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On Legal Theory and Philosophy in Poland and the Polish Section of IVR¹

From the historical perspective, the theory and philosophy of law in Poland has always been closely linked with a global jurisprudential trend. There are at least two important determinants of this interrelation. The first, referred to by me as institutional and personal, entails, on the one hand, the outstanding figures who shaped the development of intellectual research centres of Polish theory and philosophy of law – these include, amongst others, Jerzy Lande, Czesław Nowiński (before World War II he published under the name Sawa Frydman), Leon Petrażycki, Bronisław Wróblewski and Czesław Znamierowski. The consequence of the scientific and educational activities of these authors was the emergence and development of research centres focused around them, namely Kraków School, Poznań School and Vilnius School. Another institutional and personal determinant of developing the theory and philosophy of law in Poland, and thus its position in the contemporary international scene, is the Lvov-Warsaw School, whose former representatives were: Kazimierz Ajdukiewicz, Tadeusz Czyżowski, Władysław Tatarkiewicz, Kazimierz Twardowski. In the 50s of the past century, these four centres (schools) were joined by another one, i.e. Łódź School, due to the fact that Jerzy Wróblewski – a leading figure in Polish and world science of law – became the head of the Department of Theory and Philosophy of Law. The scientific and educational shape of Polish post-war theory and philosophy of law was undoubtedly influenced by its five outstanding figures – considered as intellectual heirs of the abovementioned authors, i.e. Kazimierz Opałek, Józef Nowacki, Jan Woleński, Zygmunt Ziemiński and Jerzy Wróblewski. We should also mention a strongly emerging trend of the sociology of law, whose first (albo “initial”) propagators in Poland were Adam Podgórecki and was Maria Borucka-Arctowa.

Currently in Poland there are nearly 20 research centres of the theory, sociology and philosophy of law which were shaped by the abovementioned authors, their students or the closest associates. Their scientific activity not only affects the legal theory and philosophy in Poland but it also certainly influences the state of theoretical and jurisprudential knowledge worldwide. It is crucial to mention those authors who – by the fact

¹ The text is not strictly of a reporting nature but it constitutes the author's own viewpoint on the issues indicated in the title. The historical reflection is, to some degree, an idealizing one, yet it is far from misrepresenting anything. For more on the theory and philosophy of law in Poland, see T. Gizbert-Studnicki, K. Pleszka, J. Woleński, *Legal Theory and Philosophy in Poland*, in: *Treatise*, edited by E. Pattaro, publication pending.

of their emigration – developed scientific and educational centres all over the world, including Adam Czarnota (Australia), Jerzy Kalinowski (France), Aleksander Peczenik (Sweden). At present these researchers educate a large group of legal theorists and philosophers of the so-called middle generation, which actively takes part in shaping the theory and philosophy of law worldwide, as evidenced by their participation in many international conferences, in particular in IVR Congresses (*Internationale Vereinigung für Rechts-und Sozialphilosophie* / *International Association for Philosophy of Law and Social Philosophy*).

The scientific and educational activity of Polish theorists and philosophers of law has always been supplemented by their social activities carried out especially within the institutional structure of IVR. The Polish Section of IVR was an initiative of Jerzy Wróblewski and it was registered as an association in 1993. Its activities comprise all academic centres in Poland. It is one of more than thirty national sections of the International Association for Philosophy of Law and Social Philosophy IVR, founded in 1909 in Berlin. The aim of the Association – the Polish Section of IVR is to nurture and support the development of legal philosophy and social philosophy nationally. The Association actively supports contacts between the representatives of legal philosophy and legal theory in Poland and the respective leading centres in the world. This activity is undertaken by means of participation of Polish philosophers and theorists of law in the IVR congresses, generally held every two years, as well as through their participation in international bodies of IVR. The Association organizes conferences, seminars and meetings. Every two years, there are nationwide congresses of the Departments of Theory and Philosophy of Law, attended regularly by over 140 people, ranging from the heads of departments and the most distinguished professors, to assistants and doctoral students (which is unique in Europe). Every two years, the Association also organizes Congresses of Young Theorists and Legal Philosophers, whose idea is to provide junior researchers with training opportunities. Currently, the Polish Section of IVR has around 100 members and the President is Bartosz Wojciechowski.

