includes emotions, excessive desire for power (i.e. an advantage over the other party in a trial) and political correctness (which appears at many stages of the judicial procedure). Collectively they decide about the particular mistakes that a typical judicial expert commits during his or her functioning in the judicial system. Mistakes of this sort occur in the work of a judicial expert (expert witness) who is appointed for the sake of deciding about the defendant’s guilt. Also the witnesses, whose testimonies and confessions are distinctly conditioned by cognitive and personal factors, contribute to these mistakes; in both cases similar cognitive patterns are signified. Haack recognizes this problem in a much broader perspective than the cognitive one (just as Kahneman or Simon do), including also to it socio-political factors which explain why an expert sometimes demonstrates a specific bias in his or her expert judgments. “Bias may be due to expert’s greed, his desire to feel important or to help police or a sympathetic plaintiff, his indiscriminating conservatism about new and radical-sounding ideas, or his indiscriminating attraction to the novel or the radical” [4, p. 149]. What is crucial in this case is the exaggerated trust of the expert in the infallibility of scientific knowledge (of the natural and experimental sciences), significant parts of substance and methodology of which belong to his or her expert knowledge and skills. Not in every case the knowledge that a judicial expert makes use of finds its acceptance in the judicial procedure, although this is not decided by its inherent value (truthfulness or falsity). What is also, nevertheless, significant is that what is specific for a criminal trial, namely the emotional involvement of the expert, and also the witness, in the situation of the victim, sympathy for him or her, which sometimes leads to issuing expert judgments that do not fulfill standards of impartiality and objectiveness.

There is yet another, much more epistemologically significant trait of an expert witness to which Haack draws attention. The expert judgment of an expert witness undergoes analysis and an assessment process during the court procedure; it is not always taken in full by the judge (or the

jury) in its complete and final version formulated by the expert. An expert witness, generally speaking, is evaluated by the court on the basis of the conclusion which are a result of the expert judgment prepared by him or her. It is analyzed, as Haack notices, basically with the consideration of the judicial procedure, especially the arguments of the litigants, analyzed with respect to the manner of inferring from its premises, but also on account of the possibility of a court at a give level to appeal and annul verdicts, at the basis of which an expert judgment was issued. Because of that it acquires distinct significance, being part of a whole. Besides that, expert knowledge, what is demonstrated by discussion in the American jurisprudence and judicial practice [cf. 4, pp. 149-155] is the subject of assessment, also from the methodological side – the procedures of their formulation and justification. Courts are empowered to question and reject expert judgments, considering them to be insufficiently grounded in accepted and socially acknowledged knowledge in a particular domain; what is, however, significant, Haack notices, is that the term “reliable” in reference to expert judgments does not appear in the terminology of court rules and procedures. Therefore, the expert may be limited in this way in his or her independence (i.e. formulating an opinion on a given case) by the court which shows its autonomy (independence) with regards to arbitrary expert judgments. Such a situation indicates, Haack concludes, an epistemologically significant (important for the general model of expert knowledge) fact that the doctrinal-legal case presented above “gives federal judges substantial responsibility and broad discretion in screening expert testimony, but offers them little really substantive guidance about how to do his” [4, p. 155]. The position of an expert – non-biased, operating with objective and reliable knowledge according to scientific and socially accepted standards – in certain situations seems limited, especially with respect to his or her cognitive autonomy. A factor that decides about that is the social position of the expert – the social role which he or she play in institutions that gave him or her this status.

8. Conclusion

The abovementioned concepts, theories and positions, formulated in an interdisciplinary discussion on the specificity of expert knowledge, manifest that it is a complex, multifactorial and contextual phenomenon of a cognitive as well as social nature. A model of expert knowledge and expertise that could be constructed is one for which not only theories or empirical research are crucial – including decision making theories and ones relating to creative problem solving – but also practical remarks are significant, e.g. referring to the practice of judges and managers. This allows one to grasp key elements of this phenomena and to distinguish them both on the *epistemic* level (i.e. co-occurrence of propositional knowledge and skills, including the active role of intuition) as well as on the *epistemological* one (i.e. social conditions of expertise, including factors other than cognitive, such as the social roles of the experts or institutions within the frameworks of which they act). Although expertise on the one hand is a type of knowledge or cognitive competence and on the other hand as a social skill it assumes various shapes and forms of realization, within the framework of a model constructed on the basis of comparative analyses and empirical research, it is possible to grasp many of its crucial factors. One of them is the evermore broadly considered and generalized intuition that lays at the basis of the skills and dispositions to make decisions. Its nature – pre(un)reflexivity, simplicity and automaticity – is not considered to be antithetical (like in other theories) to rational, reflective and verbalized cognition. Intuition turns out to not only be a factor for making decisions and resolving problems with which experts are confronted, but also indirectly influences the state of the experts’ consciousness. It is a determining cognitive as well as meta-cognitive factor; in the second case it is the condition for achieving a top level of expertise, it repeatedly disrupts the methodological skills (reflexivity and the ability to correct mistakes) of experts in some domains of their activity. What plays along with this destructive fact is the impact of institutions and procedures conditioning the functioning of experts (in a model where expertise is understood as its contextuality) in particular social situations on the crucial pre-conditions of the status of expert knowledge and competences.

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Intuitive Law in the Light of Independent Ethics

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Abstract:

The conception of the paper is connected with bringing forward the reflection of Leon Petrażycki on intuitive law. For this purpose I analyze the genesis and dynamics of this phenomenon on the cultural-historical level, as well as with reference to issues belonging to the scope of positive law. In addition, I broaden the research field with the range of problems touching on intuitionism, morality, and also independent ethics of Janusz Kotarbinski. The starting point of the methodological optics I assume is constituted by the multi-aspectual transformations surrounding us in the sphere of axiology. Hence, if the pedagogical aspects are taken into account, it seems to me justified to undertake some actions in order to search for the logically consistent, sensible and universal solutions, which can become an ethical guide-post for the contemporary human being.

Keywords: independent ethics, intuitionism, morality, intuitive law, ethical education.

1. Introduction

The modern social-cultural conditions have transfigured the everyday ways of our functioning. The earlier narratives seem to be non-adequate to the today's needs. The concrete and coherent goals of proceedings, which were offered to us by tradition, become dispersed and changed into the ones that are less clear, sometimes internally contradictory and indifferent. In the context of these determinants, various anxieties and disquietudes have appeared. On the other hand, new possibilities and alternatives are propitious to the self-reliant determination of the goals and values that are closest to us. The cultural capital that we develop during the whole life is far from playing a minor role on this level. There are contained in it – not always, unfortunately – reflectiveness, contextuality, and dialogicality. It is these features that influence the way we perceive norms and principles of behavior. Frequently, the choice of a definite way of acting is unconscious or poorly embedded in the context of diversified aspects making up the whole issue. It's worthwhile then to dedicate a moment of time in order to gain – in such an important sphere of life as the ethicality – more self-awareness and understanding of the complexity of that which determines the problems and dilemmas troubling us, manifesting themselves in both personal and community life.

Keeping what was said above in mind, I made the purpose of the reflections undertaken here to bring forward the range of issues touching on intuitive law, elaborated by Leon Petrażycki. In the text I propose the fundamental assumptions delimiting intuitive law from positive one. I broaden the question of intuition itself by performing the analysis of the main assumptions of the philosophical current that is the empirico-emotionalist intuitionism. Hence I situated the undertaken reflections in the context of the questions within the scope of the status of the independent ethics formulated by Tadeusz Kotarbiński. The common – to the both savants – categories of conscience and intuition are revealed on this cognitive level. One more yet fundamental question joins the research approaches discussed by me, namely, the fact that both Petrażycki and Kotarbiński attached in their investigations great significance to the range of problems concerning the human attitude to the rest of the living beings.

The essence of the so-planned actions is getting to know and determining the role played by understanding and perceiving the rules of law in the perspective of individual feelings and desires. The crucial question is, moreover, the ethical education we have contact with during our lives – both with reference to the institutional influences and to the informal ones. I refer the above questions to the proces of the formation of the moral identity assumed by the contemporary human being [24]. Therefore, the proceeding of this type aims at the recognition of the interdependence occuring between law and morality. The ethical and pedagogical aspects of law, as well the interdependences between motivational and pedagogical influences of law, are for me crucial.

2. Intuitive Law in the Context of the Social Adaptation

Leon Petrażycki was an unusually comprehensive man.¹ He was interested in many issues within the range of social-humanistic sciences. Philosophy and its subdisciplines, such as ethics and logic, were close to him. Apart from questions of law, the thinker was curious about theories and conceptions disclosed on the ground of sociology and psychology. Kotarbiński himself highly praised the scientific achievements of Petrażycki in this way:

at last the time has come to understand that in the works of Leon Petrażycki rare treasures of the oryiginal genuinity are contained, so much precious that it would by worthwile to undertake the Polish publication of his works, if not of all of them, then at least of the main, guiding, the most outstanding ones [8, pp. 484].

Petrażycki payed the particular attention in his works to the complexity of the processes that constitute the mutual relationships among morality, esthetics and the human psyche. We won't deny that these areas, together with other contexts, incessantly transform us, as well as help us in the adaptation to the social functioning. Petrażycki notices on this plane the specific fundament for the genesis, development and dynamics of legal arrangements. As we get to know from the writings of the thinker, legal regulations are also subjected to these multiplanar processes of the unconscious adjustment [19, pp. 139-152]. The adequacy of law to the human needs is associated by the philosopher with the question of the universal good. Petrażycki notices in this perspective the factors, conscious to us, as well as the unconscious ones, which consequently lead to the transformation of legal norms. The scientist writes about a particular form of the human communion on the plane of emotional-intellectual associations. What is important here are cognitive dissonances, and so what is offered to us by the inherited predispositions – together with what we acquire through the everyday experience [3, p. 67].

Petrażycki effectuates the division of laws into intuitive and positive ones [19, pp. 267-276]. The former of them are characterized, first of all, by the fact that they don't contain among their arrangements any imaginations of normative facts. It is only the question of self-awareness, accompanying the choice of the appropriate way of behavior, without referring to – differently conceived of – authorities, that is important on this level. The upbringing that we've received, our

education, the adherence to formal and informal groups, or the job we do are here of equal importance. Our character traits and personal acquaintances, friendships and relationships are also equally essential. The accordance of intuitive experiences is secured by the similar, or even the same conditions of life.² In spite of these determinants, Petrażycki underlines with all his might that intuitive law has an individual character, because of which it is changeable and varied. In this context an important condition of intuitive law is revealed to us, as it is independent on any statutory provisions.

The above conclusions concerning intuitive law were elaborated with relation to positive law. That which connects the two terms regards the factuality itself of the content because it may be unreasonable and harmful on the both sides. Whereas the element differing these questions is the assumption, according to which positive law is built on the ground of the perception of external facts. Hence there's no talking here about the free-and-easy adjusting norms to the individual context. The law of this kind delivers norms that are uniformed for everyone. Besides, in the opinion of the conception's author, this type of law embraces these spheres of life which don't manifest themselves in people's consciousness as forms of receiving and giving the good or the evil. As far as this question is concerned, the author has in mind the formation of the official international relations and the functioning of the national jurisdiction and administration. Therefore, thanks to the establishments elaborated in the framework of positive law, the normal social life and the lasting social order may be developed [3, pp. 68-78].

