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A Note of Appreciation for Adam Podgórecki Who Alerted the Oxford Centre for Socio-Legal Studies Many Years Ago to the Importance of the Rule of Law, Thus Preparing Us for Recent Challenges

Wyrazy uznania dla Adama Podgóreckiego,
który wiele lat temu zwrócił uwagę Oxford Centre
for Socio-Legal Studies na znaczenie rządów prawa,
przygotowując nas tym samym
na niedawne wyzwania

Abstract

This article records thanks to Adam Podgórecki for introducing discussion of the rule of law on his visit to the Oxford Centre for Socio-Legal Studies fifty years ago, and thereby for stimulating use of the concept during the recent period of 14 years of Tory government in the UK, which ended in July 2024.

Keywords: Adam Podgórecki, Rule of Law, legislative process in the United Kingdom, Parliamentary sessions, UK Supreme Court

Abstrakt

Niniejszy artykuł stanowi podziękowanie dla Adama Podgóreckiego za zainicjowanie dyskusji na temat rządów prawa podczas jego wizyty w Oxford Centre for Socio-Legal Studies 50 lat temu oraz

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za stymulowanie korzystania z tej koncepcji w ostatnim okresie 14 lat rządów torysów w Wielkiej Brytanii, który zakończył się w lipcu 2024 roku.

Słowa kluczowe: Adam Podgórecki, praworządność, proces legislacyjny w Wielkiej Brytanii, sesje parlamentarne, Sąd Najwyższy Wielkiej Brytanii

As a founder member of the Centre for Socio-Legal Studies in Oxford, it has been a great pleasure for me to take part in the Human Rights Days, and to express and reaffirm the close connection between the law faculties and socio-legal groups in Oxford, Warsaw, and now Lublin. I have had the pleasure of working closely with Jacek Kurczewski and Małgorzata Fuszara for many years, and have enjoyed having my Western mind opened up to a better understanding of the wider Europe, as well as developing an appreciation of the music of Chopin. We have published many books together, as shown in the list of publications in the IISL Onati Series with Hart¹, as well as enjoying and learning from Workshops in Onati on many subjects, most recently and appropriately Mental Capacity, as we approach our 80s.

All of this collaborative work and all of these friendships began in the Centre for Socio-Legal Studies in Oxford, the first sociology of law centre in the UK, set up by Don Harris from New Zealand, a wonderful scholar and colleague. He valued and respected the connection with Poland, especially the University of Warsaw, originally established during the Second World War between Warsaw and Oxford. In the Boardroom of the Oxford Law Faculty, there remains a brass plate on the wall, put up nearly 80 years ago, announcing and celebrating this relationship. And sometime after I had joined the Centre the month it opened in 1972, I walked into my tiny office one morning to find someone there before me... a quiet, tired gentleman with very little English, whom Don Harris introduced as our eminent visitor from Warsaw... Professor Adam Podgórecki. He had been recently deposed from his chair in Warsaw by the Communist authorities and found refuge in our tiny new centre. His colleagues, led by Adam's student Jacek Kurczewski, who in turn introduced his student Małgorzata Fuszara, soon followed in his footsteps and we became, and remain, firm friends and colleagues in research. For example, on 1 May 2023, at the suggestion of Professors Kurczewski and Fuszara, we held an international seminar in Lon-

¹ *Families, Politics and the Law: Perspectives for East and West Europe*, eds. M. Maclean, J. Kurczewski, Clarendon, Oxford 1994; *Family Law and Family Policy in the New Europe*, eds. J. Kurczewski, M. Maclean, Dartmouth, Aldershot 1997; *Family Law and Family Values*, ed. M. Maclean, Hart Publishing, Oxford 2005; *Parenting after Partnering: Containing Conflict after Separation*, ed. M. Maclean, Hart, Oxford 2007; M. Maclean, J. Kurczewski, *Making Family Law: A Socio Legal Account of Legislative Process in England and Wales, 1985 to 2010*, Hart Publishing, Oxford 2011.

