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Evolution of the Institution of Justices of the Peace in the United States

Ewolucja instytucji sędziów pokoju w Stanach Zjednoczonych

SUMMARY

This article presents a history and development of the institution of justices of the peace in the United States from the beginning of formation of American democracy until modern times. It presents jurisdiction, the scope of the activities and the role of justices of the peace in several states through different periods of times. It includes a thorough discussion concerning pros and cons of justices of the peace in the U.S. legal system and general tendency of declining the institution of justices of the peace in modern times. The article includes also a discussion of the major court decisions concerning justices of the peace.

Keywords: justices of the peace; American democracy; American justice

INTRODUCTION

The institution of the justices of the peace evolved in the present territory of the United States as early as the 18th century and in some states this institution still exists today. In justice of the peace courts, also referred to as the courts of limited jurisdiction, disputes were traditionally decided by judges who were trusted and influential people in a community, however, they usually did not have any formal legal education. Two completely different views on the role of justices of the peace today in the United States can be distinguished in the literature. On the one hand, some commentators note that the justices of the peace who have no legal education, have filled and continue to fulfill an important social role, perform many significant duties in the justice system, and, more importantly, are closer to citizens and ensure

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faster and better access to justice, as well as a participation of representatives of the community in the justice system. On the other hand, the majority of authors, recognizing the importance of these judges in historical times, criticizes their role in the contemporary legal system for lack of competence, insufficient legal knowledge, delivering arbitrary judgments based on principles which do not derive from the law, and for being a relic of a bygone era, unsuited to the needs and expectations of modern society.

The institution of justices of the peace is interesting from a comparative perspective. This is especially true because of the current debate in Poland, including legislative proposals, over a re-introduction of institution of justices of the peace as part of the changes in the justice system, with the goal to increase the involvement of public in that system.

This article is an attempt to analyze the evolution of the institution of justices of the peace from the time of the formation of American democracy in the 18th century to modern times, as well as an assessment of their functioning. The important cases decided by American courts, including the U.S. Supreme Court, regarding the role of the justices of the peace in the American justice system will also be a subject of the analysis[1].

HISTORICAL REVIEW OF THE INSTITUTION OF JUSTICES OF THE PEACE IN SELECTED STATES

Alex De Tocqueville, who wrote the famous book *Democracy in America*, which is one of the most accurate analyses of the emerging American democracy, also devoted attention to the justices of the peace stating that "The justice of the peace is an enlightened citizen, but who is not necessarily versed in knowledge of the law. […] Americans have appropriated the institution of justices of the peace, while removing from it the aristocratic character that distinguishes it in the mother country"[2]. De Tocqueville noticed that justices of the peace in America were the bridge between ordinary citizens and the adopted state and federal law[3].

The functioning of this institution in the United States is the result of the United States' unique history and although it was adopted from the tradition of justices of

[1] See generally: P. Króliczek, *Udział społeczeństwa w sprawowaniu wymiaru sprawiedliwości w Stanach Zjednoczonych Ameryki*, Warszawa 2018; D. Mizerski, *Sędziowie pokoju sposobem poprawy efektowności działania polskiego systemu sprawiedliwości przy zachowaniu sędziowskiej niezależności*, https://for.org.pl/pl/d/803295fb3501d01949366eebbc5009c0 [access: 9.08.2019]; K. Liszewski, *Instytucja sędziów pokoju na przykładzie USA*, http://repozytorium.uni.wroc.pl/Content/94843/06_K_Liszewski_Instytucja_sedziow_pokoju_na_przykladzie_USA.pdf [access: 9.08.2019].

[2] A. de Tocqueville, *Democracy in America*, Chicago 2000, p. 70.

[3] *Ibidem*.

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the peace in England, it underwent an evolution resulting from the different character of the formation of the United States[4]. Due to the fact that legal education at the time of the formation of American democracy was extremely rare, even those who claimed they had legal education did not have too extensive legal knowledge, and the difference between lawyers and non-lawyers was not that distinct. People who called themselves lawyers often had only some practical experience, for example, being assistant judges and "a little bit of knowledge from Blackstone"[5]. The situation changed slightly after the American Revolution, after which lawyers began to gain in importance, and this period is associated with the professionalization of the legal profession[6].

Already in the 18th century, the activity of the justices of the peace, who did not have a legal education was criticized. For example, the figure of justice of peace J. Dudley, who was a judge in New Hampshire at the end of the 18th century, was recalled as "never was able to write five consecutive sentences in English" and he advised the members of the jury "to do justice between the parties, not by any quirks of the law out of Coke or Blackstone – books that I never read and never will – but by common sense as between man and man"[7].

Although some states, such as Massachusetts and Virginia, adopted laws that required formal juridical training for a majority of judges early, nevertheless, over the next hundred years, the positions of justices of the peace in most states were

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[4] A. Ashman, D.L. Lee, *Non-Lawyer Judges: The Long Road North*, "Chicago-Kent Law Review" 1977, Vol. 53(3). In England, justices of the peace were established in the 14th century by Edward III, and although for many centuries they played an influential role, especially in the creation and autonomy of local self-governments, they gradually lost their importance. Currently, their adjudication is limited to minor offenses, including traffic offenses. See R. Johnson, M. Chapman, J. Clifton, J.W. Field, *Justice Courts in Oregon*, "Oregon Law Review" 1973, No. 53, p. 413.

[5] L.M. Friedman, *A History of American Law*, New York 1985, p. 126.

[6] D.M. Provine, *Judging Credentials: Non-lawyer Judges and the Politics of Professionalism*, Chicago 1986, pp. 11–12 after A.-H. Chroust, *The Rise of Legal Profession in America*, Norman 1965, p. 9. *Black's Law Dictionary* (St. Paul 2014, p. 204) defines the concept of "Blackstone lawyer" as a slang concept functioning in the legal world, referring to a lawyer who acquired the knowledge of the law by himself, without any formal legal training, by getting acquainted with Blackstone's Commentaries. *Commentaries on the Laws of England* by Blackstone, an 18th-century lawyer, politician and judge had a huge impact on the development of American law and American legal thought. Some say that if it were not for the fact that the Commentaries were written by Blackstone at the time they were written, it is doubtful whether the United States would have universally adopted the case law system. Even a hundred years after the release of the Commentaries, they are the basis for adjudicating for many courts. In addition, in the United States, especially due to the unavailability of books on the so-called frontier, often Blackstone's Commentaries were the only source of knowledge for those who practiced law. See generally: D.H. Cook, *Sir William Blackstone: A Life and Legacy Set Apart for God's Work*, https://regentparents.regent.edu/acad/schlaw/student_life/studentorgs/lawreview/docs/issues/v13n1/13RegentULRev169.pdf [access: 2.09.2019].

[7] G.E. White, *The Path of American Jurisprudence*, "University of Pennsylvania Law Review" 1976, Vol. 124(5), DOI: https://doi.org/10.2307/3311597, p. 1214.

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occupied by non-lawyers[8]. Such a development resulted, *inter alia*, from the emergence of Jacksonian democracy in the first half of the 19th century, which was associated with the broad promotion of the principle of egalitarianism, as well as the attack on the growing importance of lawyers[9]. Reformers opted for making the position of lawyers in the system weaker, for decreasing their influence and even for a dissolution of the bar associations, as well as abolishing the requirement to be a member of the legal profession in order to become a judge or practicing lawyer. This movement was partially successful[10]. A majority of state constitutions provide for the institution of justices of the peace elected by local citizens and as it was described at the time, this position "came to be filled by people of humble calling and scant education"[11].

The popularity of justices of the peace was explained mainly by the fact that both the organization of the society and the economic system at that time were quite uncomplicated and the law was characterized by great simplicity. There were also no educated lawyers who could perform these functions. At the same time, in the early period of the formation of a state with a very large area, communication, transportation and going from town to town in the areas that were sparsely populated was a big challenge which resulted in the fact that a small number of educated lawyers and professional judges could not handle many cities and towns[12]. Taking the positions of judges by non-lawyers was also more consistent with democratic ideals, including the belief of citizens that the law should be understandable for all and, therefore, non-lawyer judges should be put in charge of applying the law[13]. In addition, some also were convinced that non-lawyer judges are closer to community

[8] J. Findley, *The Debate over Nonlawyer Probate Judges: A Historical Perspective*, "Alabama Law Review" 2010, Vol. 61, p 1155.