Since 2010, the Executive Committee of IVR has been issuing a national journal, resembling *Archiv für Rechts-und Sozialphilosophie (ARSP)*. The Journal of the Association of the Polish Section of IVR aims to attract relatively young authors, sometimes those that are still developing their research skills, as well as to cooperate with the authors who are members of other national sections. The programme council consists of the Heads of the Departments of Legal Theory and Philosophy of Law in Poland and of social philosophers cooperating with them. These are Andrzej Bator, Tadeusz Biernat, Tadeusz Buksiński, Stanisław Czepita, Tomasz Gizbert-Studnicki, Hubert Izdebski, Jolanta Jabłońska-Bonca, Adam Jamróz, Andrzej Kaniowski, Stanisław Kaźmierczyk, Małgorzata Król, Leszek Leszczyński, Lech Morawski, Marek Smolak, Tomasz Stawecki Jerzy Stelmach, Andrzej Sylwestrzak, Zygmunt Tobor, Sławomira Wronkowska-Jaśkiewicz, Jerzy Zajadło, Maciej Zieliński. The editorial board consists of Marek Zirk-Sadowski as the editor-in-chief, and Paweł Skuczyński as the managing editor. The content of the journal, besides articles, also includes reviews, polemics and reports.

The second determinant of close interrelation between Polish theory and philosophy of law and its general global trend is referred to by me as substantive one. It is connected with the phenomenon of enormous intellectual activity of all generations of theorists and philosophers of law in a broadly understood scientific trend of philosophy. This

phenomenon naturally remains in a close relationship with the institutional and personal determinant but it is far broader and in this sense it operates at a different, more general level. I am referring at this point to the impact of major trends in the philosophy of the 20th century, which very strongly imprinted on the methodology of jurisprudence in Poland, especially in the way of practising theoretical reflection. On the one hand, there are neo-Thomistic conceptions, traditionally developed in Poland, by for example Mieczysław Krąpiec and Antoni Kość. On the other hand, there are trends with distinct Kantian origins, such as phenomenology and analytic philosophy. Given that from the metaphilosophical point of view they have much in common because they stem from a similar category of problematic questions which were treated as an opposition to the multiplicity of idealistic structures, they have been present for many years in legal theory and philosophy in all abovementioned scientific centres of Polish theory and philosophy of law. The reasons for this phenomenon should be primarily sought in the very presence of phenomenology in Poland, manifested by the activity of one of its most prominent figures, namely Roman Ingarden (Edmund Husserl's student), and secondly, in the presence of analytic philosophy of the Lvov-Warsaw School. This was primarily the trend that has become the cornerstone of Polish reflection on the theory and philosophy of law, especially its version of atomism and logical empiricism, as well as the Oxford ordinary language philosophy. In many studies, especially those written up to 1989, i.e. the year of the political transformation, methods applied by these trends of analytic philosophy formed the basis for solving the problems that arose in the area of the theory and philosophy of law. The number of these studies is so vast that the modest scope of this article does not allow to enumerate even some of them, without being accused of arbitrary choice. A similar tendency can also be observed in the way of practising the theory and philosophy of law in the international arena which, on the one hand, evidences full consistency of Polish and global trends in this discipline of law, and on the other hand, the unity in determining the issues and methods of its analyses undertaken by Polish theorists and philosophers of law.

The scientific activity of Polish theorists and philosophers of law is not confined merely to the study of law with the methods provided by analytic philosophy, but it also responds to alternative trends in the methodology of legal sciences and humanities. These included Chaim Perelman's theory of legal argumentation, Robert Alexy's theory of legal argumentation, Jürgen Habermas's theory of communicative action, a considerable trend in discourse ethics, Ronald Dworkin's integrative philosophy of law and hermeneutics, particularly well observed in German legal philosophy. There can be no doubt that great contribution to global discourse on the issues of argumentation theories and legal hermeneutics, as well as to the introduction of this discourse to Polish theory and philosophy of law has been made by Jerzy Stelmach (doctor honoris causa degree at the universities of Heidelberg and Augsburg).

From the perspective of the problems in question, the research scope of Polish theory and philosophy of law has attempted theoretical analyses in relation to all the issues raised in this field, like the theory of legal norm, the analysis of the concept of obligation and permission, the study of the language of law and legal language, deontic logic and the logic of norms, the theory of legal system, the concept of legal validity, the theory of law making and law application, the concept of law and morality, and the interactions between these two areas, the concept of natural law, the issues of judicial discretion, the methodology of law, the phenomenology of law and lawyers' participation in culture.

Undoubtedly, one of fundamental issues raised in numerous studies devoted to the theory and philosophy of law in Poland is the theory of legal interpretation. Discussions on this issue were initiated in 1959 by Jerzy Wróblewski, with his conception of interpretation based on *interpretatio cessat in claris*. This theory, referred to as semantic and intensional, was subsequently expanded by its author, thus becoming an essential element of the studies of theorists and philosophers of law worldwide. The theory of J. Wróblewski is currently being developed primarily by Lech Morawski. The discussion around the issues of this theory resulted in the creation of two theories of legal interpretation – so to say contrary to the conception of J. Wróblewski – i.e. the first developed by Maciej Zieliński, described as a derivative conception of legal interpretation (1972) and the second created by Jan Woleński, referred to as a semantic and extensional conception of legal interpretation (1972), currently developed by Krzysztof Płeszka. In recent years there also appeared a conception of horizontal interpretation, developed by Ryszard Sarkowicz, and a conception of legal interpretation undertaken from the point of view of validity and semantics, as developed by Leszek Leszczyński. In addition to the theory of interpretation in the strict sense, there also exists a reflection defined as philosophy of interpretation, developed primarily by Jerzy Stelmach and Marek Zirk-Sadowski, referring primarily to hermeneutic philosophy.