The philosopher specifies the above questions in the following way:

while being individually heterogenous, as far as the content is concerned, intuitive law differs from positive law also in that its decisions are adjusted in a free way to the concrete, individual circumstances of a given case, a given arrangement of the living relations. They are not constrained – as it takes place in the domaine of positive law – by any pre-established pattern of the relevant legal rules, the introduced customs, etc., which contain regulations prescribed for particular cases of general categories, don't take into account the multitude of individual features in the specific circumstances of life, can't foresee them and adjust themselves to them [19, p. 270].

It's worthwhile to accentuate that Petrażycki called 'moral duties' only those which are purely and simply free with reference to other people, they are then duties not implicating any claim.

The author conducts his deliberations taking into consideration the historical aspect. He remarks in that matter that in the light of the conditions having their source in the past positive law may undergo the process of the slowdown of its development.³ This state of affairs is influenced by the situation regarding not keeping up with the cultural-technical transformations. The historical context manifests itself also on the horizon of changes introduced too violently, which haven't as yet found any understanding in the mentality of the particular social groups.⁴ In turn, "intuitive law develops regularly, slowly, it doesn't undergo any fixation, petrification and it is not dependent on anyone's self-willedness" [19, p. 272]. However, this characteristic – as the author himself remarks – doesn't guarantee the choice of better decisions. This is influenced, first of all, by the conditions of development, of education and the cultural level, and these are often the processes improperly or pathologically determined. In such situations the space is produced for the application of positive law.

The philosopher remarks that we find the essential differences between intuitive and positive aspects of ethics – in the sense of the preponderance of positive elements – on the ground of the domain of morality. The author expresses his position in the following way:

if the content of the positive Christian or Buddhist morality would be compared with the past or present intuitive morality of Christians or Buddhist, one could become

convinced that this intuitive morality is in large measure something far less noble, and even something pitiful as compared with the positive morality [19, p. 273].

As regards this question, the author adds that for the right understanding of the Gospels it must be made conscious that they are unilaterally-imperative teachings, and hence “(...) if any social-legal claims, etc., are derived from the teachings of the Gospels at present – it is a misunderstanding and a distortion of their meaning” [20, p. 86].

We find the similar reflections in the field of the recognition of these spheres of life, which stay outside of the sphere of positive-legal norm-setting. The author has in mind also such categories as family, friendship or love. The complexity as well as delicacy of these relations cause the application of the individual intuitive law, and so what is all the talk here about are the indications of one's conscience. Petrażycki remarks that it is the context of causing or receiving the good or the evil that is directly connected with the essence of intuitive law.

We find also in the works of the scholar the analysis of the endangerments which the discussed forms of law carry with themselves. One of the main defects is revealed by the question of the social good and it concerns the substantial content contained in the intuitive law's transmission. The great part is obviously played in this dimension by the education and Petrażycki pays his attention repeatedly to this issue. In the lifetime of the thinker, as well as today, the moral level, the level of customs, and the pedagogical culture of particular social groups were and are very differentiated. This state of affairs has its influence on that which we define as intuitive.

The question itself of motivation is extraordinarily crucial. In the opinion of Petrażycki, the legal motivation exerts a larger influence on the social life, and also it has a greater meaning in it than the moral motivation. The author remarks that the social progress is conditioned by the propagation – in the social psyche – of the association of the imaginations of behavior with the emotions connected with law. Such activity carries with itself benefits for the whole community. According to this understanding, the development of the legal psyche shapes the most fully the character of particular people, as well as the sound interpersonal relationships [7, pp. 22-23].

It has to be added that the lawyer perceived the psyche as an active and autonomous system.⁵ Actions in this conception aren't oriented by hedonistic factors but precisely by emotions revealing themselves, among others, through imaginations of the concrete actions. The scholar underlines the educational aspect of the legal self-awareness. Self-respect and sense of dignity count here.

Keeping in mind the analyses performed by himself, Petrażycki acknowledges the priority of intuitive law over positive law. It is this type of law that has to prevail over the uniformed provisions of civil and criminal law. Apart from this, it has to be the determinant and the stimulator of formulating and transforming themselves of the social-legal conditions. However, making his views more precise, the author underlines in an unequivocal way the need for the existence of the two types of law. The spheres of their influences should complement and permeate each other. Petrażycki remarks, however, that areas left by positive law to the influence of intuitive law should be broadened out regularly with the lapse of time. Moreover, the accordance of contents of the guiding principles with one another should exist between the discussed kinds of law. The fundament of this type ensures the legal order and the appropriate social, political, as well as economical system. In this understanding,

(...) the development of the both species of law, the intuitive law, as well as the positive one, determines, in the general and principal outlines, the impact of the same social-psychical processes, proceeding according to the same rules, and the partly unlike outcomes of the development, the diverse particular, inessential for the most part, differences regarding contents come into being only in connection with the specific difference between the intellectual compositions of intuitive and positive law [19, p. 277].

The reflection of the scholar that it may come to the transfiguration or even the collapse of positive law in the situation of coming into existence of a large divergence between the two forms of law remains not devoid of significance. The concept of the intuitive-legal conscience also appears in the texts of the thinker, and both conscience and intuition are the crucial concepts, on which Tadeusz Kotarbiński builds the notion of independent ethics.

3. The Category of Intuition in Social Sciences

This subsection will serve me to situate both the issue of intuitive law and the empirical-emotionalist intuitionism in the broader context of the system of sciences. In order to achieve this I will discuss the concepts of intuition and intuitionism [16, pp. 15-49].

According to the etymology of the word, intuition is joined with the Latin term *intuitio*, meaning vision, presentiment and immediate understanding.⁶ We notice its manifestation on the various levels of our functioning, first of all, in the emotional and intellectual dimensions. Intuition expresses itself also in the concrete activities, which should let us reach directly a certain being, through defining its fundamental aspects, or make it possible to find a solution of the problem that troubles us [3, p. 7].

Wincenty Okoń presents an interesting interpretation of the discussed term, and he performs this recognition, taking into account its pedagogical-philosophical horizon. In the opinion of the researcher, intuition consists in “[...] the judgements and beliefs directly imposing themselves, not based on the conscious operation with the premises, on the conscious reasoning” [18, p. 156]. What is crucial here is the promotion of the actions performed in favor of shaping the skills of perception, embracing the whole of problematic issues, without the sense of the awareness of the way in which one attains the concrete answer. It is then an unconscious process [26, pp. 225-252].

In this place of the argumentation I will present the main presumptions of the philosophical and empirical current which is intuitionism. The character of this cognition consists in grasping the concrete phenomenon without referring oneself to the reasoning and acting. Among the researchers of the discussed problematics we must enumerate, first of all, Plato, Aristotle, Saint Augustin, Descartes, Lock, Kant, Pascal, Brentano, Wittgenstein, Russell, and also Bergson. On the ground of the Polish elaborations within the range of ethics “[...] R. Ingarden and, in a certain sense, T. Kotarbiński went the way of Brentano and of fenomenologists, whereas Wł. Tatarkiewicz, T. Czeżowski, H. Elzenberg opted for the intuitionism in Moore’s edition” [3, p. 49].

Searching for more significations ascribed to intuition, it’s worthwhile to mention the theological interpretation. On this level intuition “(...) means that a certain reality is immediately given to the act of cognition and in this act” [21, p. 182]. There’s no way not to mention the activity of which Max Scheler gave evidence in this matter. This researcher interpreted values objectively, which means that he defined their existence as properties of the world. According to this understanding, it is thanks to intuition that we get to know the values: religious, spiritual, vital, hedonistic or utilitarian. The source and the fundament of intuition are emotions [22], [23].

In the psychological sense intuition is interpreted as an imposing itself on us belief, which we can’t justify precisely [6]. Following this track, intuition “(...) originates since it emerges as the outcome of the unconscious transference of the attitudes generated with reference to the similar situations or as the outcome of very weak stimuli” [4, pp. 8]. We get to know – on the ground of the elaborations having its origin in cognitivist psychology – that every processing of information takes place with the help of associations, patterns and images. And this is why cognitivists work out the methodology serving to define the concrete mechanisms of the conscious functioning, as well as of all the unconscious processes.

I want to emphasize that the position of intuitionism was, and still is, repeatedly criticized. The polemics touching on this issue refer to the objections connected with the sense of the lack of historicity, as well as the necessity of preserving the oppositions between that which we regard as factual and that which concerns the emotional sphere [14, pp. 318-319]. The dangers associated

with the intuitive feeling have been described by essentialists. In their opinion, each thing operates in agreement with its nature and only such its operating leads to the good.

The research analyses performed within the scope of the studies on intuitionism have disclosed a bit different character of intuition. Now it's not at all perceived exclusively through the prism of mysticism and irrationalism. Intuition has become a scientific category. It turns out that our intentions regarding phenomena and objects are the vehicle for very many informations.⁷ The sketched problems are evident in the statement of Anna Drabarek, in whose opinion, "the fact itself that all the positive sciences strive to prove every truth that is proclaimed by them, and so to confirm, to verify, that is, to validate it by experience – is, looking at it from the metascientific perspective, also dictated by intuition. It can be said then that both the basic assumptions of logic and the axioms of other sciences based on them have the intuitive character" [3, p. 29]. Hence, the evidence derived exclusively from the rational and empirical research activities appears as secondary with relation to the initial, intuitional assumptions. These are questions about which it is especially worthwhile to remember while analyzing the educational processes.

4. The Independent Ethics – Morality and Intuition

Kotarbinski defines ethics as the worldly wisdom because it constitutes for him 'the totality of advices – obviously striving to be rational, and answering the question how to live' [11, p. 23]. In order to present the complexity of this discipline, the researcher proposes its division. He creates then three subdisciplines of the traditional ethics:

- 1) praxeology (the science of the efficient action);
- 2) felicitology (the science of happiness);
- 3) ethics in the strict sense of the world.

This division leads to further demarcations, which is disclosed by the next statement of the philosopher: "we can distinguish moral and biochemical issues. The former are about how to live honestly, the latter – how to live happily. Only the whole of answers constitutes the personal practical wisdom" [10, p. 463].