[9] The 19th-century political thought initiated during the presidency of Andrew Jackson, whose main idea was built upon Jackson's equal political policy and moving away from the "monopoly of the elites" in governing of the state, as well as building democracy based on equal treatment of all citizens. The Jacksonian democracy also sought to strengthen the power of the president and the executive branch at the expense of reducing the role of Congress, as well as increasing the public participation in government. These reforms were limited, however, only to white males and did not address the issues of gender equality or the abolition of slavery. See *Jacksonian Democracy*, 2012, www.history.com/topics/19th-century/jacksonian-democracy [access: 10.08.2019].

[10] D.M. Provine, *op. cit.*, p. 16.

[11] W.R. Furr, *The Justice of the Peace in Virginia: A Neglected Aspect of the Judicary*, "Virginia Law Journal" 1966, Vol. 52(1), DOI: https://doi.org/10.2307/1071669, p. 152. See also K. Unterzuber, *Justices of Peace and Magistrates in Virginia and West Virginia*, 1977, https://scholarship.richmond.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2194&context=-masters-theses [access: 2.09.2019], p. 15 ff.

[12] A. Ashaman, D.L. Lee, *op. cit.*, p. 567.

[13] J.R. Pankratz, *Neutral Principles and the Right to Neutral Access to the Courts*, "Indiana Law Review" 1992, Vol. 67, pp. 1102–1103.

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values than judges with formal legal education and are, therefore, more likely to pursue the sense of justice expressed by the community[14].

The state constitutions provided usually positions of justices of the peace, their scope of jurisdiction, the location in the administration of justice, the manner of remuneration. Due to the fact that this institution was regulated in the state constitutions, justices of the peace were, and in some states are still placed on an equal footing with the professional judges in common courts and the state supreme courts[15]. The scope of the decision of justices of the peace varied, depending on the state, but they were usually authorized to adjudicate minor criminal cases and misdemeanors, small value civil cases in the so-called small claims courts, as well as probate and family matters[16].

With the strengthening of federal and state administration and the development of communication, transportation and trade, the practice of law became more common. Due to the development of jurisprudence, legal principles and legal education, the requirements for those practicing law also increased. In spite of the fact that initially the majority of judges in the field did not have legal education, in the second half of the 19th century, judges who had a legal education were the norm, except for geographic areas where the profession of lawyer was still a rarity.

A special function was played by justices of the peace on the border frontier during the formation of American statehood. The example of the state of Arizona illustrates the interesting history of this institution. Comments below are accurate not only to Arizona, but also to other states which, like Arizona, can be included in the group of states which, due to the location, cultural uniqueness and special character of the community, reached stability quite late, i.e. in the case of Arizona in 1912[17]. Arizona was a patchwork of different cultures, and the reality of everyday life forced the members of the community to carry weapons. The citizens of Arizona realized that in order to achieve stability, it is necessary to establish a legal order and apply laws and introduce a judicial system which would force citizens to obey the law, however, the attempts to introduce such formal system failed[18]. The federal judges, most often transferred to Arizona from the eastern states, quickly resigned from their positions due to great difficulties in administering justice, because of

[14] J.H. Israel, *Cornerstones of the Judicial Process*, "Kansas Law Journal and Public Policy" 1993, Vol. 2, p. 19. See also D.M. Provine, *op. cit.*, pp. 11–19.

[15] G.C. Gillespie, *Historical Status and Jurisdiction of Justice of the Peace*, [in:] *Michigan Criminal Law & Procedure with Forms*, 2010, § 4.2.

[16] Constitution of the State of Michigan of 1963, www.legislature.mi.gov/(S(bcahry0at5rx-jiqvbtndvngh))/mileg.aspx?page=GetObject&objectname=mcl-Constitution [access: 25.07.2019], Article 7 § 16.

[17] A. Patane, *Old-Fashioned Justice, Law and (Dis)Order on the Arizona Frontier*, "Arizona Attorney" 1998, Vol. 34 (February), p. 27.

[18] *Ibidem*.

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the uniqueness of the population living in these areas and the lack of infrastructure that would support judging[19].

One of the first decisions made by President A. Lincoln after proclaiming Arizona part of the United States in 1863 was to organize a judicial system in which the justices of the peace played an important role[20]. Justices of the peace dealt according to the adopted law with misdemeanors and minor offenses. However, very often, due to the pressure of the public to administer justice quickly and effectively, the lack of prison facilities for detainees, they exceeded their powers and delivered sentences much beyond their jurisdiction, in cases of serious offences and even felonies. At that time, the justices of the peace were, in principle, the only representatives of the judiciary in this area. Their powers, at least informally, were very broad and they were not subject to any control. Historians investigating the history of Arizona cite judgments of justices of the peace, which departed significantly from the modern concept of justice, and even from the sense of justice expressed by the members of the society at that time, who usually by informal groups or by the so-called public security committees, organized by the residents, influenced the decisions of the justices of the peace and in effect pressed justices to change their decisions[21].

The tradition of the justices of the peace and exercise of these functions by individuals without legal education, enjoying authority and being influential in a given community was widely accepted in the United States before the incorporation of many territories into the Union[22]. In Utah, where the Mormon settlers arrived in the Salt Lake Valley, the U.S. Congress adopted the Utah Organizations Law establishing a judicial system that included a local Supreme Court, Federal District

[19] *Ibidem*, p. 29.

[20] J. Murphy, *Laws, Courts, and Lawyers Through the Years in Arizona*, Tucson 1971, pp. 2–11.

[21] A. Patane, *op. cit.*, p. 29. Couple of them is described by M.F. Pare. In the early 19th century in Arizona and other states, the theft of cattle was a very serious crime even threatened with the death penalty. In Gila County, a man who stole and killed a calf was brought to justice and the justice of peace found him guilty of first-degree murder. As a consequence, he sentenced him to immediate death. The committee formed by the citizens, however, recognized that the man's action was justified because he had to feed ten children and therefore he did not deserve the death penalty. The committee asked the justice of the peace to change his mind. The judge accepted the arguments of the committee and changed the verdict, acquitting the accused and his main argument is that the accused "acted in self-defense". Another example that deserves to be recalled was Judge Meyer, justice of the peace, who was the terror of those who break the law. Although Meyer held his office for 36 years, also he was respected by lawyers, he knew very little about the law. According to contemporary sources, he used two books in court, which had nothing to do with the law. These were the textbooks of medicine *Materia Medica* and *Fractured Bones*, which he opened and studied at the trial, to impress the audience and buying himself time to make a decision. See M.F. Pare, *Arizona Pagan: A Short History of Maricopa County's Legal Profession*, Chatsworth 1991, p. 19 ff.

[22] P.C. Farr, *The Evolution of the Utah's Justice Courts*, "Utah Bar Journal" 2016, Vol. 29(4), p. 28.

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Courts, and local justices of the peace[23]. Because of the conflict between the federal government and the Mormon settlers, who shared different values and principles, especially with regard to the family law principles and the desire to create separate legal rules that are not subject to federal jurisdiction, they sought to diminish the role of the federal courts in the constituency. In consequence, some justices of the peace, for example, those dealing with family and probate matters, in practice had very wide jurisdiction, the same as federal judges[24]. As a result of this evolution, the justices of the peace, lacking legal education, increased their significance and the scope of jurisdiction.

At the end of the 19th century, in Utah, the institution of justices of the peace who had no legal training, let alone legal education, were in charge of adjudication in a broad range of cases. This was caused by both, practical considerations since Mormon settlers represented different values, and the influence of B. Young, the leader of Mormon settlers on the shaping community of this state. He did not hide his aversion to lawyers which was expressed in his speech delivered in 1872, stating: "I feel about them as Peter of Russia is said to have felt when he was in England. He replied that he had two lawyers in his empire, and when he got home he intended to hang one of them"[25].

In spite of the fairly long tradition of holding positions of justices of the peace by people without legal education in Utah and recognition of their work, as well as contribution to the community, the state legislature in 2016 adopted a law extinguishing the offices of justices of the peace without legal education in such a way that in the most populous municipalities in which there are the most cases, only people with legal education can be judges. This means that the justices of peace-lawyers will consider approx. 74% of cases. However, the justices of the peace without legal training may still hold these offices in very sparsely populated municipalities, and in such cases, where there is no possibility of employing a lawyer on this position[26].

