

# MATER FAMILIAS

## SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

A CURA DI

**ZUZANNA BENINCASA**  
**JAKUB URBANIK**

CON LA COLLABORAZIONE DI

**PIOTR NICZYPORUK**  
**MARIA NOWAK**

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*Scritti per Maria Zabłocka*

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**FUNCTIONALITY  
OF NEW INSTITUTIONAL ECONOMICS  
IN RESEARCH ON ROMAN LAW**

THE STUDENTS OF ANTIQUITY emphasize that if there aren't any reliable empirical data, the ancient examples can rarely if at all be a foundation to test assumptions of the New Institutional Economics. Undoubtedly, routine and schematic perceiving ancient economics through the prism of modern theories exposes a scholar to necessity of dealing with possible complaint of presentism. The effort seems to be worth making however, as the possibility of a new angle of looking at that far reality seems to be remarkably interesting. The angle of looking at New Institutional Economics is the point herein (NIE).<sup>1</sup> The basic ques-

<sup>1</sup> Ronald Coase is generally accepted as the father of 'New Institutional Economics' – (R. COASE, 'The nature of the firm', *Economica* 4.16 (1937), pp. 386–405), whereas the term of 'New Institutional Economics' was used for the first time by Oliver Williamson in order to differentiate the new approach from the new trend characteristic to 'the old institutionalism' (IDEM, *Markets and Hierarchies: Analysis and Antitrust Implications*, New York 1975). For a comprehensive treatment of NIE theory with indication of crucial trends of research see: P. G. KLEIN, 'New Institutional Economics', [in:] B. BOUCKAERT & G. DE GEEST (eds.), *Encyclopedia of Law and Economics* 1. *The History and Methodology of Law and Economics*, Cheltenham 2000, pp. 456–489. Klein defines NIE as follows: 'The new institutional economics (NIE) is an interdisciplinary enterprise combining economics, law, organization theory, political science, sociology and anthropology to understand the insti-

tion, which arises herein concerns the reason for which using instruments delivered by representatives of NIE would turn out to be useful and sensible. Answering this question is neither easy nor obvious. The best evidence to prove it is lasting for almost a whole xx century – ‘and still vital’<sup>2</sup> – debate between ‘primitivists’<sup>3</sup> and ‘modernists’<sup>4</sup> concerning as a matter of fact the most significant issue: if ancient societies had at their disposal a market economy and in consequence how one can define, describe and assess the contemporary economic system. That long-time academic debate resulted in a measurable effect, namely in directing scientific interests towards economic and legal analysis of the ancient world. On its basis there arose numerous and remarkably valuable works including issues like: trade in the period of Roman republic and the Empire,<sup>5</sup> taxes,<sup>6</sup> legal structure and importance of *societas publicanorum* in the Roman economy.<sup>7</sup> Nevertheless,

tutions of social, political and commercial life. It borrows liberally from various social-science disciplines, but its primary language is economics.’ (*Ibidem*, p. 456).

<sup>2</sup> Cf. I. MORRIS [in:] M. I. FINLEY, *The Ancient Economy: Updated with a New Foreword by Ian Morris*, Berkeley 1999. Cit. after P. TEMIN, *The Roman Market Economy*, Princeton 2013, p. 4. See also K. GREEN, ‘Technological innovation and economic progress in the ancient world: M. I. Finley re-considered’, *The Economic History Review* ns. 53.1 (2000), pp. 29–33.

<sup>3</sup> The definition ‘primitivists’ stuck to the proponents of theory of M. I. Finley (M. I. FINLEY, *The Ancient Economy*, Berkeley – Long Angeles 1973, pp. 222) and A. H. M. Jones (A. H. M. JONES, [in:] P. A. BRUNT (ed.), *The Roman Economy. Studies in ancient economic and administrative history*, Oxford 1974, p. VI; 418). This trend is followed by: R. DUNCAN-JONES, *The Economy of the Roman Empire. Quantitative Studies*, Cambridge 1974, p. XIV; 396; P. GARNSEY & R. P. SALLER, *The Roman Empire: Economy, Society, and Culture*, London 1987, p. VIII; 231.