Indicating the specified areas of ethical influences, Kotarbiński evokes a very important category, which also appears in the works of Petrażycki, and it is the conscience. For the representant of the Lvov-Warsaw School ethics is the analytical study of the conscience because "taking the conscience as the point of departure, analyzing its fundamental data, one can resolve a moral problem, that is, answer the question what the moral good is, how one should act to deserve the moral respect, and what is the principal norm of demeanor" [2, p. 129]. In this understanding the conscience isn't perceived as an instinct. It isn't also seen as an attribute of the reason. Furthermore, neither is it a feeling. For the ethician it is a definite and specific ability, joining in itself heterogenous aspects of the human functioning. Therefore, these predispositions that enable the conscience to be generated, were acquired in the course of one's history.⁸ Taking into account the propositions of Kotarbiński, we can ask the question about the possibility of coming into existence of a real chance for establishing the ethical system – based on the obvious judgements – the basic property of which is the independence from any religious, philosophical, anthropological, and even political worldview [17, pp. 223-240]. The author refers us back to the voice of the conscience, conditioning the universality of the exemplar of the honest man, called by him a reliable guardian. The savant assumes the thesis, according to which it is the timeless, worthful and noble intentions, springing from our conscience, that can constitute the interpretative fundament of our behavior. The role of intuition becomes visible in this place, indicating us what is good, and what is shameful – something similar happens in Petrażycki's works.⁹

Let's stop for a while by the interpretation of these behaviors and acts. The intentions and motives, defined as good in the moral sense, receive in Kotarbiński's works the name – venerable. The following ones belong to them: good heart, dedication, friendliness, honesty, care for other people and animals, generosity, courage, perseverance in the face of hardships, and internal

discipline. Evil acts are defined by the ethicist as infamous. Here the author means unreliability, injustice, and cruelty. This is the perspective on which the ethical axioms are built, such as: 'kindness is more supreme than maliciousness, righteousness – than unlawfulness, courage – than cowardliness, self-control – than lack of will, moral dynamism – than apathy' [10, p. 249]. In the light of this interpretation we can try to discuss the universal values, constituting for each of us the orienting points in a concrete problematic situation.¹⁰ In the opinion of the philosopher, we have the intuitive abilities to detect the concrete values, thanks to which we gain the possibility of in-depth recognizing a complex, problematic situation. Once more the question of intuition, interpreted in the meaning of the heart's obviousness and the moral sense appears in the course of the presentation. In agreement with this mode of argumentation, it is from the conscience that we should derive moral indications, independent from any ideology, religion, and even science. Let's add that the criteria of the good ought to be verified by referring them to the everyday moral experience.

The conscience is both an evaluating judge and an emotion taking the form of the sense of shame. Assuming this interpretation, the desirable legal and cultural state of affairs should be for each of us the conscience disquieted by remorse.

This type of thinking is characterized by empiricism and emotionality. According to this conception, there is then the ethical experience in the form of feeling [5, pp. 133-134]. In the perspective thus defined the common moral sense ought to constitute the pattern of behavior worthy of imitation. Responsibility for oneself and for others is important, which should manifest itself through the reverence for such principles as justice, disinterestedness and empathy, expressed in the form of fighting and minimalizing the omnipresent suffering of all the living beings.

5. Conclusions

The purpose of my investigations was calling the attention of the readers to the question of the recognition of the status of morality in the broad context of the problematics of shaping the ethical-legal identity of the contemporary human being. The point of departure for the reflection of this type was for me the analysis of the effects, which the diversified transformations carry with themselves, manifesting themselves among others through the laicization of the Polish society, and what follows from it, taking over of the responsibility for one's actions – no longer on the ground of the religious reflections but precisely of the individual and autonomous perceptions. In this cognitive perspective the attempts to reformulate the goals, methods and measures applied in the process of the ethical education were for me equally important. Moreover, the changes in the code interpretation of norms and rules, which in the consequence – we see this on the daily basis – contribute to the polarization of standpoints and sometimes even conflicts,¹¹ remained for me not devoid of significance. In this place of the presentation it's worth referring to the words of Petrzycki, who postulates that:

entrusting the care for the further achievements in the domain of the progress of law to the legislator and his future specialist-counsellor – the science of the politics of law, one has to advocate for the impartial control of – and the help in – the efficient and unwavering realization of everything that has already been or will be obtained with the help of the legislative cards, in order to make these legal achievements constitute *magna charta* not only on the papers; whereas to reach this goal one has not only to preserve but also revere and love the jurisprudence – the living voice of the already conquered laws of the man and citizen as well as the law in general [19, p. 330].

I have referred the above assumptions to the research results obtained by the savants chosen by me – Petrzycki and Kotarbiński – and they took into consideration, first of all, the elementary truths, which had and still have an enormous significance in the social life. The question of the historical overview of the reality, making it possible for us to be able to perceive phenomena in their socio-

spatio-temporal context, is not without significance for them. The researchers make us aware that by taking into consideration the broader cognitive plane, we will understand why it is worthwhile to subject the traditional instructions, prescriptions or norms to the critical analysis, looking at them from the point of view of their reasonability, consistence and truthfulness [9, p. 11]. It is the critical and reasonable attitude to the generally wide-spread views and evaluations that counts [20, p. 74].

Petrażycki accentuated explicitly the question of developing the strong and vital legal psyche of children, which should manifest itself through instilling into them not only morality but also the law obliging with reference to us ourselves. The question of the respect for the rights of others is also crucial [20, p. 104]. In the savant's opinion:

the outcome of having been brought up «without law» is the lack of a strong ethical attitude and safeguarding against the diverse temptations of the world (...); whereas, as regards particularly the attitude to other people, as well as to oneself, the natural outcome of such having been brought up is a «slavish soul» and simultaneously the lack of consideration for another's dignity, despotism, and vanity. The development of the active legal consciousness is for pedagogy the matter of a great importance also from the standpoint of (economical, etc.) prowess. It imparts to people the indispensable self-confidence, energy, and entrepreneurship. If the child is brought up in the atmosphere of willfulness, even accompanied by kind-heartedness, if there is not a certain sphere of rights allotted to him/her, certain rights on the immunity of which he/she can certainly count, he/she can't get used to constructing and carrying out any plans with trust [20, p. 105].

According to Petrażycki, the concept of the legal consciousness is intertwined with the terms of energy, spirit of enterprise, and bravery in action, both on the individual and the national levels. These are the traits that can be daringly acknowledged as needed and valuable for the educational processes. He transfers the postulates directed at children onto the ground, which he defines as the education of nation, and he regards the legislative politics as the most important means of this education. Kotarbiński himself described the ideal of Petrażycki as the active and universal people's kindness of one to another [8, p. 485].

In this light it can be clearly seen, how important educational tasks are before us. Reinforcing the sense of strength and courage in order for one not to give in to the opinion of the environment – it is one of the more serious educational influences. It is also important to counteract arising of the situation, characterized by the lack of the possibility of transforming the internal structures of the system in case of the appearance of new ethical problems, and this is an extraordinarily difficult task, especially in connection with the institutional setting of teaching. In this context understanding of the basic analyses, elaborated on the field of the intuitive law, which doesn't undergo any fixation or petrification, may turn out unusually helpful. The thinkers in common underline the significance of such characteristics as processualness, changeableness, interpenetration of the opposites. The savants also draw our attention to the category of the conscience, being the reflection of feelings of people professing the leading values, and these are respect for every form of life and counteracting to sufferings. Whereas intuition should complement rational thought in order for the knowledge and the feelings situated in the moral dimension to become in consequence the typical and natural equipment of each of us. It is associated with the question of fighting the intransigence of the worldview and methodological characters. On the basis of these conceptions I advance the thesis – valuable, in my opinion, for pedagogical issues – that we ought to act educationally in such a direction which would let us treat the uniqueness and exceptionality of specific actions, for which we take responsibility individually, as worthy of reflection and even popularization. What we consider to be particularly exceptional and unique in ethical actions, is as important in the process of education as the actions that have already acquired the status of universality. Moral dilemmas and quandaries will incessantly surround us. That is why

our task is to measure ourselves with that which is ambiguous and doesn't allow to be attributed to any particular ethical or religious doctrine. As far as this question is concerned, it's worth emphasizing, after Petrażycki, that the consciousness of the moral duty and of the legal one, apart from being psychical phenomena, have many more other common features, at least on the level of intellectual and feeling elements.

The authors accentuate the lack of agreement to sanction harmful behaviors, which engender the real suffering and discomfort. The advantage of one entity over another is, according to them, the source of the obligation in relation to the weaker one. The postulates of promoting the responsibility for one's own identificatory group, and for the excluded, people as well as animals, are visible here. Today we realize more and more that our attitude to animals is so much important that the fully scientific exploratory recognition should be conducted within this scope [20, pp. 5-22], [8, pp. 399-404]. The example of the continuation of the investigations of this type are at the very least the issues elaborated on the ground of the conceptions of ahimsa or posthumanism [25, p. 252], [1], [12], [13].

The presented views, both of Petrażycki and of Kotarbiński, are far from promoting any version of the ethical rigorism. When one starts to follow the profound analysis of the issues elaborated by these two eminent savants, a wise, logical and coherent argumentation appears, transforming itself in the course of the reading into the signpost thanks to which we can work out our own vision of moral-legal reflections.

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Notes

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1. It can be said that in our times it is a trait too rarely met among researchers. This fact is largely influenced by striving to achieve the specialization and concretization of knowledge.
 2. It turns out useful to apply in this context the term collective consciousness, which is exploited on the ground of phenomenographic explorations. This issue is interpreted on this level as the culture of community, the set of evidences in perception and judgment of the reality, and also as the cognitive habits [15, pp. 177-200].
 3. The crucial role is played on this level by the respect for tradition.
 4. The author applies the term collective psyche.
 5. Petrażycki differentiated among emotions (which were for him the fundament of the psychical life), sensations, feelings and will. Besides, the savant regarded examples of the awareness of the moral and legal duty as psychical phenomena.
 6. At the turn of XX-XXI centuries, the term ‘intuition’ began to be interpreted in the meaning of the creative imagination and perception.
 7. This is why we shouldn’t reduce intentionality exclusively to that which is material and physical. The expression of this belief is the rejection by intuitionists of the views formulated on the ground of emotivism and naturalism.
 8. We can’t omit the fact, which isn’t mentioned by Kotarbiński, that conscience prompts different things to different people. This risk is seen much broaderly by Petrażycki.
 9. It’s worth adding that Petrażycki described in his works the so-called standards of decency.
 10. The conception of ethics without code, formulated by Leszek Kołakowski, was accorded the fundamental significance in the question of the impossibility of formulating the universal ethical code.
 11. The fact that the disputes connected with the question of valuations may turn out undecidable has to be taken into account.

**Falsification of the Theory of Legal Rules and Legal Standards
of Ronald Dworkin Using the Methodological Foundations of the Theory of Law
and Morality of Leon Petrażycki**

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Abstract:

Efficient thinking is the foundation of efficient operation. The correct definition of concepts, especially the basic ones for a given field, in order to reach the truth, is a condition for the development of science and its social utility. The Petrażycki's research methodology of law is a thoroughly modern method, as it enables effective examination of the accuracy of contemporary legal theories created after Petrażycki's input.

A model contemporary theory susceptible to an examination through the research methodology of law by Petrażycki is the normative theory of legal rules and non-legal standards by Dworkin. For this purpose some falsifications will be subject, i.e. selected ad hoc among many others, two important theories of normative law theory Dworkin. The first one is the thesis classifying legal norms into two groups of norms, namely legal rules and non-legal standards. The second one is a thesis about the existence of who are capable of discovering and issuing lawful and, at the same time, fair (just) court decisions, which are also the only ones for resolving particular court disputes.