Louisiana which was purchased from France by the United States in 1803 is another interesting example of the development of the institution of the justices of the peace. Louisiana is the only state until present times which developed a civil law system based on the Napoleonic Code. In this state, the institution of the justices of peace continues to this day. In Louisiana, the justices of the peace have been part of the judiciary since 1712, and the legislature, after Louisiana was incorporated into the Union in 1812, granted the justices of the peace jurisdiction

[23] *Ibidem*.
[24] *Ibidem*.
[25] *Ibidem*.
[26] *Ibidem*, p. 26.

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to rule in all civil matters above 50 dollars[27]. Despite several changes in the state constitution, which reflected the tensions between the cultural and social identity of this area which over a hundred years belonged alternatively to France and Spain, before joining the Union, and the unification tendencies with other states, justices of the peace remained part of the justice system for three centuries and currently they adjudicate in all civil cases up to 5,000 dollars[28]. Presently in Louisiana the justices of the peace are considered as an alternative to more costly and usually longer court proceedings.

In the state of Montana, the so-called justice courts and city courts have so far played an important role in the administration of justice. As in other states, the institution of justices of the peace was established in the first constitution of that state in 1864. The Supreme Court of Montana noted that justice courts are "a forum serviceable to the people, where litigation may proceed without the aid of attorneys or those familiar with the rules of pleading"[29]. The judges adjudicating in these courts have no formal legal education and their knowledge of the law comes from obligatory training taking place once every six months[30]. Due to the fact that the vast majority of cases were handled by these courts, with only a small number of judges who had formal legal education, Montana decided to maintain this institution and, at the same time, introduced a reform of the civil procedure to ensure clear rules of procedures applied by justices of the peace[31]. Previously, the regulations governing the institutions of the justices of peace were in principle unchanged from 1895, i.e. from the moment when Montana was admitted into the Union. Present judges in the justice courts adjudicate civil cases up to 5,000 dollars and misdemeanors. Both judges in the justice courts and judges in city courts do not have to have legal education or experience, and the only requirement is to be a U.S. citizen and to live in the particular county for three years[32]. Despite the fact that many small claims cases and misdemeanors are decided by justices of the peace without legal education, only 1.6% of these cases end with an appeal. According to the researchers, the reason for such a small number of cases being appealed is the low value of the subject of the dispute[33].

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[27] S.B. Hopkins, *Local Justice: What Every Lawyers Should Know About Louisiana's Justices of Peace*, "Louisana Bar Journal" 2004, Vol. 52, p. 17.

[28] *Ibidem*.

[29] *Reynolds v. Smith*, 48 Mont. 149, 151, 135 P. 1190, p. 1191 (1913).

[30] C. Ford, *Civil Practice in Montana's "People's Courts": The Proposed Montana Justice and City Court Rules of Civil Procedure*, "Montana Law Review" 1997, Vol. 58(1), p. 198.

[31] *Ibidem*. Montana is the fourth largest state in the US in terms of its territory, one of the least populated states – 48th place out of 50 states.

[32] C. Ford, *op. cit.*, p. 199.

[33] *Ibidem*.

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In the state of Indiana, the legislature twice was ready to completely abolish the justice of the peace courts from the system, during the reform movements in the 1970s[34]. As a result, however, cities and towns were left with the option of independently deciding whether or not to set up these courts. Most municipalities in Indiana decided not to allow non-lawyers to serve as justices of the peace, although in 73 municipalities such justices were permitted[35]. Although justices of the peace in those 73 municipalities do not have to have legal education half of them do. Justices of the peace primarily decide now minor offenses, as well as acts violating the city or town ordinances, whereas only judges appointed in cities have the possibility of adjudicating in civil cases with the value of the subject of the dispute up to 500 dollars[36].

The Constitution of the state of Michigan provided that justices of the peace were elected in the townships and cities, and the number of justices of the peace in each township shall be no higher than four. Each justice was elected for period of four years. In this state the justices of the peace performed their duties in the name of the state based on the city or township ordinance, which underlined their important position and role in the justice system. The function of the justices of peace was defined as "conservators of peace"[37]. In 1963, institution of the justices of the peace in Michigan, as well as in many states during this period, was removed from the constitution, and the state legislatures was obliged to set up modern local courts, which replaced justices of the peace.

CRITICISM OF THE INSTITUTION OF JUSTICES OF THE PEACE IN MODERN SOCIETY

Even at the beginning of the 20th century, most state legislatures in the state constitutions provided for the function of justices of the peace. However, in the 1930s, as legal disputes became more complicated and the organization of society was more complex, a discussion began about whether justices of the peace should continue to perform their functions in a modern state, and consequently many legislatures began to limit their role in the justice system[38]. Justices of the peace were considered a relic of a bygone era. The criticism of justices of the peace referred to many aspects of that institution but concentrated on the system of rewarding, lack

[34] J. Lamber, M.L. Luskin, *Court Reform: A View from the Bottom*, "Judicature" 1992, Vol. 75, p. 278.

[35] *Ibidem*.

[36] *Ibidem*.

[37] *Ibidem*.

[38] R.J. Dolan, W.B. Fenton, *The Justice of the Peace in Nebraska*, "Nebraska Law Review" 1969, Vol. 48(2), p. 460 ff.; K. Unterzuber, *op. cit.*, p. 23.

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of requirements as to their qualifications to adjudicate, lack of legal education, as well as lack of control over their decisions[39].

In the 1950s and 1960s, many organizations and institutions, including the American Judicature Society, the American Bar Association, the National Municipal League, the Institute of Judicial Development, and the President's Commission on Law Enforcement and the Administration of Justice, called for judicial reform in relation to justices of the peace, which included also a complete abolishment of this institution[40]. For example, the Presidential Commission on Standards in Criminal Law stated that the first step in the state reorganization of the courts should be the abolishment of justice of the peace courts and municipal courts in which judges also had no legal education. The Commission proposed to replace them with a uniform court system at the lowest level of the counties, by judges who have formal legal education, hold these positions on a full-time basis, and are members of the bar[41].

The main issue raised by the reformers was the concern that the majority of citizens usually had very little contact with the justice system. However, if such a relationship takes place it mainly exists at the level of the lowest courts in small civil cases and misdemeanors and these matters are subjected to the jurisdiction of justices of the peace without legal education. Therefore, the opinion of the citizens about the entire justice system is shaped and influenced by those contacts and therefore the reformers encouraged to replacing justices of the peace with professional judges, whose judging is their only function[42].

R. Pound, the dean of Harvard University, author of the sociological jurisprudence and reformer of legal education, referred to justices of the peace as a "humiliating anachronism"[43]. He argued that "patients in hospitals for whom surgery is to be performed no doubt expect the surgeon to be a qualified doctor. It is any less reasonable to assume that persons brought before a court in which often complex legal issues must be adjudicated expect the presiding authority to be a judge"[44]. Translating this comparison into the field of law, it should be assumed that a person who faces a court case in which a comprehensive legal issue shall be resolved would like a professional judge to decide that case[45].

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[39] K. Unterzuber, *op. cit.*, p. 27.

[40] *Ibidem*, p. 28.

[41] J.A. Gazell, *A National Perspective on Justices of the Peace and Their Future: Time for an Epitaph?*, "Mississippi Law Journal" 1975, Vol. 46, p. 799.

[42] Ch.H. Smith, *The Justice of the Peace System in the United States*, "California Law Review" 1927, Vol. 15(2), DOI: https://doi.org/10.2307/3475968, p. 131.

[43] R. Pound, *Anachronisms and Law*, "Journal of the American Judicature Society" 1920, Vol. 3, p. 146.

[44] *Ibidem*.

[45] P.E. Dow, *Discretionary Justice: A Critical Inquiry*, Cambridge 1981, p. 196.

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Even the few authors who underlined the positive aspects of the institution of the justices of the peace, such as D.M. Provine, noted that "non-lawyer judges are the worst paid, worst housed, worst outfitted, and least supervised judges in the nation"[46]. Justices of the peace were criticized because, as the researchers pointed out, they ultimately ruled in very few cases, were unqualified and actually caused additional costs to the judiciary, because they were mainly dealing only with minor traffic offenses, but the system still had to support them. Even in those states where their scope of adjudication was quite broad, it was thought that they did not meet the expected goals set for them by the state constitutions as the role of "poor man's courts" in matters of low value of the dispute, in which the parties could get justice quickly, mainly because they often had connections with the local establishment[47]. Critical opinions about the lack of any qualifications and training requirements were also expressed because many cases before the justices of the peace requires knowledge of technical issues of evidence, which a person without legal education may not even identify and, moreover, issue a correct and fair decision[48]. Other authors analyzing the role of justices of the peace indicated that some of the substantive law issues even in small claims courts are no less difficult than those that arise in large cases and this is why legal education is needed[49].

