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Kwartalnik

Complete and Crippled Human Rights: On the Concepts
of Adam Podgórecki on the 25th Anniversary of His Death

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Introduction

This thematic issue of “Zeszyty Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II” is a result of the XL Human Rights Days, an annual conference with a rich tradition dating back to the early 1980s, organised in the Institute of Sociological Sciences at the John Paul II Catholic University of Lublin. Held on 13–14 December 2023 in cooperation with the Lublin section of the Polish Sociological Association, the conference was entitled “Complete and Crippled Human Rights: On the Concepts of Adam Podgórecki on the 25th Anniversary of His Death.”¹ It served a dual purpose: to honour the legacy of this remarkable scholar,² a founding figure in the International Sociological Association’s Research Committee on Sociology of Law, and to introduce human rights scholars to his pivotal distinction between crippled and complete rights, as well as to stimulate the application of this distinction and other Podgórecki’s sociological contributions to human rights research.³

¹ The programme of the conference is available at https://www.kul.pl/the-xl-days-of-human-rights,art_105240.html.

² See e.g.: J. Kurczewski, *In Memoriam. Adam Podgórecki*, “Studia Socjologiczne” 1998, no. 3, p. 13–17; A. Kojder, *Adam Podgórecki’s “Vita Activa”*, “Polish Sociological Review” 1999, vol. 126, no. 2, p. 323–330; K.A. Ziegert, *Adam Podgórecki’s Sociology of Law: The Invisible Factors of the Functioning of Law Made Visible*, “Law and Society Review” 1977, vol. 12, p. 151–180; J. Kurczewski, *Adam Podgórecki’s Empirical Theory of Law*, “Societas/Communitas” 2013, no. 1, p. 79–97; H. Dębska, *Herezja w prawoznawstwie. Trajektoria polskiej socjologii prawa w XX wieku*, in: *Polskie nauki społeczne w kontekście władzy i zależności międzynarodowych*, ed. T. Zarycki, Wydawnictwa Uniwersytetu Warszawskiego, Warsaw 2022, s. 105–137; K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland under Communism*, in: *Leon Petrażycki. Law, Emotions, Society*, eds. E. Fittipaldi, A.J. Treviño, Routledge, New York 2023, p. 47–71.

³ The distinction is referred to in a few publications: J. Kurczewski, *The Resurrection of Rights in Poland*, Clarendon Press, Oxford 1993, p. 390; M. Krygier, A. Czarnota, *Rights, Civil Society, and Post-Communist Society*, in: *Western Rights? Post-Communist Application*, ed. A. Sajó, Kluwer Law International 1996, p. 101–137, at 104; M.J. Fariñas Dulce, *Los derechos humanos: desde la perspectiva sociológico-jurídica a la “actitud postmoderna”*, Instituto de Derechos Humanos Bartolomé de las Casas, Universidad Carlos III de Madrid, Madrid 1997, p. 7; K. Dzieniszewska-Naroska, *The Citizens’ Rights and Freedoms in the Legal Understanding of the Small Town’s Inhabitants*, “Prace ISNS” 1999, no. 2: *Sociology of Law: Prof. Adam Podgórecki in Memoriam*, p. 267–295, at 268; R. Oviedo, *Relatos, revueltas y desventuras de la gente entintada del Pacífico Sur*, Universidad de Nari, Departamento de Sociología Observatorio Social, Graficolor, Pasto, Nariño 2009, p. 7–8, <https://sired.udenar.edu.co/370/1/LibroGenteEntintada.pdf> (accessed: 09.09.2024); M. Krygier, *The Rule of Law and ‘the Three Integrations’*, “Hague Journal on the Rule of Law” 2009, vol. 1, no. 1, p. 21–27 at 26; A. Noguera



Podgórecki presented the distinction at the International Congress of Sociology of Law in Bologna in 1988.⁴ He considered it – and the related concept of intuitive law – essential for the sociology of human rights. He wrote:

In order to establish the basis for an adequate sociology of human rights, one must first elaborate two introductory concepts. The first concept is intuitive law. [...] The second concept is of a classificatory nature. It distinguishes: a) crippled and b) complete human rights. In social reality, as a rule, human rights are mainly abstract, meaning that they are pronounced, but not necessarily practiced. Abstract rights become crippled when they do not provide realistic conditions for their own operation. [...] For human rights to be complete, it is crucial not only that written prescripts be in congruence with the respective attitudes of intuitive law, but also that institutional and/or organizational links exist between these two elements.⁵

Podgórecki's distinction was rooted in Polish academic debates on the guarantees of the rule of law and constitutional rights, which often differentiated between formal/legal/institutional guarantees and extralegal/informal/socio-economic guarantees (conditions). These debates included considerations of legal consciousness and political culture,⁶ but none went as far as Podgórecki in dividing rights based on the existence – or the lack – of such guarantees. His approach builds on Leon Petrażycki's concept of intuitive law, even though Podgórecki defines it somewhat differently, considering it synonymous with what has been termed living law, informal law or folk law. His reference to “institutional and/or organizational links” in the context of complete rights, however, remains somewhat underexplained. Strangely enough, he does not incorporate his hypothesis of the three-level operation of the law into this analysis.

Fernández, *Derechos fundamentales y normativa sobre inmigración en el marco de la Unión Europea*, “Revista Universitaria Europea” 2012, no. 17, p. 75–88, at 84, <http://www.revistarue.eu/RUE/102012.pdf> (accessed: 09.09.2024); A. Jacqmin, *When Human Claims Become Rights. The Case of the Right to Truth over “Desaparecidos”*, “Oñati Socio-Legal Series” 2017, vol. 7, no. 6, p. 1247–1272, at 1250, <https://opo.iisj.net/index.php/osls/article/view/866/1048> (accessed: 09.09.2024).

⁴ A. Podgórecki, *Toward a Sociology of Human Rights*, in: *Laws and Rights. Proceedings of the International Congress of Sociology of Law for the Ninth Centenary of The University of Bologna (May 30 – June 3, 1988)*, ed. V. Ferrari, Giuffrè, Milano 1991, p. 417–432, included as a chapter *Human Rights Revolution* in his *A Sociological Theory of Law*, Giuffrè, Milano 1991.

⁵ Ibidem, p. 101–103.

⁶ See e.g.: H. Suchocka, *Rodzaje konstytucyjnych gwarancji praworządności w europejskich państwach socjalistycznych*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1974, no. 2, p. 55–70, at 57; B. Banaszak, A. Preisner, *Prawo konstytucyjne. Wprowadzenie*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 1993, p. 104.

This issue of the journal provides space for a more detailed discussion of Podgórecki's sociological ideas on complete and crippled rights. Several articles delve into these topics, offering both theoretical explorations and contemporary applications.

These are preceded by two letters addressed to the conference participants. The first is by Professor Mirosława Grabowska of the University of Warsaw, President of the Polish Sociological Association and a former student of Podgórecki. The second is by Professor Emeritus Maria Łoś-Podgórecka of the University of Ottawa, who was first his student, then collaborator, and eventually his wife.

The authors of the articles featured in this issue are connected in various ways to Adam Podgórecki and his intellectual legacy. Several of them, including Mavis Maclean, Jacek Kurczewski, Małgorzata Fuszara, Stefka Naoumowa, and Agata Fijalkowski, had the privilege of knowing Podgórecki personally, most of them since the 1970s. Naoumowa and Kurczewski earned their doctorates under his supervision and collaborated with him on research projects. Others, while not having met Podgórecki in person, have engaged deeply with his sociological contributions. Michael D. Kennedy's work included the review of *Polish Society*, one of the latest of Podgórecki's books,⁷ while Janine Wedel has explored, adopted and disseminated his concept of "dirty togetherness" in her studies on corruption and informal networks.⁸ Agata Przylepa-Lewak wrote the only doctoral dissertation on Podgórecki's sociology of law published to date, offering an in-depth exploration of his theories.⁹ Bartosz Pilitowski has drawn on Podgórecki's work in his research on the right to a fair trial.¹⁰ Paweł Orzechowski co-authored a continuation of Podgórecki's research on attitudes towards law and earned his doctorate under Jacek Kurczewski; thus one could say that he is a "scholarly grandson" of Podgórecki. Finally, I myself have published several works on Professor Podgórecki's place in the socio-legal Petrażyckian tradition¹¹ – having had the honour and pleasure of exchanging correspondence

⁷ M.D. Kennedy, *Book Review: Adam Podgórecki, Polish Society*, "Contemporary Sociology" 1995, vol. 24, no. 2, p. 222–223.

⁸ See e.g.: G.W. Creed, J.R. Wedel, *Second Thoughts from the Second World: Interpreting Aid in Post-Communist Eastern Europe*, "Human Organization" 1997, vol. 56, no. 3, p. 253–264; J.R. Wedel, *Shadow Governing: What the Neocon Core Reveals about Power and Influence in America*, in: C. Shore, S. Wright, D. Però, *Policy Worlds: Anthropology and the Analysis of Contemporary Power*, Berghahn Books, New York 2011, p. 151–168.

⁹ A. Przylepa-Lewak, *Wkład Adama Podgóreckiego w powstanie i rozwój socjologii prawa*, Wydawnictwo UMCS, Lublin 2020.

¹⁰ S. Burdziej, B. Pilitowski, K. Guzik, *Fairness at Trial: The Impact of Procedural Justice and Other Experiential Factors on Criminal Defendants' Perceptions of Court Legitimacy in Poland*, "Law & Social Inquiry" 2019, vol. 44, no. 2, p. 359–390, at 373.

¹¹ See n. 2, above.

with him over several years and finally meeting him in person during his visit to Poland shortly before his death in 1998.

The article that opens our collection is an essay by Mavis Maclean – an eminent British socio-legal scholar, founding member of the Oxford Centre for Socio-Legal Studies, and former Director of the International Institute on Sociology of Law in Oñati, a place truly dear to Adam Podgórecki. Professor Maclean has been in touch with Warsaw sociologists of law for over 40 years and was awarded the ISA RCSL Adam Podgórecki Prize. In her essay, she notes that Polish scholars' relations with Oxford University's Faculty of Law date back to 1944–1947 when – let's add – the Polish Law Faculty operated within the University. This is commemorated by a brass plaque still proudly hanging on the wall in the Oxford Faculty of Law Board Room.¹² In the first part of the essay, Mavis Maclean recalls her first meeting with Adam Podgórecki and credits him with initiating a discussion around the rule of law in the Oxford Centre for Socio-Legal Studies. In the second part of the essay, she reflects critically on the rule of law in the United Kingdom and – from this perspective – presents the former UK Government's policy towards illegal immigrants from Rwanda.

The article by Michael D. Kennedy, Professor of Sociology and International and Public Affairs at Brown University, whose scholarly connection to Poland has been an important element of his academic profile, marked by four decades of collaboration and close ties with Polish sociologists,¹³ begins by considering Podgórecki's place in American sociology¹⁴ and his own review of Podgórecki's *Polish Society*. He then reflects on law, human rights, justice, and love “in Podgórecki's light and Petrażycki's shade.” This intellectual lineage serves as a prism through which Professor Kennedy discusses Russia's invasion of Ukraine and the enduring conflict in Israel and Palestine.

In the next article, Bartosz Pilitowski, the President of the Board of the Court Watch Poland Foundation, draws on Podgórecki's theory of human rights, as well as on the works of Leon Petrażycki and Lawrence M. Friedman and focuses on the obstacles to implementing the right to a fair trial in Poland. Pilitowski categorises them into three areas: legal regulations, institutional conditions, and legal culture, with a particular emphasis on judicial culture, which he considers

¹² The plaque reads: “*Facultas iuridica Polonorum in Universitate Oxoniensi. From 1944–1947 The University was honoured to be party to the creation of The Polish Faculty of Law situated at Oriel College [.] 266 students were awarded degrees.*”

¹³ See: *Czy można być szczęśliwym profesorem? O przywództwie akademickim rozmawiają Michael D. Kennedy, Anna Giza-Poleszczuk i Michał Łuczewski*, “*Stan Rzeczy*” 2021, no. 1 (20), p. 263–282.

¹⁴ Cf. his article: *Poland in the American Sociological Imagination*, “*Polish Sociological Review*” 2004, no. 4, p. 361–383; see also: A. Sulek, “*To America!*” *Polish Sociologists in the United States after 1956 and the Development of Empirical Sociology in Poland*, “*East European Politics and Societies*” 2010, vol. 24, no. 3, p. 327–335.

the most persistent barrier to the realisation of this right. The article offers a vital contribution to the understanding how institutional and cultural factors shape access to justice in contemporary Poland.

The author of the next article is Stefka Naoumowa, Professor Emeritus at the Institute of Legal Sciences of the Bulgarian Academy of Sciences and a leading Bulgarian sociologist of law. After a brief reminiscence of Adam Podgórecki, under whose guidance she wrote her doctoral thesis in the sociology of law on legal consciousness (the first thesis on this area of study in her country), Professor Naoumowa presents the place of this phenomenon in the sociology of law of her master, the contexts in which he analysed it, and selected results of his and her own research in this area.

Dr Agata Fijalkowski, Reader at the Leeds Beckett University, who has been familiar with Polish socio-legal thought for years and has authored several important works on Polish law,¹⁵ begins her article by recalling her first meeting with Podgórecki in the mid-1990s at the International Institute for the Sociology of Law in Oñati, where, during an informal lunch, he reflected on the role that cooking schools had played under the authoritarian regime of General Franco, describing them as “pockets of democracy.” A. Fijalkowski connects this idea to similar spaces in Albania, and through the lenses of Podgórecki’s theory of totalitarian law, as well as the experience and testimony of the main protagonist of the article, Musine Kokalari, a writer and dissident, she examines totalitarianism in communist Albania.

In the next article, Agata Przylepa-Lewak, Assistant Professor at Maria Curie-Skłodowska University in Lublin, examines Podgórecki’s notion of social oppression, a phenomenon he both studied and experienced as a man and a scholar in Poland under communism.¹⁶ It is worth noting that the relationship between human rights and social oppression is, of course, negative, as expressed, among others, in the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen, which in Article 2, among the natural and imprescriptible rights of man, after liberty, property, and security, lists “resistance to oppression”. A. Przylepa-Lewak presents Podgórecki’s views on the essence of social oppression, methods of its study, its various forms, its ties to law, and its implications for human rights.

The article by Jacek Kurczewski, Małgorzata Fuszara, and Paweł Orzechowski, of the Department of Sociology and Anthropology of Custom and Law, Institute of Applied Social Sciences at the University of Warsaw, contributes

¹⁵ E.g. *From Old Times to New Europe: The Polish Struggle for Democracy and Constitutionalism*, Ashgate, Aldershot 2010; *Politics, Law, and Justice in People’s Poland: the Fieldorf File*, “Slavic Review” 2014, vol. 73, no. 1, p. 85–107.

¹⁶ See: D. Wicenty, *The Experience of Oppression and the Price of Nonconformity: A Brief Biography of Adam Podgórecki*, “Studies in East European Thought” 2018, vol. 70, no. 1, p. 61–81.

to the long-standing tradition of socio-legal research on public opinion and attitudes towards compliance with the law established by Podgórecki. The authors discuss the results of their own research on this issue, conducted in 2023, and compare them with the results of research carried out by Podgórecki in 1964. A distinctive feature of their analysis is the inclusion of the natural law/legal positivism divide. This collaborative work exemplifies the continuity and evolution of Podgórecki's intellectual legacy across generations.

The author of the article closing our collection is Janine R. Wedel, an anthropologist and Professor at George Mason University, recognised for her work on corruption, informal networks, and governance. For over 30 years, Professor Wedel has engaged with Polish academia. In her article, she revisits Adam Podgórecki's concept of "dirty togetherness", which described the informal networks that helped individuals navigate shortages in communist Poland. She explores how these networks evolved, influencing market and democratic institutions, and argues that this phenomenon has taken on global significance, now manifesting as "weaponised corruption", a tool for strategic, geopolitical ends, threatening democracy.

Two more people ought to be highlighted in this short Introduction. The first is the late Professor Kazimierz Frieske, first a student and later a collaborator of Adam Podgórecki. He delivered the opening paper at the XL Human Rights Days on Podgórecki's global ethics, but – very sadly – he passed away in February this year, joining two of his colleagues and disciples of Podgórecki: Andrzej Kojder and Jerzy Kwaśniewski. The second is also a person who is no longer alive, my mentor, Professor Hanna Waśkiewicz. She deserves to be mentioned not only because it was she who initiated and organised Human Rights Days for the first 10 years, but also because, although she was a philosopher of law, not a sociologist, she was one of the first to call for sociological research on human rights, in 1986, and outlined the research problems in this area.¹⁷ Therefore, on the twentieth anniversary of A. Podgórecki's death, and the twentieth anniversary of H. Waśkiewicz's death, we dedicated the XXIX Human Rights Days entitled "Human Rights in Sociological Perspective" to their memory.¹⁸

There is yet another, very important feature that Adam Podgórecki shared with Hanna Waśkiewicz: character. He displayed intellectual integrity, honesty and fidelity to his scholarly and ideological beliefs – which was not common in the oppressive world of science in Poland under communism, especially in legal sciences, but also in sociology.

¹⁷ H. Waśkiewicz, *Some Remarks on the Necessity of Sociological Study of Some Aspects Human Rights Problems*, in: *Niedzica Castle Papers on Rights and Duties*, ed. J. Kurczewski, University of Warsaw, Institute of Social Prevention and Resocialisation, Sociology of Custom and Law Unit, Warsaw 1987, p. 36–45.

¹⁸ See: https://www.kul.pl/xxxvi-dni-praw-czlowieka,art_83863.html.

This is a further reason to hope that the XL Human Rights Days and this collection of articles will be followed in Poland and abroad by similar scholarly enterprises in 2025, the year of the 100th anniversary of the birth of this fascinating scholar – “the recognised father”¹⁹ of Polish sociology of law.

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¹⁹ Cf. A. Podgórecki, *The Unrecognized Father of Sociology of Law: Leon Petrażycki. Reflections Based on Jan Gorecki's Sociology and Jurisprudence of Leon Petrażycki*, “Law & Society Review” 1980, vol. 15, no. 1, p. 183–202.

To the Participants of the 40th Human Rights Days

Warsaw, 11 December 2023

Dear Ladies and Gentlemen, participants of the 40th Human Rights Days, held on the 25th anniversary of Adam Podgórecki's death centred on the concept of complete and flawed human rights.

First of all, my compliments to the organisers of the Human Rights Days for the impressive range of issues raised, for bringing together excellent speakers and for honouring Adam Podgórecki as the patron of these Days. Let me start with a personal reminiscence: I belong to the generation which still had the chance to listen to the lectures of Prof. Adam Podgórecki. I remember his slightly stooped figure, his unhurried manner of speaking, with his characteristic occasional murmuring. But I also remember the content of the lectures, which consisted of theory and empirical research in the sociology of law, which was a pioneering approach at the time. Pioneering because it founded a new field of sociological science – the sociology of law, and also pioneering because Prof. Podgórecki was seeking to combine theoretical concepts with empirical data. Among the compulsory readings for the exam were also his books *Prestiż prawa* [*Prestige of the Law*] (1966), *Patologia życia społecznego* [*Pathology of Social Life*] (1969) and *Zarys socjologii prawa* [*Outline of the Sociology of Law*] (1971). At the University of Warsaw, Adam Podgórecki found himself on the wave of the 1956 thaw, first in the Department of Logic of Prof. Tadeusz Kotarbiński, and from 1958 in the Department of History and Theory of Morality, chaired by Prof. Maria Ossowska. He was a co-founder of the interdisciplinary Institute of Social Prevention and Resocialisation (IPSiR), where he chaired the Department of Sociology of Norms and Social Pathology. Removed from the university on charges of “anti-state research activities”, he left Poland in 1977. He was a professor at Carleton University in Ottawa, and guest lectured at many prestigious

universities. His students and followers remained in the country, including, in alphabetical order, Kazimierz Frieske, Andrzej Kojder, Jacek Kurczewski, and Jerzy Kwaśniewski, two of whom are among the speakers. The institute he co-founded, which today is part of the Faculty of Applied Social Sciences and Resocialisation, remains to the present day. And, above all, there remains the now firmly established sociology of law. It has continued not only in Poland: in order to honour Adam Podgórecki's significant contribution to the development of the sociology of law, The Research Committee on Sociology of Law (one of the committees of The International Sociological Association) established an annual prize named after him, which is awarded for outstanding achievements in socio-legal research. Adam Podgórecki can be envied for his good fortune and for his masters (Leon Petrażycki, Maria Ossowska) and students, his organisational skills and his academic legacy. Under such patronage, the 40th Human Rights Days will certainly be inspiring and fruitful, which I wish to you.

Mirosława Grabowska
President of the Polish Sociological Association

A Word from Professor Maria Łoś-Podgórecka

Ottawa, 11 December 2023

It is natural that with the passing years, the central stage of various branches of science is taken over by new generations. Only very few of the older scholars continue to live in the collective memory as paragons, providing a vision for the development of the given discipline as well as the values that constitute its ethos.

The past 25 years brought enormous changes in Poland and in the world as well as in sociology as a discipline. The fact that Adam stays in the collective memory 25 years after his passing is reassuring and indicates a lasting need for genuine authority figures.

Young sociologists – and probably some older ones as well – may wonder who was Adam Podgórecki as a person, as an academic and as a mentor to multiple generations of sociologists. In my view, he was above all a good man, but what made him unique was the fact of being a true and exceptionally creative thinker – a man whose mind worked continuously, looking for original answers to questions that fascinated him.

Sometimes these questions and answers were expressed in the literary form of dialogues between Master Si-Tien and his disciples. Sometimes they were translated into the language of science and presented themselves in the form of research hypotheses. And sometimes they appeared seemingly trivial, but vibrated with a brilliant, inimitable sense of humour and always, apart from a joke, conveyed serious, often bitter meaning.

The world of his thoughts, which fascinated and inspired those who knew him will surely continue to be explored and discovered by new generations of sociologists and others.

Despite international recognition and affection towards Canada, Adam did not feel well in the role of *émigré*. He missed Poland deeply and closely followed events in his native land, taking pride in its triumphs and agonising over its disappointments. Poland has become for him a field of sociological observations as well as a source of never extinguished pain.

Multiple publications that appeared after his sudden passing in 1998 portrayed – in addition to his intellectual virtues and academic achievements – his personal traits, such as the remarkable value he attached to friendships, his unique sense of humour, his support for the weaker and at the same time uncompromising condemnation of those who had played an active role in building the communist regime in Poland and after its collapse avoided any accountability and often presented themselves, or were promoted by others, as moral paragons.

Various authors underlined Adam's colourful personality, originality, the depth of his insight and the diversity of his creative legacy. They were not exaggerating. Those, who stressed the great role Adam played in their lives, as a mentor and friend, underlined often that he was a real authority, not an artificially created one. The former Head of the Polish Sociological Association, who had been Adam's student and later a friend, the late Professor Andrzej Kojder, aptly pointed out a number of Adam's unique traits. He wrote,

If there are people who defy categorisation, are incomparable, exceptional, Adam Podgórecki was such a person. His achievements, wealth of ideas, scale of his projects, range of academic interests, extraordinary imagination, incomparable literary style, industry and many other features would be enough to endow multiple people. (...) He fired others with his enthusiasm. His initiatives were being transformed into shared, collective goals. His ideas were contagious even to his opponents." (A. Kojder, *Vita Activa Adama Podgóreckiego*, "Więź" 1999, no. 6, p. 123–132)

Thinking about Adam, one should not forget his love of music. He had a perfect ear and classical music was his great passion. At any given time, there were composers who fascinated him more than others. At various times these included Francis Poulenc, Michael Tippett, Luciano Berio, Olivier Messiaen, Karol Szymanowski and many, many others.

Despite his shattered health, his curiosity about the world and people did not leave him to the very end. He left us too early but continues to live in our memory.

At the end of my short reflections, I would like to thank Professor Krzysztof Motyka for organising this conference to honour my husband. I wish all the authors and participants inspiring and interesting discussions.

MAVIS MACLEAN*

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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⁵ B. Riley-Smith, *Starmer Kills off Rwanda Plan On First Day as PM*, "The Telegraph" 10.07.2024, <https://www.telegraph.co.uk/politics/2024/07/05/starmer-kills-off-rwanda-plan-on-first-day-as-pm/> (accessed: 15.07.2024); cf. A. Forrest, *Starmer Will Reverse Rwanda Policy Even if Flights Start and Small Boats Decline*, "The Independent", 8 October 2023, <https://www.independent.co.uk/news/uk/politics/starmer-labour-conference-stop-rwanda-flights-b2426078.html> (accessed: 15.07.2024).

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Love, Law, and War in Ukraine and Israel/Palestine: Rearticulating Podgórecki's Place in a Polish Become American Sociological Imagination¹

Miłość, prawo i wojna w Ukrainie i Izraelu/Palestynie.
Określenie na nowo miejsca Podgóreckiego w polskiej,
która stała się amerykańską, wyobraźni socjologicznej

Abstract

Adam Podgórecki's place in American sociology, and my own engagement with his work 30 years ago, begins my contribution to this collection. I turn next to consider how some subsequent scholars have explained his work and its potential, and do some of the same by inviting our translation of intuitive and formal law into an exploration of vernacular and professional articulations of justice and law. I then consider the place of love in the relationship before moving on to examine two epoch-ending crises of our time: Russia's invasion of Ukraine and the war in Israel/Palestine. I conclude with an observation that Podgórecki and other scholars invite us to rethink how the intuitive and the formal, the vernacular and the professional, senses of justice might be rearticulated. I recommend that South Africa's intervention at the International Court of Justice might be a transformational moment.

Keywords: Adam Podgórecki, justice, law, love, knowledge, war

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¹ I am grateful to all those enabling and participating in the conference which preceded this volume, and especially to the anonymous reviewers, for moving my reflections so profoundly. My greatest appreciation, however, goes to Krzysztof Motyka for the original invitation to the conference and to his many contributions to the improvement of this manuscript. His expertise and his most collegial and considerate disposition have moved me most meaningfully. I also appreciate the serendipity of our first meeting in Ann Arbor in 1998, which, itself, moved this paper.



Abstrakt

Niniejszy artykuł rozpoczyna rozważania na temat miejsca Adama Podgóreckiego w amerykańskiej socjologii i mojego udziału w dyskusji nad jego pracą 30 lat temu. Następnie przedstawiam sposób, w jaki kolejni badacze prezentowali jego twórczość oraz jej potencjał i robię to samo, włączając nasze rozumienie prawa intuicyjnego i formalnego do eksploracji wernakularnych i profesjonalnych sformułowań sprawiedliwości i prawa. W dalszej części artykułu zastanawiam się nad miejscem miłości w tej relacji, po czym przechodzę do dwóch kryzysów naszych czasów: inwazji Rosji na Ukrainę i wojny w Izraelu/Palestynie. Kończę spostrzeżeniem, że Podgórecki i inni badacze zapraszają nas do przemyślenia, w jaki sposób intuicyjne i formalne, wernakularne i profesjonalne poczucia sprawiedliwości mogą zostać ponownie sformułowane. Proponuję, aby interwencja RPA w Międzynarodowym Trybunale Sprawiedliwości stała się momentem transformacji.