Unfortunately, owing to the seemingly cognitive research methodology of Petrażycki, both Dworkin's deformed division of legal norms as well as Dworkin's *Hercules* judges – cannot stand the test of authenticity. Due to the Petrażycki's methodology, the legal-normative theory of Dworkin does not lose an innovative outlook on the existence of social norms, which are being discovered by judges in the jurisprudence, indifferently to the doubts over their proper classification (be it non-legal standards or, perhaps, outright standards supplementing statutory and sub-statutory legal regulations). Moreover, Dworkin's theory is placed between naive theories, regardless of whether they are considered realistically naive theories (towards the *Hercules* judges) or nihilistically naive theories (when it comes to the existence of the only judgments in the given court cases which are also the just ones.) A few random reflections on the well-known work of Dworkin with the help of Petrażycki's methodology serve to provide a new perspective on the contemporary legal normativity.

Keywords: methodology, falsification of theory, theory of rules and standards of Dworkin.

*If the language is not correct,
Then the speech does not mean what it is supposed to mean.
If speech does not mean what it is supposed to mean,
what is to be done, will not be done,
and then morality and all art will be corrupted
and justice will go astray
and everyone will be in a state of confusion.*
[Unknown author]

1. Introduction

It is a truism to postulate a search for a philosophical basis of decision making for the societies' welfare. There are two concepts which are covered, these are *ideas* and *society*, which are positioned in a variety of extremely different types of relationship towards each other. Widely considered globalization requires an improvement of interpersonal communication and nothing seems to amplify a quality of a conversation as intensely as interdisciplinary meetings.

Efficient thinking is a foundation of an efficient operation. Defining concepts correctly, especially the ones which are basic in a given field, in order to reach the truth conditions the development of science and its social utility. Paradoxically, the law exploratory methodology by Leon Petrażycki is an entirely modern method, as it enables an effective investigation of the truth of contemporary theories of law. These were created after the construction of the exploratory methodology by Petrażycki, while it heavily draws on the Aristotelian dialectic [1].

An ideal contemporary theory prone to research through the law exploratory methodology by Petrażycki is the normative theory of legal rules and non-legal standards of Dworkin. For this purpose, two important theories of Dworkin's normative law will undergo a process of falsification. They were selected ad hoc, among many others. The first thesis divides legal norms into two groups, namely legal rules and non-legal standards. The other one focuses on the existence of *Hercules* judges who are capable of discovering and issuing lawful, and at the same time just court decisions, which are also the only possible decisions for resolving particular court disputes.

Unfortunately, owing to the seemingly cognitive research methodology of Petrażycki, both Dworkin's deformed division of legal norms as well as Dworkin's *Hercules* judges – cannot stand the test of authenticity. Due to the Petrażycki's methodology, the legal-normative theory of Dworkin does not lose an innovative outlook on the existence of social norms, which are being discovered by judges in the jurisprudence, indifferently to the doubts over their proper classification (be it non-legal standards or, perhaps, outright standards supplementing statutory and sub-statutory legal regulations). Moreover, Dworkin's theory is placed between naive theories, regardless of whether they are considered realistically naive theories (towards the *Hercules* judges) or nihilistically naive theories (when it comes to the existence of the only judgments in the given court cases which are also the just ones.)

A few cursory reflections on the well-known work of Dworkin with the use of Petrażycki's methodology serve as an opening to a new perspective on the contemporary legal normativity.

2. Petrażycki's Methodological Assumptions about Law and Morality

Under the reign of the legal-historical school and the upcoming triumph of juridical positivism, as Petrażycki used to call it – practical-dogmatic jurisprudence (mainly Ihering), the philosopher dared to return to the ancient roots of jurisprudence based on the natural law, enriching successful polemics with the schools. He did it by introducing research methodology which stretches up to the topical Aristotelian traditions [5, p. 11]. In 1908, opposing to "selfish practical interests" in the jurisprudence, which "poison the social life and social psyche", he had already foreseen their

”devastating influence on legislative and state policy in general and on justice” [5, p. 12].¹

Petrażycki’s work presents his lively opposition towards individual and collective, national egoism. This attitude of his is incredibly valid at all times. However, these deficiencies in managerial principles and ideals of the jurisprudence were approached by Petrażycki in a methodological manner. He emphasized a need which has not proposed yet by the school of the natural law. The need to establish and develop a new legal discipline “which would be based on premises, recognized by scientific considerations as a sound basis for resolving political and legal issues, and using scientifically-conscious methods of thinking would built a system of scientifically justified claims of legal policy.”

In terms of strategy Petrażycki was a law visionary. He defined law as psychological phenomena which could be influenced by the jurisprudence through

“bringing up the social psyche” and, at the same time, used logic with finesse as a cognitive methodology: The basic method of political and legal thinking is psychological deduction - conclusions about mental effects drawn from particular psychological premises - motivational and educational, which should trigger action of certain rules and legal institutions, or when it comes to legislative measures that may elicit some desirable psychological consequences - motivational and educational. While it is possible in certain areas and boundaries to also apply an inductive method, next to psychological deduction, then, logically, the legal policy should use as well this method to check the validity of deductive applications [5, p. 11].

3. Falsifiability of Dworkin’s Thesis about the Existence of Legal Rules and Non-Legal Standards Based on the Methodology of Petrażycki

The psychological method of perceiving Petrażycki’s legal phenomena enables an exposure of ontological errors made by Dworkin while formulating his normative theory. By comparing the long, exorbitantly complicated and, at the same time, the most important in the 20th century legal dispute about the notion of law (Hart-Dworkin) to Petrażycki’s methodology, it can be concluded this methodology enables cutting, like Occam’s razor, through many arid digressions of that time.

From all of the fundamental theses of the legal-normative theory of Dworkin subjected to the test of truth, the first one is the thesis about the existence of a dichotomous division of legal norms into legal rules and non-legal standards.

This is a thesis refutable by Petrażycki’s methodology. Petrażycki consequently applies Aristotle’s vision of the world to law, using both analytical and dialectical syllogisms alternatively. The philosopher draws from the Aristotelian sophisms, precisely about the error of circular reasoning (a vicious circle - *idem per idem*) [1, p. 302].

The aforementioned affliction of lawyers was commonly known in the times of Petrażycki. For that reason Petrażycki quotes the definition of law by a well-known German theoretician named Biering: “Law in the legal sense is ...”.⁴ Petrażycki vigorously points out the mistakes of philosophers of law, caused by the usage of professional terminology in the attempts to address the questions about what law is:

What they recognize as law, as ‘right undoubtedly’ is all this, and only this, what they got used to call ‘law’ as lawyers. Everything else from their point of view comprises non-law, ‘undoubtedly non-law’. Whereas different usage of the word “law” in a colloquial language usually is not recognized by lawyers, nor do they take it into account [...] In reality, one terminological custom is opposed to the other which is incompatible with it, and it is groundless to claim that the colloquial application of the word “law” is incorrect. If a lawyer perceives something as an actual law and this phenomenon is what he got used to describe as a law and, if the thing that is perceived right by non-lawyers he sees not as law but as something incorrectly defined as such,

then such attitude cannot be justified but it can only be explained as peculiar mental circumstance [5, p. 90],

therefore, sophism, a faulty proof of an idea, a false meaning of a thought.

Dworkin created a dichotomous normative theory, the theory of legal rules and non-legal standards, in which he did not recognize the second type of norms as worthy of a status of the legal norms. This status was given by him only to the non-legal social rules with legal consequences. Yet, it still might be difficult to understand why Dworkin did not dare to show any appreciation towards them in legal terms, to classify them as legal norms that complement legal rules.

On the whole, a question arises – was it a case of disrespect toward the natural law common among current lawyers, even those outstanding ones, that took precedence over Dworkin, a well-known philosopher of law?

Moreover, it is also known and will be proved below that *Hercules* judges do not actually exist, despite Dworkin's belief. One can explicitly say Dworkin consciously used the fictional idea of the *Hercules* judges. For this reason, such fiction was necessary to justify yet another fiction, specifically, the monistic, idealistic fiction of the existence of a sole, lawful and just judicial decision in a given litigation between disputing parties. Dworkin's efforts in the normative field, including recognition of legal rules as the only legal norms, resulted from his psychological desire to justify the existence of a hierarchical closed empire of law, in which the judges are emperors, princes and dukes [2].

Dworkin did not avoid particularism in his normative-legal concept. By making use of his works, he aimed, perhaps subconsciously, at legitimization of an enormous judicial power in his homeland, the United States of America – a multicultural empire. He sought both – such norms and such power – that would order the reality in which he lived and created. The reality in which he lived and created seemed unstructured to him, so this might be why he was looking for such norms and such jurisdiction that would help to put the aforementioned reality in order. He indicated dichotomous legal normativity and the power of judges who are in his opinion entitled to discover and apply extra-legal standards in certain legal situations, as well as to pass *contra legem* sentences. However, this work was doomed to fail, consequently with Dworkin admitting it toward the end of his life [3].

Petrażycki, on the other hand, repeatedly presented the reality as a pluralistic world and, at the same time, a world wide open. Unfortunately, when comparing Dworkin's vision of the world with the open and, eventually, the internally conflicted world of diversified social norms, it is a lot easier to take on, *in statu nascendi*, the truth about the existence, which brings much more cognitive and adaptive difficulties. However, Petrażycki did not leave the idea hanging but indicated an urgency to work on the law policy as on a crucial issue. Specifically, the necessity to improve on “legal principles and on managerial ideals”, while avoiding “shallow practical utilitarian directions” in the indecent meaning of this word, deprived of the principles of general ideas and ideals [5, p. 12].

Dworkin allowed himself, following to the proverb “the end justifies the means,” to accept successive scientific fictions. Firstly, when it comes to the legal norms entitled to be present in the sentences of the court judgments, Dworkin distinguished only the existence of legal rules as such. Next, the second fiction Dworkin approved of were the *Hercules judges*. Finally, he recognized only the existence of sole, idealistic court judgements in specific litigations. On the other hand, Dworkin turned to non-statutory, or rather, precedented judges' oeuvre as if they barely were extralegal, social standards. By doing so, Dworkin was not preservative. It is because he discovered yet another legal norms used parallelly with legal norms commonly known, however he refrained from calling it what they actually were, being under the influence of profession-oriented habits which were, in fact, described by Petrażycki.

Unfortunately, a different creative decision would have forced Dworkin to reformulate his lifework which was a closed, hierarchical, monistic, philosophical normative system, which, in his view, should be used by “priests of the system,” in other words – by the *Hercules judges*. Opening

his work to the second type of legal norms competing with legal rules would push Dworkin to broaden his conception of the previously closed normative system and to reveal the pluralism of social norms that compete successfully with legal rules, that is with the main legal norms in the ruling over judiciary practice of judicial and non-judicial authorities.

4. Falsification of the Dworkin's Thesis about the Existence of *Hercules Judges* on the Basis of Petrażycki's Methodology

The second of the fundamental theories of normative law Dworkin subjected to the test of truth is the thesis about the existence of *Hercules judge* capable of discovering and applying lawful and at the same time fair and, importantly, the only, ideal sentences.

By paraphrasing Petrażycki's vocabulary one can say Dworkin, experiencing legal-focused emotions while creating the theory, has been deluded to say the least. His delusion was based on perceiving the judges as if they have supernatural capacities to solve human disputes. In fact, what also has to be verbalized is that Dworkin's judges do not exist.