In addition, there are several examples when justices of the peace, who did not have legal education, abolished application of existing law and decided that the only basis for their ruling is common sense and informed attorneys at law representing the parties that decisions of the supreme court or federal courts do not apply in their courts[50]. Some also emphasize the complex nature of some civil cases, for example, probate matters, which are still subject to the jurisdiction of justices of the peace in several states. The previously cited R. Pound believed that administering justice is a difficult task and that not everybody has the competence to resolve a complex problem of modern society[51]. Pound, noticed that the public does not always understand the role of the justice system in society and

> [...] contributes to the unsatisfactory administration of justice in many parts of the United States. The older states have generally outgrown it. But it is felt in lay judges of probate in most of the commonwealths of the South and West. The public seldom realizes how much it is interested in

[46] D.M. Provine, *op. cit.*, p. 122.

[47] C. Ford, *op. cit.*, p. 207.

[48] R.C. LaFace, T.G. Schultz, *The Justice of the Peace Court in Florida*, "University of Florida Law Review" 1965, Vol. 18, p. 118.

[49] E.R. Sunderland, *A Study of the Justices of the Peace and Other Minor Courts*, "Connecticut Bar Journal" 1947, Vol. 21, p. 326.

[50] C.A. Fieman, C.A. Elewski, *Do Nonlawyer Justices Dispense Justice?*, "New York State Bar" 1997, Vol. 69, p. 20 ff.

[51] R. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, "American Law" 1906, Vol. 14, p. 446 ff.

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maintaining the highest scientific standard in the administration of justice. There is no more certain protection against corruption, prejudice, class-feeling or incompetence. Publicity will avail something. But the daily criticism of trained minds, the knowledge that nothing which does not conform to the principles and received doctrines of scientific jurisprudence will escape notice, does more than any other agency for the everyday purity and efficiency of courts of justice[52].

Commentators pointed out that justices of the peace should not decide in more complicated civil cases such as inheritance or family disputes, if they are not prepared professionally to decide those matters[53], because they can make a decision under the pressure and influence of members of the families and in effect lose their neutrality. J.H. Langbein expressed an opinion that judges in probate courts should have "a strong command of the complex substantive and procedural rules that are meant to govern" in decisions regarding property ownership, liberty, and incompetency, and that such persons should possess legal training. He also questioned the constitutionality of the justice system which includes justices of the peace without legal education claiming that "When liberty and property are at stake, the state has an obligation to operate under procedures commensurate with the seriousness of the affected interests"[54].

Researchers also express doubts in regard to the adjudication by the justices of the peace, without legal training, especially in criminal cases, due to their lack of impartiality. Empirical research has shown that judges without legal training are not able to determine whether the party is telling the truth[55]. Other studies have shown that judges who are not lawyers trust more the evidence presented by the police, compared to judges-lawyers, which has a key influence on the fate of the defendant in misdemeanor cases[56]. According to these studies, the lack of knowledge of the legal issues means that judges who are non-lawyers, unlike lawyer-judges, more favorably refer to the arguments presented by the prosecutor and, therefore, when adjudicating they may attach more importance to his position[57].

One of the most serious allegations against justices of the peace in the past was that they tended to perceive their office as a kind of business rather than an institution which is a part of the justice system, because, traditionally, their salary was directly connected to the funds obtained from fines imposed on those who vio-

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[52] *Ibidem*.

[53] E.R. Sunderland, *op. cit.*, p. 326.

[54] *Scandal of Connecticut's Probate Courts, Statement of Prof. John H. Langbein to Conn. Legislature Committee on Program Review and Investigations, in Hartford, Conn. (Oct. 7, 2005)*, www.law.yale.edu/faculty/1766.htm [access: 10.08.2019].

[55] J.M. Conley, W.M. O'Bar, *Fundamentals of Jurisprudence: An Ethnography of Judicial Decision Making in Informal Courts*, "North Carolina Law Review" 1988, Vol. 66(3), p. 486.

[56] J.P. Ryan, J.H. Guterman, *Lawyers Versus Non Lawyers Town Justices: An Empirical Footnote to North v. Russell*, "Judicature" 1977, Vol. 60, pp. 276–277.

[57] *Ibidem*, p. 277.

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lated the law[58]. Indeed, in some states there were mixed remuneration schemes that included income from fines and county funding. However, even in these cases the relation between the amount of JP's remuneration and the imposed penalties were still significant[59]. In some cases it led to a situation in which justices of the peace automatically imposed a fine on the plaintiff to raise the funds for their salary[60]. In addition, it has been suggested that there was a strong correlation between the police and collection agencies and those justices of the peace, who were more likely to convict the accused, even if other judges were available[61]. The justices of the peace were not subject to any supervision or control. They depended so much on the fees imposed that in many communities the abbreviation "JP" meaning justice of the peace – was commonly paraphrased and meant "judgment for plaintiff", meaning routinely imposing a fine on the defendant and rendering a judgment in favor of plaintiff, the state represented by the prosecutor, which actually caused corruption[62].

There are also opinions that justices of the peace, especially in small communities, were not only in cahoots with the local police, but were also susceptible to local political and social influences, as well as personal sympathies and dislikes in making decisions, and, therefore, there were doubts as to their neutrality and impartiality in making decisions. This dependence was the result of the way in which the judges were elected in a community which "seriously impaired independence and that party acceptability and vote getting abilities are qualities not necessarily required by a competent justice"[63]. Lack of legal education meant that these judges were primarily considering the arguments of the police and prosecutor, as well as those who in fact had a power and influence in the county. One of the critics remarked that justices of the peace render "justice unequally with disregard of law"[64].

Another objection directed toward justices of the peace was lack of control over their adjudication. In many states, in order to ensure informality of proceedings, these courts were not courts of records and there was no obligation to make recordings of the hearings, as in other courts referred to as courts of record. Although the parties could have requested them, the courts themselves were not obliged to do so[65]. This is a special situation, because from the justices of the peace, who are

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[58] K.E. Vanlandingham, *The Decline of the Justice of the Peace*, "University of Kansas Law Review" 1964, Vol. 12, p. 391.

[59] K. Unterzuber, *op. cit.*, p. 31.

[60] J.A. Gazell, *op. cit.*, p. 798.

[61] *President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts*, Washington 1967, p. 34 ff.

[62] Ch.H. Smith, *op. cit.*, p. 121.

[63] K.E. Vanlandingham, *op. cit.*, p. 391.

[64] C.J. Davis, E.R. Elkins, P.E. Kidd, *The Justice of Peace in West Virginia*, Morgantown 1958, p. 12, quoted after K. Unterzuber, *op. cit.*, p. 40.

[65] C.L. Mansfield, *Disorder in the People's Court: Rethinking the Role of Non-Lawyers Judges in Limited Jurisdiction Court Civil Cases*, "New Mexico Law Review" 1999, Vol. 29, p. 130.

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more likely to make procedural mistakes compared to the professional judges, less is required[66]. In addition, there is a procedural rule that if a court is not a court of record, the procedure *de novo* shall be granted in every case, in front of the judge-lawyer. However, this procedural rule is not clear and the law provides that if a party has the option of requesting a recording from the proceeding, even if it has not done so, it is not possible to initiate a *de novo* hearing[67].

One of the goals of introducing the institution of justices of the peace was to save costs for both, judiciary and parties, who could assert their rights in small cases in a very simplified procedure before a non-lawyer judge. The role of the justices of the peace is to adjudicate in the small claims cases in which the use of the full justice system is uneconomical. C.L. Mansfield, analyzing the numerous cases in which she represented the parties before the justices of the peace, notes that civil cases settled by these judges are small in relation to the value of the disputes between business entities. However, taking into account that these are matters brought by individuals, their values constitute a significant part of the household budget. So-called small claims cases decided often by justices of the peace without legal education differ in value depending on the state. For example, currently in twelve states, the justices of the peace deal with cases worth 5,000–9,999 dollars, in five states the value of such cases is 10,000–14,999 dollars, and in the state of Washington, justices of the peace decide cases worth up to 35,000 dollars. Considering these amounts they are not "minor" cases from the point of view of the individual parties participating in the court proceedings[68]. The question then arises whether in such cases in which the amount in question is significant for a party, such party should not have access to a full procedure in which the matter is resolved by a professional judge?