Słowa kluczowe: Adam Podgórecki, sprawiedliwość, prawo, miłość, wiedza, wojna

We are living through “epoch end”.² Sociology usually thrives in such crises, but the crisis does not tell us which past sociologists we should reach to for inspiration. The return to W.E.B. Du Bois³ within the USA and to global sociology⁴ is obvious in a sense, given the deep racialisation of our American despair. Du Bois could, of course, inspire discourses elsewhere, even on the other side of the global colour line, as I have proposed for Polish sociology.⁵ But the invocation is far from automatic; cultural political work must be undertaken to demonstrate the relevance of a particular scholar or school of thought for the times in which we live.

I admire the work that is being undertaken in Poland and elsewhere to reconsider Podgórecki's place in Polish, as well as global, sociology. Since I am not especially expert in his work, or in the sociology of law for which he is best known, I am not the most suitable person to step up to this challenge. However, because some have argued that Podgórecki has been underappreciated for his contributions to other parts of sociology, this invitation may not be entirely inappropriate. Indeed, given my interest in Polish sociology as such, and my commitment to knowledge cultural sociology and its articulations of knowledge and social change, I find this invitation quite appealing.

In order to develop this project, I begin with considering Podgórecki's place in American sociology, and my own engagement with his work 30 years ago.

² M.D. Kennedy, *Violence and Truth in 2022's Epoch End: Covid-19 and Russia's Invasion of Ukraine in the World Historical Context*, “Journal of Public Governance” 2022, vol. 61, no. 3, p. 5–24, DOI: 10.15678/PG.2022.61.3.01.

³ A. Morris, *The Scholar Denied: W.E.B. Du Bois and the Birth of Modern Sociology*, University of California Press, Berkeley 2017.

⁴ J. Itzigsohn, K. Brown, *The Sociology of W.E.B. Du Bois: Racialized Modernity and the Global Color Line*, New York University Press, New York 2020.

⁵ M.D. Kennedy, *National Cultures and Racial Formations: Articulating the Knowledge Cultures of Kłossowska and Du Bois*, “Kultura i Społeczeństwo” 2019, vol. 63, no. 3, p. 7–30.

I turn next to examine how scholars have explained his work, and its potential, and do some of the same by inviting our translation of intuitive and formal law into an exploration of vernacular and professional articulations of justice and law. I even consider the place of love in the relationship before moving on to describe two epoch-ending crises of our time: Russia's invasion of Ukraine and the war in Israel/Palestine. I suggest that the former offered an opportunity to harmonise the vernacular and professional understandings of international law even if the architecture of existing institutions prevented the enforcement of justice and the law. I propose that the latter war only confirms the charge of hypocrisy so many in the Global South previously articulated when the USA and the West declared the Russian invasion of Ukraine illegal, but recognised Israel's assault on Gaza as a matter of self-defence. I conclude with the observation that Podgórecki and the other scholars invite us to rethink how the intuitive and the formal, the vernacular and the professional, senses of justice might be rearticulated. I recommend that South Africa's intervention at the International Court of Justice might be a transformational moment. But first, a few words on Podgórecki.

Podgórecki's Place in American Sociology

Twenty years ago, in 2004, I began my journey in exploring globalising knowledge⁶ following an invitation from Włodzimierz Wesołowski to address the Polish Sociological Association. That talk eventually became an article published in *Polish Sociological Review* in which I sought to characterise, and then explain, how Polish sociology figured in the American sociological imagination.⁷

Wesołowski was among the leading contributors, but there were several other authors who brought Polish sociology to its American audience. Adam Podgórecki (1925–1998) was among the more visible scholars. However, he was not as prominent at the 20th century's end within the USA as one might expect.⁸ In what follows, I consider some accounts that could help to explain his reception in the USA. I also offer some reinterpretations in light of subsequent

⁶ M.D. Kennedy, *Globalizing Knowledge: Intellectuals, Universities and Publics in Global Transformations*, Stanford University Press, Stanford 2015.

⁷ M.D. Kennedy, *Poland in the American Sociological Imagination*, "Polish Sociological Review" 2004, no. 4 (148), p. 361–383, https://www.researchgate.net/publication/241669781_Poland_in_the_American_Sociological_Imagination (accessed: 16.08.2024).

⁸ However, his prominence in international sociology, especially in the research committee dedicated to the sociology of law, has been assured with a prize in his name; International Sociological Association, *Adam Podgórecki Prize*, <https://www.isa-sociology.org/en/research-networks/research-committees/rc12-sociology-of-law/rc12-adam-podgorecki-prize> (accessed: 16.08.2024).

global transformations that could elevate his relevance to discussions today. At least for me.

At the start, it would be useful to document variations over time regarding Poland's place in the US, and global, sociological imaginations. It is clear, however, that in the late 1970s and early 1980s, Polish scholarship and society moved ahead in both academic and public discussion in the USA. For example, in a 1981 issue of *Social Forces*, the Southern Sociological Society's official journal, itself housed in the highly regarded University of North Carolina at Chapel Hill Department of Sociology, the following reviews of books by Polish scholars were published: Craig Calhoun reviewed Kolakowski's *Three Currents of Marxism*⁹, Gerhard Lenski reviewed Wesołowski's *Classes, Strata and Power*¹⁰, and George Ritzer reviewed Podgórecki and Los's *Multidimensional Sociology*.¹¹ Lenski, already a senior scholar, mostly praised Wesołowski. Calhoun, then an assistant professor, engaged Kołakowski with critical respect. Ritzer, however, was quite unsympathetic. He wrote,

This is a very ambitious book; in fact, one of its great faults is that it is too ambitious. (...) The result is highly selective and superficial coverage (...) Not content with having dealt with all sociological theories, the relationship among them, and a number of subareas within sociology, the authors turn in the last part of the book to applied sociology, "sociology and practice". This is another loosely connected set of essays, ranging from sociotechnics to the intelligentsia, to global ethics. There is not much that is very practical here, but we are treated to the authors' dreams of a new world in which the intelligentsia will save us from social nihilism by helping to create a new system of global ethics, to embrace not just all human beings, but all living creatures. Evident through the entire book is the authors' background and experience in Polish society. Most of the illustrative material is drawn from that world. In the end, the authors admit to "have been struggling ... to combine their unique East European experience with the academically elaborated Western rhetoric". While such a struggle is both useful and laudable, the authors seem to have struggled largely in vain.¹²

Of course, many sociologists of law were much more engaged, and familiar, with Podgórecki's work. But even Klaus Ziegert began his elaboration of the

⁹ C. Calhoun, *Main Currents of Marxism. Volume 1: The Founders; Volume 2: The Golden Age; Volume 3: The Breakdown*. By Leszek Kolakowski. New York: Oxford University Press, 1978. 434 pp.; 541 pp.; 541 pp., "Social Forces" 1981, vol. 60, no. 2, p. 607–610.

¹⁰ G. Lenski, *Classes, Strata and Power*. By Włodzimierz Wesołowski. London: Routledge & Kegan Paul, 1979. 159 pp., "Social Forces" 1981, vol. 60, no. 2, p. 605–607.

¹¹ G. Ritzer, *Multi-Dimensional Sociology*. By Adam Podgórecki and Maria Łós. London: Routledge & Kegan Paul, 1979. 344 pp., "Social Forces" 1981, vol. 60, no. 2, p. 610–612.

¹² Ibidem.

Polish sociologist's significance with the following acknowledgement: "most of his numerous publications (...) have failed to reach a wider international public because they are written in Polish. His comprehensive writings are known outside Poland only in the most fragmentary fashion."¹³ Ziegert wrote this in 1977.

Later, in the final decade of his life, Podgórecki contributed much more in English. Martin Krygier, whose work on law and social theory extends well beyond Polish ties even while he is deeply connected to the nation and its scholars, wrote a review of Podgórecki's English language account of *Polish Society*, alongside an assessment of Jacek Kurczewski's work *The Resurrection of Rights in Poland*, in a review essay.¹⁴ Here too, we find a much more sympathetic treatment of Podgórecki's work, especially because it is appreciated from the heart of the challenge in, what at least I have called, transition culture.¹⁵ But Krygier centres law in this account in ways I never have and goes on to make a point that other scholars long marked about Podgórecki's sociology, perhaps in more eloquent form than most. He wrote,

The book is frequently shrewd, perceptive, well-observed, and illuminating. It is thought-provoking and never dull. Much of it is witty, some of it bitter, some wild, and some- as, for example, his characterizations of former and perhaps present colleagues, courageous or outrageous, depending upon whose side you are on. Podgórecki has a love-hate relationship with Poland and with Poles. Sometimes it is simply hate. Words are not minced; sins not forgiven. Tributes are paid and scores are settled, in ways that people from more impersonal cultures with happier histories might find mystifying or excessive.¹⁶

Bronisław Misztal also reviewed Podgórecki's *Polish Society*. As Krygier, Misztal wrote,

For many American scholars who have had contact with Polish sociologists, this work will hardly be comfortable, since it offers an erudite "who's who" in discussing the crippled intellectual potential of sociology in Poland. But it is also enlightening (...). Although this book is difficult to read, especially for anyone unfamiliar with the myriad of names and situations it contains, its intellectual contents and overall historical message cannot be overestimated. Ten or twenty years from now researchers will find it prophetic and far-sighted, and I expect that for the next decade, it will provide a mine

¹³ K. Ziegert, *Adam Podgórecki's Sociology of Law: The Invisible Factors of the Functioning of Law Made Visible*, "Law & Society Review" 1977, vol. 12, no. 1, p. 151–180.

¹⁴ M. Krygier, *The Constitution of the Heart*, "Law & Social Inquiry" 1995, vol. 20, no. 4, p. 1033–1066.

¹⁵ M. Kennedy, *Cultural Formations of Postcommunism: Emancipation, Transition, Nation and War*, University of Minnesota Press, Minneapolis 2002.

¹⁶ M. Krygier, *The Constitution of the Heart...*, p. 1046.

of knowledge for the new generation of scholars. A final note: Podgórecki's writing frequently resembles that of Milan Kundera, in which the life-world is mixed up with surrealistic situations; and Podgórecki is living proof that intellectual nonconformism, though it carries a high price, can offer an original perspective on history and society. This is a book about all of us. Read it.¹⁷

I could have been one of those "American scholars" to whom Misztal refers.

In fact, I also reviewed Podgórecki's *Polish Society* for the American Sociological Association's journal of book reviews, *Contemporary Sociology*. As a newly tenured associate professor at the University of Michigan, I could have been free to "speak my mind", but out of respect for the challenges I knew Polish sociologists in the diaspora typically faced (as both Misztal and Podgórecki faced), I was guarded in expressing my concerns.

Podgórecki's account of Polish society is based on Polish sociological traditions and an engagement with Polish empirical research. He presents an incredible assortment of home-grown concepts – dirty-togetherness and spectacular principledness to name a couple. They are used to illuminate Polish exceptionalism and more generic problems of communist and postcommunist society (...). Podgórecki identifies another distinction of Poland as the 'emotionally and personally loaded framework of interpersonal relationships' (p. 159). It is hard to miss this in Podgórecki's portrait of intellectual life, with its heroes (Lipski, Ossowska, his colleagues, and a few others) and its more numerous undeserving luminaries (often pre-fixed by "ex-communist"). Podgórecki's own place in Polish intellectual life looms large in this.¹⁸

In retrospect, I don't like the snark I shared. As a much more senior scholar reading my youthful attempt to balance appreciation with objection, I find my expression less than helpful, and probably unclear to those who lacked both a relatively sophisticated command of English language affect and at least familiarity with Polish intellectual life.¹⁹

I do not know that I would read *Polish Society* differently today, but I am surely less affected by the "interpersonal relationships" that undeniably shaped

¹⁷ B. Misztal, *Book Review of Polish Society by Adam Podgórecki*, "Social Forces" 1995, vol. 73, no. 4, p. 1637–1638.

¹⁸ M.D. Kennedy, *Book Review of Adam Podgórecki, Polish Society*, "Contemporary Sociology" 1995, vol. 24, no. 2, p. 222–223.

¹⁹ Nevertheless, I do think Wicenty (2018) reads me pretty well: "Even Kennedy, who knows the Polish realities so well and who highly valued Podgórecki, finishes his review of *Polish Society* with a remark about the Polish sociologist's frustrations and his emotional involvement in the described phenomena" (FN 19). My only difference with Wicenty is that I don't find understanding these personal dispositions at odds with appreciating, and interpreting, professional engagement; to deny their relevance is, to my mind, limiting the data we might marshal to explain what appears on the printed page.

my engagement with Polish sociology. I was certainly not in a Podgórecki-loaded network, even while I knew Jacek Kurczewski at the time and appreciated his intellect and wit. I thus welcomed the chance of the conference preceding this volume to return to consider Podgórecki's scholarship, especially for the times in which we live and not just for the society he left. But before I leave Podgórecki as a scholar, allow me to offer my portrait from this chronological distance of the place he seemed to occupy in Polish scholarship.

Of course, Adam Podgórecki developed his sociological imagination in Poland, but unlike others who fell from political grace, or at least tolerance, in the immediate and subsequent aftermath of Jaruzelski's declaration of martial law in 1981, Podgórecki was "ousted" in the previous decade, in the Gierek era. In this sense, he was not so readily recognisable as an intellectual victim of political repression as others more prominent in the West. Piotr Sztompka, for example, comes to mind as someone who paid a small price for his resignation from the Polish United Workers Party in 1981/82. Wicenty identifies other qualities that led to Podgórecki's relative invisibility as well.²⁰

For one, Podgórecki was not associated with subfields that enjoyed a broader global resonance in American sociology. Unlike the study of inequalities and power, the American sociology of law was more ethnocentric than these others; indeed, the International Sociological Association research committee devoted to law has been far less dominated by US sociologists than many other such bodies. Within the USA, the sociology of law was also characterised by many different traditions of inquiry relatively hostile to others, making Podgórecki's relatively peculiar approach harder to translate, or perhaps even appreciate, across US traditions.

As well, Podgórecki very much felt like he was "in between" two worlds.²¹ He was also quite distant from a Marxist-engaged sociology ascendent in North American sociology in the 1970s and 1980s. Hungarian émigré Iván Szelényi, for example, benefited considerably from addressing critical sociologies associated with Alvin Gouldner, Michael Burawoy, and others. Podgórecki did not fit well in that stream, to say the least.²²

²⁰ D. Wicenty, *The Experience of Oppression and the Price of Nonconformity: A Brief Biography of Adam Podgórecki*, "Studies in East European Thought" 2018, vol. 70, p. 61–81, <https://link.springer.com/article/10.1007/s11212-018-9300-x> (accessed: 16.08.2024).

²¹ K. Ziegert, *Adam Podgórecki's Sociology of Law...*, p. 151–180.

²² In fact, Podgórecki somehow managed not only to be a co-founder of the Institute for Social Prevention and Resocialization (*Instytut Profilaktyki Społecznej i Resocjalizacji*) at the University of Warsaw in 1972 but also establish the Institute's section on Sociology of Norms and Social Pathology with a staff of 17 – "none of whom was a member of PZPR, which was a major departure from the accepted standards for social sciences." By 1977, however, the communist authorities closed that section and moved Podgórecki to another department at Warsaw University. Podgórecki accepted

Especially with the growing fascination with the Polish Solidarity movement of 1980–1981, witnessed over the 1980s, Podgórecki's focus on law seemed much less important than the study of social movements and social change. Moreover, his distance from that articulation of the contest between communist authorities and Polish civil society did not move inspiration from Americans seeking insight into those struggles.²³ Notions such as “dirty togetherness” rather sullied what was for so many Americans, including me, a rather clear struggle for justice, democracy, and dignity.

Now that we are long past that decade's normative terms, we might return to his work to find new inspiration. As we search in this epoch end for analytical frames and normative foundations I find, in particular, the contrast between intuitive and formal law appealing, especially if we might translate that contrast into one between public and professional sensibilities of human rights and justice.

Human Rights in Podgórecki's Light and Petrażycki's Shade

Krzysztof Motyka organised the panel discussion in which I initially began to revisit Podgórecki's work with this idea.

In order to establish the basis for an adequate sociology of human rights, one must first elaborate two introductory concepts. The first concept is intuitive law. (...) The second concept is of a classificatory nature. It distinguishes: a) crippled and b) complete human rights. In social reality, as a rule, human rights are mainly abstract, meaning that they are pronounced, but not necessarily practiced. Abstract rights become crippled when they do not provide realistic conditions for their own operation. (...) For human rights to be complete, it is crucial not only that written prescripts be in congruence with the respective attitudes of intuitive law, but also that institutional and/or organizational links exist between these two elements

I find the above articulation of cultures of law particularly useful. It also led me back to Podgórecki's earlier (1977) elaboration of Petrażycki:

Petrażycki distinguished between “living law” (in his language “intuitive law”) and “law in books,” (in his language, “positive law” or “official law”). “Law in books” (binding law) is located in abstract reality as a normative phenomenon, whereas “living law” is spread among the people and influences their behavior directly (p. 191).

an invitation and moved, after a brief stay in the Netherlands and Oxford, to Carleton University as a professor where he taught until the end of his life; D. Wicenty, *The Experience of Oppression...*

²³ M.D. Kennedy, *Professionals, Power, and Solidarity in Poland: A Critical Sociology of Soviet-type Society*, Cambridge University Press, Cambridge 1991.

Every knowledge culture has its own histories and vocabularies. Klaus Ziegert offered one of the earliest summaries of Podgórecki's sociology for an English-reading audience, one that remains quite helpful. He wrote, "Podgórecki's goal is not only to cooperate with lawyers in order to achieve a more realistic evaluation of law's capacity to structure social behavior, but also to replace the legal theory of the legal sciences with a legal theory constructed by the social sciences."²⁴ Ziegert also marked explicitly how Podgórecki's sociology draws on Leon Petrażycki.²⁵

While in his 1977 article Podgórecki acknowledges that certain qualities of Petrażycki's 19th century almost Spencerian thought would not be embraced by the broader tradition of the 20th, if not also, now, 21st century, sociology, he rather continued to articulate the distinction between intuitive and official law in Petrażycki's terms.²⁶ That might continue to work for certain traditions in the sociology of law, but it does not carry over well into broader traditions of sociology and social analysis.

I would rather distinguish intuitive and positive law in terms of public and professional knowledge cultures around law as such. That of course resonates well with Michael Burawoy's approach to different kinds of sociologies and their interlocutors,²⁷ as well as with my own interest in knowledge cultural sociology and its commitment to figure the social relations and positions that shape the articulations and validations of knowledge.²⁸ To describe something as intuitive

²⁴ K. Ziegert, *Adam Podgórecki's Sociology of Law...*, p. 156.

²⁵ Those sociologists of law who are the followers of both scholars find this obvious. For me, and many other US sociologists, this lineage is not especially meaningful. But I try to make up for that loss here.

²⁶ I would wish to figure how we might bring Polish-centered scholarship more squarely into a US or even global field of learning. One way is to approach these scholars with a more universalizing Bourdieusian frame. For subsequent assessments of Petrażycki (and Podgórecki) in more Bourdieusian terms, see: H. Dębska, *Herezja w prawoznawstwie. Trajektoria polskiej socjologii prawa w XX wieku, in Polskie nauki społeczne w kontekście relacji władzy i zależności międzynarodowych*, ed. T. Zarycki, Wydawnictwa Uniwersytetu Warszawskiego, Warsaw 2022, p. 105–137; and H. Dębska, *Kariera uczonego i tworzenie idei w warunkach fundamentalnych zmian strukturalnych. O Leonie Petrażyckim raz jeszcze*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2024, vol. 38, no. 1, p. 19–33. Comparisons across Polish and Central and East European fields of knowledge production can be useful too. T. Zarycki, for instance, compares Petrażycki with Badouin ne Courteney in *Pole językoznawczo-literaturoznawcze w Polsce. W poszukiwaniu strukturalnych czynników jego wzlotów i upadku na przestrzeni „długiego XX wieku”*, in *Polskie nauki społeczne...*, p. 185–227. T. Zarycki also notes that the tensions between Petrażycki and the Warsaw-Lviv school of law were homologous to those found between de Courtenay and the heirs to the Warsaw Lviv school of language headed by Roman Ingarden in T. Zarycki, *The Polish Elite and Language Sciences: A Perspective of Global Historical Sociology*, Palgrave, 2023, p. 348.

²⁷ M. Burawoy, *For Public Sociology*, "American Sociological Review" 2005, vol. 70, no. 1, p. 4–28, <http://burawoy.berkeley.edu/Public%20Sociology,%20Live/Burawoy.pdf> (accessed: 16.08.2024).

²⁸ P.S. Kehal, L. Garbes, M.D. Kennedy, *Critical Sociology of Knowledge*, in: *Oxford Bibliographies in Sociology*, ed. Lynette Spillman, Oxford University Press, New York 2021, <https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0221.xml?>

connotes, in US English at least, something that is less discursively apparent and more internal; it's also more psychological than sociological, a distinction Podgórecki himself uses to describe Petrażycki's approach. To characterise human rights as abstract and theoretical fits well with a more professional discourse associated with the consolidation of a knowledge culture with privileged voices (jurists and prosecutors among others) in contrast to those discourses animated by merely popular interpretations of justice. That Podgórecki elevates the popular beyond the "mere", however, suggests something important sociologists are likely to embrace in today's world. But it makes sense, to me at least, that we use a term that sociologists across the discipline use more commonly. Other changes in discourse may be important too.

We can use words such as "intuitive", "popular", or even "public", but they don't always grasp what we seek. I rather appreciate what Jan Kubik argues in his essay elevating "vernacular knowledge" as our analytical frame.²⁹ I have celebrated his proposal that

researchers need to investigate whether problems are identified as such by the actors themselves, how they are articulated within (locally) available interpretive frameworks (ideologies), and whether and how they are used as foci of mobilization. By making vernacular knowledge the foundation for theory, evidence, and practice, Kubik and his colleagues elevate vernacular knowledge in scholarship. No longer is it to be understood in terms of its distance from any proper interpretative framework (based on Marxism, modernization, neoliberalism or any other generalizing theory). It is, rather, the foundation for understanding theory, evidence, and practice.³⁰

Taking seriously not only intuitive understandings but also modes of expression seems like an appropriate extension of Podgórecki's sociology. Others are more conscious about their lineage.

Kurczewski elaborates Podgórecki's empirical theory of law, offering this injunction: "law should be understood as integrated parallel schemata (of a formal or informal character) which exhibit normative consistency."³¹ Motyka reinforces this with the following invocation of Podgórecki himself³²:

²⁹ J. Kubik, *From Transitology to Contextual Holism: A Theoretical Trajectory of Postcommunist Studies*, in: *Postcommunism from Within: Social Justice, Mobilization and Hegemony*, eds. J. Kubik, A. Linch, New York University Press, New York 2013, p. 27–94.

³⁰ M.D. Kennedy, *Mobilizing Justice Across Hegemonies in Place: Critical Postcommunist Vernaculars*, in: *Postcommunism from Within: Social Justice, Mobilization and Hegemony*..., p. 390.

³¹ J. Kurczewski, *Adam Podgórecki's Empirical Theory of Law*, "Societas/Communitas" 2013, vol. 15, no. 1, p. 92.

³² K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland under Communism*, in: *Leon Petrażycki: Law, Emotions, Society*, eds. E. Fittipaldi, A.J. Treviño, Routledge, New York 2023, p. 47–70.

law should be understood as an integrated parallel schemata [sic] (the mutual acknowledgement of duties and claims) of formal or informal character. These schemata constitute an elaborate horizontal network of interrelations (independent from the state) that compose the main fabric of social relations. Vertical intervention (directly connected with the state) is a tool used by those who have power to sustain the legal schemata and the hierarchy of orders in a given social system.

These normative claims add nicely to the distinction between professional and vernacular considerations of the law, making clear that professional ties depend on a cultural normative integration, through professional schemata, on the one hand, but on the other depend even more deeply than other professional communities on the power of the state to reinforce their authority.

This set of distinctions seem quite useful for understanding how law functions in relatively “settled” times.³³ But in unsettled times, where law’s own public legitimacy is to be found in its articulation through its complement to struggles for justice, one might find the expression of intellectual responsibility in the quest to find justice beyond the rule of its authorities. And, as Krygier so insightfully notes, Poles, in modernity, have been unjustly ruled by authorities beyond their own nation for so long that we might consider being “unsettled” a Polish way of being.³⁴ And for that reason, we can see why Motyka might wish to turn toward Petrażycki and his own interest in something beyond state power.

As Kurczewski writes, “Despite his explicit positivist methodological standpoint, Petrażycki was in search of a new law of nature, and he considered the development of mutual love as an observable historical process” with “global ethics’ being its explicit normative expression.”³⁵ In fact, as Motyka observes, Petrażycki invokes St. Paul’s first letter to the Corinthians (1 Cor. 13) and declared love to be, “from the point of view of practical reason, the supreme ideal of conduct,”³⁶ and “from the point of view theoretical reason, the supreme truth.”³⁷ This builds on Motyka’s longstanding interest in that which lives beyond law which nonetheless binds us together. Indeed, in the conclusion of his PhD dissertation, Motyka writes,

³³ A. Swidler, *Culture in Action: Symbols and Strategies*, “American Sociological Review” 1986, vol. 51, no. 2, p. 273–286.

³⁴ M. Krygier, *The Constitution of the Heart...*, p. 1047. For those especially interested in Jacek Kurczewski’s work as such, this essay offers a most thoughtful, and complimentary, account.

³⁵ J. Kurczewski, *Adam Podgórecki’s Empirical Theory of Law...*, p. 92.

³⁶ L. Petrażycki, *Die Lehre von Einkommen*, vol. 1, H.W. Müller, Berlin 1893, p. 340, after K. Motyka, *Leon Petrażycki and Adam Podgórecki...*, p. 58.

³⁷ L. Petrażycki, *Wstęp do nauki polityki prawa*, Państwowe Wydawnictwo Naukowe, Warsaw 1968, p. 43–44, quoted by K. Motyka, *Leon Petrażycki and Adam Podgórecki...*, p. 58–59.

Petrażycki's concept of law, especially intuitive law, in a society with an imposed system of authority, seemed close and even heartening. It said that man is governed in his conduct mostly by his own autonomous rules, and of the rules of a non-autonomous nature, only a part depends on state power.³⁸

Love is clearly not something to be legislated. Instead, we might see it as an expression of that intuitive, transcendent spirit expressed in many different languages, from ancient texts to more recent emancipatory expressions. In the Bhagavad Gita, Chapter 6 verse 32, for example, it is said that "When a person responds to the joys and sorrows of others as if they were his own, he has attained the highest state of spiritual union." In a most complementary sense, bell hooks proposes that "the only way out of domination is love, and the only way into really being able to connect with others, and to know how to be, is to be participating in every aspect of your life as a sacrament of love."³⁹ Most Polish scholarship does not draw on the Bhagavad Gita or bell hooks to think about love, and thus the opportunity for extending the conversation could rest in that engagement; but we also might respect Polish traditions and consider how Petrażycki can contribute to reframing American sociology and its engagement with love.