In accordance with the methodology of Petrażycki, *Hercules judges* existed only in Dworkin's psyche and his works, and after his death they remain only on the pages of his Opus Magnum titled "Taking Rights Seriously." Thus, the fundamental premise of Dworkin's normative theory presenting judges as capable of making appropriate decisions in court disputes is an ontological error regarding the condition of judges when considered in terms of Petrażycki's research methodology. These judges, *prima facie* people are therefore rational beings, but because of free will, prone to mistakes too. Aristotle used to say in his famous syllogism about Socrates that he, indeed, is a man and every man is mortal, hence Socrates is mortal as well. From an ontological point of view the matter of the judges looks similar: each judge is a man, not a god or a demigod (a hero), each man is fallible, therefore each judge is fallible too.

In the research methodology of Petrażycki, the fundamental premise of the Dworkin's normative theory on the existence of divine judges is as valuable as the moral epithet. It amounts to a conventional "dear" or "loved" etc. Furthermore, accordingly with Petrażycki's methodology, it is logical to assume that moral, or even legal duty of the Dworkin's judges conception is only Dworkin's imagery while creating normative law theory. Especially, that these judges are meant to adjudicate according to the highest moral standards, or with the best possible knowledge and practice. Potentially, even one hundred years ago Dworkin's aforementioned imagery would have been called by Petrażycki an internal legal experience.

Riposting to the accounts of psychic experiences, the creator of the theory of legal rules and non-legal standards on judges' judgments regarding the actual behavior of judges ruling in court disputes can be firmly stated after Petrażycki that "a lawyer will make a mistake if he starts looking for this legal phenomenon somewhere in space over people or between them, in the "social environment" or else, because in this case the legal phenomenon occurs "in his own mind" – in his or her own psyche and nowhere else" [5, p. 51]. Therefore, there is a relationship between them, most probably a psychological relationship, certainly a phraseological relationship, somewhat actual relationship, but there is no logical connection, but an optical illusion, resulting from the essence and composition of legal experiences discovered by Petrażycki.

Phenomenal methodological remarks of Petrażycki should be definitely considered as referring both to the rhetorical figure of *Hercules judge* created by Dworkin, and to many other currently known, significant philosophical theories of law. Petrażycki claimed that

Doctrines of lawyers and philosophers about law, its elements, variations, etc., give the image of such a pursuit of delusions, of constructing things that do not exist in a more or less ingenious and "deep" way, using various means, such as metaphysical hypotheses (an overman judge, a hero) or mystical, various unconscious stretches or even conscious recognition of unreal things as existing, with reference to the fact that without fiction, the issue cannot be solved, etc. With the time passing, theories become

not only more and more incompatible with each other, full of contradictions, but also increasingly unclear, intricate and artificial [5, p. 53].

Giving scientific weight to folk wisdom and widely available knowledge is the success of sobriety of Petrażycki's mind. The same goes with the possibility of uncloaking this kind of false theories which even happened to be called "naive creationist theories" by Petrażycki himself. Petrażycki enables passing a cognitive judgment on the topic of Dworkin's *Hercules judges* seen as a hollow (nihilist) theory, similar to the thesis that "the servant is in the hallway", while he actually might be somewhere else; for example, in the kitchen [5, p. 53].

Owing to the research methodology of Petrażycki's law, the falsification of the logical value of Dworkin's thesis about the existence of *Hercules judges* does not encounter any research difficulties.

In compliance with Petrażycki's methodology, the theory about the existence of *Hercules judges* is a realistically naive theory. In Petrażycki's view Dworkin proposed an erroneous solution. Dworkin recognised an actual, existing object (Petrażycki's servant versus Dworkin's judge), however found in an invalid sphere (in the Petrażycki's hall) as a sought-after thing, which really has a completely different nature and is located in a completely different sphere (in the court itself, or in Dworkin's mental experience and not in the real world).

5. First Summary - A Few Words

With an increasing difficulty comes the act of handing over achievements by scholars coming from narrow scientific specializations. Nowadays, shutting down of specialization makes both the scientific interdisciplinary communication and, what is worse, communication with the society, impossible. Petrażycki presents some simple diagnostic methods of those phenomena by subjecting some randomly chosen Dworkin's theses to his research methodology. Moreover, he reveals the fresh outlook on the Polish law and lawyers by drawing from the Aristotelian work.

6. Repackaged Summary - the General Criticism of the Legal Theory of Petrażycki

In all fairness to scientific reliability, a shortened summary of pros and cons of Petrażycki's legal theory has to be made, not only through confrontation with Dworkin's ontology. For the contemporary scientific needs the general assessment of the theory is not clear-cut. Also, under no circumstances does it convince as strongly as it was articulately used above to falsify Dworkin's theory.

On the one hand, undoubtedly, Petrażycki's legal emotivism influences a deeper understanding of substance of law, along with its vocabulary and interpretations of will incentives, but more importantly with discovering emotions in psychological and legal categories. The legal emotivism is even of a higher value than other, mainly patchy, legal-tenet treatises by the former and current law positivists. It also yields subjectivist theories of legal behaviours, which credibly affect in-depth understanding of basic, individual legal acts, such as will incentives, will, motives, guilt, damage, legal capacity, commitment, entitlement or legal relations. They influence the legal awareness and a sum of other crucial elements for the application and interpretation of the substantive civil law, as well as for the broadly understood legal interpretation.

On the other hand, the emotive legal theory of Petrażycki cannot be analyzed only on a basis of a legal theory, especially excluding the civil law, and only with connection to an empirical context. The memory of the ethically tragic experiences of mankind is vital for this matter. The emotivist theory needs to be looked at in the light of the great totalitarianism of the 20th century, including the pre-war, Trotsky-Lenin Russian Bolshevism, Italian and Spanish fascism, German Hitlerism, post-war Russian Stalinism and up to the contemporary nihilist, anarchist or ethically relativist, liberal Western and Eastern democracies.

It should be remembered that Petrażycki's jurisprudential theory is a philosophical and legal

theory from the late 19th century, a theory created in the monarchic, despotic, tsarist, yet democratizing Russia. However, considering it more broadly, Europe of that time was a completely different ethical, legal and political reality, opposing to current Russia, Central and Eastern Europe. In addition, the legal theory of Petrażycki, at least in Poland, never had a chance to be a dominant philosophical theory, precisely because of the reign of the 20th century totalitarian regimes. These days it also is not lucky to exist among wide circles of philosophers of Polish or Russian law because it found supporters only among a few students who managed to survive the above-mentioned totalitarianism. Throughout the 20th century the theory in Polish legal culture vegetated in the scientific underground, under the overwhelming influence of legal positivism and then under the Marxist sciences about the state and law.

Furthermore, Petrażycki, as a 19th century European rationalist favored the Enlightenment ideals of rationality power. His scientific credo was based on anthropocentric ideals of progress, thus it rejected theocentrism, the Christian paradigm of seeking truth, justice, freedom and other ethical values in God. As a result, Petrażycki, as an ontological non-cognitivist perpetrated subjectivist descriptions and assessments of the existence, permanence and meaning of non-legal, normative, social systems (which are religion and morality) in the name of ostensible ethical values, such as i.e. efficacy. He created an unjustified hypothesis about a hierarchy of normative social systems, in other words – the hypothesis about the normative primacy of the law over morality involved in implementing the society's idea of "universal kindness of all people." Such hypothesis could only get epistemological approval, however it is not possible to maintain it, either in the ontological or in the axiological sense.

A dialectical doubt arises – can we comprehend the law while using the original, even nowadays, emotivist legal theory, nevertheless created by the 19th century law theorist Petrażycki, strongly embedded mentally in the legal system of the declining in that time, pre-revolutionary, despotic Russian empire?

Therefore, the question has to be answered of whether such a theory, even partially, and to which extent enables real reforms of modern, 21st century, multicentric, pluralistic, multi-system law, including non-judicial and extrajudicial law, and in particular contemporary Polish law. For this reason, there is scientific need of, from one side, to continually use methodological legal techniques directly derived from the ancient technique of Petrażycki – especially from the output of Aristotelian dialectics – and from the other side – the need of, at least, an ethical criticism of Petrażycki's legal pluralism.

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Notes

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1. The motto for the revival of the natural law Petrażycki included in [6, p. 579] already in 1895. and the first edition of the *Introduction* took place in 1908, so just before the horror of the First World War and the Bolshevik Revolution and then the rise of fascism in Germany, Austria, Spain and Italy.
 4. [5, p. 89], footnote No. 1 in which he quotes the work of Biering, *Juristische Prinzipienlehre I*, p. 19.

**Genesis and Nature of Moral and Legal Norms.
Leon Petrażycki's Naturalistic Solution**

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Abstract:

The aim of the paper is to examine the nature of moral and legal norms in a broader context: first, taking into account logical and methodological assumptions, second, in the perspective of psychology of emotions and legal policy. The basic subject of the research carried out by Leon Petrażycki was represented by law. Originally, it had a psychological character, not an objective, eternal, and unchanging one. To fully understand the genesis and nature of morality and law, Petrażycki addressed the study of mental phenomena, especially emotional experiences. First, however, he developed appropriate rules of logic and scientific methodology. Then he developed a new classification of mental phenomena, among which the fundamental role is played by bilateral (passive-active) emotions. At some stage, emotions begin to cooperate with cognitive processes, first of all with imaginations. Imaginations of acts, such as theft, betrayal, murder, can cause repulsive emotions, and type imaginations, such as truthfulness, charity, justice can evoke apulsive emotions. On the basis of such associations, judgments are created over time, the content of which becomes a basis for fundamental rules of conduct, that is, for norms. There are two fundamentally different types of norms: moral norms and legal norms. The norms of the first type are imperative and represent the nature of validity (they are obeyed), while the norms of the second type are imperative-attributive and they also always entitle someone to something, i.e. they give someone a right. This division determines a fundamental difference between morality and law.

Keywords: law, classification of mental phenomena, emotions, moral norms, legal norms.

1. Introduction to Petrażycki's Theory of Law and His Politics of Law

Emotions are an integral part of human beings. They are very important in everyday life: at work, at school, at home, in art, in research, and in every action and conversation. They provide us with effective operation and success. Emotions often are helpful. Often, but not always. Today we know

a lot about emotions, however, we still have much to discover. For example, we do not know exactly what emotions are.

According to Leon Petrażycki the phenomenon of law is not entirely objective, immutable and independent from the subject. Primarily the law exists in the subject's mind as an experience that is being projected outside. Legal norms that are contained in constitutions and codes are merely projections of these primary legal experiences. Petrażycki aimed his conception mainly against natural law theories, but partly also against positivistic approaches [cf. 44, see also 1, 2, 19, 21, 37, 60, 61, 63]. Legal experiences belong to basic mental facts. They are 'ethical experiences, and emotions connected with them possess attributive character' that is two-sided (binding and demanding). Actually their character is imperative-attributive and it is contrary to the character of positive emotion experiences (moral phenomena belong here), the latter bind one-sidedly [44, vol. 1, p. 153].¹

Petrażycki's theory concerns the basic concept of law but is not limited to it. Within broadly understood generic law he distinguished four basic kinds: intuitive law, positive law, official law, and unofficial law. The positive law contains projections of normative facts that are constituted by an external authority figure (God, monarch, lawmaker). Intuitive law (or natural law) does not contain such projections. It arises in independence from authorities, is individually variable, depends on unique biography of a man, on his character, personal experience and education [44, vol. 2, pp. 249-251]. Official law is applied and supported by state authority, whereas unofficial law has not such a backing – it is not applied nor supported by the state. It is present in various social groups (in family, in organized groups, e.g. in organized crime) [44, vol. 2, pp. 306-307]. The law of all kinds functions by 1. Arousing or inhibiting some motives of action (or of abandoning them), 2. Developing and preserving some tendencies and weakening and eliminating others [43, p. 14].