The perspective of the last decade of scientific and educational activity of the theory and philosophy of law in Poland prompts two observations. Firstly, Polish theory and philosophy of law has maintained continuity of the tradition of science and education, despite numerous economic and political changes that took place in the 20th century in Poland. No doubt this is thanks to enormous intellectual potential of Polish theorists and philosophers of law, which currently results in their permanent participation in the global discourse. Secondly, the last few years have been a period of systemic changes in higher education concerning Polish legal system, which largely relate to changes in the structure of scientific activity, which in turn led to an even greater activity of Polish theorists and philosophers of law in the international arena. Naturally, the phenomenon of globalization and systemic changes was not a necessary condition for participation of Polish theory and philosophy of law in the international discourse (since its presence has always been felt there), but the fact that the system of higher education is finally open for scientific research projects results in an even closer cooperation with many international centres of the theory and philosophy of law.

All the current problems in the field of jurisprudence are now the subject of many research projects, conferences and individual research. The last decade has produced many studies on the economic analysis of law, legal ethics, bioethics and biojurisprudence, monism and multicentrism of legal systems, intercultural criminal law and the issues related to the effect of globalization. A peculiar novelty in the research undertaken by Polish theorists and philosophers of law are the issues related to the area of cognitive science and bioscience. A current interest in the theory and philosophy of law in Poland is specifically directed at the issue of international security, the theory of human rights and the aspects of humanitarian intervention. This is due to the global trend connected with the need of intellectual recognition of the pending questions related to armed conflicts around the world, the phenomenon of violating basic standards of law and the issues of global economic crisis. What remains a crucial field of interest for many theorists and philosophers of law in Poland, is the topical issue of validity of law and the attempt of its uniform conceptualisation. In recent years, fundamental research

in this area has been conducted by Andrzej Grabowski. This author also polemicalised with Ralf Dreier's and Robert Alexy's nonpositivist concept of legal validity.

It merits noting that in addition to numerous conferences, conventions and seminars, a major scientific forum of the theory and philosophy of law in Poland are various periodicals, whose existence has played an important role in the intellectual development of the representatives of legal professions. These include *Państwo i Prawo* [Eng. *Law and State*], *Ruch Prawniczy, Ekonomiczny i Socjologiczny* [Eng. *Legal, Economic and Sociological Movement*], *Studia Prawno-Ekonomiczne* [Eng. *Legal and Economic Studies*], *Studia Prawnicze* [Eng. *Legal Studies*], *Studia z Filozofii Prawa* [Eng. *Studies in the Philosophy of Law*], *Krakauer-Augsburger Rechtsstudien*.

Last ten years of Polish activity in the field of the theory and philosophy of law have also involved crucial activity of academic law clinics. In Poland there are currently 25 law clinics where law students provide free legal assistance.

Finally, we should mention crucial contribution of Polish theorists and philosophers of law to the activities connected with translating and popularizing respective topics related to jurisprudence. The last few years have provided an enormous number of translations of many important studies on the theory and philosophy of law, including among others the works of Robert Alexy, Ronald Dworkin, John Finnis, Jürgen Habermas, Herbert Hart, Ottfried Höffe, David Lyons, Joseph Raz, Adolf Reinach, Roberto Unger.

The popularization activities resulted in many reference books and compilations, covering the whole spectrum of the theory, sociology and philosophy of law.

Some important works published in recent years in English include:

- Bartosz Brożek *Defeasibility of Legal Reasoning* (2004);
- Wojciech Załuski *Evolutionary Theory and Legal Philosophy* (2009);
- *Multicentrism as an Emerging Paradigm in Legal Theory*, edited by M. Zirk-Sadowski, B. Wojciechowski, and M.J. Golecki (2009);
- *Between Complexity of Law and Lack of Order. Philosophy of Law in the Era of Globalization*, edited by B. Wojciechowski, M. Zirk-Sadowski, and M.J. Golecki (2009);
- *Studies in the Philosophy of Law 4. Legal Philosophy and the Challenges of Biosciences*, edited by J. Stelmach, M. Soniewicka, W. Załuski (2010);
- *Studies in the Philosophy of Law 5. Law and Biology*, edited by J. Stelmach, B. Brożek, M. Soniewicka (2010);
- Bartosz Wojciechowski *Philosophical Approach to the Interculturality of Criminal Law* (2010);
- *Humanitarian Interventions*, edited by S. Sykuna, T. Widłak, J. Zajadło (2010).