We can begin with Petrażycki himself who declared that

Love in the sense of cordial devotion toward another – being nothing but a propensity or disposition to experience caritative impulses as to that other – is manifested in thousands of different benevolent actions and abstentions, and the same is true of love in the evangelical sense – a general trait of character – a propensity to experience caritative impulse – as regards others in general. Opposed to these caritative impulses are impulses of malice or hatred directed at causing evil and endowed, in their turn, with extremely free responses which change in concrete cases.⁴⁰

Of course, Petrażycki refined his ideas over time. In their edited collection on Petrażycki, Fittipaldi and Treviño offer the following in their glossary about his treatment of love:

³⁸ K. Motyka, *Wpływ Leona Petrażyckiego na polską teorię i socjologię prawa*, Redakcja Wydawnictw KUL, Lublin 1993, p. 206.

³⁹ B. Hooks, G. Yancy, *Buddhism, the Beats, and Loving Blackness*, "New York Times" 10.09.2015, <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2015/12/10/bell-hooks-buddhism-the-beats-and-loving-blackness/> (accessed: 16.08.2024).

⁴⁰ L. Petrażycki, *Law and Morality*, transl. H.W. Babb, Harvard University Press, Cambridge, MA 1955, p. 27.

love (as the ultimate ideal for legal policy): benevolence, or sympathetic proactive concern for others, including current and future humanity as a whole, as distinct from the love for one's partner, relatives, and friends. According to Petrażycki, human culture has a tendency toward the replacement of law and morality with love not only for humans but also for all sentient beings. Petrażycki held that the acceleration of this tendency should be the ultimate goal of legal policy. In his early writings, Petrażycki treated love as an ethical ideal. After developing his theory of law, he characterized it as an extralegal and extramoral ideal.⁴¹

Motyka also elaborates on Petrażycki's sense of love in his contribution to that volume.

In his own words, this ideal was "the attainment of a perfect social character, a complete rule of active love in mankind" (1959: 15). When discussing how to attain this ideal, Petrażycki explained that: it is about (...) the gradual eradication of selfish, malicious (...) emotional dispositions, and thereby of the very psychical ability of the corresponding behaviors, [like] killing others— even if with the justifying epithet of "enemies" —, inflicting (...) wounds, and causing others harm, as well as about instilling, developing, and strengthening caritative emotional dispositions and thus creating the mental necessity of good, merciful, compassionate, etc., behaviors. 1925[1913]: 53–54.⁴²

I have only begun to explore Polish sociological traditions in the engagement of love, and for that I am especially grateful to those who organised and participated in this conference preceding this volume and to the reviewers who considered an earlier version of this paper. Their suggestions, however, already have extended my work in critical ways, even beyond Petrażycki and Podgórecki.

Indeed, we can draw upon Zenon Bankowski who frames his 2001 book as a quest to figure how the "moral life should be seen as not one or the other of law and love, but as the interlinking and tension between these two. So, it is not law or love, rather the precarious intertwining between the two that we are seeking."⁴³ Indeed, only through their articulation, he argues, that both "lose their negative aspects by being dependent upon each other."⁴⁴

His conclusion, while drawing on other traditions and examples few Americans would be poised to engage nevertheless fit with some of the traditions around civil society's engagement that studies of the Polish Solidarity movement itself inspired. Bankowski writes in the pursuit of the mutuality of law and love:

⁴¹ Leon Petrażycki: *Law, Emotions, Society*, eds. E. Fittipaldi, A.J. Treviño, Routledge, New York 2023.

⁴² K. Motyka, *Leon Petrażycki and Adam Podgórecki...*, p. 47–70.

⁴³ Z. Bankowski, *Living Lawfully: Love in Law and Law in Love*, Springer-Science+Business Media, B.V., 2001, p. 10.

⁴⁴ *Ibidem*, p. 108.

Part of the way forward would be in juries and lay justice, institutions which can be seen as ‘bridging institutions’ – they are part of the legal system but also as being the conduit to the outside make the outside part of the system. Also important would be the way legal reasoning should leave itself open to interested groups and institutions which through this opening become part of the system injecting particularity into it. It is in all of this that we might see a system of ‘living lawfully’.⁴⁵

We might identify other expressions of love from various traditions so that its universality could be acknowledged even while its modes of expression might vary, if not also collide. Most obviously, nationalisms declare love of the nation to be one of the highest obligations, but that love can readily conflict with other nations’ expressions of devotion.

While justice might be what love looks like in public (a recurring expression of Cornel West), human rights might be the law’s best attempt to render justice across national boundaries. Its various codifications also fulfil quite readily the distinctions Podgórecki and kin would make about its abstract qualities; they might also point to the difficulty of translation into public sensibilities or intuitive law, much less into a language of love.

We might wade into this challenging articulation by recognising not only how the public language of love can be embedded in particular religious or spiritual traditions, but its very public expression opens it up to those beyond familiar communities, and even beyond rules as such. Much as Sorokin saw fit to explore yoga in his 1954 volume on the ways and power of love,⁴⁶ perhaps an exploration of how Petrażycki⁴⁷ and hooks could be productively combined in the search for a spirit of love in analysing, and animating, global social change could be transformational. Were we to focus on two expressions of solidarity and war in these times to consider the combinations of love and law we might find renewed inspiration.

Law, Love, and War in 2022–2024

Thinking about law, love and war in 2022–2024 is helped by thinking with these expressions of Petrażycki through Podgórecki, Kurczewski, and Motyka. Human rights are readily understood in professional terms and abstract language, but their articulations with public sensibilities and their emergent

⁴⁵ Ibidem, p. 226.

⁴⁶ P. Sorokin, *The Ways and Power of Love: Types, Factors, and Techniques of Moral Transformation*, Beacon Press, Boston 1954.

⁴⁷ Sorokin was himself among the few in the USA to invoke Petrażycki in their sociology; Nicholas Timasheff was another. See: K. Ziegert, *Adam Podgórecki’s Sociology of Law...*, p. 151–180.

qualities matter. We might focus on those solidarities war makes, thickening the bonds made with the language of friends and enemies. But we might also think about how law, love, and war intersect in ways that can rearticulate global social change.

At the foundation of this rearticulation is the recognition that love for the nation and its institutional expressions is both intuitive and institutionally grounded. In this, it is hard to evade the ready observation that intuitive and formal laws reinforce one another to make nationalism the trump card of all identities⁴⁸ while its cultural expression is, also, the subject of various politics invoking alternative histories.⁴⁹ There is of course extensive literature on nationalism of which most readers of this text know at least a portion, on which I build.

Justice and Formal Law Regarding Russia's Invasion of Ukraine

One of the most grotesque claims in the last decade has been Putin's justification for violating Ukrainian sovereignty with the argument that Ukrainians commit genocide against Russians and speakers of Russian. That claim has itself been rejected in the International Court of Justice; indeed, Ukrainian representatives used a clever manoeuvre to bring the court to rule on this Russian invasion. They argued, "Russia's false claims that Ukraine was engaging in genocide against members of the Russian ethnic minority in eastern Ukraine, which it had used to justify its unlawful acts of aggression, made for a 'dispute' under the Genocide Convention that the Court should resolve." The Court agreed with Ukraine and ordered Russia to cease its military operations on Ukrainian territory; of course, Russia ignored that ruling.⁵⁰

One should not, however, take for granted that Ukrainian nationalism was itself somehow "natural" in resisting Russia's imperial grab. Before the empire's 2022 invasion, people were still wondering how much variation there was in Ukrainians' geopolitical identifications. Presumably, Putin himself believed that at least those in the East of the country would have welcomed the Russian

⁴⁸ C. Calhoun, *Nationalism*, University of Minnesota Press, Minneapolis 1998.

⁴⁹ M.D. Kennedy, *What Is "the Nation" after Communism and Modernity?*, "The Polish Sociological Review" 1994, vol. 105, no. 1, p. 47–58; and *Istorychna spadshchyna ta hromadians'ke suspil'stvo: al'ternatyvni natsiji v Shkhidniy Yevropi*, in: *Ukraina Moderna*, vol. 1, eds. Y. Hrytsak, M. Krykun, Lviv State University, Lviv 1996, p. 114–131.

⁵⁰ O. Hathaway, *Taking Stock of ICJ Decisions in the Ukraine v. Russia Cases and Implications for South Africa's Case Against Israel*, "Just Security" 05.02.2024, <https://www.justsecurity.org/91781/taking-stock-of-icj-decisions-in-ukraine-v-russia-cases-and-implications-for-south-africas-case-against-israel/> (accessed: 16.08.2024).

invasion with flowers. They did not. Indeed, throughout this war, as Russian brutality became ever more evident, Ukrainian solidarity in resistance grew.⁵¹

Ukrainian resistance to Russian invasion has taken many forms, and the solidarities it has won have been genuinely transformative. The most dramatic may have been the consequential expansion of NATO to include Finland and Sweden beyond their Cold War-bred neutralities in the contest between the USSR plus allies, and the USA plus allies. The most difficult transformation to interpret, however, has been the invasion's impact on the status of international law, with genocide being perhaps the most important theme in that stream of jurisprudence. Ukraine has certainly engaged, then, not only in warfare but also lawfare in its defence.

Ukrainians have been meticulous in their documentation of Russian war crimes.⁵² The genocide in Bucha was a turning point for many in the world. A United Nations Commission of Inquiry has collected evidence of summary executions, sexual violence, and forced transfer of Ukrainian children to Russia.⁵³

The treatment of this invasion by the International Court of Justice (ICJ) was itself a profound disappointment to those who might find justice through lawfare compelling. But given the politics, the outcome was hard not to anticipate. This is a politically challenging case, not for the facts of the matter given that Ukraine has, at least in terms of United Nations General Assembly Votes, garnered sufficient support to claim that the world stands with it in declaring Russian invasion a violation of international law. But the ICJ must be careful in such cases; it has no power that allows it to enforce its decisions. It can only recommend certain actions to the United Nations Security Council. That Council, of course, can be prohibited from acting on the veto of any of its permanent members, of which Russia is one. There is no enforcement possible, and thus the ICJ is likely not to squander its legitimacy by declaring the impossible. At best Ukraine can claim a moral victory.⁵⁴

The singular exceptions to this failure of the rule of law have happened in the International Criminal Court. To date (July 2024) the International Criminal Court has issued arrest warrants in two cases: to Vladimir Putin, president of

⁵¹ M.D. Kennedy, *How Russia's Invasion of Ukraine Matters: A Knowledge Cultural Sociology*, "Footnotes: Magazine of the American Sociological Association" 2023, <https://www.asanet.org/footnotes-article/how-russias-invasion-of-ukraine-matters-a-knowledge-cultural-sociology/> (accessed: 16.08.2024).

⁵² F. Coleman, *To Prosecute Putin for War Crimes, Safeguard the Digital Proof*, "Foreign Policy" 10.04.2022, <https://foreignpolicy.com/2022/04/10/prosecute-putin-war-crimes-evidence-bucha-safeguard-digital-proof/> (accessed: 16.08.2024).

⁵³ N. Cummings-Bruce, *Welcome to Hell: UN Panel Says Russian War Crimes Are Widespread*, "New York Times" 15.03.2024, <https://www.nytimes.com/2024/03/15/world/europe/russia-war-crimes.html> (accessed: 16.08.2024).

⁵⁴ O. Hathaway, *Taking Stock...* (accessed: 16.08.2024).

the Russian Federation, and to Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation, as they bear "responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children." Two military leaders have also been indicted for "the war crime of directing attacks at civilian objects, the war crime of causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts."⁵⁵ They have not been arrested, of course. But these charges have affected reputations; however, the consequences of reputational damage have been diminished by the events of 7 October 2023 and its aftermath.

Justice and Formal Law Regarding Israel/Palestine

The relationship between Israel and Palestine has been in the courts of public opinion and formal law since the founding of the State of Israel, and even before. But recent developments in the International Court of Justice bring to light a critical decision. At the request of the United Nations General Assembly, the ICJ considered the legality of Israel's occupation of the West Bank and Gaza since the 1967 war; in its July 2024 ruling, the ICJ declared that Israel should end its occupation of those areas, along with East Jerusalem, as soon as possible. Just as Putin could ignore the ruling over Russia's invasion of Ukraine, Israel's Prime Minister Netanyahu declared:

The Jewish people are not occupiers in their own land – not in our eternal capital Jerusalem, nor in our ancestral heritage of Judea and Samaria. No decision of lies in The Hague will distort this historical truth, and similarly, the legality of Israeli settlements in all parts of our homeland cannot be disputed.⁵⁶

Israel also faces another case in the ICJ; South Africa brought Israel to court on charges of genocide against Palestinians in Gaza. In its document, South Africa describes "acts and omissions by Israel" as "genocidal in character because they are intended to bring about the destruction of a substantial part of the Palestinian national, racial and ethnic group."⁵⁷ In this ICJ case, the cultural

⁵⁵ International Criminal Court, *Situation in Ukraine*, <https://www.icc-cpi.int/situations/ukraine> (accessed: 16.08.2024).

⁵⁶ R. Berg, *UN Top Court Says Israeli Occupation of Palestinian Territories Is Illegal*, <https://www.bbc.com/news/articles/cjerjzxlpydo> (accessed: 16.08.2024).

⁵⁷ International Court of Justice, *Application Instituting Proceedings*, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20231228-app-01-00-en.pdf> (accessed: 16.08.2024).

shock may have been even greater. After all, Israel was itself a signatory to the establishment of the ICJ and the importance of the Holocaust to the understanding of genocide gives it a culturally powerful position in the definition of what constitutes such evil. Israel responds to these charges of committing genocide with incredulity; how could it be charged with genocide? Indeed, Benjamin Netanyahu declared, it was Hamas who would destroy Israel if it could.⁵⁸ Israeli leaders use the character of the threat to their nation to justify what appears to be extreme acts of brutality if not genocide because of how Hamas conducts its war against Israel. And it's not just Israelis who make that claim of self-defence.

Holocaust historian and Israeli citizen Omer Bartov⁵⁹ anticipated, on his return to Israel, to find more sympathy for the eradication of Hamas than one might find in the USA, but it exceeded even his anticipations. He found two reigning sentiments: (1) a rage and fear that threatens to make war an end in itself; (2) "the utter inability of Israeli society today to feel any empathy for the population of Gaza." Such indifference was not what he remembered around past conflicts in which Israel was embedded, but now, he regrets to write, it prevails. Rather than a war to achieve political ends, it has become a war whose point is destruction and genocide.

Alongside these contests over the meanings of self-defence vs. genocide, Israel also enjoys the support of the USA, another member of the UN Security Council with the capacity to veto any resolutions. But there is a difference between Russia and the USA; of course, Putin will not alter Russian behaviour because of global public opinion. However, because the USA is ideologically committed to the rule of law in ways that Russia is not, America would find it more difficult to simply defy a ruling of the ICJ.⁶⁰

What is more, public opinion matters more in the USA than in Russia; indeed, public mobilisations in Palestinian solidarity within the USA have been overwhelming. Already on 8 November 2023, following a protest in support of Palestinian life and dignity, sociologist Eman Abdelhadi declared, "I have been to so many protests in my life. None as big as this. None as beautiful as this. None as full of rage and joy and grief. I love us, I love our people – Palestinians, our allies, all the free people of the world. I believe. I believe we will win."⁶¹ Mobilisations and expressions like this have moved Kamala Harris, now

⁵⁸ R. Berg, *Israel to Fight South Africa's Gaza Genocide Claim in Court*, BBC, 02.01.2024, <https://www.bbc.com/news/world-middle-east-67866342> (accessed: 16.08.2024).

⁵⁹ O. Bartov, *As a Former IDF Soldier and Historian of Genocide, I Was Deeply Disturbed by My Recent Visit to Israel*, "The Guardian" 13.08.2024, <https://www.theguardian.com/world/article/2024/aug/13/israel-gaza-historian-omer-bartov> (accessed: 13.09.2024).

⁶⁰ O. Hathaway, *Taking Stock...* (accessed: 16.08.2024).

⁶¹ E. Abdelhadi [@emanabdelhadi], "I have been to so many protests in my life...", X.com, 05.11.2023, <https://twitter.com/emanabdelhadi/status/1720952234341474728> (accessed 16.08.2024).

the presidential candidate of the Democratic Party, to declare greater awareness and sympathy for Palestinian suffering than her predecessor. How that affects policy is another matter.⁶²

Also, the ICJ ruling will not be issued for some time, but already there is manifestly more Palestinian solidarity globally than at any previous time in world history. It matters, too, that South Africa has led the charge in the courts. The UN Special Rapporteur Francesca Albanese declared that “watching African women and men fighting to save humanity” from the “ruthless attacks supported/enabled by most of the West will remain one of the defining images of our time.”⁶³ The author added, “As the proceedings opened, South Africa’s lawyers were uncompromising and principled, speaking from, and to, our national experience.”⁶⁴

Palestinian solidarity has become one of those expressions of love in public for many who can recognise the legacies of colonialism and empire by the Global North over the Global South. South African leadership in that lawfare struggle appears to be the manifestation of an intuitive understanding of the law to hold global institutions, historically dominated by the Global North, accountable to victims in the Global South. Recognising that articulation is critical for appreciating how both conflicts might be shaping one another, and global trajectories more broadly. However, one can’t only think in these terms because other conflicts and contradictions shape the politics of global social change.

Antisemitism, Israeli Contradictions, and Jewish Transformational Solidarity

Alongside the contest over whether Israel’s assault on Gaza, and other forms of harm to Palestinian lives and well-being, is an expression of just war or genocide, questions of antisemitism become more palpable. I have not been especially engaged in the politics of Israel/Palestine, or even of Polish/Jewish relations like many of my US sociology colleagues.⁶⁵ But this has become an obligation for every academic in the USA given the intensity of the contest

⁶² J. Bouie, *Kamala Harris Can’t Escape Gaza Any More than Joe Biden Can*, “The New York Times” 30.07.2024, <https://www.nytimes.com/2024/07/30/opinion/kamala-harris-netanyahu-israel-gaza.html> (accessed: 16.08.2024).

⁶³ S. Jacobs, *South Africa Sees Its Moral Conscience in a Genocide Case*, “New York Times” 26.01.2024, <https://www.nytimes.com/2024/01/26/opinion/south-africa-israel-genocide.html> (accessed: 16.08.2024).

⁶⁴ Ibidem.

⁶⁵ G. Zubrzycki, *Resurrecting the Jew: Nationalism, Philosemitism and Poland’s Jewish Revival*, Princeton University Press, Princeton 2022.

within universities and associated professional organisations.⁶⁶ Antisemitism is real, but it is also being weaponised.

Soon after 7 October 2023 and the initial contests on campus, several of my friends sympathetic to Israeli arguments recommended I read Jason Rubenstein, the senior rabbi of the Joseph Slifka Center for Jewish Life at Yale. He wrote a letter to the Yale University community in which it was said:

Antisemitism is a fear, and hatred, of Jewish power – expressed primarily as a readiness to believe that Jews, when organized and acting together on large scales, are dangerous, the very essence of evil... Bassel's theory of antisemitism, like a scientific theory, makes a prediction: Israel, as the greatest assertion of power by Jews as Jews in the last two millennia, should be a locus of antisemitism. (This of course does not imply that all criticism of Israel is antisemitic, nor that Israel is the only site of antisemitism).⁶⁷

In this argument, the focus on Israeli actions vis-à-vis Palestinians could only be understood through a lens of hatred and fear of Jews understood as a coherent body without meaningful differences among them, much less contradictions in their body politic.

Israeli scholars can, however, find not only political contests within Israel, as any democracy ought to express, but deep contradictions within the idea of the Israeli nation itself. Scheindlin, for example, draws on public opinion research to note that most Israelis would prioritise hostage release over toppling Hamas. She argues further that

[the] hostage situation is an eerie metaphor for long entrenched beliefs that Israel can fulfill fundamentally irreconcilable aims. The idea that Israel can both occupy Palestinian territories and retain its Jewish majority is a political illusion... It is not possible to suffocate and sideline Palestinian self-determination, bask in regional normalization, and also live with a reasonable level of peace. However, most Israeli Jews in public opinion polls believe, still, in a fantasy that Israel transcends these contradictions.⁶⁸

If such a transformation of Israel is only a fantasy, then the most effective means of defying that future impossibility is not only to assure sufficient su-

⁶⁶ M.D. Kennedy, *Contemplative Studies, Martial Arts and Solidarity: An Autobiographical Knowledge Cultural Sociology of Transformational Theory and Practice*, "Stan Rzeczy" 2023, vol. 24, no. 1, p. 113–144.

⁶⁷ J. Rubenstein, *Reckoning with Antisemitism at Yale*, <https://slifkacenter.org/wp-content/uploads/2023/10/Reckoning-with-Antisemitism-at-Yale.pdf> (accessed: 16.08.2024).

⁶⁸ D. Scheindlin, *Myth and Reality In Israel's Hostage Negotiations*, "New York Times" 27.02.2024, <https://www.nytimes.com/2024/02/27/opinion/israel-hostage-negotiations-entebbe.html> (accessed: 16.08.2024).

periority in the means of violence, but to magnify the power of an ideology that justifies its abiding illusion. At least that is what Omar Bartov has cautioned as he warned against misusing the memory of the Holocaust to justify genocidal practices in the defence of Israel. In fact, he argues, Israel/Palestine faces a self-destructive cycle where “allegations of genocidal intent by one side appear to legitimize genocidal intent by the other, all in the name of liberation, self-determination, justice, and dignity.”⁶⁹

With the examples of Bartov, Scheindlin, and others, we can appreciate that there is a different kind of national identity possible, one different from the readiness to risk genocide while defending one’s own people. It might even be found within Judaism itself.

Like many other cases across the USA, Brown University was the site of student-led protest demanding a ceasefire in Israel-Palestine. The mobilisation was early and effective; it drew, in part, on the Boycott/Divestment/Sanctions movement in the previous decade.⁷⁰ It also drew on substantial Jewish activism in Palestinian solidarity, substantially diminishing the veracity of discourses claiming that campus polarisation was defined by antisemitism’s ring. From the early days of protest, a cultural politics of love was elaborated by many Jewish voices. One group published an open letter in the Brown University student newspaper. It began this way:

“Solidarity is the political version of love.” - Jewish feminist activist Melanie Kay/Kantrowitz

As of today, it has been a month since the Oct. 7 attacks that have dominated global political consciousness and discourse, not to mention our experiences as young Jewish people. Zionist institutions purport to be representative of all Jews, often using us as a rhetorical shield to support the unconscionable actions of the state of Israel. We feel a particular pain as Jews, having to continuously justify our stance against genocide. We are here to make ourselves clear: We stand in solidarity with Brown Students for Justice in Palestine and the Palestine Solidarity Caucus in the pursuit of the liberation of Palestinian peoples. We know intimately that Jewish struggles are necessarily bound up in global struggles for freedom. We are a group of Jewish students who have coalesced around our shared vision of justice, anti-occupation, liberation, and community.⁷¹

⁶⁹ O. Bartov, *Weaponizing Language: Misuses of Holocaust Memory and the Never Again Syndrome*, Council for Global Cooperation, 12.03.2024, <https://cgcinternational.co.in/weaponizing-language-misuses-of-holocaust-memory-and-the-never-again-syndrome/> (accessed: 16.08.2024).

⁷⁰ M.D. Kennedy, M. Tadesse, *Towards a Theory and Practice of Diversity and Inclusiveness in Globalizing US Universities: The Transformational Solidarity of Knowledge Activism*, “Youth and Globalization” 2019, vol. 2, no. 1, p. 254–281.

⁷¹ A Collective of Anti-Occupation Jews, *An Open Letter from Jewish Students*, “Brown Daily Herald” 7.11.2023, <https://www.browndailyherald.com/article/2023/11/an-open-letter-from-jewish-students> (accessed: 16.08.2024).

Although this is a particular example, it signalled a broader cultural politics of love that could be found across US campuses. It was not, however, heralded so much given the broader public interest in identifying polarisation as a defining feature of epoch end. With these expressions of love, we can see the potential for a different kind of Jewish response to the crisis made manifest on 7 October 2023. This kind of engagement has been obvious to those who have attended to the prospects and pains of Palestinian lives since, at least, the Nakba. With their examples, we can see that being Jewish and being an Israeli nationalist are not the same thing.

The complexity, or clarity, depending on one's politics, of this contest over charges of genocide by Israel against the Palestinians of Gaza is substantial enough. But this contest has also deepened the challenge of protecting human rights in, and figuring solidarity with, Ukraine.

A Matter of Global Solidarity with Ukraine

Before the Hamas assault on Israel on 7 October 2023, Ukraine was already struggling to develop global solidarity in its support. Most of Europe was, of course, mightily organised in its favour, fearing that Russia would continue to threaten even NATO members if its military incursions were not halted in Ukraine. But the Global South did not have similar fears; indeed, it was relatively easy to make the case that Western solidarity with Ukraine against Russian invasion was not a principled but political act; after all, the USA and Great Britain invaded Iraq in 2003 with similar imperial claims; namely, that it was its duty to prevent further destruction from taking place, as they sought to defend Kurds from Sadaam Hussein's barbarism, just as Putin declared his intent to defend Russian speaking minorities from the Nazism of Ukrainian authorities.⁷² Still, the quest for global solidarity with Ukraine held promise.

That promise was there right from the start. On 22 February 2022 the Kenyan ambassador to the United Nations delivered a speech likening Russia's invasion to colonial repression, with the diplomat firmly supporting Ukraine: "Kenya and almost every African country was birthed by the ending of empire. Our borders were not of our own drawing."⁷³

⁷² L. Fadel, S. Antoon, *The 2003 US Invasion of Iraq Brought Terrorism to My Country, Iraqi Author Says*, "NPR Morning Edition" 22.03.2023, <https://www.npr.org/2023/03/22/1165249956/the-2003-u-s-invasion-of-iraq-brought-terrorism-to-my-country-iraqi-author-says%E2%80%A6> (accessed: 16.08.2024).

⁷³ B. Chappel, *Kenyan Ambassador Compares Ukraine's Plight to Colonial Legacy in Africa*, "NPR News" 22.02.2022, <https://www.npr.org/2022/02/22/1082334172/kenya-security-council-russia> (accessed: 16.08.2024).

Seven months later, the president of Ghana declared the Russian invasion costly for African well-being: “Every bullet, every bomb, every shell that hits a target in Ukraine hits our pockets and our economies in Africa. In Ghana, we are experiencing the highest inflation in 21 years.”⁷⁴ In fact, there were substantial Ukrainian diplomatic efforts in reaching out to Africa.⁷⁵ Diplomats and their think tanks were working to link African commitments to non-alignment and sovereignty with the cultural politics of Ukrainian solidarity: “the Ukraine war should inspire a self-assessment of Africa’s ability to agree on how to solve conflicts. In the absence of principled consistency, non-alignment may look like short-sighted opportunism.”⁷⁶

Of course, these debates were not just organised around self-criticism; it was laced with concern over the abiding hypocrisies in the West. Martin Kimanji, the very diplomat who spoke so powerfully in the immediate aftermath of the Russian invasion of Ukraine, shared later how the colonising powers fail, themselves, to act on principle.⁷⁷

This kind of dialogue is necessary to realise the common sense, perhaps the intuition, that could make the rule of law work on a more global scale. To be honest about real challenges is a foundation for mutuality’s sincere address. We will never know, however, how far that kind of hermeneutic project could have gone for the conjuncture defined by war in Israel/Palestine and Russia’s invasion of Ukraine has stymied any hint of global progress around a public culture or vernacular defined by human rights, justice, and most obviously, love.