<sup>4</sup> The term ‘modernists’ is accepted to define the proponents of an ‘optimistic’ theory of M. Rostovtzeff (M. ROSTOVITZEFF, *Social and Economic History of the Roman Empire*, Oxford 1957). The creators of this trend: M. W. FREDERIKSEN, ‘Theory, evidence and the ancient economy’, review of M. I. FINLEY, *The Ancient Economy*, London 1973, *The Journal of Roman Studies* 65 (1975), pp. 164–171; K. HOPKINS, ‘Taxes and trade in the Roman Empire (200 BC–AD 400)’, *The Journal of Roman Studies* 70 (1980), pp. 101–125; J. H. D’ARMS, *Commerce and Social Standing in Ancient Rome*, Cambridge 1998, p. XVIII; 201.

<sup>5</sup> P. F. BANG, ‘Trade and Empire – in search of organizing concepts for the Roman economy’, *Past and Present* 195 (2007), pp. 3–54; Claire HOLLERAN, *Shopping in Ancient Rome*, Oxford 2012, p. XII; 304.

<sup>6</sup> K. HOPKINS, *Taxes* (cit. n. 4), *passim*, esp. pp. 103–105; 116–117.

<sup>7</sup> Ulrike MALMENDIER, *Societas publicanorum*, Cologne – Vienna 2002, *passim*, EADEM, ‘Law and finance at the origin’, *Journal of Economic Literature* 47.4 (2009), pp. 1076–1108.

only the New Institutional Economy delivers methods allowing to examine, based on available data, complicated relations between the law and economy. Carrying out the analysis of a specific phenomenon of economics or a development of a determined legal institution in the historical context requires taking into account correspondingly legal or economic environment. Giving up of making such an effort can lead to obtain falsified results and in consequence it can result in outlining a sketchy and therefore deformed picture of an examined reality. Undoubtedly, examining such distant socioeconomic realities as the Roman one, even if one keeps the highest scientific dependability, will not necessarily result in presenting a full, non-falsified picture of it. This is the reason why the assumptions accepted during the process of examination and description of this reality are remarkably significant. It seems that the view proposed within the range of New Institutional Economy, although being criticized,<sup>8</sup> allows a lawyer practising economic history not only to outline a socioeconomic picture of the ancient economy but also makes possible to carry out a thorough analysis of causes and effects of implementing specific regulations or legal measures. A possibility of using tools proposed by NIE in examinations on law was allowed by the very ‘father’ of the New Institutional Economy — Ronald Coase, although he emphasized that according to him the tools should examine the economic system: ‘I am delighted when our colleagues in law use them to study the working of the legal system or when those in political science use them to study the working of the political system. My point is different. I think we should use these analytical tools to study the eco-

<sup>8</sup> Cf. e.g., D. ANKARLOO, ‘“Institutions” What is in a word? A critique of the new institutional economics’, *Lund Studies of Economic History* 11 (1999), p. 189; H. CHANG, ‘Institutions and economic development: Theory, policy and history’, *Journal of Institutional Economics* 7.4 (2011), pp. 473–498; A. J. FIELD, ‘The problem with neoclassical institutional economics: A critique with special reference to the North/Thomas model of pre-1500 Europe’, *Explorations in Economic History* 18 (1981), pp. 174–198; P. C. WILLIAMS, ‘Physician reimbursement mechanisms as social constraints: an historical critique of Douglass North’ theory of institutional evolution’, *Politics and the Life Sciences* 16.2 (1997), pp. 289–298; and esp. J. MAUCOURANT, ‘New institutional economics and history’, *Journal of Economic Issues* 46.1. (2012) pp. 193–207.

conomic system.<sup>9</sup> The importance of NIE to a scholar of antiquity has been accurately defined by Peter Temin indicating that: ‘The New Institutional Economics helps focus attention on the institutions that govern activities in the ancient world, and it has given rise to some basic hypotheses that may be useful to explore when considering ancient institutions.’<sup>10</sup> Usefulness of NIE in research on the ancient times has been noticed as well by Peter Fibiger Bang: ‘New Institutional Economics would, in many respects, seem congenial to the interests of Greco-Roman historians.’<sup>11</sup> The scholar has even expressed his amazement that a dialogue between both disciplines had not started previously and that it has not proceed in a more intensive way.<sup>12</sup> The proponent of a need of interaction of historians of law and historians of economics is also Ron Harris – a professor of law history at the University in Tel-Aviv. First and foremost he indicates the potential of Historical New Institutional School in economics.<sup>13</sup>

There exist two concepts fundamental to the theory of New Institutional Economics which are crucial to further considerations, namely: ‘institutions’ and ‘institutional change’. Concerning the first out of indicated concepts one should necessarily emphasize the existence of (perhaps only apparent) variances within a range of a meaning being given to it within law and economics. At the beginning, the lawyers considered *institutiones* as course books, thus as the educational, specialist literature including elementary knowledge of law,<sup>14</sup> whereas contemporarily it is accepted to understand a concept of institution as a ‘set of legal and cus-

<sup>9</sup> R. COASE, ‘The new institutional economics’, *The American Economic Review* 88.2 (1998), p. 72.