Petrażycki was convinced that relations between people might be different than they are, and the world would be better. The way to the better leads – according to him – mainly by the law, for it has got a big influence upon how human communities and states operate, and that is by its motivational and educational function. Nevertheless what is necessary is a deep reform in science and law and – as a consequence – a change in human consciousness. As the tool for it he meant scientific politics of the law: 'The highest good that we are obliged to seek in the realm of politics in general and in politics of law in detail is the moral development of man, the domination of high rational ethics over humanity, i.e. the ideal of love' [53, p. 25]. Support for the moral development of societies and whole the humanity – according to Petrażycki – should be based on '1. Rational directing human activity – individual and collective as well – by an appropriate motivation of the law, 2. Perfecting human psyche, purifying it from bad antisocial tendencies and introducing and strengthening the contrary inclinations' [43, p. 14], [cf. 45, 53, see also 28, 35, 57, 69].

The question if the moral progress is possible always was controversial and until today nothing has changed. One could argue that a human is born as a primitive being, with its primary reflexes and instincts (to obtain food, to fight, to defend oneself, to seek for a sexual partner). Since the beginning a human being possesses a set of inborn cognitive abilities and communicational, social and moral predispositions, but the degree to which they would develop depends on the education and the environment in which he lives. Left alone in difficult conditions of the world he would not become a civilized person. It is possible that every new generation is born as primitive and needs to be educated and civilized. The moral progress is difficult because of the freedom of man itself, his tendency to evil and the presence of evil. Morals assume the freedom of choice between various options – the choice between good and bad. Making choices is a persistent disposition of a human being, and one cannot avoid it. A man does the moral evil and – on the basis of freedom of choice – he would always do. The state of affairs makes any moral progress very difficult or impossible at all.

Petrażycki has no doubts that moral and social progress of humanity is possible [53, p. 25, see also 35, 45, 57, 69]. In order to believe it, that is enough that one reads *Corpus iuris* and *Gaius*. History of law describes gradual changes in ethical life of man and presents how the progress is being done. Petrażycki gives a few examples. One of them is history of bond right. Evolution of

Roman, German or Russian law reveals that originally ethical virtues which supported the institution of obligation, that is, they made for obligation fulfillment, were very little developed, and because of that the justice had to apply very firm and tight means of coercion. According to the mental evolution and to the development of more and more noble ethical motives sanctions became more and more subtle and delicate. Another Petrażycki's example are relations between members of a family, married couples and between parents and their children. Originally they were very severe and based on absolute subordination and rigor. Various means of suppression and taming were applied. Nevertheless over time they become more civilized. The position of woman improved and the attitude to children changed [53, pp. 25-28].

According to Petrażycki, in the process of moral perfecting the main role should be performed by the law. He believes that that rational politics is an important factor of moral progress [53, p. 29]. That is because the law has the ability to weaken and eliminate some given inclinations and behaviors and to strengthen and develop the others. He argues by giving the example of Roman law concerning *possessio* and the criminal law. The history points out that not only regulations contained in the law concerning possession removed motives for deeds that were harmful for the economy and social coexistence, but also they structured positive patterns of behavior, taught how to act in harmony and how to respect property and its owners. One can see the educational aspect in that how the criminal law works. Its aim is not to fight against the crime but to educate a worthy man. It is so, because the concern about the punishment keeps people from perpetrating crimes and shapes their character positively [53, pp. 29-44].

Petrażycki claims that the humanity should be led by 'the great ideal of panhuman love.' The principle that love is an ideal and the highest good is in his view an axiom of practical reason and as such it does not need to nor might be proved [53, p. 25]. It is so for any proof of it would have to undermine the thesis being concerned: values upon which one would argue – satisfaction, wealth, happiness – would have to be put in the place of the ideal, and then the primary principle would lose the status of an axiom. Generally Petrażycki's ideal of love means rejecting egoism of many kinds: social, national and state one. Its aim is to remove differentiation of people by nationality, origins, or by other means, and to treat everyone as a man. The ideal excludes also any individual egoism, nastiness, aggression, laziness and other vices. Petrażycki's great ideal of love assumes stronger sympathy and involvement in doing good. The love that Petrażycki means is activity for the good of all people, and even for the good of animals.²

Petrażycki means not only development of ethical and legal principles or acting according to them, but also he expects more radical and deep transformation of man. That needs to go on the level of our deepest emotions, so they would motivate us to noble actions only. Petrażycki means that proper mental dispositions should be formed: 'That is about gradual structuring a certain ideal composition of emotional mind, and gradual eradication of egoistic dispositions, and in that manner introduction of the mental ability to act correctly...development and strengthening charitable (*karytatywny*) emotional dispositions, and in that way creation of mental necessity that one's actions are good, gracious, merciful etc' [54, p. 159]. So realization of the great ideal of love is possible only in the way of knowing mental mechanisms, especially emotional ones, and in the way of shaping them properly. Once the ideal is realized the law and morals become useless: 'when the proper fully social education and the psyche of love in our broad sense are achieved...then the law loses whole its sense and its existence becomes even psychologically impossible' [54, p. 165]. Any state authority becomes needless too. The humanity becomes a mature community of people acting upon positive desires (impulsions). The realization of that is still very far. Lots of obstacles needs to be removed and many important reforms have to be implemented. Some of them will be described below.

2. Petrażycki's Logical and Methodological Claims

Petrażycki's interests and aspirations were very vast. He had a reformer's spirit and he let it act. He criticized principles of classical logic, offered a new classification of propositions/positions and a

new classification of sciences. He elaborated a new methodology of science, and he attempted to reform science in general. The most fully he applied his ideas in the area of psychology, theory of law and sociology.

The most exhaustively he formulated his program of so called positional logic in *New Principles of Logic and Classification of Skills* (*Nowe podstawy logiki i klasyfikacji umiejętności*). His idea was to supplement the logics of 'propositions' (or logical sentences) with the science concerning so called positions as a homogenous theoretical category. According to him the foregoing logics was 'limp' (it took into account too narrow class of propositions), because it rejected propositions that had no 'objective-cognitive' nature. Nevertheless according to Petrażycki's view logics should deliver support and direction not only in the domain of seeking the truth, but also in the area of rational obtaining position toward things and of rational acting. Positions are simple senses or contents of sentences that are not possible to divide [54, p. 5]. Let us take the sentence 'A cold rock lies.' It contains at least three positions: 'a rock exists,' 'a rock lies,' 'a rock is cold.' And another sentence: 'Jupiter sleeps.' It contains at least three positions: 'Jupiter exists,' 'Jupiter lives' and 'Jupiter sleeps.' Petrażycki claims that merely the first one is independent and only examining its truthfulness makes possible to consider whole the sentence. The position 'Jupiter sleeps' assumes the position 'Jupiter lives.' Various respective predicates point to subsequent positions. Petrażycki divided positions into two basic groups: I. Objective-cognitive positions and II. Subjective-relative ones. The former are divided into 1) Class (theoretical) positions and 2) Non-class (particular-individual) ones: i. Descriptive (e.g. in geography), ii. Historical, and iii. Predictive. Subjective-relative positions are divided into: 1) Critical (they express personal, emotional attitude of the subject): i. Negatively valuating, ii. Positively valuating, or 2) Postulated (they express obligations, demands or requirements): i. Subjective (concerning actions), ii. Objective. Subjective ones may be a) Teleological and b) Principal (normative): positive (dogmatic) or non-positive (intuitive).

In his methodology Petrażycki postulated to introduce class concepts and the criterion of scientific propositions adequacy [cf. 43, see also 18, 34, 64, 66]. Let us start from the latter. The most generally, the principle of adequacy demands to 'refer what one claims to proper classes of objects that are sufficiently broad,' and not to narrow unduly the class of objects that the given sentence concerns. The sentence 'All men are mortal' is true but inadequate, for one can say that 'mortal' are not only men but living organisms at all. Theories that are scientifically adequate may not be false, but in the same time, not every truth is important from their point of view and not every truth needs to be taken on board. Adequate theories are properly general, referring to properly broad classes – not too narrow, and not too wide. In other words, adequate theories are accurate given their range concerned.

Theories that are narrow because of their range – that is 'limp' ones – are theories that 'break the principle of sufficiently broad class, i.e. theories whose predicates are being referred to too narrow ranges of objects' [43, p. 128]. There are also theories that are absolutely defective. They are false when referred to whole the class [43, pp. 128-150]. According to Petrażycki in science there are lots of theories that are false, limp or jumping, but also such (they usually are more compound) that they contain theses that are limp and jumping as well. He declared war against all theories of those kinds.³

It is also general class concepts that are important in scientific research practice. According to Petrażycki such concepts enable: 1) The general knowing phenomena of the reality, 2) Scientific theories constructing, 3) Understanding what those theories claim, and 4) systematization of knowledge [42, pp. 35-36]. Unfortunately, by his opinion, the contemporary science had not in its disposal either adequate concepts or adequate theories. Especially humanities and social sciences seek for their class, basic and central concepts: psychology seeks for the concept of mental phenomenon, the theory of law seeks for the concept of law, ethics and theory of morals seek for the concept of morality, sociology seeks for the concept of society, economy seeks for the concept of economy, the theory of state seeks for the concept of state and esthetics seeks for the concept of esthetic phenomenon.

What are class concepts? A class is comprised of all objects (things, phenomena, processes etc.) that possess a given property characteristic for them or may be thought as possessing it. Petrażycki writes: ‘The idea of all objects being white is a class concept, that is the concept of the class of white objects. The class comprises of all objects that possess that color or may be thought as possessing it’ [43, p. 74].

It is not necessary to know all properties of an object to create a class concept, so it is not necessary to obtain complete and perfect knowledge of the object. What is enough is one of its properties and then one can divide the being analyzed group of objects into class of objects that possess the property and class of objects that do not. Furthermore it is important that class concepts are not limited to objects that exist in reality here and now, but contrarily, the latter comprise a small part of them merely. In addition to them, also all the objects that existed in the past, and those that will exist in future belong to the class. Moreover lots of concepts embrace objects that may be merely thought of, but they do not exist in nature [43, pp. 74-75]. The essential rules concerning class concepts and class creation Petrażycki put into the two of his theses:

1) To create a class concept means to formulate a thought according to the schema: objects possessing the property *a*.

2) Then one has to prove that any object possessing the property *a* possesses also a further property *b* or further properties *b, c, d* etc. [43, p. 157].