Epoch End, Law and Love

When Russia invaded Ukraine in 2022, we could see, once again, the limits of law and love in constraining those who mobilise extraordinary violence for the sake of restoring an empire. My relative expertise in matters of global social change focuses more on the lands bordering Poland than elsewhere, but it is hard to imagine that the contest in Israel/Palestine would not be of similar if

⁷⁴ F. Fassihi, *One Man Chose this War: Harsh Words Fly at UN Security Council Meeting*, “New York Times” 22.09.2022, <https://www.nytimes.com/2022/09/22/world/europe/un-security-council-lavrov-blinken-ukraine-war.html> (accessed: 16.08.2024).

⁷⁵ P. Fabricius, *Ukraine’s Kuleba Tries to Change Africa’s Narrative on the War*, Institute for Security Studies, 14.10.2022, <https://issafrica.org/iss-today/ukraines-kuleba-tries-to-change-africas-narrative-on-the-war> (accessed: 16.08.2024).

⁷⁶ F. Djilo, *Unpacking Africa’s Divided Stance on the Ukraine War*, Institute for Security Studies, 12.08.2022, <https://issafrica.org/iss-today/unpacking-africas-divided-stance-on-the-ukraine-war> (accessed: 16.08.2024).

⁷⁷ J. Ioffe, *Africa’s Xi-Biden Power Play*, “Puck” 20.12.2022, <https://puck.news/africas-xi-biden-power-play/> (accessed: 16.08.2024).

not greater world historical consequence as the Russian invasion of Ukraine. But unlike that war, where matters of international law seem relatively settled if nonetheless frustrated only by the location of Russia and its geopolitical power in constraining the administration of justice, the war in Gaza defies similar faith in the professional legal apparatus. It even defies an uncomplicated Ukrainian sensibility in recognising affinities.

Ukrainians can recognise affinities with both Palestinians and Jews. Official statements by Ukrainian President Zelensky are common in demanding the West support Ukraine in similar ways it has supported Israel.⁷⁸ But other Ukrainians have articulated their own Palestinian Solidarity. In an open letter to Palestinians, Ukrainian researchers, artists, political and labour activists, and members of civil society declared themselves to stand in solidarity with the people of Palestine.⁷⁹

This open letter resonates most obviously with the dominant discourses of the Global South where charges of hypocrisy ring out when Palestinians are not defended in similar terms as Ukrainians. While one might readily find arguments in publications identifying with “the Global South”, concerns over double standards even animate American publications of the foreign policy establishment.⁸⁰

It hardly seems evident to me what global futures will entail given the lack of vision other than military victory by one established identity over another established identity. But it is clear that the articulations of intuitive law or vernaculars are radically divided not only based on where people live, but whose principles are to be upheld, and whose right to life is most respected. We live in the most dangerous times where human rights are at risk both in reality and as a principle if they have not already suffered an utter collapse in political and policy relevance.

⁷⁸ News Wires, *Ukraine's Zelensky Calls for Same Unity from Allies as from Israel*, France 24, 15.04.2024, <https://www.france24.com/en/europe/20240415-ukraine-zelensky-calls-same-unity-from-allies-israel> (accessed: 16.08.2024).

⁷⁹ Ukrainian Palestinian Solidarity Group, *Ukrainian Let of Solidarity with the Palestinian People*, Al Jazeera, 08.11.2023, <https://www.aljazeera.com/opinions/2023/11/8/ukrainian-letter-of-solidarity-with-the-palestinian> (accessed: 16.08.2024).

⁸⁰ O. Stuenkel, *The Global South Is Accusing America of Hypocrisy*, “Foreign Affairs” 01.01.2024, p. 30–32.

Conclusions

I am an American sociologist with a particular interest in Polish sociology stemming, in part, from my interest in social change in Poland. However, part of my interest in Poland comes from my appreciation for how Polish sociology was both engaged in the dynamics of its own society and its quest to understand more general principles that can be illuminated by comparing other places to Poland, and considering Poland's place in the world at large.

I have not been engaged substantially with Podgórecki's sociology for a number of reasons; I am not a sociologist of law, nor have I been particularly devoted to human rights as a normative framework, nor as an object of explanation. The works by Podgórecki that I have read I found off-putting for justifiable, and not quite so justifiable, reasons. But in the course of the conference that Krzysztof Motyka organised, and following subsequent reflection, I see a different light of inspiration. With my recent interest in figuring sociology of love as a complement to my abiding commitment to emancipatory social change, I see a new place for Podgórecki and Petrażycki, when we envision an intuitive law finding its place not only in the actually existing vernacular societies but in the potential of their transformational solidarities.

For those foreign policy experts motivated by understandings of nations defined by those who rule them, such an articulation hardly seems important. But for those sociologists working to figure out cultural politics that might resonate not only across those disinherited from the nations in which they live, but from the world that fails even to see them, much less recognise them, this rearticulation of intuitive and positive law, or of public vernaculars and professional cultures of law and policy, offers promise.

We saw that promise in the wake of Russia's invasion of Ukraine. It was such an obvious and grotesque assault on international law, and on Ukrainian sensibilities. Ukrainian allies moved more effectively in solidarity with that nation than one might have expected, especially after the halting response to Russia's earlier stealth invasion in 2014. And while declarations defending human rights and international law could move listeners to scepticism, especially if they had themselves been members of societies that have been victimised by colonialism's ravages or more recent Global North interventions, as America in Iraq in 2003, progress in diplomatic circles at least was evident as African leaders and policymakers could argue that the continent's nations undermined their self-professed commitments to principles of sovereignty by failing to recognise Russia's imperial venture. The road to global solidarity was not paved with gold, but at least its contours were evident. And then 7 October 2023 came. Or rather, the particular Israeli response to Hamas's assault ruined the promise of global solidarity and the power of international law.

Some could see what many Ukrainian leaders also saw; a common assault by dictatorships on flawed democracies. But other Ukrainians saw their reflections in Palestinian lives lost, land stolen, and infrastructures decimated. Others in the Global South did not bother to look for similarities and differences between suffering by Ukrainians and by Palestinians. As the USA, Germany, and the United Kingdom stood up in defence of Israeli war practices that South Africa, in its charge to the International Court of Justice called genocidal, they could only see the hypocrisy of the Global North return, once again, to the international stage.

We could consider this through the lens of the Global South, and others beyond that geopolitical association like Ireland who understand the lash of colonialism; we could treat this simply as a kind of Western legalism that operates only when it suits the interest of the Global North. That is, in a sense, the much simpler path, but it treats the law as nothing more than an instrument of rule and domination rather than a vehicle for justice and rights.

If we were to consider, rather, the conditions under which vernaculars can be mobilised through legal institutions to change the terms of discussion, despite the interests of the powerful, we might find a sociology resonant with Podgórecki's legacy, and global transformations today. Indeed, by tracking what happens with the International Court of Justice and South Africa's charges against Israel's war practices, we might see a new spirit for a sociology of law that treats the intuitive, the vernacular, as critically as legal precedent in understanding the conditions of, and possibilities for, social change.

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BARTOSZ PILITOWSKI*

Typology of Obstacles to the Implementation of the Right to a Fair Trial. Application of Adam Podgórecki's Sociological Concept of Human Rights

Typologia przeszkód w realizacji prawa do sądu.
Zastosowanie socjologicznej koncepcji praw człowieka
Adama Podgóreckiego

Abstract

The purpose of the paper is to propose a typology of obstacles to the implementation of the right to a fair trial, based on the sociological and legal concepts of Adam Podgórecki, Leon Petrażycki and Lawrence M. Friedman. The methods used by the author are a review of the literature on the implementation of the right to a fair trial in Poland, including the author's own research and reports of public institutions. The result of the analysis is a typology with three main categories of obstacles: (1) those arising from the content of the regulations (direct, indirect and potential), (2) those related to the state of the justice system institutions (infrastructure and human resources), and (3) those arising from the legal culture (general and judicial). The author stresses that the most persistent barrier to the implementation of the right to a fair trial is the legal culture, especially the judicial culture. The author argues that a key element of the "complete right to a fair trial", as understood by Adam Podgórecki, is an internal sense of obligation on the part of justice system officials towards the subjects of that right, and not just towards the state or their superiors.

Keywords: sociology of human rights, right to a fair trial, legal culture, access to court, intuitive law

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Abstrakt

Celem artykułu jest zaproponowanie typologii przeszkód w realizacji prawa do sądu, w oparciu o koncepcje socjologiczno-prawne Adama Podgóreckiego, Leona Petrażyckiego i Lawrence’a M. Friedmana. Metodami wykorzystanymi przez autora jest przegląd literatury dotyczącej realizacji prawa do sądu w Polsce, w tym badań własnych autora i raportów instytucji publicznych. Wynikiem analizy jest typologia obejmująca trzy główne kategorie przeszkód: 1) wynikające z treści przepisów (bezpośrednie, pośrednie i potencjalne), 2) związane ze stanem instytucji wymiaru sprawiedliwości (infrastruktury i zasobów ludzkich), oraz 3) wynikające z kultury prawnej (ogólnej i sędziowskiej). Autor podkreśla, że najtrwalszą barierą w realizacji prawa do sądu jest kultura prawna, szczególnie sędziowska. Argumentuje, że kluczowym elementem „kompletnego prawa do sądu” w rozumieniu Adama Podgóreckiego jest wewnętrzne poczucie zobowiązania funkcjonariuszy wymiaru sprawiedliwości wobec podmiotów tego prawa, a nie tylko wobec państwa czy przełożonych.

Słowa kluczowe: socjologia praw człowieka, prawo do sądu, kultura prawna, dostęp do sądu, prawo intuicyjne

Introduction

Idea

As noted by Adam Podgórecki, a state’s declaration of observance of the human rights, expressed in generally applicable regulations of statutory law, does not automatically imply the implementation of those rights in practice.¹ By presenting examples of the results of empirical research, analyses of legal regulations, and my own observations of the Polish justice system, I propose a typology of problems that lead to crippling of the right to a fair trial in a given country, i.e. they constitute obstacles to its implementation in social reality. When developing the typology, I took into account the division into three components of the legal system known from socio-legal literature: the content of regulations, the organisation of the justice system and the legal culture.² However, it is only by applying the optics of the sociology of law to the analysis of the individual components of this system that brings a cognitive result in the form of a list of obstacles to the fullness of the right to a fair trial in social reality. The typology is able to organise and therefore facilitate the use of information on obstacles to the implementation of a key human right in a democratic state under the rule of law. The applications of the typology can be comparative analyses of the obstacles to the implementation of the right to a fair trial in different jurisdictions, or the development with its help of the

¹ A. Podgórecki, *Sociological Theory of Law*, Milano 1991, p. 101 et seq.

² L.M. Friedman, *Legal Culture and Social Development*, “Law & Society Review” 1969, vol. 4, no. 1, p. 261–274, DOI: 10.5771/0506-7286-1969-3-261.

so-called “check-lists” to facilitate the monitoring of the implementation of the right, but also actions aimed at improving the level of its functioning in practice.

Subject of the Analysis: Right to a Fair Trial

The right to a fair trial is widely recognised as one of the human rights. It is mentioned in the United Nations Universal Declaration of Human Rights (Articles 8–10), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 5–6),³ the International Covenant on Civil and Political Rights (Articles 8 and 14)⁴ and the Charter of Fundamental Rights of the European Union (Article 47).⁵

The right to a fair trial was also included in the Constitution adopted by Poland in 1997. Its essence is to provide every person with access to an independent, unbiased and impartial court established by law, which will hear cases relevant to the implementation of their rights and freedoms without undue delay in an open and fair manner.

The understanding of the right to a fair trial may have changed over time, but at least the right to a fair and public trial has remained undisputed elements of the principle of civil rights in democratic states since the Enlightenment.⁶ Similarly, the catalogue of core standards of a fair trial does not raise there any dispute, neither in doctrine nor in case law. Some of them were already written down by the lawyers of ancient Rome, which is why they still function today in the form of Latin maxims, e.g. *lex retro non agit* (in English: the law does not operate retroactively), or *in dubio pro reo* (in English: when in doubt, rule for the defendant).⁷ According to Ewa Łętowska, “[e]lementary of the fairness of the proceedings assumes hearing, presentation of reasons, equality of arms,

³ Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up at Rome on 4 November 1950, as amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, was ratified by Poland in 1993 (Polish Journal of Laws 1993.61.284, as amended); hereinafter the ECHR or the Convention.

⁴ International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, was ratified by Poland in 1977 (Polish Journal of Laws 1977, No. 38, item 167).

⁵ Charter of Fundamental Rights of the European Union, adopted on 7 December 2000 at the summit of the European Council in Nice, came into force in the Member States on 1 December 2009 following the ratification of the Lisbon Treaty (Official Journal of the EU 2010/C083).

⁶ The precursor of granting certain trial principles the status of an overarching norm in the hierarchy of national statutory law was the United States of America, which in 1791 included them in the federal Constitution. Also in Poland, after regaining independence after the period of partitions, the principles of openness of the trial and independence of judges were included in the catalogue of constitutional rights, and written in the March Constitution adopted in 1921.

⁷ The aforementioned maxims are the most common in the jurisprudence of Polish courts, according to W. Wołodkiewicz, *Łacińskie paremie prawne w orzecznictwie sądów polskich*, in: *Łacińskie*

possibility of appeal, existence of an objective arbitrator.”⁸ As part of psycho-social research on fairness in the judicial process, focusing on trial participants’ experience of procedural fairness, it has been found that its most essential elements are voice, respect, equality and understanding.⁹

Relevance of the Level of Implementation of the Right to a Fair Trial

The right to a fair trial has a unique place among human rights. In addition to its individual functions, it also serves to enforce other rights. Thus, ensuring that there are actual conditions for observing the right to a fair trial and that it is actually respected takes on particular importance.

It is known from regular opinion polls that the operation of the courts has been assessed relatively critically by Polish society for years. In surveys conducted by the Public Opinion Research Centre (CBOS) between 2005 and 2022, the question “How do you generally assess the operation of the justice system in Poland?” was answered negatively by an average of 55% of respondents. For comparison, positive answers were given on average by 32% of the survey participants, while in none of the editions were more than half satisfied and only once (in April 2007) did the survey show more positive than negative answers.¹⁰

In the most recent public poll by the CBOS in the series “Opinions about Public Institutions” from March 2024, the activities of the courts was assessed as good by 30% of respondents. A greater proportion of respondents gave a positive assessment of the activities of other authorities: the Senate (38%), the Sejm (40%), the President (46%), or local authorities (68%), as well as other institutions related to the observance of the law: Ombudsman (43%), the Supreme Audit Office (44%) and the police (64%). The same percentage of positive assessments as the courts was given to the prosecutor’s office (30%), and

paremie w europejskiej kulturze prawnej i orzecznictwie sądów polskich, eds. W. Wołodkiewicz, J. Krzynówek, Warsaw 2001, p. 21–22.

⁸ E. Łętowska, *Jak i czym mierzyć rzetelność*, in: *W pogoni za rzetelnym procesem karnym. Księga dedykowana Profesorowi Stanisławowi Waltosowi*, ed. D. Szumiło-Kulczycka, Wolters Kluwer, Warsaw 2022, p. 52; A. Clooney, P. Webb, *The Right to a Fair Trial in International Law*, Oxford University Press, New York 2020.

⁹ T.R. Tyler, *What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, “Law & Society Review” 1988, vol. 22, no. 1, p. 103–136; S. Burdziej, K. Guzik, B. Pilitowski, *Fairness at Trial: The Impact of Procedural Justice and Other Experiential Factors on Criminal Defendants’ Perceptions of Court Legitimacy in Poland*, “Law and Social Inquiry” 2019, vol. 44, no. 2, p. 359–390; S. Burdziej, K. Guzik, B. Pilitowski, *How Civility Matters in Civil Matters: Procedural Justice and Court Legitimacy in the Midst of a Legitimacy Crisis*, “Law & Social Inquiry” 2022, vol. 47, no. 2, p. 558–583.

¹⁰ K. Pankowski, *Spółeczne oceny wymiaru sprawiedliwości. Komunikat z badań Nr. 95/2022*, CBOS, Warsaw 2022, p. 4.

among the state institutions asked about by the CBOS, only the Constitutional Tribunal received fewer positive assessments (24%).¹¹

Statistics from the European Court of Human Rights (hereafter: ECtHR) show that violations of the right to a fair trial, i.e. Article 6 of the ECHR, were the most common reason for judgments by the European Court of Human Rights finding violations of the Convention by states under its jurisdiction. Violations of Article 6 accounted for 36% of all violations of the Convention found by 2019. This also applies to Poland, but in its case, violations of the right to a fair trial accounted for as much as 46% of all violations found in the judgments. Subsequent in the regrettable hierarchy of the most frequently breached articles of the Convention is Article 5, which safeguards the liberty of the individual. A critical aspect of this protection is the right to judicial review of the legitimacy of any deprivation of liberty. Violations of this article account for 14% of all violations found by the Court since its inception, but in the case of Poland the share is again higher and amounts to 25%.¹²

The data presented supports the acknowledgment of the right to a fair trial as not only a central component within the framework of fundamental rights protection but also as its particularly sensitive element. Moreover, the cited data imply that the execution of the right to a fair trial in Poland specifically falls short of the standards anticipated by both a substantial segment of the population and external assessors, such as the Strasbourg Court.

Definition of the Research Problem

Positive law was assigned various functions in the 20th century, from criminal to humanitarian. It's usually possible to track back the origin of a written norm to its informal predecessor. Codifications of human rights are manifestations of objectively existing beliefs about people's entitlements and freedoms too. However, they do not reflect the beliefs of all people obliged to apply them. Nor are they understood in a uniform way everywhere they have been ratified. They were codified by lawyers coming from a particular legal culture, which had in mind that the regulations they developed would be applied with the help of the institutions and organisational conditions existing in the countries from which they themselves originated. To a large extent, human rights were articulations

¹¹ M. Feliksiak, *Oceny instytucji publicznych w marcu. Komunikat z badań Nr. 36/2024*, CBOS, Warsaw 2024; A question regarding trust in these institutions yielded analogous results, see: A. Cybulska, *Social Trust. Research Reports No. 40/2024*, CBOS, Warsaw 2024, https://cbos.pl/EN/publications/reports_text.php?id=6804 (accessed: 06.10.2024).

¹² Own calculations based on: ECHR, *Annual Report European Court of Human Rights 2019*, 2020, p. 136–137.

of existing norms, derived from intuitive law and observed in the practice of their national judiciaries.

The accession of subsequent states to treaties mandating the observance of human rights constitutes a compelling natural socio-legal experiment. Historically and contemporaneously, it has been feasible to examine the outcomes elicited by the uniform human rights regulations ratified by successive states. An example is the Council of Europe and the ECtHR statistics cited above. In the majority of instances, the number of grievances and documented infringements of the European Convention on Human Rights per capita is greater in countries that ratified the Convention at a subsequent point in time than in countries that participated in its drafting. This discrepancy persists for an extended period following the admission of new members to the Council.

To identify the various factors that differentiate the implementation of human rights across different states, it is evident that the prevailing comparative, historical, and dogmatic-formal research methodologies in legal scholarship are inadequate. Statutory law regulations may appear deceptively similar, yet they yield divergent practical results. Simultaneously, legal systems deemed fundamentally distinct from a jurisprudential perspective may nonetheless achieve comparable outcomes concerning the implementation of individual human rights, exemplified by the nations surrounding the North Sea. It can thus be concluded that analysing doctrines, case law, and statutory regulations alone does not encompass the myriad factors influencing the practical outcomes of law. This realization should be considered pivotal in the context of formulating necessary changes aimed at enhancing the actual implementation standards of human rights.

The necessary instruments for conducting research on the operating of law are furnished by the sociology of law, a discipline that specializes in this domain. Notably, within its diverse trends, the pluralistic approach to law developed by the Polish polymath of the late 19th and early 20th centuries, Leon Petrażycki, alongside the sociological theory of human rights advanced by his intellectual successor, Adam Podgórecki, merit particular emphasis and recall in the context under discussion.

Purpose of the Analysis and Methods Used

The purpose of the analysis, the results of which are presented in this paper, is to propose a typology of problems that prevent the full implementation of the right to a fair trial in social reality. For this purpose, I reviewed available data on the operation of the Polish justice system using the *d e s k r e s e a r c h* method in search of systemic obstacles to the implementation of the right to a fair trial.

Before using them in the analysis, I examined the data from the selected sources for their usefulness in identifying the problems preventing a fuller implementation of the right to a fair trial or measuring the level of implementation of the right to a fair trial. I analysed the selected information by drawing conclusions from it in a manner appropriate to the type of data (qualitative or quantitative).

The purpose of creating typologies has its source in the characteristics of human cognition, which requires naming things in order to reduce the complexity of reality for one's individual needs, but also to enable communication – to build an epistemic community – with other people.¹³ The scientific goal of creating a typology is to propose an arrangement of observed phenomena according to a specific model (i.e. a simplified vision) of reality in order to explain the observed and predict future events.

The obstacles presented below does not exhaust the list of problems of a given category occurring in Poland, i.e. jurisdiction serving us as an example. Each one serves as a selected exemplification of a given category. The selection was not primarily based on the “typicality” of the obstacle within the category. Instead, the objective was to illustrate the typology with examples identified through a range of research methods and theoretical paradigms. In this way, I would like to highlight wealth of empirical social research on the operation and effects of law in Poland, which – although practised from the 1960s within the discipline of sociology, primarily by Adam Podgórecki's team, and continued to some extent by his students after his forced emigration¹⁴ – remains overshadowed in quantitative terms by academic work focused on the content of law.

The analysis draws on a variety of sources, including reports from public institutions and articles from the legal, psychological, and sociological literature; empirical research conducted by or with the author: quantitative analysis of data from the files of a representative sample of 300 criminal cases,¹⁵ analysis of the

¹³ According to Alfred Schütz, thanks to typologies (which he calls “typifications”), “individuals may effectively relate to the world around them, as they are not forced to analyse every nuance and specific characteristic of their situation. Moreover, typification facilitates entry into the world, simplifies the process of adaptation, as it gives people the opportunity to treat others as categories or as typical objects of a given kind”. A. Schütz, *The Phenomenology of the Social World*, Northwestern University Press, Evanston 1967. As cited in: J.H. Turner, *Struktura teorii socjologicznej*, Wydawnictwo Naukowe PWN, Warsaw 2005, p. 416.

¹⁴ One can read about the dramatic circumstances of Podgórecki's permanent departure from Poland in the biography of this sociologist contained in the paper by Daniel Wicenty, *The Experience of Oppression and the Price of Nonconformity: A Brief Biography of Adam Podgórecki*, “Studies in East European Thought” 2018, vol. 70, no. 1, p. 61–81, DOI: 10.1007/s11212-018-9300-x.

¹⁵ Z. Branicka, B. Kociolowicz-Wiśniewska, B. Pilitowski, *Analiza praktyki stosowania tymczasowego aresztowania przez polskie sądy. Wyniki badań aktowych i ich ocena*, in: *Stosowanie tymczasowego aresztowania. Analiza praktyczna*, eds. P. Karlik, B. Pilitowski, Wolters Kluwer, Warsaw 2022.

accessibility of 41 court buildings for persons with disabilities,¹⁶ analysis of the orders of court presidents and practices of court personnel in the context of implementing the principle of open hearing and public announcement of the judgment during the COVID-19 pandemic,¹⁷ analysis of the results of a survey conducted using the CAWI method on a nationwide representative sample, and statistical analysis of more than 28,000 motions for pre-trial detention examined by judges of a random sample of district courts.¹⁸

Implementation of the Right to a fair trial in the Light of Adam Podgórecki's Concept of Human Rights

It was the legal philosopher Hanna Waśkiewicz who initially drew attention to the superficiality of scientific research on the implementation of human rights in social practice. At an international conference organised in 1986 by the Institute of Applied Social Sciences of the University of Warsaw, she said that "it is only in everyday social life that people effectively exercise their human rights or are deprived of them. So perhaps the social aspect of human rights is even more important than the legal aspect."¹⁹ She suggested that sociology of law is the most appropriate scientific discipline to address this cognitive deficit.

Two years later, in Bologna, Adam Podgórecki presented a paper that, in a way, was an answer to the problem originally raised by H. Waśkiewicz.²⁰ The project of the sociology of human rights, which he announced, has developed independently in numerous locations across the globe.²¹

¹⁶ A. Rekowska, B. Pilitowski, *Jak zwiększyć dostępność sądów dla osób ze szczególnymi potrzebami*, Fundacja Court Watch Polska, Toruń 2022.

¹⁷ B. Pilitowski, *Przestrzeganie zasady jawności postępowania sądowego w Polsce podczas stanu epidemii COVID-19. Wyniki badań empirycznych*, "Zeszyty Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II" 2023, vol. 66, no. 2, p. 119–141.

¹⁸ B. Pilitowski et al., *Stosowanie tymczasowego aresztowania w Polsce. Wyniki badań ilościowych i jakościowych*, Fundacja Court Watch Polska, Toruń 2024.

¹⁹ H. Waśkiewicz, *Kilka uwag o konieczności socjologicznych badań nad niektórymi aspektami problematyki praw człowieka*, "Roczniki Nauk Społecznych" 2015, vol. 7(43), no. 4, p. 11–15, DOI: 10.18290/rns.2015.7(43).4-2.

²⁰ K. Motyka, *Od Redaktora Naukowego*, "Roczniki Nauk Społecznych" 2015, vol. 7(43), no. 4, p. 7–9, DOI: 10.18290/rns.2015.7(43).4-1.

²¹ An extensive bibliography of works on the sociology of human rights can be found in the studies on this subject by Krzysztof Motyka: *Socjologia prawa. Od Petrażyckiego do Podgóreckiego*, in: *Sto lat socjologii w Katolickim Uniwersytecie Lubelskim*, ed. J. Szymczak, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, Lublin 2018, p. 251–273; K. Motyka, *Od Redaktora Naukowego...*

Adam Podgórecki's Sociological Concept of Human Rights

In the view of Adam Podgórecki, an abstract pledge to uphold the human rights enshrined in the Constitution is insufficient. "In social reality, as a rule, human rights are mainly abstract, meaning that they are pronounced, but not necessarily practiced. Abstract rights become crippled when they do not provide realistic conditions for their own operation."²² In his opinion, the conditions for human rights to be "complete" also include: normative provisions enabling their implementation, intuitive law tantamount to them, as well as organisational and institutional ties connecting them to social reality.²³

Intuitive Law as an Element of Legal Culture

In the context of complete implementation of human rights, Adam Podgórecki wrote about the need for the existence of adequate "intuitive law". He took this concept from Leon Petrażycki. According to him, most social relations are regulated by "intuitive law", i.e. the emotional experiences of individuals "not with judgments as to what is supposed to be done according to statutes and the like but what is due to another and so forth in »conscience«, according to our independent convictions without reference to any external authorities."²⁴ "Intuitive law" is therefore a manifestation of people's internal beliefs, not externally existing normative facts about what they are obliged to do and what they are entitled to.²⁵ Because the "intuitive law", like any social fact, exerts coercion on individuals, it will have observable consequences in the form of the behaviour of these individuals. "Intuitive law" can thus be a valuable operationalisation of what we call "conscience"²⁶ on the individual level, or "social justice"²⁷ on the group level.