<sup>10</sup> TEMIN, *Roman* (cit. n. 2), p. 12.

<sup>11</sup> P. F. BANG, ‘The ancient economy and New Institutional Economics’, *The Journal of Roman Studies* 99 (2009), p. 195 (review article of W. SCHEIDEL, I. MORRIS, & R. SALLER (eds.), *The Cambridge Economic History of The Greco-Roman World*, Cambridge 2007).

<sup>12</sup> BANG, ‘The ancient economy’ (cit. n. 11), p. 195.

<sup>13</sup> R. HARRIS, ‘The encounters of economic history and legal history’, *Law and History Review* 21.2 (2003), pp. 297–346, esp. pp. 299–300; 306–307; 310–311.

<sup>14</sup> A. BERGER, s.v. ‘institutiones’, [in:] *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, p. 504.

tomary norms concerning a field of life<sup>15</sup> and as ‘an outpost, an organisation based on these norms.’<sup>16</sup> By dint of ambiguity of the concept and by virtue of general using it by legal doctrine and first and foremost towards the fact that the New Institutional Economics defines ‘institutions’ to satisfy its own needs, one can find complaints about ‘acute infection’ of economics with the science of law<sup>17</sup> in economic literature. It seems however, that it is possible to present an attempt of treating institution (legal) in the first out of the mentioned previously meanings — namely as an institution in meaning (meanings) given by NIE, in particular if one observes the Roman law understood as heterogeneous legal order (including coexistence of *ius civile*, *ius honorarium*, *ius gentium*). Nevertheless, by the time one would present functioning of law (laws) as ‘institutions’ by examples from the Roman Private Law, it is necessary to present at least some out of numerous definitions of this concept, presented in literature dedicated to the New Institutional Economics.<sup>18</sup> A concept that is crucial to NIE has not obtain one more, undisputed definition yet. It seems however, that one should not seek for imperfection of the New Institutional Economics in this fact. A prominent economist, The Noble laureate — Kenneth Joseph Arrow reasonably states that: ‘since research in this area is still in its early stages, undue exactness must be avoided.’<sup>19</sup> From among the most frequently quoted definitions of the concept of

<sup>15</sup> W. DOROSZEWSKI (ed.), s.v. ‘instytucja’ [‘institution’] [in:] *Słownik języka polskiego* III [Dictionary of the Polish Language III], Warszawa 1964, p. 228.

<sup>16</sup> DOROSZEWSKI (ed.), s.v. ‘instytucja’ (cit. n. 15), p. 228.

<sup>17</sup> W. STANKIEWICZ, ‘Instytucjonalna teoria kontraktów – presja ekonomii i prawa’ [‘Institutional theory of contracts – pressure of economics and law’], *Ekonomia* 4 (2013), p. 274.

<sup>18</sup> For the review of an institution concept’s conceptualization see: Dorota KUDER, ‘Pojęcie instytucji w teorii ekonomii’ [A concept of institution in a theory of economics], *Nierówności społeczne a wzrost gospodarczy* 19 (2011), pp. 85–87 together with literature indicated there. See also: Aldona ZAWOJSKA, ‘Instytucje ekonomiczne i polityczne a ceny dóbr konsumpcyjnych’ [Economic and political institutions and prices of consumer goods], *Roczniki Ekonomii Rolnictwa i Rozwoju Obszarów Wiejskich* 99.4 (2012), pp. 9–11.

<sup>19</sup> K. J. ARROW, *Essays in the Theory of Risk-Bearing*, Amsterdam 1970, p. 224. Cit. after: E. G. FURUBOTN & R. RICHTER, *Institutions & Economic Theory. The Contribution of The New Institutional Economics*, Ann Arbor 2005, p. 6.