don to support the career in exile of our Ukrainian friend Professor Oksana Tashkinova. She had fled Mariupol with her young son but continued her research on the train towards Warsaw carrying out interviews with the other women passengers. Since then, with the support of Jacek and Malgorzata, a fine account has been published from her about this courageous group of travellers and their children, describing the pressure to leave, the awareness of possible opportunities which might arise, and the tragedy of leaving home, family and friends in such terrible circumstances.²

Professor Podgórecki was to remain in Oxford for some time, much to the benefit of those of us working at the Centre for Socio-Legal Studies. As he began to speak more English, he often referred to what he called the “Rule of Law”. This term was quite new to us. In our sheltered lives in the UK law was just law... it was the rule... and it was by and large obeyed. Water came out of taps. Law came out of governments. There was little questioning about the making of law, though of course there were also concerns about lack of obedience which would be dealt with by the authorities, i.e. the police and the courts.

When invited to the meeting in Lublin, I was therefore afraid that I had little to offer to the experts in these debates surrounding the key concept of the rule of law. I had remained ignorant of the questions and issues surrounding the rule of law, but suddenly my government began to educate me by breaking the rule of law in very public and distressing ways. Firstly, in 2014, the government attempted to close (prorogue) Parliament improperly for political reasons to expedite the Brexit legislation and prevent delay in leaving Europe. And recently, the matter arose again over the question of controlling immigration to the UK. The matter had never been discussed, in my memory, before the period of Tory government led first by Boris Johnson, but suddenly the words “Rule of Law” appeared frequently in newspaper headlines, TV shows, the radio, and on the bus or tube train- ...everywhere. We have been learning fast, led by our new Supreme Court, established in 2009.

But first, let us clarify the background to these issues by addressing the question of where do our UK laws come from. A complex pathway was followed historically from decisions made by individuals, to large assemblies, then to small tight groups surrounding a powerful individual, and back again. But essentially the laws of England were traditionally given legitimacy by kings, with an interruption following our regicide in 1649. I understand that in Poland kings were being elected as we were convicting ours of treason...

² O. Tashkinova, *War Routes of Civilian Mariupolites: Sociological Exploration*, “Societas/Communitas” 2021 [2023], vol. 32, no. 2, p. 293–308; Cf.: O. Tashkinova, *The Traumatic Experience of the Mariupol Civilians’ Forced Migration and Adaptation Abroad in 2022*, “Collection of papers New Economy. Innovative Solutions for Managing” 2023, vol. 1, no. 1, <https://conference.oikosinstitut.org/files/proc/Vol1No1/7.pdf>.

Ever since the Restoration of the monarchy in London in 1660, however, following the short period of interregnum known as the Commonwealth led by Oliver Cromwell, the making of law by statute has been carried out in the United Kingdom by the sovereign in Parliament, i.e. the sovereign signs off what an elected government decides. (And a fine statue of Oliver Cromwell still stands outside the Parliament building in Westminster.)

We also have common law, which is the law made by decisions of lower courts, an accretion of individual judicial decisions. These develop in close contact with the public, case by case, rather than being imposed from above. Magistrates are known and respected figures locally, not remote top-down law-makers in a central legislature.

Although the role of the sovereign in the legislative process has long been only formal, there is in addition a gap in the legislative process, a space, which can be used following a disagreement between the two houses of Parliament, the House of Commons, which is elected by universal suffrage, and the House of Lords, which until recently, in 1999, was populated by hereditary lords with 26 bishops of the established Church of England. Until 1911, both houses, Commons and Lords, needed to agree for a piece of legislation to pass. But the Parliament Act of 1911 gave the Lords the power to delay the passing of a law, the most common disagreements being about budgets. They still have this power, even though the membership is now no longer made up of mainly hereditary peers, but a mixed group of some hereditaries, plus 26 bishops of the Anglican Church (membership of which had fallen to an active worshipping community of 1.7% of the population of England by 2021). The total membership of the House of Lords currently numbers 784, of whom 92 are now hereditary lords and ladies.

But the context is changing as the traditional two-party system is becoming more complex. The political parties are dividing, and in addition, there seems to be a growing focus on rights rather than laws. Recently, we have experienced a new form of political crisis, where there has been conflict with government, and since 2009, when the senior judges who had previously sat in the House of Lords as Law Lords moved out into their own establishment close to the Palace of Westminster on the other side of Westminster Square, now called the Supreme Court!