²² A. Podgórecki, *Sociological Theory of Law*, A. Giuffrè Editore, Milano 1991, p. 101 et seq.

²³ Ibidem.

²⁴ L. Petrażycki, *Law and Morality*, transl. H.W. Babb, Harvard University Press, Cambridge, MA 1955, p. 242.

²⁵ J.M. Kurczewski, *Leon Petrażycki's Two Dimensions of Law*, in: *Leon Petrażycki: Law, Emotions, Society*, eds. A.J. Treviño, E. Fittipaldi, Routledge, New York 2023; A. Kojder, *Pluralistyczna idea prawa Leona Petrażyckiego*, in: *Leon Petrażycki i współczesna nauka prawa*, ed. T. Giaro, Wolters Kluwer, Warsaw 2020, p. 240–241.

²⁶ When appointed, most Polish judges take an oath, among others: "to safeguard the law, fulfil the duties of a judge with the utmost diligence, administer justice in accordance with the law, with impartiality, according to [one's] conscience"; fragment of Article 66 sec. 1 of the Law of 27 July 2001 – Law on the Common Courts System Polish Journal of Laws 2024.0.334.

²⁷ See Article 2 of the Law of 2 April 1997 – Constitution of the Republic of Poland: "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"

In the light of Petrażycki's concept, intuitive law is an indispensable element in the organisation of society, performing motivational, educational and distributive functions. Positive law, in order to be eufunctional in society, should work in synergy with intuitive law. However, if the norms resulting from it are contrary to what someone's conscience tells them, it will be natural for the subject of this law to look for a way to comply primarily with the command of the intuitive law. Most often, however, this is not done by directly rejecting positive law,²⁸ but by adapting it, i.e. interpreting or applying the regulations in such a way that their result corresponds as much as possible to what is right according to the people applying them.

Typology of Obstacles to the Implementation of the Right to a Fair Trial

Although Adam Podgórecki was right in saying that to be complete, human rights need appropriate regulations, institutions and intuitive law consistent with them, this does not exhaust the list of necessary conditions for them to be fulfilled. When designing a typology of obstacles to the full implementation of the right to a fair trial in social reality, I use Lawrence M. Friedman's distinction between components of the legal system, corresponding to Podgórecki's concepts. Friedman proposed that when conducting empirical research on legal systems, their structural, content and cultural components should be taken into account. The structural components were to include the system and division of power, organisation and resources of the judiciary. The content of the legal system: regulations, case law and legal doctrines. Meanwhile, the intangible elements of the system that modify the operation of the law, e.g. the customs of lawyers, the views of judges, established ways of acting in certain situations, are elements of its legal culture.²⁹

When creating the typology, I have therefore abandoned explicit reference to the term "intuitive law" in favour of the broader concept of "legal culture" understood in the same way as Friedman did, i.e. as broadly as possible, including all intangible elements of the legal system, i.e. also the intuitive law.³⁰

(Polish Journal of Laws 1997, No. 78, item 483); see also: A. Kojder, *Godność i siła prawa*, Oficyna Naukowa, Warsaw 1995, p. 252.

²⁸ Conscious non-compliance with positive law may take hidden forms, e.g. tax avoidance, or overt forms, e.g. demonstrative disobedience.

²⁹ L.M. Friedman, *Legal Culture...*, p. 265–266.

³⁰ There are a number of competing definitions and applications of the concept of legal culture in the social sciences, which have been systematically reviewed by: M. Čehulić, *Perspectives of Legal Culture: A Systematic Literature Review*, Croatian Sociological Association, 2021; see, for example, E. Blankenburg, *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany*, "Law & Society Review" 1994, vol. 28, no. 4, p. 789–808; C. Gryko,

This choice of category name does not mean abandoning the use of Pe-
trażycki's concept. On the contrary, I would like to emphasise the value of his
approach to law as bilateral imperative-attributive emotions, i.e. obligations and
entitlements, for explaining the phenomena outlined in the introduction with
regard to the right to a fair trial. Although the method of introspection he pos-
tulated is archaic, many of his original observations and the conclusions drawn
from them are today confirmed by the results of research in decision-making
and moral psychology.³¹ When examining legal culture in order to explain
the occurrence of different operation of identical regulations of statutory law,
scientists today more often refer to concepts such as "law in action" coined by
R. Pound or "living law" introduced by E. Erlich,³² because they had a greater
chance of being popularised.³³

Obstacles to the Implementation of the Right to a Fair Trial Resulting from the Content of the Regulations

The obstacles to the implementation of the right to a fair trial arising from
regulations include the properties of the content of statutory law, which in
practice invalidate the promise to provide every person with access to a court.

Prawo a kultura. Pojęcie kultury prawnej, "Annales Universitatis Mariae Curie-Skłodowska" 1985, vol. 10, no. 7; J. Kurczewski, *Prawem i lewem. Kultura prawna społeczeństwa polskiego po komunizmie*, "Studia Socjologiczne" 2007, vol. 185, no. 2, p. 33–60; A.-M. Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, "Law & Social Inquiry" 2006, vol. 31, no. 1, p. 229–249; D. Nelken, *Using the Concept of Legal Culture*, "Australian Journal of Legal Philosophy" 2004, vol. 29; H. Olszewski, *Polska droga do państwa prawa. Refleksje o kulturze prawnej*, "Studia Prawnicze" 2002, vol. 151, no. 1, p. 25–36; K. Pałeczki, *O pojęciu kultury prawnej*, "Studia Socjologiczne" 1972, no. 2, p. 205–224; J. Winczorek, *Systems Theory and Puzzles of Legal Culture*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2012, vol. 4, no. 1, p. 106–125.

³¹ M.L. Finucane, E. Peters, P. Slovic, *Judgment and Decision Making: The Dance of Affect and Reason*, in: *Emerging Perspectives on Judgment and Decision Research*, Cambridge University Press, Cambridge 2003; J. Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, "Psychological Review" 2001, vol. 108, no. 4, p. 814–834, DOI: 10.1037/0033-295X; J. Haidt, S.H. Koller, M.G. Dias, *Affect, Culture, and Morality, or Is It Wrong to Eat Your Dog?*, "Journal of Personality and Social Psychology" 1993, vol. 65, no. 4, p. 613–628.

³² D. Nelken, *Using the Concept of Legal Culture...*, p. 3.

³³ On the reasons for the relatively low familiarity and popularity of Petrażycki's concept, see e.g.: R. Cotterrell, *Foreword*, in: *Leon Petrażycki: Law, Emotions, Society*, eds. E. Fittipaldi, A.J. Treviño, Routledge, New York 2023; K. Motyka, *Leon Petrażycki and Adam Podgórecki*, in: *Leon Petrażycki: Law, Emotions, Society...*; K. Motyka, *Law and Sociology: The Petrażyckian Perspective*, in: *Law and Sociology*, ed. M. Freeman, Oxford University Press, Oxford 2006; A. Podgórecki, *Intuitive Law versus Folk Law*, "Zeitschrift für Rechtssoziologie" 1982, vol. 3, no. 1, p. 74–81; A. Podgórecki, *Unrecognized Father of Sociology of Law: Leon Petrażycki – Reflections Based on Jan Gorecki's Sociology and Jurisprudence of Leon Petrażycki*, "Law & Society Review" 1980, vol. 15, no. 1, p. 183–202.

This may result both from the fact that the norms arising from statutory law are directly contrary to the principles of the right to a fair trial, and from the fact that the regulations protect the exercise of the right to a fair trial in an insufficient manner, e.g. ostensibly or depending on someone's arbitrary decision. Therefore, I distinguish legal obstacles to the implementation of the right to a fair trial into three subtypes: direct, indirect or potential.

Direct Legal Obstacles to the Implementation of the Right to a Fair Trial

The legal problem that is an obstacle to the implementation of the right to a fair trial is of a direct nature, when the applicable regulations *de facto* prevent the exercise of the full right to a fair trial. A direct obstacle may be regulations that oblige one to act in a way that leads to a denial of the right to a fair trial or a violation of its standards. A similar problem emerges when the legal system effectively precludes public actors from taking action without the requisite regulations, such as legislation or ordinances. In such jurisdictions, the absence of regulations that formally authorize the taking of action to guarantee access to the court can effectively “cripple” the right to a fair trial.

Example: In 2020, the presidents of most courts in Poland, following the recommendations of the Polish Judges Association “Iustitia” and the Undersecretary of State in the Ministry of Justice, issued orders prohibiting the entry of unsummoned persons into the courts or making the entry of the public into the courtroom subject to the arbitrary decision of managing judges. This made the hearings in these courts *de facto* held in camera. These actions were carried out in disregard of the principle of the hierarchy of legal acts, as the orders were contrary in their effect to the legislation in force during this period (including the constitution) or claimed extra powers to presiding judges, managing judges, and even court buildings' security guards without proper legal grounds. As a result, in the years 2020–2022, the principle of a public trial *de facto* did not apply in at least several dozen courts in the country.³⁴

³⁴ B. Łopalewski, B. Pilitowski, *Jawność wyjęta spod prawa, czyli zarządzenia prezesów sądów ważniejsze niż konstytucja*, “Gazeta Prawna” 13.05.2020, <https://prawo.gazetaprawna.pl/artykuly/1476300,-jawnosc-rozpraw-ograniczona-zarzadzenia-prezesa-sadu.html> (accessed: 23.05.2023); B. Pilitowski, *Przestrzeganie zasady jawności postępowania sądowego...*; see also: K. Rogala, *Rozprawy zdalne w praktyce sądowej*, in: *Postępowanie cywilne w czasie pandemii: e-doręczenia, rozprawa zdalna, posiedzenia niejawne, składanie pism procesowych*, ed. J. Gołaczyński, C.H. Beck, Warsaw 2022, p. 151.

Indirect Legal Obstacles to the Implementation of the Right to a Fair Trial

Regulations may pose an indirect problem for the implementation of the right to a fair trial when, although their content does not imply norms directly opposing the implementation of this right, due to other objective circumstances (e.g. biological, cultural, institutional or organisational conditions), they create conditions in which the right to a fair trial becomes illusory.

Example: An element of the right to a fair trial is the right to a defence and access to professional defence counsel. In accordance with the regulations of the 1997 Polish Code of Criminal Procedure, a detained person has the right to communicate with his or her defence counsel. If the prosecutor's office files a motion for pre-trial detention, he or she also has the right to read its content and the evidence on which it is based. Nevertheless, in the experience of suspects, access to defence counsel before the first hearing is difficult. In practice, the detained person must know by heart the telephone number of the person who is able to ensure that an attorney arrives at the hearing, since the only assistance that the state guarantees in the exercise of the right of defence is instructions and one telephone call. As a result, at the first pre-trial detention hearing, which takes place several dozen hours after the detention, defence counsels accompany only 16% of the suspects whose cases are later brought before the district court and 27% of the suspects whose cases are later brought before the regional court.³⁵ Such a low percentage of use of a professional cannot, however, be explained solely by the spontaneous reluctance of suspects to be assisted by lawyers, since in hearings for the extension of pre-trial detention, which are usually held after about 12 weeks in detention, defence counsels already accompany about half of them.³⁶

Also at the stage of considering a motion for pre-trial detention, the right to defence is often only formally implemented, as the prosecutor is not obliged to provide the motion and a copy of the file to the suspect and his defence counsel.³⁷ The defence must therefore request access to the case files and wait for the court to review them. As the court has 24 hours to consider the motion, the

³⁵ Z. Branicka, B. Kociolowicz-Wisniewska, B. Pilitowski, *Analiza praktyki stosowania tymczasowego aresztowania...*, p. 21.

³⁶ Ibidem, p. 22.

³⁷ The provision of a copy of a motion for pre-trial detention to the defence by the prosecutor's office occurs in Poland only as a manifestation of the goodwill of a particular prosecutor in a particular case. The European Court of Human Rights has already pointed out to Poland that the failure to provide the suspect with access to the material of preparatory proceedings in the scope of the motion for pre-trial detention constitutes a violation of the adversarial nature of the proceedings and the principle of equality of arms between the parties to the trial; see the ECtHR judgment of 06.11.2007 in Chruściński v. Poland (22755/04) and the ECtHR judgment of 15.10.2008 in Łaskiewicz v. Poland (28481/03).

defence is left with often only a few minutes to read the prosecutor's arguments and evidence before the hearing begins, the outcome of which will determine whether or not someone will spend the next few months in detention.

Potential Legal Obstacles to the Implementation of the Right to a Fair Trial

The regulations may also constitute a potential threat to the implementation of the right to a fair trial. This occurs when, using recognised rules of interpretation, the regulations oblige officers to act in accordance with the standards of the right to a fair trial, but at the same time does not provide any control mechanism as to whether this is happening, or effectively excludes liability when it is found that a violation of the standards of the right to a fair trial does occur after all.

Example: Openness of court proceedings may be excluded exceptionally, in cases specified by law, not only by virtue of law, but also by the court when it finds grounds for doing so and perceives a need to do so. The court may exclude the openness of the proceedings *ex officio* or at the request of an authorised entity. In situations where it is the court that decides to exclude openness, it affects the way in which the right to a fair trial is implemented and the participants in the proceedings, whose rights and interests the openness is supposed to safeguard, may be opposed to it. Meanwhile, the court that has the power to make this decision finds itself in a situation of potential conflict of interest, because the participation of the public and media serves, among other things, to control its work. The problem is that the court in this situation may decide to exclude the openness arbitrarily, it does not have to justify it, and the regulations of Polish law do not provide for the possibility of appealing against this decision to another court.³⁸ This legal state of affairs poses a threat to the implementation of the right to a fair trial, as the fairness of the judge, which the public is supposed to guard, is a prerequisite for the public to be able to enter the courtroom and exercise its controlling role.

Obstacles to the Implementation of the Right to a Fair Trial Resulting from the Characteristics of the Institutions Entrusted with the Justice System

In the context of the proposed typology, I use the term “institution” in the narrow sense, referring to state organisations established to carry out specific public tasks.

³⁸ The Commissioner for Human Rights, prof. M. Wiącek, appealed to change this state of affairs by postulating the introduction of an appeal procedure against the decision to exclude openness, which could be initiated by a party to the proceedings; see the speech of the Commissioner for Human Rights no. VII.510.32.2022.PKR of 20 April 2022 to the Minister of Justice, https://bip.brpo.gov.pl/sites/default/files/2022-04/Do_MS_jawnosc_postepowan_20.04.2022.pdf (accessed: 04.09.2024).

The entire state is responsible for implementing the right to a fair trial. In a system where competences are divided between the legislative, executive and judicial powers, it is not possible to achieve fullness of implementation without their cooperation. Nevertheless, in the case of the right to a fair trial, the role of the legislature and the executive is primarily to ensure appropriate conditions for the courts to operate. Alternatively, to ensure their quality and accessibility for the public.

Therefore, realisation of the right to a fair trial may be hindered by various obstacles related to the condition of the resources available to the justice system. The way in which the institutions that indirectly influence the efficiency, independence, impartiality or even reliability of the courts – the judicial councils, legal professional organisations, legal apprenticeships, disciplinary bodies, the system of appointment and evaluation of judges and, last but not least, the financing of the courts³⁹ – operate is also significant. Without forgetting all the potential sources of problems, I propose to distinguish the obstacles to the implementation of the right to a fair trial related to the state or *modus operandi* of justice system institutions into two subcategories only: obstacles related to the state of their infrastructure and obstacles related to the characteristics of their personnel.

³⁹ *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World*, eds. K. Malleon, P.H. Russell, University of Toronto Press, Toronto 2006; B. Hayo, S. Voigt, *Explaining de facto Judicial Independence*, "International Review of Law and Economics" 2007, vol. 27, no. 3, p. 269–290, DOI: 10.1016/J.IRLE.2007.07.004; M.L. Volcansek, *Appointing Judges the European Way*, "Fordham Urban Law Journal" 2007, vol. 34, no. 1, p. 363–385; C.G. Geyh, *The Endless Judicial Selection Debate and Why It Matters for Judicial Independence*, "Georgetown Journal of Legal Ethics" 2008, vol. 21, p. 1259–1281; C.G. Geyh, *Methods of Judicial Selection & Their Impact on Judicial Independence*, "Daedalus" 2008, vol. 137, no. 4, p. 86–101; D. Piana, *Beyond Judicial Independence: Rule of Law and Judicial Accountabilities in Assessing Democratic Quality*, "Comparative Sociology" 2010, vol. 9, no. 1, p. 40–64, DOI: 10.1163/156913210X12535202814351; J. Riedel, *Training and Recruitment of Judges in Germany*, "International Journal for Court Administration" 2013, vol. 5, no. 2, p. 42–54, DOI: 10.18352/ijca.12; T. Smith et al., *Selecting the Very Best. The Selection of High-Level Judges in the United States, Europe and Asia*, Kirkland & Ellis, Due Process of Law Foundation, 2013; C. Kulesza, *Systems of Selection and Appointment of Judges and the Issue of Judicial Independence: American, English and German Experiences*, "Białostockie Studia Prawnicze" 2016, vol. 20/A en, p. 121–132, DOI: 10.15290/BSP.2016.20A.EN.09, <https://repozytorium.uwb.edu.pl/jspui/handle/11320/7040>; B. Pilitowski, M. Hoffmann, B. Kociolowicz-Wisniewska, *Wyniki badania procesu selekcji kandydatów na wolne stanowiska sędziowskie w latach 2014–2017*, in: *Konstytucja. Praworządność. Władza sądownicza. Aktualne problemy trzeciej władzy w Polsce*, eds. Ł. Bojarski et al., Wolters Kluwer, Warsaw 2019; K. Šipulová et al., *Judicial Self-Governance Index: Towards Better Understanding of the Role of Judges in Governing the Judiciary*, "Regulation & Governance" 2022, vol. 17, no. 1, p. 22–42, DOI: 10.1111/rego.12453; B. Pilitowski, *Niezależność sądownictwa a proces wyboru sędziów w Królestwie Niderlandów*, Fundacja Court Watch Polska, Toruń 2022.

Obstacles Related to the State of the Infrastructure of the Justice System

This category of obstacles includes problems hindering the implementation of the right to a fair trial related to the number, layout, functionality and condition of court buildings, the functionality and condition of their equipment, the technical means used, the tools used to communicate with the participants in the proceedings, etc. What is important in this respect is the adequacy of adapting the infrastructure to the legitimate needs and actual capacities of society within the financial and organisational potential of the state.

Example: Council of Europe data reveals that Poland spends 0.39% of its GDP on the judiciary. The only European Union country that spends more is the much smaller Slovenia (0.4% of its GDP). Despite this, out of 41 court buildings in Poland examined for accessibility for people with disabilities by Court Watch Poland Foundation,⁴⁰ six did not have an entrance of the width provided for by the regulations, i.e. enabling easy use by a person in a wheelchair. Such a person could not get to the next six buildings without assistance because there were stairs leading to the entrance.⁴¹ This means that 30% of the court buildings surveyed were in practice inaccessible to wheelchair users, which is a limitation of access to the justice system for this category of people.

Obstacles Related to the State of the Human Resources of the Justice System

These are obstacles related to the quantitative and qualitative characteristics of the personnel of the justice system in the context of the legitimate needs of society and the objectively existing capacities. Among the various variables that determine the level of implementation of the right to a fair trial, one of the most important is certainly the level of competence of judges. Therefore, the way in which personnel is managed has a huge impact on the state of human resources of the justice system. The key in this area is to ensure the recruitment of people with appropriate predispositions and competences, the development and supplementation of necessary skills and knowledge, the division of tasks and responsibilities adequate to the needs and possibilities, planning processes in the context of rotation, ensuring high motivation and well-being of personnel; so that the right to a fair trial in accordance with the standards can be implemented in reality.

⁴⁰ The sample consisted of court buildings of various types selected by teams of volunteers involved in the survey at random and at their discretion (*convenience sample*).

⁴¹ A. Rekowski, B. Pilotowski, *Jak zwiększyć dostępność sądów...*

Example: Among the procedural activities that are most frequently performed by judges, the assessment of the reliability of personal sources of evidence places a particularly heavy responsibility on the shoulders of the judge. This is due, on the one hand, to the importance of witness testimony for the resolution of a significant number of cases, particularly criminal cases, and, on the other hand, to the characteristics of this type of source of information. It is crucial for the judge to recognize the various elements that can affect the accuracy and honesty of witness statements. When assessing the probative value of testimony or explanations, the judge should take into account both the imperfections of human perception, imperfections of human memory and the fact that the person before the judge may (intentionally or not) mislead the court. The level of one of the elements of these competencies – knowledge of the psychology of eyewitness testimony – was checked by Michał Głowczewski. He surveyed a sample of 87 criminal judges from all over Poland⁴² and concluded that “they had relatively low knowledge of the psychology of eyewitness testimony.”⁴³ 87% of them did not know that a witness’s ability to recall small details about a crime is not a good indicator of the accuracy of their identification of the attacker. 64% that the confidence of the witness during the trial is not a good predictor of accuracy in their identification of the defendant as the attacker. 60% that it is not true that the sooner a witness makes an identification during an appearance, the more accurate that identification is. Głowczewski also noted that over 90% of the judges surveyed believe in popular psychological myths about hypnosis, the usefulness of the polygraph, or psychological profiling.

In conclusion, he notes:

Respondents also indicated that they would very much like to be trained in forensic psychology, as they see its huge role in the application of the law. However, the current system of legal education – studies, apprenticeship and continuing training – does not allow future lawyers and trial decision-makers to acquire the up-to-date knowledge of the psychology of testimony necessary for their profession. This creates a potential risk of them making wrong procedural decisions.⁴⁴

⁴² 51 women and 35 men, one person did not specify their gender (average age = 43 years). Average length of service: 13 years, shortest: a few months, longest: 34 years. Place of adjudication: 79 judges indicated the district court, 6 – the regional court and 1 – the court of appeal, one judge did not answer this question. The survey was anonymous and was conducted in 2018 among participants of continuing training courses organised by the National School of Judiciary and Public Prosecution at the training centre in Dębe.

⁴³ M. Głowczewski, *Wiedza polskich sędziów i prokuratorów na temat psychologii zeznań naocznych świadków w świetle badania własnego*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2019, vol. 81, no. 2, p. 153, DOI: 10.14746/RPEIS.2019.81.2.11, <https://pressto.amu.edu.pl/index.php/rpeis/article/view/19690> (accessed: 23.08.2024).

⁴⁴ Ibidem.

Obstacles to the Implementation of the Right to a Fair Trial Resulting from Legal Culture

I define legal culture herein as any intangible cultural elements that modify the operation of positive law. The impact of legal culture on the implementation of the right to a fair trial may also consist in determining or co-determining people's beliefs about their rights and obligations towards the judicial power and *vice versa*. As already noted above, culture exerts an internal compulsion on its people to act in accordance with the patterns resulting from it. Every person is influenced by the culture to which he or she belongs. This also applies to the way in which positive law is applied, or the performance of the obligations arising from it. Hence, the law often produces effects that are different from the legislator's declared expectations. Even when people adapt their conduct to the applicable law, they do not necessarily do so in the way the legislator would expect. Their way of understanding the regulations, responding to the content contained therein and acting within the scope of the regulation will be subject to their legal culture.

Intermezzo – Variety of Obstacles Resulting from Legal Culture and Their Division

In the scientific literature, the term “legal culture” is used in various meanings. An important distinction that should be made at this stage is to distinguish the popular, or general, legal culture of society from various legal subcultures. I use the term “general” legal culture to distinguish it from the second subtype: legal subculture, namely “judicial legal culture”, to which I would like to pay special attention. The subculture of people professionally involved in the implementation of the right to a fair trial is, in my opinion, a key, and surprisingly rarely taken into account in research,⁴⁵ independent variable of the operation of law, and the right to a fair trial in particular.

Judicial legal culture is not only part of the broader phenomenon of “legal culture”, i.e. characteristic of people practicing the legal profession or professions.⁴⁶

⁴⁵ See: M. Čehulić, *Perspectives of Legal Culture...*

⁴⁶ This is a way of using the term culture characteristic of the sociology of the profession. See, for example, R.L. Abel, *Comparative Sociology of Legal Professions: An Exploratory Essay*, “Law & Social Inquiry” 1985, vol. 10, no. 1, p. 1–79, DOI: 10.1111/j.1747-4469.1985.tb00496.x; T.C. Halliday, *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*, University of Chicago Press, Chicago 1987; J. Kurczewski, *Legal Professions in Transformation in Poland*, “International Journal of the Legal Profession” 1994, vol. 1, no. 3, p. 269–282, DOI: 10.1080/09695958.1994.9960382, <https://www.tandfonline.com/doi/abs/10.1080/09695958.1994.9960382> (accessed: 20.03.2021); V. Volkov, A. Dzmitryieva,

In Anglo-Saxon literature, the homogeneity of legal culture within a given legal system is often assumed *a priori*. This is due to the fact that in English-speaking countries the most common system for recruiting judges is the appointment of experienced professional attorneys. In many countries, the path to becoming a judge does not lead through an apprenticeship in other professions, and judges differ from professional attorneys or academic lawyers not only in the way of employment, subordination and the type of tasks performed, but also in the way of recruitment, education and professional socialisation. However, judges – even if they will not formally constitute a profession separate from other lawyers, as is the case in the United States – still produce, together with other court personnel, a kind of subculture whose impact on the implementation of the right to a fair trial is much greater than any other.

Elements of the General Legal Culture That Are an Obstacle to the Implementation of the Right to a Fair Trial

This category includes those elements of culture that prevent or hinder the implementation of the right to a fair trial, or invalidate or impair the operation of its rules. Significant obstacles to the implementation of the right to a fair trial may be irenic patterns or religious principles that exclude resolving conflicts between community members to someone outside the community. Too low or false legal awareness is also a cultural factor that *de facto* limits access to court.

Example: One of the important elements of a fair hearing of a criminal case is the observance of the principle of the presumption of innocence. It is among other things to ensure that the suspect or defendant is not stigmatised, as this could have a negative impact on the impartiality of the court – biasing the court against the defendant either directly or indirectly, as a result of the society becoming convinced of guilt or the need for severe punishment and the pressure exerted on the court as a result.⁴⁷ Meanwhile, the Polish criminal procedure calls one of the measures securing preparatory proceedings in a manner confusingly similar to a criminal measure applied after the court has found the perpetrator of the prohibited act guilty. This refers to “tymczasowe aresztowanie”

Recruitment Patterns, Gender, and Professional Subcultures of the Judiciary in Russia, “International Journal of the Legal Profession” 2015, vol. 22, no. 2, p. 166–192, DOI: 10.1080/09695958.2015.1086351, <https://www.tandfonline.com/doi/abs/10.1080/09695958.2015.1086351> (accessed: 03.01.2023).