‘institutions’ the one proposed by Douglass Cecile North is indicated: ‘Institutions are the rules of the game in a society’.<sup>20</sup> Further on, the same scholar specified the concept of institution indicating that ‘Institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights<sup>21</sup>, and similar).<sup>22</sup> Whereas the fundamental function which the institutions perform is reducing insecurity in trading, achieving by introduction of schemes to everyday life.<sup>23</sup> On the other hand, Geoffrey Hodgson indicates that ‘Institutions are the kinds of structures that matter most in the social realm: they make up the staff of social life’<sup>24</sup> and offers to define them ‘as systems of established and prevalent social rules that structure social interactions.’<sup>25</sup> Whereas Erik Grundtvig Furubotn and Rudolf Richter decided to accept a definition of institution proposed in 1900 by Gustav von Schmoller in the light

<sup>20</sup> D. C. NORTH, *Institutions, Institutional Change and Economic Performance*, New York 1990, p. 3.

<sup>21</sup> One should raise herein an issue of understanding ‘property rights’ in the theory of economics. W. STANKIEWICZ indicates that ‘Property rights include: rights to dispose of the object of property (a right of ownership), rights to control the object of property (a right of possession, usufruct), rights to administer the object of property, rights to benefit from the object of property (for example: lease, consumption), rights to sell ownership interest (transfer of property), rights to change features or use of the object of property, rights to bequeath the object of property (transfer of property), rights to protect from expropriation, rights to indefinite usufruct, rights that forbids negative use of the object of property toward other objects, rights to use the object of property as indemnifying of transaction, rights of reimbursement of granted powers of attorney regarding the object of property after the period defined by agreements’ (W. STANKIEWICZ, *Ekonomika instytucjonalna. Zarys wykładu* [Institutional economics. Lectures], Warszawa 2005, p. 47). Cf. also: R. T. STROIŃSKI, ‘Ekonomiczna analiza prawa, czyli w poszukiwaniu efektywności’ [Economic analysis of law — in search for efficiency], *Kwartalnik Prawa Prywatnego* 3 (2002), pp. 562–563, M. ZALESKO, ‘Prawa własności filarem rozwoju gospodarczego’ [The property rights as foundations of economic growth], *Ekonomia* 4 (2013), pp. 92–102.

<sup>22</sup> D. C. NORTH, ‘Institutions’, *The Journal of Economic Perspectives* 5.1 (1991), p. 97.

<sup>23</sup> NORTH, ‘Institutions’ (cit., n. 20), p. 3.

<sup>24</sup> G. M. HODGSON, ‘What are institutions?’, *Journal of Economic Issues* 40.1 (2006), p. 2.

<sup>25</sup> HODGSON, ‘What are institutions?’ (cit. n. 24), p. 2.



of which an institution means 'a set of formal and informal rules, including their enforcement arrangements'<sup>26</sup> and is 'a partial order for community life which serves specific purposes and which has the capacity to undergo further evolution independently. It offers a fine basis for shaping social actions over long periods of time; as for example property, slavery, serf hood, marriage, guardianship, market system, coinage system, freedom of trade.'<sup>27</sup>

A guarantee of realisation of function assigned to institutions by economists is their stability which however should not be identified with permanence. According to Douglass Cecile North, the institutions undergo changes in time and in addition a change adopts for the most part the evolutionary nature, and less often it occurs as a result of a revolution or conquest.<sup>28</sup> The pace of changes is different with regard to formal and informal institutions. The change of these former ones can occur quickly as a result of implementing specific political or legal solutions, whereas the change of informal institutions which are the peculiar cultural heritage of society occurs slower as they are 'much more impervious to deliberate policies'.<sup>29</sup> The institutional change is a complicated, multifaceted process including changes of formal rules and informal restrictions. Whereas, the institutional change which is crucial to further considerations 'shapes the way societies evolve through time and hence is the key to understanding historical change'.<sup>30</sup>

Consequently, the question arises if it was (and if it is) possible to call the institutional change forth? It seems that with regard to Roman reality in the period of Republic and the Empire, one should give a positive answer. The instruments which are delivered by the New Institutional Economics allow carrying out an institutional analysis on the macro scale

<sup>26</sup> G. VON SCHMOLLER, *Grundriss der Allgemeinen Volkswirtschaftslehre*, Munich – Leipzig 1900, p. 61. Cit. after FURUBOTN & RICHTER, *Institutions* (cit. n. 19), p. 7.

<sup>27</sup> FURUBOTN & RICHTER, *Institutions* (cit. n. 19), p. 7.

<sup>28</sup> NORTH, *Institutions* (cit. n. 20), p. 6.

<sup>29</sup> NORTH, *Institutions* (cit. n. 20), p. 6.

<sup>30</sup> NORTH, *Institutions* (cit. n. 20), p. 3.