The assumption made while adjudicating smaller civil cases by the justices of the peace was that those cases are legally uncomplicated and, thus, can be decided by a person who does not have legal knowledge. However, often the lower value of the case does not mean that there are no complex legal issues in such matters[69]. Most importantly, for the attorney representing parties in such cases it is difficult to appear in front of the judge who has no legal education and raise complex legal arguments, which could not be understood by a person without proper education.

While the institution of justices of the peace was introduced in the early years of the American legal system, it was accompanied by the conviction that the justices of the peace, who are regular citizens and members of the community, reflect the values of that community, and, thus, will render more just judgments because they understand better the needs of the members of the community, instead of

[66] C.A. Fieman, C.A. Elewski, *op. cit.*, p. 20.
[67] C.L. Mansfield, *op. cit.*, p. 130.
[68] *Ibidem*, p. 144.
[69] *Ibidem*, p. 146.

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application of the rigid legal provisions by judges who are lawyers and often are outsiders. This assumption, especially in larger towns and cities today, departs from the contemporary realities of complex democratic statehood, because these communities consist of different groups such as Muslims, Christians belonging to different churches, Jews, atheists, which is additionally diversified by age, ethnic or racial groups, who have very different values. In the face of such diversity it is difficult to imagine that justices of the peace will in their judgments find and reflect some joint values of those groups[70].

One of the key arguments against maintenance of the institution of justices of the peace who do not have legal training is the paradox, because on the one hand, justices without any legal education shall take into account and adjudicate in accordance with state law, so it is required from them that they should behave as if they know the law, but at the same time, they have to take into account the perspective resulting from the values represented by the community. Ch.H. Smith noticed:

> […] ours statutes dealing with the justice of the peace system postulate a justice according to law, that is, justice through the application of legal rules, standards and principles, which justice to be administered by a tribunal which for the most part is wholly unlearned in the law. The proposition seems to be almost a contradiction[71].

D.M. Provine, a lawyer from New York and also a former justice of the peace, researched justices of the peace and in particular the differences between judges with legal education and non-lawyer judges and concluded that:

> Among those favorable to the continued participation of nonlawyers in adjudication, the call nearly everywhere is for more education. The nonlawyer adjudicators themselves seem as anxious as anyone for more training. Education for personnel ostensibly chosen because they are not lawyers, however, raises difficult questions. The temptation is to try to make the nonlawyers more like lawyers; indeed, criticism of lay capacities and performance is usually couched in terms of their deviation from professional standards. Yet lay persons who internalize professional criteria for judgment lose some of the very characteristics that rationalize their presence in the system. Lay participants become more like experts in the institution. A legal system, it seems clear, cannot simultaneously satisfy desires to represent citizen opinion on tribunals and at the same time satisfy professional standards for performance[72].

It seems, therefore, that the paradox mentioned by Smith and Provine leads to the conclusion that the legal system may not be well crafted to satisfy the expectation that, at the same time, justices of the peace should represent values of the community and also provide professional judgments according to the legal standards.

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[70] *Ibidem*, p. 152.
[71] Ch.H. Smith, *op. cit.,* p. 127.
[72] D.M. Provine, *op. cit.*, p. 187.

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BENEFITS OF THE INSTITUTION OF JUSTICES OF THE PEACE

In spite of many critical opinions regarding the justices of the peace as an institution belonging to the past, some authors perceive the benefits of this office by considering it as an ADR (Alternative Dispute Resolution) method, which is a cheaper and faster alternative to the more formal court proceedings, especially in smaller cases. ADR methods, such as mediation and arbitration, are applied in the U.S. legal system commonly in both court and off-court procedures. The role of justices of the peace is sometimes compared to the role of mediators or arbitrators, who do not necessarily have to have legal education[73]. Proponents of maintaining the institution of justices of the peace argue that if mediators, who often do not have legal education, participate in the justice system and mediate the cases sent to mediation by the judge bring tangible benefits to the parties and the justice system, consistently justices of the peace may also not have any legal training to adjudicate, if their position is understood as an ADR method. In the face of attempts to qualify justices of the peace as an ADR method, some authors express the view that the criticism of justices of the peace mainly by lawyers is unjustified, inconsistent and is an expression of hypocrisy of lawyers. Since, in principle, lawyers quite enthusiastically support both mediation and other ADR methods, which are often mandatory in state and federal courts, it is difficult to justify their different view with respect to justices of the peace, especially when they are considered as an alternative to the formal proceedings.

This argument, however, seems to be erroneous because there is a fundamental difference between justices of the peace and mediation or arbitration, even though all three proceedings have one joint characteristic, which is lack of legal education by a third neutral person. That key difference may be also expressed in the voluntariness of ADR methods and the need to obtain the consent of the parties to participate in mediation or arbitration, as well as the parties' consent for the settlement. On the other hand, when the justice of the peace decides, there is no element of party autonomy to choose such a procedure or submit to the court's judgment[74]. Due to the development of ADR methods in the U.S. justice system in which various disputes, mainly of a civil nature, are resolved amicably, and special mediation programs are developed for small civil cases in the courts, the universality and popularity of mediation in the justice system, due to the relatively low costs associated with them and the possibility for the parties to influence the outcome of the case, contribute to a displacement of the cases decided by justices of the peace by the ADR methods, such as mediation.

One of the arguments for maintaining the institution of justices of the peace, especially in those jurisdictions where the jury is rarely used, which is also a ten-

[73] S.B. Hopkins, *op. cit.*, p. 17.
[74] *Ibidem*, p. 167.

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dency of the last decades because of the complex nature of court disputes, is the fact that the justices of the peace ensure participation of the members of the community in the administration of justice. In addition, despite much better communication and the Internet, people who live far away from larger cities do not have appropriate access to justice, and justices of the peace fill this gap. Another advantage of maintaining the institution of justices of the peace without legal education are lower costs, comparing to having professional judges with legal education. The remuneration of justices of the peace is lower than the remuneration of professional judges, and some authors claim that their judicial activity contributes significantly to the unclogging the court dockets in small cases. In addition, the research shows that although it is not always the case that justices of the peace issue decisions based on an appropriate legal reasoning, the parties rarely appeal these judgments, because of the quite low value of the case or fine[75].

Those who advocate for justices of the peace without legal education also point out that since they rely on common sense and life experience in their adjudications, these judges have the advantage of encouraging disputing parties to resolve their conflict themselves instead of being subjected to an unpredictable procedure[76]. Although it would seem that this uncertainty should be assessed negatively, according to the supporters of this institution, the tendency of judges who are non-lawyers to adjudicate on the basis of common sense is positive and strengthens the autonomy of individuals by incentivizing them to resolve their dispute instead of bringing the case to the court[77].

D.M. Provine concluded that non-lawyers could be just as competent as judges with legal education in the courts of so-called limited jurisdiction, and there is no evidence that judges without legal training adjudicate worse than those who have such education[78]. Her conclusions were different from those made by other researchers and disproved, to a certain extent, the opinion about the differences between the judges-lawyers and non-lawyers. However, in her study, she stated that due to the fact that justices of the peace are not full-time and they can perform other duties, it conflicts with the concepts of professionalism[79].

Those who advocate for maintaining the institution of justices of the peace argue that there is no research and evidence that judges without legal training make mistakes in their judgments more often than judges-lawyers, although this claim is difficult to verify because, as previously indicated, due to the low value of the subject of the dispute or small penalties, the parties rarely appeal the judgments of

[75] *Ibidem*.
[76] R. Foster, *The Era Ends*, "Michigan Bar Journal" 1997, Vol. 76, p. 965.
[77] J. Findley, *op. cit.*, p. 1143.
[78] D.M. Provine, *op. cit.*, pp. 22–23.
[79] *Ibidem*.

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justices of the peace[80]. Furthermore, it is argued that the institution of justices of the peace who do not have legal education is firmly rooted in the U.S. judicial system, and despite criticism it has undergone a long evolution and reform which include: requiring from judges-non-lawyers compulsory participation in the legal trainings; payment of their remuneration from the county or state budget and to, thus, make them neutral and impartial, since there is no connection between penalties imposed by them and their salary; introducing the recording of the proceedings, which gives greater control over the procedure[81]. Those who opt for justices of the peace maintain that although this institution is used less and less often currently, it does not mean that it has no value and its functioning still has an economic justification in states which are sparsely populated[82].