This new court began to find itself increasingly critical of the actions of the Parliament which they had formerly been members of. As the bitter disputes over leaving Europe, known to us as Brexit increased, the government in 2014 took the unprecedented step of immediately proroguing (i.e. ending the session of) Parliament. A case was brought by a citizen, Miss Gina Miller, who argued in the Supreme Court that this action was not legally valid. And she won! On the day when Lady Brenda Hale, then President of the Court, announced the verdict, the chamber was surrounded by armed guards and civil disruption

was expected. But this did not happen: the Court's verdict was upheld, and we began to become more familiar with the term Rule of Law!

Sadly, other issues have arisen since, in particular over the Government's plan to send to Rwanda the illegal immigrants arriving by boat from France across the Channel. A case was brought before the Supreme Court, arguing that to do this would breach international human rights law, as Rwanda was not a safe place and would be likely to send immigrants back to the countries from which they had fled in fear for their lives. The Government insisted Rwanda was safe. The Supreme Court made its own inquiries and found it not to be safe.³ The then Prime Minister, Rishi Sunak, insisted it was safe and signed a treaty with Rwanda which says it is safe ... and was willing to limit international human rights elements in international legislation. But so far, more Home Secretaries have travelled to Rwanda than immigrants. The cost of the scheme is high and would only be able to deal with small numbers of immigrants. Furthermore, the current bill caused Tory party divisions because it is not tough enough on these illegal immigrants!

The situation remained unsettled at the time of the Lublin Conference. Did we seek the Rule of Law meaning the rule of the democratically elected chamber in Parliament? Or did we include the Lords and the sovereign as decision makers? And what did we want from the new Supreme Court, whose members were until recently the Law Lords who sat in the House of Lords? There are also questions arising about inappropriate appointments to the House of Lords. The patronage of departing Prime Ministers in putting forward candidates to become members of the House of Lords became a particular issue recently as the duration of a premiership became rather short in the period following the controversial premiership of Boris Johnson.

The government introduced a bill in Parliament to further their Rwanda plan in 2024, which stated that Rwanda is a safe country. As the recent Tory Government began preparing for the general election recently held on 4 July 2024, questions about disregarding the judgment of the Supreme Court and pushing a bill through Parliament gave rise to heated debate.⁴

³ The Supreme Court, *Judgment: R (on the application of AAA (Syria) and others) (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent)*, 15.11.2023, <https://www.supremecourt.uk/cases/docs/uksc-2023-0093-etc-judgment.pdf> (accessed: 15.07.2024).

⁴ See Institute for Government summary: J. Jones, *The Supreme Court's Rwanda Verdict and Rishi Sunak's Response: What Happens Next?*, <https://www.instituteforgovernment.org.uk/comment/supreme-court-rwanda-rishi-sunak-response> (accessed: 15.07.2024); P. Birkinshaw, *The Rwanda Bill, Boat People and International Law*, "European Public Law" 2024, vol. 30, no. 2, p. 77–100, <https://doi.org/10.54648/euro2024006>.

It was time for rather more serious attention to be paid to the concept and implementation of the rule of law in what used to be called the cradle of democracy in Westminster, and to continue to learn from the complex experience of Eastern Europe, and especially our colleagues from Poland. Following the landslide win of the Labour Party in the recent election, July 2024, the newly formed Labour government led by Prime Minister Keir Starmer (formerly Director of Public Prosecutions) has announced that the bill will not be put into effect. Instead attempts will be made to stop illegal entry to the UK via small unsafe boats across the Channel from France by paying attention to controlling the criminal gangs who profit from selling places on these dangerous methods of travel.⁵

Under this new Labour Government, led by a lawyer and with a celebrated internationally respected lawyer Lord Harmer human rights expert as Attorney General, we can look forward to a form of government free from the wayward conduct of the previous Tory government and to a greater awareness and appreciation of the Rule of Law. The Centre for Socio-Legal Studies in Oxford having experienced in person the wisdom of Adam Podgórecki will be well placed to contribute to these developments.

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