(the theory of institutions' influence on development)<sup>31</sup> which lets explain 'the way and direction of the institutions' evaluation<sup>32</sup> and indicate 'which factors form a legal, political and economic sphere.'<sup>33</sup> In this context, one should pay attention to examples of applying methods connected with the New Institutional Economics which are being considered in literature and to recommendations how they can contribute to deeper understanding of causes and process of economic development in the world of ancient Rome.<sup>34</sup> Several examples of changes within the Roman law through the concepts and issues fundamental to the New Institutional Economic will be presented below. One of them is raised within one of NIE trends – economic theory of contract, question about information asymmetry. The latter one means a situation between contracting parties, in which one of the parties has got information, and the other has none. As it is indicated in literature: 'Incompleteness and lack of symmetry in access to information and non-cooperative behaviours of participants of a change are the source of the so-called market failure ... In order to eliminate or weaken the negative effects of asymmetry and lack of information one seeks for help in the sphere of institutional solutions.'<sup>35</sup>

One should pay the attention that a problem of information asymmetry has not only taken place within the Roman law however, it seems that it has been so universal that it has been decided to implement proper legal measures in order to counteract the emergence of market failure. Undoubtedly, the parties of the most frequently concluded contract *emptio-venditio* must have taken into account negative effects of information asymmetry. The problem of information asymmetry concerned a pur-

<sup>31</sup> T. LEGIĘDŹ, 'Nowa Ekonomia Instytucjonalna a zmiany paradygmatu rozwoju gospodarczego' [The New Institutional Economics and changes of an economic development paradigm], *Ekonomia* 4 (2013), p. 79.

<sup>32</sup> LEGIĘDŹ, 'Nowa Ekonomia Instytucjonalna' (cit. n. 31), p. 79.

<sup>33</sup> LEGIĘDŹ, 'Nowa Ekonomia Instytucjonalna' (cit. n. 31), p. 79.

<sup>34</sup> B. W. FRIER & D. P. KEHOE, 'Law and economic institutions' [in:] SCHEIDEL, MORRIS & SALLER (eds.), *The Cambridge Economic* (cit., n. 11), pp. 113–143.

<sup>35</sup> Katarzyna KOWALSKA, 'Kontraktowanie i koszty transakcyjne w nowej ekonomii instytucjonalnej' [Contracting and transaction costs of the New Institutional Economics], *Gospodarka Narodowa* 7–8 (2005), p. 45.

chaser who had not been informed about defects of a product or he or she had been informed that a product being purchased had certain quality. A solution accepted in the late Roman Republic period in a form of edicts of *aediles curules* introducing an objective liability of a seller for (taxative defined in the content of edict) defects and for lack of certain product's quality (slaves or animals) which existence was guaranteed by a seller, seems rational and systemic: 'The evident purpose of this new liability was to restore confidence in the market by giving buyers an opportunity to undo sales when the object of sale turned out to be defective.'<sup>36</sup> The introduced legal measures: *actio redhibitoria* and *actio quanti minoris* effectively performed, as one can suppose, a function of restoring the balance at the market hence the solutions introduced by *aediles curules* were afterward expanded to all cases of sale.<sup>37</sup>

The consideration devoted to occurrence, using and functions of 'credit money' in the ancient Roman economy are interesting in the context of New Institutional Economics assumptions. The opinion in the light of which the growth of money supply was based only on increasing the quantity of coins in trade<sup>38</sup> and a concept of money was identified with coin:<sup>39</sup> 'money was coin and nothing else',<sup>40</sup> used to dominate in research on economic history for years. Nowadays, the approach according to which some claims (*nomina*) could generally and effectively perform accounting functions, gains approval. The scholars sharing this view emphasize that not all existing and due claims can be recognized as fidu-

<sup>36</sup> FRIER & KEHOE, 'Law and economic institutions' (cit. n. 34), p. 120.

<sup>37</sup> BERGER, s.v. 'emptio venditio', [in:] *Encyclopedic Dictionary* (cit. n. 14), p. 453.

<sup>38</sup> M. H. CRAWFORD, *Coinage and Money under the Roman Republic: Italy and the Mediterranean Economy*, London 1985, p. 176. Cf. W. V. HARRIS, 'A revisionist view of Roman money', *The Journal of Roman Studies* 96 (2006), p. 1; HOPKINS, 'Taxes' (cit. n. 4), pp. 106–112.