The continuation of the functioning of justices of the peace has, according to the supporters of this institution, substantive justification and with the appropriate level of training, preparation for adjudication and some additional education, not necessarily a law degree, they can provide a professional level of adjudication and benefit the local community[83]. The suggestions are made that justices of the peace perform their functions well in less complicated civil cases limited to the relatively low value of the dispute, as well as in minor misdemeanors that are not penalized by imprisonment. L. Silberman, who conducted a comprehensive study among justices of the peace, expressed the option that those who do not have legal education can perform important functions in the justice system particularly in sparsely populated areas where there are few cases filed in courts, in such communities where there are no financial resources to pay full-time judges-lawyers and where are no individuals available with a legal degree[84].

In addition, in defense of this institution, some authors maintain that citing examples of strange and arbitrary behaviors of justices of the peace, adds nothing to the substantive debate, because similar behaviors can be found among professional judges who, in spite of their legal training, sometimes violate ethical principles or break the law. These individual examples, although interesting, in principle are detached from reality, because the vast majority of judges-lawyers and non-lawyers act according to the ethical and procedural standards[85]. One of the main arguments presented by advocates for justices of the peace in the justice system is that since for over two centuries, this institution has met local, social and judicial objectives, there

[80] *Kelly Davis and Shane Sherman v. State of Montana*, Brief in Opposition No. 16-123, November 14, 2016, p. 2.

[81] *Ibidem*.

[82] *Ibidem*.

[83] J. Findley, *op. cit*., p. 1161.

[84] L. Silberman, *Non-Attorney Justice in the United States: An Empirical Study*, New York 1979, pp. 103–104.

[85] *Ibidem*, p. 19.

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is no need to abolish it. It is also worth citing one of the court decisions in the state of New York made at the end of the 19th century which underlined the historical role and the importance of the justice courts in the development of U.S. justice system:

> […] the office of justice of the peace came down to us from remote times. It existed in England before the discovery of America, and it has existed here practically during our entire history, both colonial and state, at first with criminal jurisdiction only but for more than two centuries past with civil jurisdiction […]. It exists in every state of the Union, and is regarded as of great importance to the people at large, as it opens the doors of justice near their own homes, and not only affords a cheap and speedy remedy for minor grievances as to the rights of property, but also renders substantial aid in the prevention and punishment of crime[86].

CHANGES IN STATE LAWS AS A RESULT OF THE DISCUSSION ABOUT JUSTICES OF THE PEACE IN THE LEGAL SYSTEM

The critical views and discussion about justices of the peace in the legal system which started as early as the 1930s initiated the reform of this institution in many states. In accordance with the recommendations contained in the President's Crime Commission Report from 1967, individual states should introduce for those without a legal degree who adjudicate in the courts of limited jurisdictions, special trainings, specific requirements for the qualifications, and the ability to dismiss the judge for non-participation in training, or introducing state examination duty[87]. Independently, the system of remuneration for justices of the peace was reformed and it was required that their salary will be independent from the amount of fines imposed and fully paid by the county or state[88]. According to the recommendations of the President's Commission on Law Enforcement, the states were also required to introduce a system of better control of justices of the peace[89].

Due to the increasing problems resulting from the functioning of the institution of justices of the peace in the justice system, since the 1930s, most state legislatures gradually limited their functions or totally abolished the institution of justices of the peace without law degrees[90]. This trend intensified in the middle of the 20th century, when most states abandoned the traditional justice of the peace system in favor of modern local courts[91]. This process, however, was quite slow, and in the 1980s, only in six states, the institutions of justices of the peace were

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[86] *The Consolidated Laws of New York, Annotated Book*, compiled by W.M. McKinney, Northport 1916, p. 450.

[87] C. Ford, *op. cit.*, p. 208.

[88] K. Unterzuber, *op. cit.*, p. 43.

[89] *Ibidem*.

[90] R.J. Dolan, W.B. Fenton, *op. cit.*, p. 458.

[91] K.E. Vanlandingham, *op. cit.*, p. 390; J.A. Gazell, *op. cit.*, pp. 806–811.

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completely abandoned, and in five states the so-called "grandfather rule" was introduced meaning replacement of justice of the peace by judges with the law degree gradually upon the expiration of their term of office, death or retirement[92]. In the remaining 39 states, judges without a legal degree could still render judgments, although their functions were increasingly limited compared to the previous scope of their jurisdiction. Some states allowed adjudication by non-lawyers only when there was no possibility of appointing a judge with legal training. For example, the constitution of the state of Colorado contained provisions that judges must have legal education except for the small group of judges who adjudicate in counties with very sparse population. From among 107 judges in county courts, only one quarter of those judges did not have law degrees[93]. In the state of Maryland, justices of the peace without legal education were permitted to adjudicate only in probate courts, dealing with inheritance cases and they did not have jurisdiction over misdemeanor cases involving sentencing of imprisonment[94]. In the state of Virginia, the reform of the justice system limited greatly the subject matter jurisdiction of justices of the peace, especially in conducting the court hearings[95].

Presently, 39 states still allow very limited jurisdiction for non-lawyer judges, which may be surprising in view of both the critical approach to the institution of justices of the peace for at least a hundred years and the availability of legal education[96]. States in which all judges must be lawyers without exception are: California, Hawaii, Illinois, Kentucky, Maine and Massachusetts. In the other states, justices of the peace without a law degree deal with misdemeanors, traffic offenses and small civil cases. Less often, due to the complexity of these matters, justices of the peace decide probate, juvenile and family matters. Presently, no state permits judges without a law degree to adjudicate cases involving more serious crimes. Out of those 39 states, only in 22 states are justices of the peace without a law degree allowed to adjudicate misdemeanors which are punishable by imprisonment. Even in those states, a trial *de novo* in front of a judge who is a lawyer is always granted, if requested[97]. In eight states in which non-lawyers may adjudicate misdemeanors punishable by imprisonment, the accused does not have the right to initiate a trial *de novo* before the judge-lawyer. Those eight states where

[92] A. Ashman, D.L. Lee, *op. cit.*, p. 568.

[93] *Ibidem*.

[94] A. Ashman, P. Chapin, *Is the Bell Tolling for Non-Lawyers Judges?*, "Judicature" 1976, Vol. 59, p. 421.

[95] W.R. Furr, *op. cit.*, p. 163. Nevertheless, in Virginia, the justices of peace have not been removed completely, and so far several hundred justices of the peace have been operating in this state, but they only deal with issuing search warrants or arrest warrants and are not able to conduct a hearing.

[96] K.M. Knab, *Courts of Limited Jurisdiction: A National Survey*, Washington 1977.

[97] See Appendix I, Abp. 57A–67a, including data concerning 50 states.

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there is no such possibility, consider that an appeal of the judgment of a justice of the peace is a sufficient safeguard of the principle of a fair trial. However, in those eight remaining states which provide that there is no possibility to open *de novo* trial, if the earlier decision was made by a non-lawyer judge, this rule does not apply in all counties. For example, in the states of Montana, Nevada, New York and Texas only in some counties there is no possibility of *de novo* trial and in other states, such as Arizona, Montana and South Carolina, the jurisdiction of justices of the peace who are non-lawyers is limited only to very minor matters[98].

The discussion about maintaining or abolishing the institution of justices of the peace without legal education shows a deep division between its supporters and opponents. Despite the predominance of critical voices, this institution still exists in many states, although their role and the powers are increasingly limited and in most states they adjudicate only the smallest matters. In addition, numerous safeguards have been introduced to increase the predictability of judgments and reduce the arbitrariness of those justices, including the possibility of initiating a hearing *de novo*, especially in more serious cases of a criminal nature in which the accused is subject to deprivation of liberty. Defenders of justices of the peace continuously argue that they offer the opportunity to administer justice in an accessible, inexpensive and rapid manner, as well as in line with local values. Critics argue that the power of such judges may be used by influential people with political or social connections and they are not suitable any more in modern times in complex social and economic issues and urge the complete abolition of these courts to avoid potential damage that they may cause or to limit their jurisdiction to the smallest cases and to require justices of the peace to have legal degree in order to avoid external pressure.