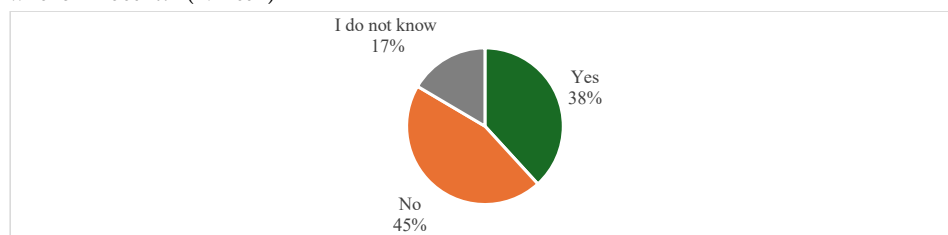
⁴⁷ The ECtHR recognises that the principle of presumption of innocence applies not only in the actual criminal proceedings, i.e. after the indictment is brought to court, but also at the preparatory stage and applies in all incidental proceedings, e.g. in detention proceedings; see the ECtHR judgment of 26.03.2002 in *Butkevičius v. Lithuania* (48297/99) and the ECtHR judgment of 08.04.2010 in the case of *Peša v. Croatia* (40523/08).

(Eng. pre-trial detention), the name of which may be confused with the punishment of “areszt” (Eng. jail).

It is all the more easy to make a mistake because both legal institutions can only be applied by a court, and both involve deprivation of liberty, and people who are “pre-trial detainees” are placed in a place also called “areszt” (Eng. jail). Moreover, in public discourse, even professionals use the expression “tymczasowy areszt” (Eng. temporary jail). in the context of a preventive measure, although such a term does not appear in the law. While, at least lawyers, do it being aware of the different functions of jail and pre-trial detention, using such a term in public space (where the recipients of the message are not only professionals) may contribute to deepening the false legal awareness of society.⁴⁸

One of the consequences of confusing these legal institutions is to equate a decision on pre-trial detention with a prejudgement of guilt. In a survey on a nationwide representative sample by age, education and place of residence (CAWI, N=1032), which was conducted for Court Watch Poland Foundation at the end of 2022 by the Pollster Research Institute, the question was asked whether it is possible to lawfully arrest a person who is innocent. The correct answer, “Yes”, was given by (only) 38% of respondents, ignorance was declared by 17%, and the largest proportion of respondents answered incorrectly with “No”.⁴⁹ One can conclude from this that the majority of Poles are not aware that, when deciding on detention, the court does not prejudge guilt, but only the need to protect criminal proceeding.

Chart 1. Distribution of answers to the question “Do you think it is possible to lawfully arrest a person who is innocent?” (N=1032)



Source: own study based on data from Court Watch Poland Foundation.

⁴⁸ As a side note, it should be noted that the term “false awareness” in this context means inconsistent with the content and official purposes of the law. At the same time, it may be “true” to its real, albeit hidden, purposes or the practice to which it leads. It should be remembered that Poland ratified the ECHR and adapted the criminal procedure to it only in the last decade of the 20th century. Even half a century ago, the use of pre-trial detention for repressive purposes was allowed, and even today one can find voices ready to defend the legitimacy of the procedural authorities by using pre-trial detention for non-procedural functions; see, for example, A. Szumski, *Funkcja prewencyjna tymczasowego aresztowania*, “Prokuratura i Prawo” 2012, no. 7–8, p. 139–147.

⁴⁹ B. Pilitowski, *Stosowanie tymczasowego aresztowania w Polsce...*, p. 5–6.

Table 1. Distribution of answers to the question “Do you think it is possible to lawfully arrest a person who is innocent?”

Do you think it is possible to lawfully arrest a person who is innocent?	N	%
Yes	394	38.2
No	468	45.3
I do not know	170	16.5
<i>Total</i>	<i>1032</i>	<i>100.0</i>

Source: own study based on data from Court Watch Poland Foundation.

In these circumstances, the right to the presumption of innocence can be described as defective. Even if no public official directly calls the suspect guilty, when informing that the suspect has been detained on remand, a prosecutor, court spokesman or journalist is understood by a large part of the population the person is being punished, so his or her guilt has been confirmed by the court.

Elements of Judicial Legal Culture That Are an Obstacle to the Implementation of the Right to a Fair Trial

This category includes those elements of the judicial legal culture that prevent or hinder the implementation of the right to a fair trial, or invalidate or impair the operation of its rules. I refer to judicial legal culture as all intangible elements of the culture of the justice system officials that influence the operation of positive law. These include, for example, values, views, beliefs that influence judges’ consciences or sense of justice, as well as the principles followed in practice, but also customs or patterns of action by judges and court personnel in certain situations.

Example 1: Some practitioners (including judges) point out that in criminal proceedings in Poland one cannot always be sure of compliance with the standards of the presumption of innocence and impartiality.⁵⁰ This is most likely due

⁵⁰ M. Czajka, *Trzeba przypominać, że mamy do czynienia z żywym człowiekiem – rozmawiał Paweł Kubicki*, “Dziennik Gazeta Prawna” 03.01.2023; W. Gontarski, *Domniemanie niewinności, in dubio pro reo i przesłanki przyjęcia postanowienia o tymczasowym aresztowaniu w prawie Unii Europejskiej. Część 3*, “Europejski Przegląd Prawa i Stosunków Międzynarodowych” 2023, no. 4, p. 185–208; W. Jankowski, *Zasada domniemanie niewinności – dlaczego praktyka tak różni się od teorii (cz. 1)*, “Palestra” 2013, vol. 9–10, p. 54–62, <https://palestra.pl/pl/czasopismo/wydanie/9-10-2013/artukul/zasada-domniemania-niewinności-dlaczego-praktyka-tak-rozni-sie-od-teorii-cz.-1> (accessed: 27.08.2024); W. Jankowski, *Zasada domniemanie niewinności – dlaczego praktyka tak różni się od teorii (cz. 2)*, “Palestra” 2013,

to a specific understanding or ignorance of certain procedural principles, e.g. *in dubio pro reo*, or the presumption of innocence by a significant number of Polish criminal judges. The judges in Głowczewski's survey mentioned above, asked whether they would be willing to convict the defendant if the only evidence supporting their guilt was the testimony of an eyewitness, 2/3 of them would render a convicting judgment in such a situation. The author of the survey rightly comments that this is a surprisingly large number of positive answers, considering that

[t]his question itself contains little information about this testimony – was it reliable, complete, detailed, certain? The judges could mark the answer “I do not know/I have no opinion”, expressing their scepticism and remembering the limitations of eyewitness testimony. Meanwhile, as many as 66% of the surveyed judges would render a convicting judgment in such a situation.⁵¹

Example 2: In the light of the most common reasons for the Strasbourg Court awarding compensation from Poland for violations of the ECHR in connection with the use of pre-trial detention (applying this measure without sufficient reasons or for too long), a survey was conducted on a nationwide sample of over 300 criminal cases in which this preventive measure was applied.⁵² The most important conclusions of the survey include: the application by judges of the maximum period of detention from the beginning in the vast majority of the examined cases (93% of cases from the jurisdiction of regional courts and 83% of such cases from district courts), the application of this measure most frequently until the end of the judicial proceedings (in 92% of finally and legally concluded cases from regional courts and 72% of such cases from district courts) and laconic justifications for decisions on deprivation of liberty (e.g. the analysis of the possibility of application of non-custodial preventive measures, of which there

vol. 11–12, p. 168–175, <https://palestra.pl/pl/czasopismo/wydanie/11-12-2013/artukul/zasada-domniemania-niewinnosci-dlaczego-praktyka-tak-rozni-sie-od-teorii-cz.-2> (accessed: 27.08.2024); A. Krupa, *Arkadiusz Krupa: obowiazuje zasada domniemania winy*, newsbar.pl, 15.01.2019, <https://newsbar.pl/arkadiusz-krupa-obowiazuje-zasada-domniemania-winy/> (accessed: 30.11.2022); P. Wiliński et al., *Stosowanie tymczasowego aresztowania w Polsce. Analiza i rekomendacje*, Lublin–Poznań–Warsaw 2008, <https://panstwowoprawa.org/wp-content/uploads/2015/11/Stosowanie-tymczasowego-aresztowania-w-Polsce.pdf> (accessed: 04.10.2020).

⁵¹ M. Głowczewski, *Wiedza polskich sędziów i prokuratorów na temat psychologii zeznań naocznych świadków w świetle badania własnego...*, p. 152.

⁵² The survey was conducted using the court files content analysis method. The sample consisted of 310 criminal cases initiated in 2016–2018 and completed in mid-2019, selected using a stratified random method from 16 district courts and 8 regional courts from the area of 4 appeals (Gdańsk, Kraków, Szczecin and Warsaw).

are eight, took up an average of four lines of text in the analysed justifications). The survey also confirmed the prevalence of justifying pre-trial detention on the grounds that the defendant faces severe punishment (98% of decisions concerning defendants in cases heard by regional courts and 66% by district courts).⁵³ They confirm the critical views of the representatives of the doctrine that “the irregularities of the practice of pre-trial detention were already pointed out by the ECtHR several years ago, and despite this, the jurisprudential practice has not changed significantly.”⁵⁴ Reading the reports of non-governmental organisations based on the analysis of case law leads one to conclude that, in fact, both the list of irregularities and the recommendations addressed to the judiciary are not changing.⁵⁵ On the other hand, a look at statistics from 30 years ago, when it was still the prosecutor who decided on the pre-trial detention of suspects, may lead to the shocking conclusion that the situation has even worsened in some respects – e.g. when it comes to the lengthiness of detentions, which is why Poland regularly loses cases in Strasbourg.⁵⁶

The explanation for the durability of the judicial practice described in this way may be the professional culture of judges. In Poland, its roots go back to the times when the use of pre-trial detention could be decided by the prosecutor⁵⁷ and the continuity of a specific *praxis*,⁵⁸ an element of which is the “transferring” by judges of responsibility for the practice of using pre-trial detention to the prosecutor’s office, although official law places it on the courts.

The hypothesis about the cultural source of this issue is confirmed by some public and behind-the-scenes statements of judges. When asked why on average 90% of motions are granted by courts even in years when their number is growing disproportionately to the growth rate of crime, I had the opportunity to hear from the judges themselves that “judges most often know the prosecutors they work

⁵³ A. Antoniuk-Drózd et al., *Analiza praktyki stosowania tymczasowego aresztowania...*

⁵⁴ J. Skorupka, *Tymczasowe aresztowanie w praktyce stosowania prawa*, “Palestra” 2021, vol. 1–2, p. 7–24, <https://palestra.pl/pl/czasopismo/wydanie/1-2-2021/artykul/tymczasowe-aresztowanie-w-praktyce-stosowania-prawa> (accessed: 27.08.2024).

⁵⁵ A. Klepczyński, P. Kładoczny, K. Wiśniewska, *Tymczasowe aresztowanie – (nie)tymczasowy problem. Analiza aktualnej praktyki stosowania tymczasowego aresztowania*, Helsińska Fundacja Praw Człowieka, Warsaw 2019, https://www.hfhr.pl/wp-content/uploads/2019/07/HFPC-Tymczasowe-aresztowanie-nietymczasowy-problem-web_01.pdf (accessed: 04.10.2020); P. Wiliński et al., *Stosowanie tymczasowego aresztowania w Polsce...*

⁵⁶ Z. Hołda, A. Rzepliński, T. Bulenda, *Prawa człowieka a zatrzymanie i tymczasowe aresztowanie w polskim prawie i praktyce jego stosowania*, “Archiwum Kryminologii” 1992, vol. 18, p. 103–146, <https://www.ceeol.com/search/article-detail?id=825790> (accessed: 11.08.2024).

⁵⁷ The deprivation of liberty for more than 72 hours solely by court decision was only reinstated with the entry into force of the Constitution of the Republic of Poland in 1997.

⁵⁸ P. Kaczmarek, *Kultura prawnicza jako praxis: o sprawczym działaniu*, “Przegląd Prawa i Administracji” 2015, vol. 102, p. 87–100.

with and know that they do not come to them with a motion without cause”,⁵⁹ or that it is the aftermath of the philosophy of “not disturbing the prosecutor”.⁶⁰

The hypothesis about the cultural source of Polish judges’ failure to comply with European legal and human standards regarding the use of pre-trial detention is also confirmed by the analysis of statistical data. Firstly, an analysis of 28,682 detention motions examined in 72 randomly selected district courts from all over Poland in 2017–2021 showed that out of 782 judges⁶¹ who examined motions in these courts, 42% of judges did not refuse, not even once, prosecutors to impose pre-trial detention during these five years. Moreover, relatively large differences were observed between the average percentage of granted motions in jurisdiction of various appellate courts (from 83.1% in the Warsaw appealation to 97.5% in the Rzeszów appealation), but also between regions within appealation (e.g. 81.7% in the Bielsko-Biała region and 96.8% in the Gliwice region belonging to the Katowice appealation).⁶² It can therefore be assumed that the practice of applying pre-trial detention is also influenced by institutional, organisational and cultural factors of a local nature, the identification of which would require further research.

Conclusions

All types of obstacles can, in practice, impede the realization of the right to a fair trial. The fundamental distinction among them lies in the amount of time and effort required to eliminate them. Statutory law regulations are the most compliant to deliberate modifications, capable of producing outcomes even within a few months. Modifications related to the resources and organization of institutions are more difficult to execute, and even if the scale is limited, they frequently necessitate several years of effort to achieve the intended outcomes. Investments, while needing well-considered planning and thorough implementation, reveal their full benefits only after personnel have gathered experience in utilizing them. The most formidable challenge, however, is posed by the obstacles stemming from the legal culture. This aspect is not only the most complex and challenging to model, but it also demands the utmost patience for change, as

⁵⁹ The author’s private conversation with a district court judge with approximately 20 years of experience in a small town.

⁶⁰ A public answer to the author’s question from a regional court judge with approximately 20 years of experience adjudicating in one of the metropolises.

⁶¹ The judges in the sample examined an average of 31 motions in the years 2017–2021, Media = 21, Min = 1, Max = 648.

⁶² B. Pilitowski et al., *Stosowanie tymczasowego aresztowania w Polsce...*, p. 112–122.

even cultures that preserve their continuity by alternation instead of preservation need their bearers have enough time for adaptation. Consequently, efforts to enact deep changes within the legal system encounter the greatest opposition at the cultural level.

We know that the very resistance to changes within the legal culture is able to reject the changes to an important component of the legal system carried out by the legislative and executive powers, and ultimately lead to its restoration to its original shape.⁶³ Sometimes, a more effective solution than attempting to intervene in the area of culture, e.g. to correct erroneous associations with certain legal terms such as bankruptcy, arrest, jail, may be a procedure from the domain of social engineering involving the renaming of an institution or the establishment, without putting down the old one, of a new institution whose name would not be burdened by previous associations in society or undesirable patterns of use among judges, so that it gradually takes over the function of its dysfunctional predecessor.

In the case of human rights, however, one element of culture cannot be replaced by anything. Let us recall that in order to talk about law as understood by Leon Petrażycki, it is necessary not only to believe that someone is entitled to something (the attributive component), but also that there is therefore an obligation to satisfy this obligation (the imperative component).⁶⁴ In the context of the implementation of human rights, the beliefs of people responsible for applying in practice the state's obligations arising from official legal and human norms about their obligations towards the people who come to them, i.e. the intuitive law of public officials, become particularly important. Whether, in their inner and personal sense of justice (conscience), they share the conviction that every human being is actually entitled to these rights and what exactly they are entitled to.

The notion of a "complete" right to a fair trial, as conceptualized by Adam Podgórecki within the sociology of human rights framework, can only be realized when the inherent right understood by those entrusted by society and the state with the enforcement of fair trial rights compels them towards an intrinsic sense of duty. The central question concerning the practical realization of the right to a fair trial pertains to the condition of judicial legal culture. While the institutions of the justice system and the statutes of positive law can ensure

⁶³ R. Montana, *Adversarialism in Italy: Using the Concept of Legal Culture to Understand Resistance to Legal Modifications and its Consequences*, "European Journal of Crime, Criminal Law and Criminal Justice" 2012, vol. 20, no. 1, p. 99–120, DOI: 10.1163/157181712X615258.

⁶⁴ See: R. Cotterrell, *Leon Petrażycki and Contemporary Socio-Legal Studies*, "International Journal of Law in Context" 2015, vol. 11, no. 1, p. 12.

the formal implementation of human rights, it is the individuals within these institutions, through their application of the law, who fill it with substance. In the absence of an intrinsic sense of duty among the individuals upon whom the enforcement of the right to a fair trial relies – such as judges, prosecutors, public attorneys, and even the administrative staff of the courts – to provide every individual with a fair, public trial by an impartial, competent, independent, and unbiased judges, without undue delay, the ideal of a “complete fair trial” remains unachieved, resulting only in a “crippled”, formal imitation.

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“Legal Consciousness” in Adam Podgórecki’s Sociological Theory of Law

„Świadomość prawna”
w socjologicznej teorii prawa
Adama Podgóreckiego

Abstract

The issue of legal consciousness occupies a central place in the sociology of law and is of particular relevance for socio-legal knowledge. Prof. Adam Podgórecki has great merit not only in determining the subject of the sociology of law, and the structure of the socio-legal knowledge, but also in delineating the importance of the legal consciousness as a research problem. The article addresses the problem of legal consciousness in the works of A. Podgórecki. In his view, in order to answer a question that is fundamentally important for jurisprudence, and to understand the ramifications of the operation of law in society, it is necessary to study not only the external manifestations of law (the behaviour of its actors and agents) but also the internal (or internalised) dimension of legal phenomena. The structure of legal consciousness includes three main elements, to which the empirical socio-legal analysis is most often directed; the knowledge of legal regulations in force, the evaluation of obligatory laws, and postulates related to what may be defined as good or desirable law. A. Podgórecki examines legal consciousness in the context of several important problems of law in the sociological sense of the word, which is also the core of his sociological theory of law. These include the relationship between intuitive law (“legal sense”) and official law; the relationship between law and morality; effective operation of the law; identification of pathologies of the law; attitudes to the law and to the actual behaviour regulated by law. The most important pieces of empirical research carried out by A. Podgórecki are presented in the article.

Keywords: legal consciousness, legal policy, prestige of law, legitimisation, social deviation, legal conformity, rigorism, tolerance

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Abstrakt

Problematyka świadomości prawnej zajmuje centralne miejsce w socjologii prawa i ma szczególne znaczenie dla wiedzy socjologiczno-prawnej. Profesor Adam Podgórecki ma wielkie zasługi nie tylko w określeniu przedmiotu socjologii prawa, struktury wiedzy socjologiczno-prawnej, ale także w określeniu znaczenia świadomości prawnej jako problemu badawczego. Artykuł jest poświęcony problemowi świadomości prawnej w twórczości A. Podgóreckiego. Według niego, aby odpowiedzieć na pytanie fundamentalnie ważne dla jurysprudencej, a także, aby zrozumieć rozgałęzienia funkcjonowania prawa w społeczeństwie, konieczne jest badanie nie tylko zewnętrznych przejawów prawa (zachowań jego aktorów i agentów), ale także wewnętrznego (lub zinternalizowanego) wymiaru zjawisk prawnych. Struktura świadomości prawnej obejmuje trzy główne elementy, do których najczęściej kierowana jest empiryczna analiza socjologiczno-prawna – poznawczy, psychologiczny, behawioralny. A. Podgórecki bada świadomość prawną w kontekście kilku ważnych problemów prawa w socjologicznym sensie tego słowa, co stanowi również rdzeń jego socjologicznej teorii prawa. Są to: relacje między prawem intuicyjnym („poczuciem prawnym”) a prawem oficjalnym, relacje między prawem a moralnością, skuteczne działanie prawa, identyfikacja patologii prawa, stosunek do prawa i do faktycznego zachowania regulowanego przez prawo. W artykule przedstawiono najważniejsze badania empiryczne przeprowadzone przez A. Podgóreckiego.

Słowa kluczowe: świadomość prawna, polityka prawna, prestiż prawa, legitymizacja, patologia społeczna, tolerancja, rygoryzm

Personal Memories of Professor Adam Podgórecki

My first meeting with Prof. Adam Podgórecki was at the Institute for Social Prevention and Resocialisation of the Warsaw University, of which he was the director. I arrived in Poland as a PhD student and I had to defend my doctoral thesis in 3 years. Professor Adam Podgórecki was my supervisor. When I arrived in Poland in 1974 and met him, he was already known as the founder of the Research Committee of Sociology of Law. The first time we discussed the problem of legal consciousness with him was when he asked me and my colleagues to write a report for the participation in the Congress of Sociology of Law in Hungary. The topic of the report was “Legal Consciousness in the Polish Society”.¹

We discussed the problems of legal consciousness many times when I was beginning to write my dissertation. He, together with Jacek Kurczewski, helped me to formulate the topic of the dissertation, namely “The Impact of modernisation on the moral and legal attitudes of Bulgarian rural residents”.² Even then, it was clear to me that in his concept of legal consciousness, Leon Petrażycki's

¹ M. Dobrowolska et al., *Legal Consciousness of Polish Society*, in: *Sociology of Law and Legal Sciences. Proceedings of a Conference on the Sociology of Law, Balatonszéplak, Hungary September 21-25, 1976.*, ed. K. Kulcsar, Institute of Sociology, Hungarian Academy of Sciences, Budapest 1977, p. 209–211.

² Part of the empirical data from my dissertation, concerning the influence of the modernisation of the Bulgarian village on the legal consciousness of its inhabitants, has been published in Poland; see: S. Naoumowa, *Modernizacja wsi bułgarskiej a świadomość prawna. Wstępne wyniki badań*, “Studia

understanding of intuitive law, as well as of the relationship between morality and law, occupied a significant place. In this sense, at the beginning of my academic career, I was aware of A. Podgórecki's views on legal consciousness. Under his guidance, I successfully defended my doctoral dissertation. He was a warm-hearted man with a big heart! Thanks to this professional relationship with him, I was able to develop the sociology of law in Bulgaria. In 1980, the discipline of "Sociology of Law" was included in the study programme of the Law Faculty at Sofia University "St. Kliment Ochridski". Later, this discipline was introduced in most law faculties in Bulgaria. In the work *Sociology of Law*, which was published by me,³ Prof. Podgórecki is presented not only as the founder of the RCSL, but also as a scientist who has made an enormous contribution to the development of the sociology of law in Poland and in the world. After 1980, as well as during the great changes in our country and in Poland (after 1989), cooperation in the field of sociology continued. In the joint research on legal consciousness, which I carried out together with Prof. Kurczewski, Prof. M. Fuszara, Prof. G. Skąpska, Prof. Iwona Jakubowska, etc., Prof. Podgórecki occupied a leading place, and this continues to this day.

Thank you, Master!

Introduction

The issue of legal consciousness occupies a central place in the sociology of law and is of particular relevance for socio-legal knowledge. Prof. Adam Podgórecki has great merit not only in determining the subject of the sociology of law and the structure of the socio-legal knowledge, but also in delineating the importance of legal consciousness as a research problem. To a greater or lesser extent, he developed the question about the social action of law, which is different from legal dogmatism, creating a new and modern approach to the investigation of the legal consciousness, which performs a major role in this mechanism.

By raising the problem of legal consciousness research, A. Podgórecki sets a new beginning in the development of empirical research on law. For him, legal awareness is of key importance for preserving the stability of the legal system or for the emergence of deviance risk and hence – of social pathology.⁴

socjologiczne" 1977, no. 2, p. 185–207; see also: S. Naoumowa, *Wpływ modernizacji wsi bułgarskiej na świadomość prawną jej mieszkańców*, "Państwo i prawo" 1977, no. 6, p. 88–99.

³ S. Naoumowa, *Sociologia na pravoto. Istoricheski cheski tradicii i perspectivi na razvitie*, ILS, BAS, Sofia 2005 (the last edition – 2024).

⁴ A. Podgórecki, *Legal Consciousness as a Research Problem*, "European Yearbook in Law and Sociology" 1977, p. 85–96; see also: A. Podgórecki, *Law and Morals in Theory of Operation*, "The Polish Sociological Bulletin" 1969, no. 1, p. 26–38.

The starting point of Podgórecki's attempts at defining his conception of the legal consciousness was Petrażycki's theory of law. Podgórecki adopted and adapted Petrażycki's broad understanding of law, which comprises both official and unofficial imperative-attributive norms and the reflection of these norms in people's legal consciousness. As some Polish authors point out, the influence of Petrażycki on Podgórecki is not always one-sided and independent of the influence of other authors, such as Sorokin and Gurwicz.⁵

Legal consciousness is nowadays the subject of many theoretical and empirical studies.⁶ This raises the question of when the term "legal consciousness" first appeared, when this term became a major problem of the sociology of law, and what the contribution of prof. Adam Podgórecki to its clarification and development was.

In general, it can be said that there are two different conceptions of legal consciousness: European and American. These different conceptions of legal consciousness were included in the very wide-ranging research of Susan S. Silbey and Chantal-AugevenKourilsky.⁷ A summary of this difference can be found in the analysis of A. Hertogh. According to him,

(...) the use of the term 'legal consciousness' in these European discussions is, however, remarkably different from its use in the US literature. It is argued that the most commonly used American' conception of legal consciousness reflects important ideas of Roscoe Pound and asks: how do people experience (official) law? By contrast, a European conception of legal consciousness, which was first introduced by the Austrian legal theorist Eugen Ehrlich, focuses on the question: what do people experience as "law".⁸

The term "legal consciousness" appeared in the legal literature as a special category relatively recently. The representatives of jurisprudence in the 19th century tended to use the term "legal sense". They used this term in parallel with

⁵ K. Motyka, for example, points out that Podgórecki, unlike Petrażycki, but similar to Sorokin and Gurwicz, defined those norms in psycho-sociological rather than purely psychological terms; K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland under Communism*, in: *Leon Petrażycki: Law, Emotions Society*, eds. E. Fittipaldi, A. Javier Treviño, Routledge, New York–London 2023, p. 54; see also: J. Kurczewski, *Adam Podgórecki's Empirical Theory of Law*, "Societas/Communitas" 2013, vol. 15, no. 1, p. 79–97.

⁶ Special attention can be paid to a successful attempt by three authors to collect and summarise all existing theoretical and empirical research on legal consciousness; F. Horák, D. Lacko, A. Kloczek, *Legal Consciousness: A Systematic Review of Its Conceptualization and Measurement Method*, "Anuario de Psicología Jurídica" 2021, vol. 31, no. 1, p. 9–34, DOI: 10.5093/apj2021a2.

⁷ C. Kourilsky-Augeven, *Socialisation juridique et conscience du droit*, "Droit et Cultures" 1991, no. 2, p. 33–56; S.S. Silbey, *After Legal Consciousness*, "Annual Review of Law and Social Science" 2005, no. 1, p. 335.

⁸ M. Hertogh, 'European' Conception of Legal Consciousness, "Journal of Law and Society" 2004, vol. 31, no. 4, p. 457–481.

the notion of "legal consciousness". The term "legal sense", popularised mainly by the representatives of the German legal school, was widespread at that time.

Podgórecki formally belongs to the European socio-legal school, but at the same time he thoroughly analysed (both theoretically and empirically) the achievements of various representatives of Anglo-Saxon legal thought in order to reach conclusions that still provide the basis for the analysis of this complex phenomenon.