<sup>39</sup> E. LO CASCIO, 'State and coinage in the Late Republic and Early Empire', *The Journal of Roman Studies* 71 (1981), p. 76. Cf. M. H. CRAWFORD, 'Money and exchange in the Roman world', *The Journal of Roman Studies* 60 (1970), p. 40: 'A wide variety of objects may function as money in the different uses which this possesses—for payment, for storing wealth, for measuring value and as a means of exchange. In the Roman world coined money was clearly dominant over other forms of money in the first three uses ...'.

<sup>40</sup> FINLEY, *The Ancient Economy* (cit. n. 3), p. 166.

ciary money. The latter one is an element of a credit's structure understood as a conglomerate of debts, receivables and liabilities, out of which only a part is or can be an accounting measure.<sup>41</sup> One should pay the attention to based on sources considerations of those scholars who tend to accept theses about functioning 'the fiduciary money'<sup>42</sup> already in the Roman republic period and about universal usage of a credit<sup>43</sup> by Romans, which was the element of economic life of all citizens, also of those ones who were in power of political elites' authority.<sup>44</sup> One can present numerous examples of creating effective institutions, namely such ones which positively affect the economic development as they cause reducing insecurity. The prominent position among them for certain belongs to arising of forming, by the 2nd century BC at the latest, a consensual type of *emptio venditio* contract due to which a moment of arising a liability from a moment of releasing a thing (a product) became possible to separate. As a result, faster and considerably easier exchange of goods and even selling future things became possible. Amongst numerous institutions of praetorian law there are *actiones adiecticiae qualitatis*<sup>45</sup> which one cannot overestimate – these are additional complaints arisen generally in the period of Late Republic which were the answer to a real market need of engagement (*de facto*) agents<sup>46</sup> to individually owned commercial activity: slaves

<sup>41</sup> J. HICKS, *Critical Essays in Monetary Theory*, Oxford 1967, pp. 157–158.

<sup>42</sup> HARRIS, 'A revisionist view' (cit. n. 38), pp. 1–24, IDEM, 'The nature of Roman money', [in:] IDEM, (ed.) *The Monetary Systems of the Greeks and Romans*, Oxford 2008, pp. 174–207, esp. pp. 182–195.

<sup>43</sup> Cf. Ch. A. CONANT, 'The development of credit', *Journal of Political Economy* 7.2 (1899), pp. 161–162, 178; Ch. HOWGEGO, 'The supply and use of money in the Roman world 200 BC to AD 300', *The Journal of Roman Studies* 82 (1992), pp. 1–30, esp. pp. 1–3, 13–15; K. VERBOVEN, 'Currency, bullion and accounts. Monetary modes in the Roman world', *Belgisch Tijdschrift voor Numismatiek en Zegelkunde* 155 (2009), pp. 91–124.

<sup>44</sup> Cf. I. SHATZMAN, *Senatorial Wealth and Roman Politics*, Brüssel 1975, *passim*. As for the subject matter of using a credit by citizens who did not belong to the wealthiest layer of society with greatest political influence cf. HOWGEGO, 'The supply' (cit. n. 42), p. 14. Cf. also, B. BOLZ, 'Majątek Cyserona' [Cicero's wealth], *Meander* 16.5 (1961), pp. 241–249.

<sup>45</sup> BERGER, *s.v.* 'exercitor navis', [in:] *Encyclopedic Dictionary* (cit. n. 14), p. 462.

<sup>46</sup> FRIER & KEHOE, 'Law and economic institutions' (cit. n. 34), p. 128.

and remaining under *patria potestas* sons and on the other hand they provided protection to those ones who would not have any protection when concluding transactions with them by dint of a fact that a slave had no capacity to be a party in court or by dint of exclusion of possibility of enforcement against *filius familias*.

On the basis of only a few quoted examples, and every one of them deserves a separate, broad presentation, one can state that at first the New Institutional Economics delivers a lawyer practicing the history of law and legal institutions' development, instruments enabling carrying out a complex analysis of arising, development and disappearance of particular solutions and secondly, it reasonably justifies a need of doing such kind of research. 'History matters. It matters not just because we can learn from the past, but because the present and future are connected to the past by the continuity of a society's institutions. Today's and tomorrow's choices are shaped by the past. And the past can only be made intelligible as a story of institutional evolution.'<sup>47</sup>

*Karolina Wyrwińska*

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Chair of Roman Law  
Faculty of Law and Administration  
Jagiellonian University  
ul. Gołębia 9  
31-007 Cracow  
POLAND  
e-mail: [karolina.wyrwinska@uj.edu.pl](mailto:karolina.wyrwinska@uj.edu.pl)

<sup>47</sup> NORTH, *Institutions* (cit. n. 20), p. VII.