Only class concepts that are understood in that manner are – according to Petrażycki – a good basis for scientific theories creation and scientific classifications construction. It is so for class concepts are merely links used when constructing a theory – an adequate theory. The ability to create adequate theories is the only proper way to test scientific value of a class concept .

3. Detailed Analysis of Moral and Legal Phenomena

Legal and moral phenomena are – according to Petrażycki – of mental kind, so the most accurate method to know them is, in his view, the introspection. Nevertheless it has to be underlined that method is basic but not the only one. Strictly speaking Petrażycki postulates to apply a mixed method that contains: usual and experimental introspection, and also observation of external behaviors that are symptoms of internal experiences. By introspection Petrażycki means internal observation of various mental phenomena: simple sensations, experiences and imaginations [43, pp. 58-62].

Petrażycki considers also the experimental form of introspection. In his opinion any observation – thus self-observation too – may be experimental. By experimental method of introspection Petrażycki means a controlled observations of one’s experiences that is based on producing, modifying, stopping and optionally repeating them. In order to do those one does not need any specialized laboratories or devices.

An important addition to such research should be the analysis of accounts and descriptions concerning experiences of various kinds coming from other people. They are mainly historical accounts, chroniclers’, journalists’, biographers’ and travelers’ descriptions. Next to that Petrażycki postulates profound and broad observation of external symptoms.

Overall Petrażycki was in favor of research that would be the basis to establish many general statements concerning physiological phenomena (especially psychological, for they contain moral and legal emotions) in case of not only humans but also animals (though not of all species).

3.1. Critique of Foregoing Classification of Mental Phenomena and Proposal of New Division

By his own logical-methodological principles Petrażycki criticizes the foregoing classifications of mental phenomena and gives a new one, additionally he offers a scientific explanation of emotions. Coming from Kant the division of mental phenomena into cognition, the will and emotions was widely spread in the nineteenth century, though there were also such approaches where emotions

were a form of will, and the will was a detailed case of cognition. Petrażycki found that mixing or relocating various emotional experiences in various categories as the vice of the very basis of the classification. Classes of cognition, feelings and the will are not clear. From one point of view – as Petrażycki argues – the scope of all mental phenomena (that includes cognition, feelings and the will) is too narrow for they do not exhaust whole the mental life. On the other hand ranges of all the three domains of contemporary psychology – psychology of cognition, emotions and the will – was too broad, and that was the reason why some extraneous elements were introduced to them, especially in case of feelings.

According to Petrażycki it was methodologically wrong to create various complexes ('eclectic groups') containing for example imaginations and pleasures or imaginations and irritations (e.g. the love as combination of imagination and pleasure, the hate as combination of imagination and irritation), and to describe such sets as feelings. In his opinion, according to the laws of logics and science, emotional elements and emotional-cognitive complexes should be strictly distinguished, and only experiences of pleasure and irritation should be found as feelings.

Petrażycki consequently offered his own classification of mental phenomena and scientific explanation of emotions. He divided all basic mental phenomena into two classes, the second one was divided into two subclasses further:

- 1) Two-sided, that is, passive-active ones, they include impulsions/emotions;
- 2) One-sided ones, they are divided into:
 - a) One-sided passive ones (cognitive and emotional experiences) and
 - b) One-sided active ones (experiences of the will).

For phenomena of the first class Petrażycki reserves two names 'emotions' and 'impulsions.' Etymologically he finds the first term the most suitable. It comes from Latin '*movere*,' and that means 'move,' and from '*emovere*,' and that means 'move strongly, shake' or – if you take into account that '*e*' means 'from' – 'move outside from inside.' Below the formation and the nature of emotions, and also ethical emotions and norms formation will be discussed. Now let us consider one-sided phenomena shortly.

Feelings as passive experiences caused by external and/or internal stimuli, and feelings as experiences of pleasure or irritation are one-sided passive. They appear on the later stage of evolutionary development as the result of impulsions differentiation. The latter means 'weakening and declining the drive element on the one side, and isolating more differentiated experiences from primitive, misty and indefinite impulses on the other' (43, p. 403). One-sided passive phenomena – sensations and feeling – are simple 'impulses', that is, experiences and perceptions without any move reaction.

The will as heading do change, governing and directing the action belongs to one-sided active phenomena (one can have the will to work despite being tired, or the will to seek for the solution continuously despite having no satisfying results). Such experiences are 'presented to one as active strivings of his ego, they are determined to make or create something in near or further future' [43, p. 256]. Nevertheless the will itself is neither an internal impulse to act nor an act itself. The will is a homogenous class of phenomena. It is an intermediate link between impulsions (or other motives) and actions (or ceasing some actions), and it is responsible for one's choices, resolutions and decisions. The will is formed 'not by various elements of mental life, but...by simple (noncomplex) experiences that are strictly active (striving). The latter comprise a separate kind of mental life elements (that is the most simple elements that are not possible to divide into more simple ones)' [43, p. 265].

3.2. Explanation of Emotions

Petrażycki assumes the biological perspective in explanations of impulsions: the evolutionary and physiological-neurological ones. In his opinion impulsions are evolutionary basis for the psyche development: 'From the historical and evolutionary point of view it seems very probable that the primary basis of the psyche development were emotions, whereas one-sided elements – active and

passive as well – were further creations of the evolution and of the emotions differentiation’ [43, p. 403].

Impulsions are the basic form of mental phenomena. They are – as Petrażycki formulates that – the prototype of mental life: ‘They are the counterpart of afferent-efferent anatomical structure of nervous system (of stimulatory-motoric function of that system), and because of that they are the prototype of any mental life that is two-sided: passive-active’ [43, p. 403]. Secondly one-sided experiences arise. Nevertheless that form of mental life never stops, but it always accompanies secondary passive feelings and the active will (that will be discussed below).

According to Petrażycki, everyday – from the morning to the evening – one experiences many thousands of various impulsions. Lots of them are mild and soft. Most of them are impossible to capture with the naked eye. They are hidden and unknown: ‘emotions are hidden and unavailable for cognition’ [43, p. 420]. Usually they go on unnoticed, but some of them are quite intensive. They all make one’s muscles, body and mind move: ‘Their function is to bring body moves and other activities (e.g. mental work and other so called internal activities) producing directly some physiological and psychic processes...or a given will (activity of the will)’ [44, vol. 1, p. 8]. Emotions – though unconsciously – strongly influence one’s thinking, decisions and activity.

Because of the direction of emotions’ acting Petrażycki made the division into: 1) appulsive (attractive) and 2) repulsive emotions. The former are of the approval kind – they push and motivate one to some given behavior. Hunger-appetite, thirst, desire and curiosity belong here. The latter are the opposite – they are of the disapprobation and rejection kind. They include hate and disgust (and also fear and horror). Repulsions may appear in situations of exaggeration or excess, e.g. in case when one eats and his appetite is satisfied but the organism still incepts the food (and the same it is in case of thirst satisfaction). Then overeating appears and it is accompanied by the rejection reflex: ‘in case of excess, stimuli of the contrary direction (repulsive ones) appear instead of instinctive-appetitive stimuli’ [43, p. 356].

The aim of appulsive and repulsive stimuli is to support the organism in its life functions. Appulsive stimuli assist the organism in its development, whereas repulsive ones work to secure the living being from harmful factors.

In his *Theory of State and Justice (Teoria państwa i prawa)* Petrażycki distinguishes 1) special impulsions and 2) abstractive impulsions (formal ones). Special (simple, specific, and diverse) ones are genetically determined and they lead to strictly defined behavior [44, vol. 1, pp. 19-20, 22, 35]. Emotions of that kind adapt the organism to perform various tasks, for example hunger-appetite, curiosity, fear, shame. On the other hand abstractive impulsions are evoked by prescriptions, bans, requests or advices directed to one by various subjects. For example, rapidly spoken calls ‘silence!’ and ‘don’t touch!’ bring to one’s mind some given drive stimuli that push him to act according to the call. Character and direction of the action is additionally strengthened by some other mental elements, e.g. by imaginations: ‘the energy of formal impulsions (legal ones included) needs an additional amplification by some other mental elements’ [43, pp. 217-219]. The latter are an essential element of moral and legal experiences.

3.3. Genesis of Ethical Emotions and Moral and Legal Norms

Moral and legal experiences are two species of one kind of ethical phenomena.

A minimal content of an ethical experience is the action imagination, i.e. imagination of the action along with an appulsive or repulsive ethical emotion accompanying it. When an imagination of a deed (e.g. a murder, a lie, a betrayal, an act of mercy or loyalty) appears in one’s consciousness, then the ethical emotion that is relevant to the given imagination begins to work.

The class of all ethical experiences (and also of moral and legal ones) is characterized by the two following properties. First, they always possess a specific mystic-authoritative feature, that is, they always are presented as something having a higher authority: ‘That authoritative character has some consequences in language, poetry, mythology, religion and other similar creations of human spirit as relevant fantastic imaginations that encourage one to some given action, and that concern

some mystic voice addressing one and speaking to him' [44, vol. 1, pp. 49-50]. The voice belongs mainly to some theological, metaphysical and moral beings like God and 'divine voice' that one must listen to, Socrates' *daimonion*, conscience and 'voice of conscience,' and also 'spirit of the nation,' 'the common will,' 'instinct of the species.' Those 'fantastic imaginations' arise as feature projections and subject creations. Second, they are kind of internal limitation: 'one experiences them as internal limitation of freedom, as a specific obstacle in the free choice, assessment and realization of one's inclinations, strivings and plans, and as a rigid pressure forcing one to act according to the imagination that is associated with relevant emotions' [44, vol. 1, p. 51]. The feeling of limitation comes out from that a) Principles of action that are derived from ethical impulsions (from the duty) are higher laws, calls and bans, but not requests, suggestions or advices that are aimed by somebody, and b) They push the subject into the specific state of emergency – breaking those calls and bans leads to vexatious consequences.

Before we discuss the character of moral and legal emotions, let us say a few words about the idea of projection that accompanies any emotional phenomena (though Petrażycki considered projections acting within esthetic and ethical emotions mainly).

Simply speaking a projection is bestowing – under influence of various impulsions – some features upon objects and finding them real, whereas actually they exist merely intentionally in the world of mind. In *Introduction (Wstęp)* Petrażycki noted that impulsions 'make that people experiencing those processes deem that external objects really possess some features that they actually do not, or even that as the effect of some external processes people get under the illusion that in the external world there are some objects that actually do not exist' [43, p. 48]. In *Theory of Law (Teoria prawa)* he explains the point by relevant examples. He assumes two kinds of projections. Projections of the first kind bestow some features upon actually existing objects. An object being perceived evokes in one some given impulsions – appulsions or repulsions – that bestow on those perceptions some entirely new complexions. Since then the given object is seen by the person in a different way, a new form. For example a freshly made roast may delight by its look and awake the appetite with the smell. Under influence of such drive stimuli the roast looks much more tasteful. One ascribes to it specific features, and he says that it is tasty, appetizing, delicious, exquisite. On the other hand if one perceives a chunk of raw and bad meat (that is going to be roasted), its look evokes repulsion or aversion, and that will make one to say that it is terrible, awful, ugly, filthy. In sum, in case of appulsions the bestowed features would be positive, and in case of repulsions they would be negative.