DECISIONS OF THE U.S. COURTS ON CONSTITUTIONALITY OF JUSTICES OF THE PEACE

The constitutionality of justices of the peace, who are not lawyers, rendering judgments has been subject to consideration by the courts of various instances since the 1960s[99]. The main argument raised by the complainants was a deprivation of their constitutional rights to counsel, due to lack of legal education and misunderstanding of the legal arguments by justice of the peace without a law degree. Noteworthy are several judgments, which present different approaches by the courts to this issue.

[98] For example, punishable by imprisonment for up to six months or as in South Carolina – 30 days.

[99] A. Ashman, D.L. Lee, *op. cit.*, p. 569.

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In *Gordon v. the Justice Court the Yuba Judicial District of Sutter County*, in regard to a criminal case which took place in 1974, the California Supreme Court agreed with the applicants and stated that the accused had been deprived of his right to counsel[100]. The court based its decision on the fact that the increasing complexity of criminal law and criminal procedure makes it unlikely that a judge without legal training would understand the legal issues in a given case[101]. Around the same time, the Kentucky court of appeal in *Ditto v. Hampton*[102] did not accept the argument concerning deprivation of the defendant's right to counsel in a situation where the judge had no legal education. The court justified its position by stating that the state was represented by a prosecutor, and the defendant's attorney also appeared before the judge, and participation by both ensured the balance of the disputed proceedings. According to the Kentucky court, the judge stands above the adversarial principle of the proceedings and must only decide which of the arguments presented by two properly represented parties are valid and his main role is to be impartial and just, and legal education is not necessary to ensure his role as a neutral[103].

Another matter regarding the question whether the institution of justice of the peace does not deprive the accused of his constitutional right to an adequate representation by the counsel was considered by the Supreme Court of Utah. In the *Shelmidine v. Jones* case, the court completely ignored the argument concerning the deprivation of the right to counsel. The court decided that the state administration is not able to provide judges-lawyers, due to the fact that there are very few people with such education in some counties, including the relevant county, and this fully justifies leaving justices of the peace, without a law degree, in the justice system[104].

Although after *Ditto* and *Gordon*, many lower courts considered the subject of the justices of the peace and referred to *Gordon's* or *Ditto's* cases, none of them carried out any in-depth analysis of the constitutionality of justices of the peace[105]. On the one hand, courts which found that the accused was deprived of his right to counsel, have used unsubstantive argument that the judges who are non-lawyers do not understand the law. On the other hand, those courts which found that the accused had not been deprived of his right to counsel never provided a convincing analysis of the situation in which it would be impossible to be effectively assisted by a lawyer in a case of ruling by a non-lawyer judge.

Apart from the argument of depriving the defendant of the right to counsel, in some cases other allegations were also raised regarding the adjudication by

[100] 12 Cal. 3d 323, 525P 2d 72, 115 Cal. Rptr. 632 (1974), Cet. Denied, 420 U.S. 938 (1975).
[101] A. Ashman, D.L. Lee, *op. cit.*, p. 569.
[102] 490 S.W. 2d 772 Ky. 1972.
[103] A. Ashman, D.L. Lee, *op. cit.*, p. 774.
[104] 550 P.2d 207 (Utah 1976).
[105] A. Ashman, D.L. Lee, *op. cit.*, p. 561.

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a non-lawyer. Those arguments concerned an equal treatment, because if the accused were presented with other, more serious allegation or would be sentenced in another jurisdiction, the proceedings would be conducted with the participation of the judge-lawyer[106]. In addition, it was questioned whether justices of the peace could provide a fair trial, mainly citing various examples of the arbitrary behavior of justices of the peace[107]. The issue of the constitutionality of justices of the peace, who are not lawyers, has been addressed by many courts of various level, but these rulings are far from being uniform, not only in individual states, but even in the same state. Some of them agreed with *Gordon's* arguments and others – with arguments of the *Ditto* case[108].

SUPREME COURT DECISION IN *NORTH V. RUSSEL* CASE

The most important case in regard to justices of the peace, which was decided so far by U.S. courts is *North v. Russel*[109]. This case was considered by the U.S. Supreme Court in 1976, and despite repeated attempts, the Supreme Court has not dealt with the problems of justices of the peace again. When examining the *North* case, the Supreme Court ruled that the constitutional principle of fair trial in case of a deprivation of liberty is preserved even when the judge is not a lawyer, but the convicted person has the right to initiate a trial *de novo* before the judge-lawyer. The Supreme Court clearly left unanswered the following question: if the proceeding before a nonlawyer judge is the only proceeding available in criminal case, does such proceedings in which defendant was convicted and deprived of liberty violate the constitutional guarantee of a fair trial[110]. According to the Supreme Court, there was not necessary to answer this question, because in the state of Kentucky, where the case was pending, the defendant had the opportunity to initiate proceedings *de novo* in front of lawyer-judge if the original proceeding was before a non-lawyer judge[111]. The court also concluded that the right to counsel was irrelevant in this case, because the defendant had the right to have the trial initiated *de novo* in front of the professional judge, who is a lawyer, and, therefore, the right to counsel was granted[112].

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[106] *Ibidem*.

[107] *Ibidem*.

[108] For example, the Supreme Court of Indiana stated that the law stipulating that judges may be non-lawyers is unconstitutional; see, among others: *Pery v. Banks*, 521 S.W. 2d 549 (Sup. Cr. Tenn. 1975; *State v. Williams* (Tenn. Cr. App.) June 27, 1975; Judicial Interpretation of 1975 Senate Enrolled Act. No. 441 – Ind. 332 N.E. 2d 97, 1975).

[109] *North v. Russel* 427 US 328 (1976).

[110] A. Ashman, D.L. Lee, *op. cit.*, p. 334.

[111] *Ibidem*.

[112] *Ibidem*.

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In the *North v. Russell* case, judge P. Stewart delivered a dissenting opinion, in which he strongly articulated his opinion concerning a deprivation of the right to a counsel and fair trial, in a case which is resolved by a judge – who does not have legal education:

> Judge Russell is a coal miner without any legal training or education. […] I believe that a trial before such a judge that results in the imprisonment of the defendant is constitutionally intolerable. It deprives the accused of his right to the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments, and deprives him as well of due process of law. […] Essential presupposition of this basic constitutional right is that the judge conducting the trial will be able to understand what the defendant's lawyer is talking about. For if the judge himself is ignorant of the law, then he, too, will be incapable of determining whether the charge "is good or bad". […] and a lawyer for the defendant will be able to do little or nothing to prevent an unjust conviction. In a trial before such a judge, the constitutional right to the assistance of counsel thus becomes a hollow mockery – "a teasing illusion like a munificent bequest in a pauper's will"[113].

After the *North v. Russell* case, despite the clear indication of the Supreme Court, when the constitutional right of counsel is guaranteed, the courts of various levels again began to adjudicate inconsistently, thus, reflecting the dualism of views on the functioning of the justices of the peace. Several state supreme courts have held that if the defendant is charged with an offense punishable by imprisonment, the right to a fair trial only requires the state to provide a hearing before a non-lawyer judge[114]. Other state courts have decided the opposite, that is, if the defendant is charged with an offense punishable by deprivation of liberty, the principle of a fair trial requires that the entire proceedings should be held before the judge who is a lawyer[115].

The issue of justices of the peace returned to the Supreme Court in 2016 in the case of *Kelly Davis and Shane Sherman v. State of Montana*, although the Supreme Court did not agree to hear the case. What is important here is that historically, justices of the peace played an important role in the justice system of the state of Montana, which was the respondent. In addition, the state of Montana introduced a fairly wide reform of the judiciary system, requiring justices of the peace to participate in special legal training, obtaining state certificates, and introducing procedural changes providing hearings *de novo* before a professional judge, when

[113] *Ibidem*, pp. 340–343. Judge P. Stewart quoted after *Edwards v. California*, 314 U.S. 160, p. 186 (Jackson, J., concurring).

[114] *Palmer v. Superior Court*, 560 P 2d. 797, 799 (Ariz. 1977); *Trainman v. State ex reel Miner*, 343 So. 2d 819, 823-24 (Fla. 1977); *Goodson v. State*, 991 P. 2d 472, 474 (Nev. 1999); *Tsiosdia v. Rainaldi*, 547 P. 2d 553, 555 (N.M. 1976); *People v. Charles F*., 458 N.E. 2d 801, 802 (N.Y. 1983); *State v. Duncan*, 238 S.E. 2d 205, 208 (S. Sc. 1977); *Masguelette v. Texas*, 579 S.W. 2d 478, 480 (Tex. Ct. Ci. Abp. 1979).