Leon Petrażycki was a scientist who was close to Podgórecki's heart. It was L. Petrażycki who created the concept of "intuitive law", the theory of which consists in emphasising the socio-psychological conditioning of assessments of law. Based on the concept of intuitive law, Petrażycki clarifies the problem of justice inherent in law and in the natural law.⁹ He tries to lift the veil of the "mystical-authoritative character" of the constantly operating mechanisms inciting permanence and behaviour in the legal sphere and to reveal the social genesis of the evaluations and attitudes towards the law ("legal experiences") that constitute an integral part of legal consciousness. Petrażycki divides legal experiences into two categories: a) experiences of positive law (official law); and b) experiences of the intuitive law, which are the basis for the construction of a relatively clear model of legal consciousness, in which legal feelings, experiences and emotions (the psychological element) occupy a special place. It is not by chance that almost all Polish authors, trying to create such a model or to specifically define the structure of legal consciousness, mainly refer to Petrażycki's conceptual reasoning. The review of the literature shows that, despite the existing differences in the indicated definitions, almost all authors (including A. Podgórecki) are united on the issue of the main elements entering into the structure of legal consciousness: the informative, the psychological, and the behavioural.¹⁰

A. Podgórecki analyses legal consciousness and its structure as one of the most important problems of his sociological theory of law. What is particularly original about Podgórecki is that he examines legal consciousness in the context of several important problems of law, which is also the core of his sociological theory of law. These are: (1) relations between intuitive law ("legal sense") and official law; (2) relations between law and morality; (3) effective operation of

⁹ L. Petrażycki, *Wstęp do nauki prawa i moralności. Podstawy psychologii emocjonalnej*, Państwowe Wydawnictwo Naukowe, Warsaw 1959, s. 12. Petrażycki has been called by Podgórecki "unrecognized father of sociology of law"; see also: A. Podgórecki, *Unrecognized Father of Sociology of Law: Leon Petrażycki*, "Law and Society Review" 1980–1981, no. 15, p. 183–202.

¹⁰ A. Podgórecki, *Świadomość prawna w świetle badań empirycznych*, "Państwo i Prawo" 1971, no. 12, p. 943–954, where the author describes the legal consciousness as a unit of 3 elements: the informative, the psychological, and the behavioural.

the law; (4) identification of pathologies of the law; (5) attitudes to the law and the actual behaviour regulated by law.¹¹

Legal Consciousness as a Research Problem in the Sociology of Law

There is an almost unified understanding in the socio-legal theory of the essence of legal consciousness and of its basic elements. Usually, legal consciousness is seen as that sphere of public, group and individual consciousness that reflects legal reality in the form of legal knowledge, evaluative attitudes towards law and the practice of its application, legal attitudes and value orientations regulating behaviour in legally significant situations.¹² The structure of legal consciousness includes three main elements, to which the empirical socio-legal analysis is most often directed. The first main element is the cognitive (informative-cognitive) element, which covers the totality of legal knowledge. The second element is the psychological element. It contains the evaluations, opinions, value orientations, and psychological attitudes towards the law and the practice of its application. The third element is behavioural and is expressed in the readiness for behaviour in the legal sphere as well as the possible postulates *de lege ferenda*. In other words, an empirical study of legal awareness is understood to be a study that covers the three main components mentioned.¹³

According to A. Podgórecki

(...) the term “legal consciousness” appears to be of practical use but it is theoretically eclectic and optional from a conceptual point of view. This is because the term is properly understood as combining three elements: (1) the knowledge of legal regulations in force, (2) the evaluation of obligatory laws, and (3) postulates related to what may be defined as good or desirable law.¹⁴

The main point regarding the theoretical and empirical studies of legal consciousness was formulated by A. Podgórecki in a rather precise and persuasive way. He believed that:

In order to answer a question fundamentally important for the jurisprudence, and in order to understand the ramifications of the operation of law in society, it is necessary

¹¹ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 85; A. Podgórecki, *Świadomość prawna...*, p. 943–944.

¹² S. Naumova, *Sociologia na prawo...*, p. 253–254.

¹³ S.S. Silbey, *After Legal Consciousness...*, p. 335.

¹⁴ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 85.

to study not only the external manifestations of the law (the behaviour of its actors and agents), but also the internal (or internalised) dimension of legal phenomena.¹⁵

At the same time, he argues that "(...) It seems plausible that this internal dimension might be penetrated relatively easily through elucidating "legal consciousness" or legal awareness. In that event both empirical research findings and more general reflections on legal consciousness are relevant."¹⁶ The overall review of the works, published by A. Podgórecki, dedicated to legal consciousness, shows that he does not provide his own definition of the concept. Rather, he emphasises that it is theoretically eclectic and optional from a conceptual point of view, because the term is properly understood as combining three elements: informative, psychological and behavioural. In other words, A. Podgórecki does not contradict the generally accepted understanding of the three main elements that make up the structure of legal consciousness.¹⁷

Relations between Intuitive Law and Official Law

Adam Podgórecki examines the problem of legal consciousness primarily in the context of the relationship between intuitive law and official law. He accepted Petrażycki's thesis that

(...) at least four kinds of law may be distinguished: positive and official (e.g. court decisions based on a given code of regulations); (2) positive and unofficial (decisions of arbitrators chosen by the parties involved in a dispute); (3) intuitive and official (when courts make decisions not on the basis of provisions of the legal code, but on the general norms of the "principles of social co-operation"); (4) intuitive and unofficial (this is the case in lynching situations when some people decide to condemn and punish another on the basis of their convictions and in violation of known stipulations of official law).¹⁸

According to Podgórecki, particularly interesting and fruitful for the purposes of research seem to be the differences between positive-official law on the one hand and intuitive-unofficial law on the other. In his opinion, in fact, these dimensions of law are usually considered in empirical research. At the same time, the author observes that "(...) in passing that the social functioning of positive-unofficial, as well as intuitive-official law, while endorsed by the basic principles of the legal system, may be understood as being in some senses incor-

¹⁵ Ibidem, p. 86.

¹⁶ Ibidem.

¹⁷ Ibidem, p. 85–86.

¹⁸ Ibidem, p. 86.

porated in the mechanisms and procedures of corrective law.¹⁹ Podgórecki looks for support and evidence for possible differences between official and intuitive law in several large-scale studies by such authors as N. Timasheff, J. Tapp, and L. Kohlberg, which he analyses²⁰ in detail to reach the following conclusion:

(...) There always remains the doubt whether it is possible to compare the functioning of similar legal institutions in different social systems. Clearly, legal institutions in any society may have been subject to unique or discrete historical developments or may operate under the influence of other institutions within the same legal system.²¹

To address these challenges, he has developed a three-tier hypothesis regarding the functioning of the law. The process begins with the first independent variable: the content and meaning of the law itself, as it exists within a specific social and economic context, forming part of the recognised legal structure. Next comes the second independent variable, which is the subculture operating within that broader context. This subculture serves as the intermediary, connecting the intentions of lawmakers with the behaviour of the individuals subject to the law. Finally, the third independent variable plays a role in shaping how the abstract legal principle is applied in real-life situations, influenced by both the social and economic environment and the legal subculture in which it operates.²²

Relations between Law and Morality

According to Podgórecki, the second issue of legal consciousness is the problem of the relationship between morality and law.²³ Podgórecki pays attention to the relationship between law and morality in most of his works, looking for the specifics of these two main normative systems in the implementation of social control. But as far as legal consciousness is concerned, this connection has a special meaning. Rather, he proposes the thesis that one should not draw

¹⁹ Ibidem.

²⁰ Podgórecki cites N.S. Timasheff, *Introduction*, in: L. Petrzycki, *Law and Morality*, ed. H.W. Babb, Harvard University Press, Cambridge, MA 1955, p. xxviii–xxix, and J. Cohen, R. Robson, A. Bates, *Parental Authority: The Community and the Law*, Rutgers University Press, New Brunswick, N.J. 1958, as well as the research conducted in Poland by the Public Opinion Poll Centre, parallel with American research, presented in: A. Podgórecki et al., *Knowledge and Opinion about Law*, ed. C.M. Campbell, W.G. Carson, P.N.P. Wilesm, Martin Robertson, London 1973, loc. cit.; A. Podgórecki, *Law and Society*, Routledge & Kegan Paul, London 1974, p. 93–103.

²¹ Ibidem, p. 86.

²² Ibidem, p. 90.

²³ Ibidem, p. 89.

a sharp line between law and morality. He substantiates this view with the following reasoning:

(...) If it is accepted that condemnation may be expressed in two qualitatively different forms – (1) punishment intended as an element of deterrence and (2) penal sanctions intended to dissuade the punished individual from going astray again – and if it is also accepted that re-education as a form of reproach is less condemnatory and more of a social inducement to improved activity, then it becomes evident that the distinction between law and morality is to a considerable degree rather arbitrary and conventional.²⁴

Podgórecki distils his argument into a thesis suggesting that law can be adopted in three different ways. The first is through voluntary adoption, where ruling groups in a society decide to integrate legal provisions from another system because they find them beneficial. The second is through forced adoption, which happens under coercion, such as during times of occupation. The third type is repeated adoption, where laws from different systems are layered over time. A prime example is post-World War II Japan, where elements of American law were added to the existing mix of traditional Japanese law and earlier German and French legal influences.

And again, he presents us with his categorical opinion that

(...) application of the conception of 'official and intuitive law' enables us to explain – according to general rules – the effects of transplantations of particular legal provisions into other systems. It is again fitting to turn to Petrażycki for the general rules explaining that mechanism.²⁵

Podgórecki further develops Petrażycki's idea of intuitive law in the context of the question of ethical development on an ever-broadening scale, as a result of human activity. According to him ethical development on an ever-broadening scale, as a result of human activity, is of essential significance to the continuing transformation of the content of intuitive law.²⁶

²⁴ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 90–91.

²⁵ Ibidem, p. 92.

²⁶ Ibidem.

Relation between Legal Consciousness and the Social Pathology and Effectiveness of the Legal Rules

The relationship between legal consciousness and social pathology takes a special place in A. Podgórecki's sociological theory of law. This relationship is an integral part of the problem of the effectiveness of legal actions.²⁷

He argues that a legal system works effectively when it reflects the collective emotions, opinions, beliefs, and values of society, as well as the core norms of social cooperation. This understanding led to research on law acceptance, which naturally extended to studying society's perception of deviant behaviour. Simply put, obeying the law represents true legal conformity, whereas breaking the law constitutes deviance.

However, he makes a distinction between negative and positive deviance, which allows him to delineate the boundaries between legal conformity and deviant behaviour. Based on Durkheim's theory of social anomie, as well as the brilliant analysis by R. Merton and T. Parsons, Podgórecki outlines his own definition of social pathology, looking for the place of legal consciousness in the formation of behaviour in the legal sphere. He argues that social pathology is "(...) this type of behaviour, this type of institution, this type of functioning of some social system that is in fundamental, irreconcilable contradiction with the worldviews and values that are accepted in a given society".²⁸

However, he does not equate behaviour that violates a just and legitimate legal system with what he calls "positive deviance".²⁹

Analysing the legal consciousness in the context of social pathology, Podgórecki points out that

(...) it appears that social institutions or organizations may contain elements of social pathology, i.e. they may be socially dysfunctional or (by investing given social roles or social positions with power) may generate negative social effects. Further, it is suggested that entire social systems – such as the Nazi legal system – may be of a socially pathological character (...). The research emphasizes the need to distinguish between negative and positive deviance (the latter being understood as behaviour that departs from accepted norms, as an internal revolt against standards obligatory in a given environment, but as non-egoistic motivation and as objectively positive social disintegration).³⁰

²⁷ A. Podgórecki, *Patologia życia społecznego*, Państwowe Wydawnictwo Naukowe, Warsaw 1969, p. 24.

²⁸ Ibidem, p. 24–25.

²⁹ Ibidem.

³⁰ A. Podgórecki, *Świadomość prawna...*, p. 91.

Empirical Research on Legal Consciousness

According to A. Podgórecki, both empirical research findings and more general reflections on legal consciousness are relevant. Very correctly he refers to the subject matter of the KOL.³¹

Podgórecki's empirical studies on legal consciousness can be defined as epochal for the development of the sociological theory of law. They are too numerous to analyse in one article like this. Therefore, in the following analysis, attention is focused on several main problems that are at the heart of his research on legal consciousness: the first element – knowledge of the law; the second element – prestige of the law; the third element – behaviour in a legally significant situation.

Podgórecki's research, both during his time in Poland and abroad, is innumerable and cannot be summarised in one article. That is why only a few of them are analysed in the article, which have a crucial importance for the development of the issues concerning legal awareness.

The Knowledge of the Law

Knowledge of the law is the first element of legal consciousness. Usually, professional lawyers attach great importance to the popularisation of legal knowledge. This is because they believe that the dissemination of information regarding the contents of legal regulations results in behaviour that is consonant with the law. The law plays an educational role and many complicated factors must come into play for a legal norm to gain recognition, and then to be internalised. The educative and motivational impact of the law can be helpful on this question.

In Podgórecki's empirical research, three questions are essential. The first question is about the application of the maxim *ignorantia juris not exusat*. Podgórecki is the first to pose the question that legal dogmatism is not interested in whether citizens have the necessary legal knowledge. That is why in legal-sociological studies this question is put forward as a basis for how legal consciousness is formed. A lack of knowledge of the law does not exempt you from legal responsibility.³² The second group of questions is related to the division

³¹ Podgórecki noted that "(...) considerations on legal consciousness coincide to a fair extent with the subject matter of the KOL Research Group"; A. Podgórecki et al., *Knowledge and Opinion...*

³² According to Berl Kutchinski, quoted by Podgórecki, "the term KOL stands for knowledge about law. It applies to the whole area of knowledge and attitudes regarding legal phenomena (the law, crime, punishment, legal institutions, and authorities, etc.)"; A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 87.

between legal principles and legal norms. The third question is about the sources of legal knowledge. The most empirical research shows that the mass media play an essential role in the receiving of information about the passing of laws.

Podgórecki researches the degree of knowledge of the law (legal awareness) not in separation from the other elements, but in relation to the problems of the importance of legal awareness for the formation of the attitude to the law and behaviour in the legal sphere. When he formed his initial hypotheses concerning the second and third elements of legal consciousness, Podgórecki created a new model for their study. He examined them in relation to the problems of the prestige of the law.

Prestige of the Law

It is widely recognised that the notion of the “prestige of the law” was introduced to empirical sociology by Adam Podgórecki³³ in the research he conducted in Poland between 1964 and 1977.

The first empirical research on the prestige of law in Poland was carried out by A. Podgórecki in 1964. This research has been professionally conducted by the Public Opinion Research Centre at the Polish Radio and Television on a nation-wide representative sample, using the survey and interview methods. It was also one of the first such studies internationally.³⁴

Setting the start of the prestige of law has been part of a cycle of public opinion research on the general assessment of law and its functioning.³⁵ Personality variables occupy a central place in the study of the prestige of law.

As many authors point out “in more than the sixty years that have passed since A. Podgórecki’s research, similar studies, even using the same questions, and the same methods have been repeated many times in both nation-wide and local studies.”³⁶

³³ A. Podgórecki, *The Prestige of the Law (Preliminary Research Results)*, “Acta Sociologica” 1966, vol. 10, no. 1/2, p. 81–96.

³⁴ It should be noted that the Public Opinion Research Centre at the Polish Radio and Television was in the 1960s the only one such institution in the Communist bloc. See: J. Kurczewski, *Prestiż prawa i sprawiedliwości*, “Rzeczpospolita” 14.02.2016, www.rp.pl/Publicystyka/302079953-Jacek-Kurczewski-Prestiz-prawa-i-sprawiedliwosci.html (accessed: 30.11.2019).

³⁵ The methodology of the sample, as well as the methods used to gather information, are described in detail in: A. Podgórecki, *Świadomość prawna...*, p. 165; see also: A. Podgórecki, *Zjawiska prawne w opinii publicznej*, Warsaw 1964.

³⁶ Many Polish authors pay attention to the fact that Podgórecki thoroughly researches and analyses the prestige of law. In this context, A. Przylepa-Lewak asks the rhetorical question: “Did it happen that the changes taking place in Poland and in the consciousness of its citizens during that time, such as the change of the system, increasing civil rights and freedoms, Poland’s accession to

Several important problems, which formed the subject of research on the prestige of the law, take place in the study of the prestige of law. The first main problem was to discover the general opinion about the present functioning of the law. The second main problem was to find out what the Polish population in 1964 thought about the law in general and the sanctions applied by the law. The third main problem was to diagnose how the law and some of its institutions are regarded by the public opinion at present. The fourth problem was to examine which connections exist between opinions about the law and attitudes to it, and various psychosocial determinants of those opinions and attitudes.

A very essential element of the research was to discover whether, and to what extent, both types of factors (objective and subjective) affected people's opinions and attitudes towards the law. Diverse variables, such as respect for the law and the public's assessment of certain aspects of the law as too severe or too mild (e.g. the public's attitude to the death penalty), were introduced in testing the principal research hypotheses.

People were asked about their views as to which factors determined a successful intervention with an official body. They were also asked for their attitude to punishments which are not applied by the law in its present state, whether people should evade or break a law they disapprove of, and whether people should obey their superiors even when the latter issue orders they think wrong.

Tolerance or Rigorism

Several questions remain regarding the attitude toward the death penalty. It is apparent that the attitude depends on gender, age, social status, and education. Two questions are of particular importance in research on the prestige of law and the tolerance or rigorism relationship.

The first question concerned the opinion on the capital penalty. People were asked to express their opinion about the death sentence: "Do you think the death sentence should be used?". 14.8 % answered that the death sentence should be definitely used, 33.6 % answered "Rather yes", and 21.7 % answered "Rather no".

international organisations, etc., might be reflected in the increasing level of the prestige of law?" He answers: "Unfortunately not". See: A. Przyłępa-Lewak, *Legal-Sociological Research of the Prestige of Law*, "Studia Iuridica Lublinensia" 2021, vol. 30, no. 1, p. 219–235; A. Przyłępa-Lewak, *Wkład Adama Podgóreckiego w powstanie i rozwój socjologii prawa*, Wydawnictwo UMCS, Lublin 2020; see also: J. Kurczewski, *Spory i sądy 25 lat później*, in: *Polskie spory i sądy*, eds. J. Kurczewski, M. Fuszara, Warsaw 2004, p. 39; A. Kojder, *Godność i siła prawa*, Oficyna Naukowa, Warsaw 2001, p. 408–409; *Biznes i klasy średnie. Studia nad etosem*, eds. J. Kurczewski, I. Jakubowska-Branicka, Zakład Socjologii Obyczajów i Prawa. Instytut Stosowanych Nauk Społecznych. Uniwersytet Warszawski, Warsaw 1994, p. 169–184.

The second question was about the opinion on the aim of penalty. 45.8 % of respondents answered that the re-education of sentenced criminals is the main purpose, 27.6% answered that to make them suffer is the main purpose, and 21.9 % said that the purpose was to isolate them.

If we are to repeat the conclusions reached by A. Podgórecki they are the following:

(1) The opinion that re-education is the main purpose is held by people with secondary or higher education, people who show no signs of insecurity, people who are rationalistic in their attitudes, who are well adjusted to life, who are engaged in social work (and in the rural areas likewise people who show strong social affiliations and who were brought up by gentle methods). Those who are in favour of corporal punishment are people aged 50 and over, people who had a severe upbringing, who are socially maladjusted, and frustrated.

(2) The opponents of corporal punishment, are recruited from among those who are aged 18–24, who were brought up by mild disciplinary methods, and who think that their prospects in their job are likely to improve.

(3) A tolerant attitude, that is, the view that the boss should talk privately to the man caught stealing, is shown by women, brain workers, people with no legal experience, people with wide social affiliations, and religious persons.

(4) A more rigorous attitude – demanding the sack for the man caught at petty theft – is represented by the skilled workers, by people with legal experience, by people who are insecure, by people who are socially isolated or who belong to primary groups, by people who are inhibited, dogmatic, and irreligious.

(5) A number of social traits lead to greater rigour and therefore incline people to approve of more severe punishment. These traits are as follows: low level of education, manual work, lack of engagement in social activities, absence of legal experience, feeling of insecurity, loose social affiliation, dogmatism, rigorous upbringing, poor social adjustment, and frustration. In the case of punishments sanctioned by the law (in case of capital offences, or theft), people who possess some of the above traits will be inclined to approve of the strict application of the punishments).³⁷

Asking the question on the attitude to the death penalty in a totalitarian system (1960s) is quite a brave and progressive act. Podgórecki dares to pose this problem and thus gives impetus to similar studies in other countries with totalitarian rule. Here, the author of this article allows himself to present data from similar studies in Bulgaria before and after the democratic changes.

Consequently, in 1979, 1982, 1990, and 2009, empirical studies on the attitude towards the death penalty were conducted in Bulgaria jointly by the

³⁷ A. Podgórecki, *The Prestige of the Law...*, p. 86–87.

Institute of Legal Sciences at the Bulgarian Academy of Sciences, the Institute for Criminological Studies, and the Methodical Council for Prison Cases at the Ministry of Justice. The idea was to see how the rigorism-tolerance relationship changed during the period of authoritarian rule, after the changes in 1989 and the subsequent accession of the Republic of Bulgaria to the EU. The study of this relationship is related to various stages in the development of society and law. The first stage is the authoritarian rule until 1989, the second is the transition to democracy after 1989, and the third is the membership of the Republic of Bulgaria in the EU.³⁸

Table 1. Opinion on capital penalty in Bulgaria³⁹

Do you think the death sentence should be used?	1979	1982	1990	2011
Definitely no	12.1	11.2	37.6	23.7
Rather no	9.8	0.2	34.0	10.0
Definitely yes	41.7	29.9	10.5	34.6
Rather yes	22.6	44.2	6.1	18.0
Don't know	13.8	14.5	11.8	13.7

Source: own research.

What can be clearly seen in the table is that during the time of totalitarian rule, the percentage of people who supported the death penalty was high. After the changes that took place in 1989, this percentage has been decreasing. The death penalty was abolished in the Criminal Code of Bulgaria in 1992, when the country became a member of PACE. Since 2007, Bulgaria has been a member of the European Union, and it should be expected that the citizens' legal awareness remains tolerant of the changes in the Criminal Code. However, it is clearly visible that several years after our admission to the EU, strong rigorist attitudes toward capital punishment are observed. These changes in the legal consciousness of Bulgarian citizens are very indicative of the mechanism of the social action of law. The explanation can be found in the inadequate application of the necessary legal measures to fight crime, especially organised crime. Society is becoming more and more rigorist. There is a populist attitude, which is expressed in the view that crime can be liquidated (restricted) through high

³⁸ S. Naoumova, *Negative Social Phenomena and the Role of Legal Consciousness in Their Overcoming*, in: *Bulgarian-Polish Dialogues in Sociology of Law and Criminology*, eds. M. Fuszara, J. Kurczewski, Sociology of Custom and Law, Institute of Applied Social Sciences, University of Warsaw, Warsaw 1990, p. 35–51; S. Naoumova, *Sociologia na prawoto...*, p. 238; S. Naoumova, *Die rechtssoziologischen Forschungen in Bulgarien*, "Zeitschrift für Rechtssoziologie" 1990, no. 1, p. 102–119.

³⁹ S. Naoumova, *Sociologia na prawoto...*, p. 151, 183, 205.

penalties. This relationship is characteristic of persons with lower education, older age, and occupying non-management positions. The issue of the return of the death penalty to the Criminal Code has been repeatedly raised in the Bulgarian parliament by patriotic parties and formations.

Legal Conformity

The question about compliance with law, which was formulated by Adam Podgórecki, is of utmost importance in the context of the empirical characteristics of legal consciousness. The question is well known and was as follows: "Please choose from the sentences that are the most appropriate for you or enter your own opinion on the subject."

The list of possible answers, formulated by Podgórecki was as follows:

(1) Law should always be observed, even if we consider it wrong. (2) When we come across regulations (provisions) that we consider wrong, one should only keep up the appearance of applying them but attempt to circumvent them. (3) Provisions we consider to be wrong should not be followed at all. (4) I have another opinion on this.⁴⁰

According to A. Podgórecki,

the following categories of people are inclined to respect the law even when they think it is wrong: people aged 35–49 and people over 60, people who have a higher education, brain workers whose families belonged to the intelligentsia, people who have no feeling of insecurity, members of small groups, people who are rationalistic in their attitudes and who engage in social work (while these have a slight tendency to evade the law).⁴¹

The research shows that not only the various types of socio-political systems but also the internal values held by various social groups that have diverse legal

⁴⁰ See: A. Podgórecki, *The Prestige of the Law (Preliminary Research Results)*, "Acta Sociologica" 1966, vol. 10, no. 1/2, p. 81–96 (question no. 6 of the questionnaire). This question has been asked many times in different versions both in Poland and in Bulgaria. S. Naumova, *Legal-Sociological Parameters of the Fight against Crime and Social Deviance – Them. Coll.*, in: *Sociology and Law: The 150th Anniversary of Emile Durkheim (1858–1917)*, eds. S. Hunt, M. Serafimova, M. Marinov, Cambridge Scholars Publishing, Cambridge 2008, p. 19–29. Recently, this question was asked in a joint study using a common methodology and a common survey in Poland, Bulgaria, Hungary, and Ukraine. See: J. Kurczewski, P. Orzechowski, S. Naumowa, *Razgrad Area Study in Ethnic Dispute and Dispute Resolution Patterns*, in: *Sociology of Law and Contemporary Directions in the Development of Legal Knowledge. Thematic Collection on the Occasion of the 150th Anniversary of the Bulgarian Academy of Sciences and in Honour of the Anniversary of Professor Stefka Naumova*, Sofia 2020, p. 155–185.

⁴¹ A. Podgórecki, *The Prestige...*, p. 88.

subcultures, affect the way people regard the law, accept it, internalise it, and acquire behaviour habits; it is also propounded that within the framework of these legal subcultures, the extent, the way, and the degree to which the law is respected also depends on certain specific types of target groups.

Conclusions

The main purpose of this article was to present a summary of the theoretical and empirical studies of Prof. A. Podgórecki on legal consciousness. It is not possible, of course, to present his extremely interesting and significant research in full in such a short analysis.

It is particularly important to note, however, that his research conducted in the 1960s and 1970s not only has not lost its relevance, but is becoming increasingly relevant today. His later research, carried out in the period after 1977, when he left Poland, can be defined as particularly valuable and important for the development of the sociology of law.

The main starting point regarding the theoretical and empirical studies of legal consciousness in Poland was formulated by A. Podgórecki in a precise way. He believes that it is extremely important for jurisprudence to study not only the external manifestations of the law (the behaviour of its actors and agents), but also the internal (or internalised) dimension of legal phenomena.

Today, when jurisprudence is subordinated to the requirement of the rule of law, it is even more necessary to examine the legal consciousness of both citizens and legislators. There is no doubt that even today the relationship between law and morality is essential, especially considering that European Union law for the most part places this problem in the context of legalism and the validity of law in the sociological sense of the word. The rise of crime and social deviance demands that the relationship between rigorism and tolerance be examined with even greater care.