Projections of the second kind rely on bestowing features (apparent ones) and construing various not existing objects: 'Impulsive fantasy calls up to life not only various features of objects and phenomena...but also creatures of other categories that do not exist in reality' [44, vol. 1, p. 56]. Petrażycki calls that kind of projections 'emotional fantasy' or 'impulsive fantasy,' and what one imagines as objectively existing he calls 'emotional phantasms' or 'projective creatures,' and also 'ideological creatures.' Norms, calls and bans of a higher authority belong here. 'Namely – he writes – such creatures of emotional projection (or emotional phantasms) include those categorical imperatives of a higher authority that in ethical experiences occur as objectively existing and directed to particular subjects, and also those peculiar states of attachment, obligation, dependence and freedom limitation that one ascribes to subjects of his imagination such that those being imagined ethical laws dictate them the appropriate conduct or ban it' [44, vol. 1, p. 59]. Such projection is naive and indiscriminate, and Petrażycki rejects it. Instead he offers an unsatisfactory compromise. He postulates the following convention: still we are going to talk about projections and phantasms but have something different in mind. His idea is that one should 'talk about duties, their content, kinds of them etc. as if they really existed but keeping in mind that actually he talks about emotional phantasms, and that their real counterparts are known emotional and intellectual processes' [44, vol. 1, p. 62]. Additionally he offers a small terminological change, namely the term 'ethical norm' should be replaced with the name 'imperative norm.' Imperative norms are projections such that their source is imperative impulsions. As projections they do not determine

any definite directions, and that is why they may evoke very different actions [44, vol. 1, pp. 62-63].

In Petrażycki's theory there are two kinds of emotional-intellectual ethical associations and their projections, two kinds of duties and norms: one-sided moral duties and two-sided legal duties. Morals rely on merely one-sided experiences of the duty. The one-sidedness of morals means that a subject experiences duties, calls and bans ('thou shalt not kill,' 'thou shalt not commit adultery,' 'thou shalt not steal'). Morals are 'free,' and that means that they lack any element of a claim that would give any authority to anyone. Naturally it is possible that some other people have some expectations, e.g. someone may expect that one helps him or gives him a handout, but that is entirely voluntary. Notice that someone's claim 'absolutely you must give me a handout' would sound strange and unjustified to anyone. Accordingly moral norms are imperative. Instead in the domain of law there are two-sided experiences: the duty on the one side, and the claim on the other. If one has a duty toward a subject then the subject has a claim toward the one. The employer has the duty to pay salary to his employee, and the employee may demand the payment for his work. Accordingly legal norms are imperative-attributive [43, 44, 52, see also 7, 22, 26, 32, 33, 61, 65].

According to Petrażycki it is essential that one's rights are somebody else's obligations, and one's obligations are somebody else's rights. As evidence of those he gives numerous linguistic analyses: 'besides or instead of expressions that are counterparts of such terms like 'right,' 'legitimation,' 'legal claim' everyday language uses expressions that mean someone's having an obligation or a debt, and those expressions are treated as synonymous' [44, vol. 1, pp. 74-75]. It is so in Slavic languages. For example in Russian the word 'liability' functions as 'debt', as in such phrases like: 'A liability is any property that is a debt of another person,' 'And the complainant together with the commissioner will come and he will reclaim his debt by force...' [44, vol. 1, pp. 74-75]. In the past, Polish word '*dlug*' (debt) meant not only – as it is today – an obligation, and that is what one is to give to somebody else back, but also what somebody may purport, pretend or claim the right to. For the word 'debtor' in old Polish there was the word '*iściec*.' There is no doubt among researchers that the term meant an owner, a creditor and in other cases a debtor. It is similar in German, and also in Latin in Arabic, and in Semitic and Asian languages.

4. Some Remarks on Two-Sidedness of Legal Norms

When Maria Ossowska presented various ways in which researchers strived to distinguish legal and moral norms, she also mentioned distinction offered by Petrażycki, and she discussed some misunderstandings that one can meet when the distinction is concerned. Her remarks do not sound like entirely accurate. It seems that Ossowska defends Petrażycki's distinction at the price of sharpness and radicalness of his claims. Her first remark is doubtful, when she suggests that Petrażycki 'did not treat his distinction as describing state of fact,' but he construed it 'as a *proposal*, a project of a conceptual convention that would be useful in explaining some controversies' [38, p. 298]. On the other hand it seems that is one of the most important distinctions Petrażycki offered in his construction of theoretical knowledge. As one can read above, the theory of ethical phenomena ('ethology') is divided in his construction into two theories: the theory of law and the theory of morals. Without that one cannot understand Petrażycki's policy of the law.

According to Ossowska, the second Petrażycki's mistake is that he 'makes the distinction rigid and absolute, whereas in his intentions that was to be rather fluxional. One and the same norm, for example the norm that forbids to lie or to cheat, one can treat as a legal or as a moral one, depending on what emotion accompanies it in the given while' [38, p. 299]. However there is lots of evidence that she is wrong. Petrażycki's distinction into legal and moral norms means that moral norms are merely imperative, and the legal norms are merely imperative-attributive. As Józef Nowacki notes: 'In the light of characteristic of moral and legal emotions and norms the relation between the law and morals in Petrażycki's theory would be separation' [33, p. 53]. For no imperative experience may be imperative-attributive, and no imperative-attributive experience may be imperative, any norm may be merely imperative or imperative-attributive: an imperative norm is

moral, and an imperative-attributive one is legal. Petrażycki himself points out that legal and moral phenomena are separate, especially when he underlines that distinction was offered for the sake of the character of subjective experiences, for they may be merely imperative or merely imperative-attributive [44, vol. 1, footnote 34, p. 74]. There are still some problems concerning the distinction. Nowacki (mentioned *supra*) pointed some of them.

Petrażycki points out that morals does not contain claims. However Nowacki refers to utterances in which a demand or a claim in the domain of morals is mentioned. In such situations norms that Petrażycki calls moral are imperative-attributive and become legal. Nevertheless it does not need to be this way. The demand in moral and legal norms may be entirely different in the object and character, and Petrażycki suggests it himself. A demand in the domain of morals is 'objectless' – nothing is due to the one who is demanding [33, pp. 54-56]. Nowacki points out to another difficulty yet. Imaginations of various kinds of conduct (jealousy, lie, cheating) evoke certain emotions that are moral or legal, and further they effect respective norms. Petrażycki does not exclude that sometimes simultaneously moral and legal emotions, that is, imperative and imperative-attributive experiences appear. On that level one would not be able to distinguish them. The relation between them would not be separation, where one experience exclude another. Then the subject would be in a paradoxical position for he would experience his claims (the condition of legal emotions) and he would not experience them (the condition of moral emotions). Strictly speaking, the problem is that imagination of a deed may evoke legal as well as moral emotions. That is kind of the problem of individuation: you do not know what makes that emotions of one or another kind appear.

The problem of relation between morals and the law has been widely discussed in the past and it is still unsolved. That relation is found in a different way by defenders of the natural law theory and supporters of legal positivism. Controversy between Herbert L. A. Hart (11) and Ronald Dworkin (8) is an inspiration for many. Some compromises are possible too. A third way representative is Arthur Kaufmann. He proposes hermeneutic philosophy of the law [13], [14]. Basically researchers agree that morals influence the genesis of the law and infiltrate legal systems deeply; on the other hand the law impacts morals (for example human rights do). Today relation between morals and the law is being analyzed on many levels and in many contexts. For example Wiesław Lang notices: 'Connection between the law and morals appears on three levels of the legal order, namely, on level of making the law, level of applying the law, and on level of interpreting the law and the doctrine of law' [22, p. 163]. Upon every of those levels one should consider some next problems and distinctions.⁴

In Petrażycki's system the law and morals have the motivational and educational role. According to him the legal motivation is much more important in social life than the moral one. The latter implants the feeling of duty merely and by that to a degree it shapes a slavish soul. Petrażycki uses the metaphor of water and wine here. The legal motivation he compared to water, that is, to something one cannot live on a day without. On the other hand he equated morals with wine, that is to a drink one makes use of from time to time. The social progress – that Petrażycki cared about so much – relied on formation of a given character of the psyche: on implanting in the social psyche imaginations of good conduct and associations of that with emotions.

It is hard to refer here to all problems concerning norms in the theory of law that Petrażycki discusses, nevertheless one is worthy of note. Petrażycki was interested in the social aspect of law. Emotions and experiences of moral and legal kind are subjective, whereas activity of a man, morals and the law are largely objective. One may raise the question if it is possible to find a bridge between subjectivity of emotions and objectivity of the law. Petrażycki strived to solve the problem by introducing the idea of emotional infecting that every day one has a brush with in social relations, behaviors, external expressions and speech. By language one communicates not only imaginations and expectations but also various assessments and emotional experiences [54, p. 446]. The infecting means that emotions come from person A to person B. When one accompanies happy people he becomes happy himself. When one contacts sad persons he turns sad. That is the same

with all emotions, moral and legal ones as well. Petrażycki claims that the infecting is one of important means of perfecting social life and progress.

The infecting is also important in reference to the objectives Petrażycki sets for his politics of law. As it is said at the beginning above, he assumes that in some future morals and especially the law will decline and vanish. The law would be merely a temporary construction that would serve to educate a man, and he would experience positive emotions only and would infect others with them. One can doubt if that would be possible and enough for the humanity would live in harmony.

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Notes

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1. Though Petrażycki's theory of law is found as his original achievement, but it was not entirely innovative. At least some experts say so. For example Jerzy Lande thought Petrażycki as continuator of psychological tradition in law and ethics. In his opinion Petrażycki followed such jurists as Friedrich Carl von Savigny, Ernst Rudolf Bierling and Léon Duguit [21, pp. 320-321].
 2. The ideal of love formulated in that manner – or in a very similar one – is not entirely new. Petrażycki himself comes back to stoic ethical ideal. He mentions teaching by Buddha, Jesus or Paul the Apostle. For Petrażycki's politics of law, its aim, detailed tasks and educational function see also Andrzej Kojder's analysis [17, pp. 155-172].
 3. It is obvious that one should avoid false theories. However it seems that Petrażycki does not count that scientists sometimes deal with isolated and very detailed problems. One can offer a general theory of action, and a narrower theory of motivation, and within that a theory of biological motivation, and then a theory of drives or a theory of emotions, but also a theory of physiological changes in emotional processes, theory of emotional expressions etc. Finally some theories may be jumping, and other may be limp, but both would be necessary and useful.
 4. Lech Morawski (among others) points out to three possible kinds of relations between the law and morals. Those relations are material, validational and functional. The latter concern the influence of morals upon the law and *vice versa*. Material relations refer to content of legal and moral norms. Some behaviors are regulated only by the law, and some others only by morals, but also there are lots of legal and moral norms that have the same content (e.g. 'thou shalt not kill'). Validational relations refer to the basis of legal and moral norms standing. For example, according to classic natural law theories moral norms should be the basis for legal norms. Other theories (e.g. legal positivism) defend the independence and separation of legal and moral norms [30].