[115] *State v. Dunkerley*, 365 A. 2d 131, 132 (Vt. 1976); *State ex. rel. Anglin v. Mitchel*, 596 S.W. 2d 779, 791 (Tenn. 1980); *City of White House v. Whitley*, 979 S.W. 2d 262, 266-67 (Tenn. 1998).

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the accused was deprived of his liberty for a criminal act in the case adjudicated by justice of the peace[116]. However, in 2003, the Montana legislature took a step backwards and adopted a law in which the right to a *de novo* trial was abolished, although such a procedural possibility in the case when justices of peace decide the matter was in force for more than 100 years[117]. Such change, which was based predominantly on financial savings in the administration of justice, was justified by Montana legislative body in this way that *de novo* "is not only costly but breeds contempt and disrespect for the lower court. It favors the rich over the poor, the affluent over the ignorant, the dishonest over the honest"[118]. In addition, according to the representatives of the state legislature, the *de novo* trial introduces inequality between the prosecutor and the defense, because it allows the defense to become acquainted with the prosecutor's arguments without revealing the position of the defense[119]. In this case the question to the U.S. Supreme Court was the following: "Whether a criminal defendant charged with an offense punishable by incarceration is denied due process when he is tried by a non-lawyer judge, where the defendant has no opportunity for a *de novo* trial before a judge who is a lawyer".

The party filing writ of *certiorari* to the U.S. Supreme Court appealed against the Montana Supreme Court ruling, which, in the case of *State v. Davis* and *State v. Sherman*[120], stated that the state of Montana traditionally had never required legal education from justices of the peace, that those judges were required to participate in training before obtaining a state certificate entitling them to adjudicate, as well as participation in additional mandatory training during the year, recognizing that these requirements ensure that the justices of peace in Montana "are not biased and are properly intelligent persons". The Supreme Court of Montana also concluded that even without the possibility of initiating a trial *de novo* the appeal procedure provided for in each case is sufficient to secure the right of the accused to a fair trial, because the appeals court decides as to the substantive and procedural law[121]. The party appealing from the Supreme Court of Montana to the U.S. Supreme Court did not invoke any procedural errors in this case, but its position was based on a constitutional argument that a fair trial is not ensured in a case where there is no procedural possibility to consider the case *de novo* before a professional judge

[116] *Kelly Davis and Shane Sherman v. State of Montana*, 2016 WL 4010822 (U.S.), Brief in Opposition, No. 16-0123, 14 November 2016, p. 5.

[117] *Kelly Davis and Shane Sherman v. State of Montana*, 2016 WL 4010822 (U.S.), Writ of Certiorari, No. 16-123, p. 3.

[118] Montana Constitutional Convention Transcript, Vol. IV, p. 1076.

[119] Quoting from a discussion in the Senate Judicatory Committee 62. Nd Montana Legislative Assembly, January 10, 2010.

[120] 371 P. 3d. 979 (Mont. 2016). Abp. 1A.

[121] *Kelly Davis and Shane Sherman v. State of Montana*, 2016 WL 4010822 (U.S.), Writ of Certiorari, No. 16-123, p. 16.

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when the accused is deprived of liberty by the non – lawyer judge. The major argument of the party bringing a writ of *certiorari* to the U.S. Supreme Court was that the type of punishment for the accused person, which is depriving him of liberty, determines the obligation to guarantee him a fair trial, in particular with regard to ensuring high qualifications of the judge and for the professional judge to understand comprehensive legal issues and constitutional issues that may arise in the matter. In contrast to the deprivation of liberty, for example, a fine has a completely different character, as it does not concern a fundamental human right, therefore, in the case of the deprivation of liberty the principle of fair trial and right to legal representation should be applied with all caution and insight. The appeal, according to the complainants, is not sufficient to ensure a fair trial, because all possible mistakes made by justice of the peace may be omitted and unnoticed, since that court is not a court of record. Concerns about the proceeding in front of the judge who is not a lawyer comes from the conducted research, according to which, the police and the prosecutor have a large influence on the decisions of non-lawyers judges and, moreover, judges without legal training may not be aware of procedural errors[122].

In turn, the respondent argued that: the system of justice in the form adopted by the state of Montana was never considered to be unconstitutional; there is no evidence that the justices of the peace who are not-lawyers perform their functions worse than judges with legal education; the constitutional principle of a fair trial does not automatically exclude non-lawyers from adjudication in criminal matters threatened with the deprivation of liberty; and that individual states can create a system of justice in accordance with their capabilities and needs. The Supreme Court refused to consider the two above-described cases[123].

The Supreme Court in the *North* case had the opportunity to decide on the unconstitutionality of the decision of justices of the peace, without legal education, in the case in which the accused was sentenced to deprivation of liberty and in consequence his rights to effective representation by counsel and due process were violated. As a consequence, such a decision would replace the justices of peace-non-lawyers by professional judges, at least in the most controversial cases of a criminal nature in which the accused was deprived of liberty. Nevertheless, the Supreme Court did not take on this responsibility. The Court also did not recognize the cases *Kelly Davis v. State of Montana* and *Shane Sherman v. State of Montana*, which could potentially have concluded the debate that has been going on for more than two hundred years on the participation of those without legal training in rendering the judicial decisions, leaving this decision to individual states.

[122] *Ibidem*, pp. 22–26.

[123] *Kelly Davis and Shane Sherman v. State of Montana*, Brief in Opposition, p. 13 ff.

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CONCLUSIONS

The justices of the peace in the United States are a unique and interesting example from the point of view of the comparative development and perspective. For more than two centuries, justices of the peace were an important element of the justice system in the United States, mainly in minor civil and criminal cases in some states, but in others they were a key element of the entire justice system. Now their role is increasingly limited and in many states this institution has been abolished and replaced by professional judges with legal education who do not conduct other activities apart from adjudication. This development was caused by the growing complexity of social and economic life, even in smaller disputes, as well as the increased availability of professionals with legal education. However, despite various reform attempts to completely abandon the institution of justices of the peace without legal education, in some states such as Montana or Arizona, these judges are still functioning today, and fulfill an important function in the administration of justice, reducing the cost of adjudicating small cases, filling the gap due to lack of professional judges with legal education, especially in sparsely populated areas and providing easier access to courts in these areas.

Presently, the arguments for keeping the offices of justices of the peace are mainly financial and economic, arguing for maintaining those positions where the population is very small, where there are no lawyers or where the county or municipal budgets are very limited to appoint full time professionals who are members of the bar. It is becoming less justified to maintain those institutions because they provide better access to justice. Better access has been solved by creating a modern structure of local courts, also in regard to the petty crimes and small claims, as well as development and popularity of ADR methods in the U.S. justice system.

The argument of the participation of the members of the community and inclusivity in the justice system is currently being criticized. One of the main reasons for introducing the institution of justices of the peace two hundred years ago was that they are ordinary citizens, understanding the problems of the community from which they came. They are also closer to problems of their fellow citizens, than professional judges with legal education, because they rule on the basis of common sense, and their judgments are understandable by the parties. It turns out, however, that legal issues, even in small matters, are now so complex that even the training provided for these judges is insufficient to avoid constitutional problems such as ensuring the right to legal counsel or the right to a fair trial, as judge P. Stewart pointed out in his dissent in the *North* case.

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STRESZCZENIE

Niniejszy artykuł jest próbą prześledzenia rozwoju instytucji sędziów pokoju od czasów tworzenia się demokracji amerykańskiej w XVIII w. do współczesności, a także oceny ich funkcjonowania. Opisano funkcjonowanie sędziów pokoju w różnych stanach oraz to, w jaki sposób rola tej instytucji zmieniała się przez ponad 200 lat funkcjonowania demokracji amerykańskiej. Analizie poddano wyroki sądów amerykańskich (włącznie z wyrokami Sądu Najwyższego) odnoszące się do problematyki umiejscowienia i roli sędziów pokoju w amerykańskim wymiarze sprawiedliwości.

Słowa kluczowe: sędziowie pokoju; demokracja amerykańska; amerykański wymiar sprawiedliwości