Podgórecki initiated these studies in the context of social deviance and raised the issue of resocialisation and humanism in penal policy. The empirical data analysed in the article, which are the result of Podgórecki's research, still sound very relevant today and serve as a basis for further analyses of legal consciousness.

At the end of the conclusion, I would like to include a few sentences about my legal-sociological research. Theoretical and empirical studies of legal consciousness occupy a central place in my scientific development. In this context, I should point out that I have researched theoretically and empirically the problems of legal awareness of civil servants, legislators, investigative bodies, judges, and prosecutors. I have published empirical studies of discrimination as a form of social pathology, of white-collar corruption, of employees in the Registration

Agency, etc. All my research on legal consciousness has been done in the spirit of A. Podgórecki. As his student, I have always adhered to his scientific legacy and faithful to his sense of what is good, fair, and moral.

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AGATA FIJALKOWSKI*

Adam Podgórecki's Concept of Totalitarian Law in the Albanian Context

Koncepcja prawa totalitarnego Adama Podgóreckiego w kontekście albańskim

Abstract

This author first met Adam Podgórecki in the mid-1990s at the International Institute for the Sociology of Law (IISL) in Oñati, Spain. Over a lunch organised by the IISL and at a cooking school in the local area, Prof. Podgórecki talked about the role these sorts of cooking schools had played under General Francisco Franco's authoritarian rule. He referred to these schools as "pockets of democracy" because of the cherished space they provided for people to live in a polity, albeit in a suspended state. The cooking schools were a safe space for people to speak freely. This author is reminded here of the case of Albania. It is in this spirit that I talk about the "pockets of democracy" that existed in Albania, through the experience of one remarkable individual, about whom I have been writing for some time now, the writer and political dissident, Musine Kokalari (1917–1983). Her own account of her 1946 trial and her ruminations on the nature of historical memory recall Podgórecki's work on totalitarian and non-totalitarian law. It is in this frame therefore that I will set out the discussion, elucidating the main points underpinning his pioneering work.

Keywords: Adam Podgórecki, totalitarian law, Musine Kokalari, Albania, pockets of democracy

Abstrakt

Autorka artykułu po raz pierwszy spotkała Adama Podgóreckiego w połowie lat 90. XX wieku w Międzynarodowym Instytucie Socjologii Prawa (IISL) w Oñati w Hiszpanii. Podczas lunchu zorganizowanego przez IISL oraz w pobliskiej szkole gotowania prof. Podgórecki opowiadał o roli, jaką tego rodzaju szkoły gotowania odegrały pod autorytarnymi rządami generała Francisco Franco. Nazwał te szkoły „przestrzeniami demokracji” ze względu na cenną przestrzeń, jaką zapewniały ludziom do życia w państwie, choć w państwie zawieszonym. Szkoły gotowania były bezpiecznym miejscem, w którym

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ludzie mogli swobodnie rozmawiać. Autorce przypomina się tutaj przypadek Albanii. W tym duchu pisze więc o „przestrzeniach demokracji”, które istniały w Albanii, poprzez doświadczenie jednej, niezwyklej osoby – pisarza i dysydenta politycznego Musine Kokalari (1917–1983) – o którym autorka pisze od jakiegoś czasu. Jej własna relacja z procesu z 1946 roku i rozmyślenia nad naturą pamięci historycznej przywodzą na myśl prace Podgóreckiego nad prawem totalitarnym i nietotalitarnym. Dlatego też w tym kontekście rozpoczęto dyskusję, wyjaśniając główne punkty leżące u podstaw jego pionierskiej pracy.

Słowa kluczowe: Adam Podgórecki, prawo totalitarne, Musine Kokalari, Albania, przestrzenie demokracji

Introduction

Adam Podgórecki was a big fan of the Czech playwright, dissident, and president of what was then Czechoslovakia, Václav Havel. Given the fact that the Polish jurist Leon Petrażycki (1867–1931) features prominently in Podgórecki's writings, this is not a surprise. Petrażycki, who had advanced new arguments in the sphere of law and morality and the notion of intuitive law, was central to Podgórecki's thinking and scholarship – pointing to a deeper reflection about the individual, their ways of being and the preserving of their subjectivity under repression and dictatorial rule.¹ Havel himself observed that

the specific nature of post-totalitarian conditions – with their absence of a normal political life and the fact that any far-reaching political change is utterly unforeseeable – has one positive aspect: it compels us to examine our situation in terms of its deeper coherences and to consider our future in the context of global, long-range prospects of the world of which we are a part.²

This author first met Adam Podgórecki in the mid-1990s at the International Institute for the Sociology of Law (IISL) in Oñati, Spain. It was my first visit to this magical venue. Over a lunch organised by the IISL and at a cooking school in the local area, Prof. Podgórecki talked about the role these sorts of cooking schools had played under General Francisco Franco's authoritarian rule. He referred to these schools as “pockets of democracy” because of the cherished space they provided for people to live in a polity, albeit in a suspended state. The cooking schools were a safe space for people to speak freely. This author

¹ K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland*, in *Leon Petrażycki: Law, Emotions, Society*, eds. Edoardo Fittipaldi and A. Javier Treviño, Routledge, New York 2023, p. 47–70.

² V. Havel, *The Power of the Powerless* (1979), transl. Paul Wilson; in Václav Havel et al., *The Power of the Powerless*, ed. J. Keane, Hutchinson, London 1985, reprinted in “East European Politics and Societies and Cultures” 2018, vol. 32, no. 2, p. 403.

is reminded here of the case of Albania. It is in this spirit that I talk about the “pockets of democracy” that existed in Albania, through the experience of one remarkable individual, about whom I have been writing for some time now, the writer and political dissident, Musine Kokalari (1917–1983). Her own account of her 1946 trial and her ruminations on the nature of historical memory recall Podgórecki’s work on totalitarian and non-totalitarian law. It is in this frame therefore that I will set out the discussion, elucidating the main points underpinning his pioneering work.

Theoretical Overview

In his writing about totalitarian systems, Podgórecki identified several key aspects of totalitarian legal frameworks: the ground norm and its supremacy over the constitution; the servility of totalitarian law; the perverse perfection of totalitarian bureaucracy; oppression of and by the judiciary; legitimization; the derivational appearance of legality; the use of popular appeals against harsh penalties; abuse of the citizen’s point of view; law as a dark instrument of social engineering; and theoretical implications.³ This discussion will consider some of these aspects in relation to the Albanian case study. There is an important connection between the opening observations made by the dissident Havel and the Albanian protagonist of this paper, one that serves as a testament to the significance of Podgórecki’s writings and contribution to the field.

The Ground Norm

According to Podgórecki, the basic norm of a dictatorial or authoritarian political system operationalises the will of the ruler under the aegis of the will of the people.⁴ This occurs incrementally and strategically. A brief overview of Albanian politics in the twentieth century will demonstrate how this occurs and why Albania serves as an illuminating case study.

At the dawn of the twentieth century, Albania’s political culture was developing. There was only limited experience, however, of democracy, opposition, or debate. Yet Albania had important links with its neighbours and the wider

³ A. Podgórecki, *Totalitarian Law: Basic Concepts and Issues*, in *Totalitarian and Post-Totalitarian Law*, eds. A. Podgórecki, V. Olgiati, The Oñati International Institute for the Sociology of Law, Aldershot, Dartmouth, UK, 1996, p. 9–10.

⁴ *Ibidem*, p. 10–12.

world.⁵ Albanian politics was driven by Bishop Fan Noli who led the Democratic or Popular Party with Luigj Gurakuqi and Ahmed Zogu.⁶ Noli was a liberal and saw himself as representing Albanian national interests. He had spent many years abroad, which is where his interest in Albanian nationalism grew, his time in exile perhaps accounting for his disconnect from the wider society.⁷ In 1920 Noli represented Albania on at least two occasions in Geneva, arguing for the country's admission to the League of Nations. On these occasions Noli, who entertained a pro-European vision, and Zogu, who represented the "old order", clashed.

During its nascent years Albania could not break free from these regional divisions, with state power perceived as being in Tirana, rather than elsewhere in Albania.⁸ In the eyes of many, the Tirana government was trying to destroy the liberty of the people just as previous rulers, such as the Romans, Ottomans, Austrians, Italians, Serbs, or Greeks, had in turn tried to do.⁹ Eventually Zogu prevailed and, after holding several key governmental posts, succeeded in eliminating most of the opposition.¹⁰ In 1924, however, Noli assumed the post of prime minister, but his rule lasted only six months and he failed to achieve his vision of an overhaul of agriculture, law, and the general administration of the country. Zogu then returned to power and in 1925 was elected president of the newly created republic. He continued to do his utmost to eliminate any opposition. In 1928 he renamed himself Zog and proclaimed himself Zog I, King of Albania. The Italians used this opportunity to manipulate Zog for their own interests.¹¹ The country was heavily dependent financially on Italy and by 1930 Mussolini had established a near total hegemony over Albania.¹² In 1938 Zog allowed the country to become an Italian protectorate, and during the Second World War it was overrun by various occupying powers.

In 1944, with the end of the Second World War in sight, the National Liberation Front (*Lëvizja Nacional-Çlirimtare*), under the guidance of the future communist leader Enver Hoxha, set about consolidating its power, deploying

⁵ N. Malcolm, *Rebels, Believers, Survivors: Studies in the History of the Albanians*, Oxford University Press, Oxford 2020.

⁶ M. Vickers, *The Albanians: A Modern History*, I.B. Tauris, London 2008, p. 101.

⁷ R. Austin, *Fan Noli, Albania and the Soviet Union*, "East European Quarterly" 1996, vol. 30, no. 2, p. 153–169; R.C. Austin, *Founding a Balkan State: Albania's Experiment with Democracy*, University of Toronto Press, Toronto 2012; E. Mëhilli, *From Stalin to Mao: Albania and the Socialist World*, Cornell University Press, Cornell, NY 2017.

⁸ M. Vickers, *The Albanians...*, p. 102.

⁹ Ibidem, p. 102–103.

¹⁰ Ibidem, p. 104–110.

¹¹ Ibidem, p. 124; see also Edith Durham, in a letter to a friend, noted in M. Vickers, *The Albanians...*, p. 124, fn. 12.

¹² Ibidem, p. 132.

execution squads to eliminate members of the opposition. It should be noted that during the 1920s Albania was the only country in the region without a communist party. The National Liberation Front was a home-grown internal party that had emerged during a tumultuous time, from 1942 onwards attempting to establish a foothold in the regions. The rapprochement with the National Front (*Balli Kombëtar*), the anti-communist national resistance movement, did not last long.¹³ With the support of the Allies, the partisans liberated the country from Axis forces.¹⁴ The British for their part had long had a strategic interest in Albania.¹⁵ Yet while the Albanians may have been aided by the British (in terms of military equipment and finance), they were guided by the Yugoslavs ideologically and politically. In 1944 Hoxha began to set up his own government, using Yugoslav structures of governance as a blueprint for state-building, for example copying the neighbouring country's constitution. Albania had been ravaged by war and would face serious challenges to repairing its economy. The country was once again in a situation of dependence, relying this time on Yugoslav political backing. Hoxha's central preoccupation in developing the country was maintaining complete control and destroying any hint of opposition. The years 1943 to 1945 were also of critical importance in the creation of a post-Second World War Albanian identity.¹⁶ Hoxha outlined his objectives for the country in a November 1944 interview with *The New York Times*, objectives that included the creation of an Albanian Telegraph Agency that would disseminate national news to an international audience.¹⁷ As Podgórecki notes, the legal system that is constructed under totalitarian rule is presented as the will of the ruler. The ruler believes in free speech but as part of an "orchestrated mass media and educational system".¹⁸ In reality, a loose legal framework is constructed to deal with opponents to the regime under a veneer of legality. Albanian communism would come to be highly centralised, with party members dominating nearly all aspects of everyday life. It was influenced by the Yugoslav and Soviet authorities,¹⁹ who provided the tools for operationalising the system. The key instrument of power was hidden yet feared – a vast secret police network created in 1943 that would later come to be known as the *Sigurimi*.

¹³ For more details about the 1943 Mukje agreement, see: M. Vickers, *The Albanians...*, p. 151–153.

¹⁴ Ibidem, 159. The Partisan Army comprised young people, and of the 70,000 partisan fighters, 6,000 were women. M. Vickers, *The Albanians...*, p. 160.

¹⁵ Ibidem, p. 153–159.

¹⁶ B.J. Fischer, *Albania 1943–1945: A View Through Western Documents*, Albanian Institute of International Studies, Tirana 2014.

¹⁷ O. Pearson, *Albania in Occupation and War: From Fascism to Communism 1940–1945*, vol. 2, The Centre for Albanian Studies in association with I.B. Tauris, London 2005, p. 415.

¹⁸ A. Podgórecki, *Totalitarian Law...*, p. 11.

¹⁹ O. Pearson, *Albania in Occupation and War...*, vol. 2, p. 344.

Albania's relations with the West deteriorated.²⁰ The country's application to join the UN was at first rejected, although it did eventually join, in December 1955. In July 1946 Albania signed a Treaty of Friendship, Cooperation, and Mutual Aid with Yugoslavia. Yugoslav influence over Albania's government and ruling political party increased considerably between 1945 and 1948, with Yugoslavia coming to dominate political, economic, military, and cultural life. However, in 1948 Yugoslavia's expulsion from the Cominform gave Hoxha the opportunity to reverse this situation, with the Albanian government being the first in communist Europe to condemn Yugoslavia. The treaty of friendship with Yugoslavia was broken off, Yugoslav advisers were expelled from Albania, and Koçi Xoxe, the Minister of Internal Affairs and head of the secret police, was tried and executed, along with hundreds of other so-called "Titoists". Albania became a full-fledged member of the Soviet sphere of influence, playing a key role in Stalin's strategy of isolating Yugoslavia. In 1949 Albania joined the Council for Mutual Economic Assistance, or Comecon, and proceeded with a programme of rapid, Soviet-style, centralised economic development. In other words, Albania ceased to be a Yugoslav satellite state, a change that also had a profound effect on legality as well.

Albanian intellectuals in exile wrote that the country

could perhaps pardon communism many crimes, but not that of having deprived her of her sons' energy of mind and spirit, a nation's most valuable capital. And when one further considers that Albania is not a nation with an abundance of intellectuals, one can more sensibly evaluate her loss.²¹

Many in the new ruling circle were suspicious of the "older intellectuals". By contrast with its communist counterparts, such as Poland, Czechoslovakia, or Hungary, it would become difficult for dissidents to draw on support networks not just within the communist bloc but from the West as well.²² The cultural developments of the interwar period were appropriated by the post-Second World War communist regime, which adopted the fight against fascism to identify and destroy all opposition to its power.

²⁰ Ibidem, p. 167–168.

²¹ A. Pipa, *Albanian Stalinism: Ideo-Political Aspects*, Boulder: East European Monographs; New York: Distributed by Columbia University Press, 1990, p. 25.

²² R.C. Austin, J. Ellison, *Albania*, in *Transitional Justice in Eastern Europe and the Former Soviet Union*, ed. Lavinia Stan, Routledge, New York 2008, p. 179.

The Servility of the Law and Law's Shadow Counterparts

In Podgórecki's writings about totalitarian law, this latter is characterised by law losing its normative force. In totalitarian systems the legal framework does in fact have a shadow counterpart.²³ One victim of Stalinist justice observes the following, with respect to the relevance of a trial:

The whole indicates the part. The bar of history throws light on the trial in court. The court that testifies to the state of the world gives meaning to the testimony of the individual. And vice versa. The individual testimony enhances the picture of the court's procedure which prepares a certain *settling of accounts* with society. The legal trial allows the concealed mechanism of the historical trial to appear. The part reveals the inner structure of the whole.²⁴

The nature of Stalinist justice would become apparent in Albania with the close involvement there of Soviet officials in legal education, judicial training, and the drafting of laws. As a result the application of key decrees in Albania would bear the mark of these officials' involvement. Narratives about the Stalinist period in Albania are not dissimilar to other communist accounts in that the Albanian context – as with all the case studies under scrutiny here – reveals political motives, legal manoeuvrings, and broader considerations surrounding specific cases and trials. The political strategy was characterised by the settling of accounts with those individuals who did not conform to the new political system, and this through the perversion of the law.

Oppression of and by the Judiciary

In the Albanian experience, specific trials laid the groundwork for law to be weaponised against any form of opposition. These key trials were held at a grand movie theatre and performance venue, Tirana's Rex Cinema. The first trial of political elites was that of the "Great Albanian Leaders", which took place in March and April 1945. Sixty defendants, former members of the government, were charged with treason. At the same time quasi-judicial measures were taken against so-called war criminals. Eighteen Albanians were executed following a death sentence imposed by a tribunal on 17 November 1944, among them

²³ A. Podgórecki, *Totalitarian Law...*, p. 12–14.

²⁴ E. Loeb, *Sentenced and Tried: Stalinist Purges in Czechoslovakia*, transl. M. Michael, Elek Books, London 1969, p. 259. Emphasis in the original.

Bahri Omari, Hoxha's own brother-in-law, one of the leaders of *Balli Kombëtar*.²⁵ Arrests of war criminals continued at a rapid pace, and the definition of the enemy was expanding quickly.²⁶ On 23 December 1944, Law Nr. 21 On saboteurs against the people's power and war, on those who harbour war criminals and any of those pursued by the law, on those who know the whereabouts of such individuals and do not report them, came into force. This was followed by the promulgation of Law 41 On the organisation and functioning of military courts, on 23 January 1945.²⁷

The second trial, that of the "Albanian Opposition", held from June to August 1946, was the first involving political dissidents.²⁸ The political and ideological character of the criminal law provisions were on show. The proceedings were before a carefully hand-picked audience and media, where the prosecutor's speech expressed contempt for and revulsion at the defendants' actions. Reports of the proceedings were transmitted throughout the city. Each judicial official's role was critical to the enactment of the trial: "So the shocking truth about a judicial hearing ... is that the judge has the freedom to be fully present in all his or her human aspects."²⁹ Outside reports state that "[e]yewitnesses at the trial attributed to torture the behaviour of the accused in their easy submission to all of the charges."³⁰ This trial is discussed further below.

The third trial, against the so-called "Saboteurs of the Maliq Marshes", was held in November 1946. The draining of the Maliq swamp was meant to be an outstanding example of the *Rindërtim* (Reconstruction) period.³¹ The trial concerned the purported actions of several scientists who were accused of conspiring to sabotage the Maliq swamp drainage project north of Korça. The project employed some 8,000 people, who were described as voluntary workers, were unpaid, and lived in conditions of squalor.³² The Albanian authorities invented facts connected to Harry Fulz of the US Mission. Fulz allegedly advised the scientists to sabotage their work. Unsurprisingly, these connections were

²⁵ See: D. Kaloçi, *The Official Letter of Enver's Sister*, *Memorie.al*, <https://memorie.al/en/the-official-letter-of-envers-sister-please-with-the-broken-heart-of-a-woman-for-the-forgiveness-of-her-husband-bahri-have-mercy-on-her-in-exchange-for-the-capital-punishment/> (accessed: 30.09.2024); see also: O. Pearson, *Albania in Occupation and War...*, vol. 2, p. 435; R. Elsie, 1945: *The Albanian Treason Trial, Texts and Documents of Albanian History*, http://www.albanianhistory.net/1945_Albanian-Treason-Trial/index.html (accessed: 30.09.2024).

²⁶ O. Pearson, *Albania in Occupation and War...*, vol. 2, entry 16 July 1945, p. 456.

²⁷ These laws were reported in the Official Gazette, *Gazeta Zyrtare i Dhejtor 1944* and in the *Gazeta Zyrtare i Dhejtor 1945*. Collection at the Central State Archive, Tirana, Albania.

²⁸ O. Pearson, *Albania in Occupation and War...*, vol. 3, p. 42, 51.

²⁹ *Ibidem*, p. 51.

³⁰ *Ibidem*.

³¹ E. Mëhilli, *From Stalin to Mao...*, p. 34.

³² *Ibidem*, p. 52–53.

described as treason. Secret telegrams sent by the US representative to Albania to the US Secretary of State describe in some detail the defendants' plight and the horrific torture they underwent, along with the charges, which included throwing soil from one side of the ditch to the other or putting wet earth on dry beds of soil.³³ It was further alleged that Fultz had given gold sovereigns as bribes.³⁴ The US mission withdrew from Tirana. The concept of "the enemy" was expanding and served the useful purpose of weaponising the law against so-called saboteurs, though still with a veneer of legality. Certain events of 1947 were linked to the circumstances of the Maliq Marshes trial. Lake Maliq served as a labour camp for priests charged with treason.³⁵

The trial against the Technical School in Tirana, in which treason was alleged on the part of the American and British missions, was held from 18 to 20 September.³⁶ Again, the connection with Harry Fulz was at the heart of the charges; Fulz had allegedly planned an armed uprising against the Hoxha regime. Links were posited with convicted war criminals to support the case of treason, a case based on fabricated charges and in which certain individuals accused of the crimes allegedly "asked to be interrogated a second time because in [their] previous interrogation [they] did not tell the whole truth, being ashamed to admit [their] treachery in front of the people."³⁷

The fourth trial, or the "Second Opposition Trial", of 24 individuals, 10 of whom were government officials, began in September 1947 and ran until October. Links between the deputies, *Balli Kombëtar* and *Legaliteti* (right-wing, pro-monarchist parties) were posited by the prosecutor, Josif Pashko, who argued that in "the course of this trial it has been exposed that every organisation and every criminal activity against our People's Power were conducted and financed directly by the Anglo-American imperialists, chiefly by the Americans."³⁸ The trial was followed by further arrests of persons suspected of having links with individuals abroad. Disappearances and quasi-judicial executions characterised this period.³⁹

In 1951 the tension rose still further. On 19 February a bomb exploded outside the Soviet embassy in Tirana. Celebrations were taking place at that time to mark the country's 34th anniversary. On 26 February, an emergency decree was issued, setting out broad parameters for a capital crime: "On the prosecution and trial of activities of terrorist organisations and terrorist acts

³³ O. Pearson, *Albania in Occupation and War...*, vol. 3, p. 112–113.

³⁴ Ibidem, p. 113.

³⁵ Ibidem, p. 188.

³⁶ Ibidem, p. 220–226.

³⁷ Ibidem, p. 226.

³⁸ Ibidem, p. 227–228.

³⁹ Ibidem, p. 230.

against representatives of the people's authorities, and of political and other organisations of the Albanian People's Republic."⁴⁰ Twenty-two individuals were executed without trial for the attack on the Soviet embassy. The charges comprised conspiracy with international foreign spies, making the accused members of a terrorist organisation.

On 10 October 1951 a sixth trial of Western-trained espionage and sabotage agents charged 14 defendants with having links to international organisations, now deemed to be part of a wider international espionage network. The authorities actively publicised the trial that took place in the Cinema on 17 November in Tirana.⁴¹ The accused were charged with an attempt to overthrow the state. The prosecutor, Sotir Qirjqi, referred to a network of international organisations.⁴² Those captured were alleged to have been trained in parachute jumping, topography, subversive warfare, and techniques of sabotage by American, British, and former Nazi officers in West German camps. Qirjqi's aggressive and at times violent speeches hit the headlines outside Albania, capturing the attention of an unsuspecting American and British public.⁴³

In 1954 several other show trials took place. For example, on 6 April the trial of the last group of Albanian parachutists was seen as the "great show trial".⁴⁴ Radio Tirana provided detailed accounts of their activities, all of which were deemed subversive.⁴⁵

Particular aspects of these trials are important for understanding the wider implications of Podgórecki's arguments and their relevance to this case study. First of all, these trials relied on a compliant judiciary, which was itself oppressed. Secondly, there were many victims of Stalinist justice who suffered at the hands of those who worked behind the scenes, operating as shadow counterparts to the law. These collaborators worked for the secret police, and supported the Albanian version of communism. Thirdly, these miscarriages of justice were committed alongside the preparation for and commencement of the Nuremberg proceedings in 1945–1949, when the nature of justice was under the international spotlight.⁴⁶ In fact, one of the most compelling narratives to dominate Albanian legal discourse in the post-1989 period concerns accountability, something destined never to be fully realised.

⁴⁰ Ibidem, p. 420–421.

⁴¹ Ibidem, p. 435–436.

⁴² Ibidem, p. 435.

⁴³ A Lord Bethell recounts, in his *The Great Betrayal* (1984). Quoted in O. Pearson, *Albania in Occupation and War...*, vol. 3, p. 436.

⁴⁴ Ibidem, p. 477.

⁴⁵ Ibidem.

⁴⁶ See discussion in A. Fijalkowski, *Politics, Law and Justice in People's Poland: The Fieldorf File*, "Slavic Review" 2014, vol. 73, no. 1, p. 85–107.

The Appearance of Legality

The venue noted above, Tirana's Rex Cinema, served as the courtroom. Loudspeakers transmitted the proceedings of the trials across the city; the audience comprised the national and international press, as well as spectators purportedly having been randomly selected from the streets, colleges and schools. These were events the public at large would be loath to miss. They formed an important part of the propaganda that supported the nascent regime in its quest to root out the enemy within. Podgórecki's stance on the meaning of these appearances is profound. The show trials did not end there, but this series of six major trials ensured that an already exhausted post-Second World War society was made subservient to the state's ever-changing concept of "the enemy". Any independence exercised by individuals would be crushed the moment it was detected. The witnesses to and survivors of these trials describe them as the genocide of the intellectuals.⁴⁷ The defendants at these trials represented the groups that came under suspicion, corresponding to wider events and political forces that influenced the Albanian authorities' choice of enemy and its depiction in a wider social message.⁴⁸

The main protagonist of this article, Musine Kokalari, whose experience and testimony bears out Podgórecki's analysis of totalitarian systems, was born in 1917 in Adana, Turkey. Her father had served as a High Court judge there. Her family decided however to return to their southern Albanian roots in 1920, settling in Gjirokastrë. Musine's childhood in Gjirokastrë was filled with the fairy tales and folklore of the region. She attended school in Tirana, the capital, where her brother Vesim owned the Venus bookstore and worked closely with the main publishing houses; the *Mesagjeritë shqiptare* (a publishing house) was owned by another brother, Mumtaz. The Kokalari family was a family of intellectuals. At least two of Kokalari's brothers were active in politics, and both of them participated in literary life, as did Musine herself. At this time, as discussed in the previous sections, Albania was undergoing a transformation from being under Ottoman Rule to becoming an independent nation. The Kokalari siblings envisaged a progressive path for their country, and moved in circles that read and discussed the ideas of thinkers like Sami Frësheri, who represented the National Renaissance Movement. Musine would herself go on to complete her studies in Literature at La Sapienza, University of Rome, in 1941. The subject of her thesis was Naim Frësheri, whom she took to be the pioneer of modern Albanian literature. Widely published by the age of 24, Kokalari's

⁴⁷ T. Aliko, *Genocide of the Intellectual Elite of the Albanian Nation*, Shtypur ne Shyptshkronjen 'Maluka', Tirana 2007; see also: A. Fijalkowski, *Law, Visual Culture, and the Show Trial*, London, Routledge 2023, p. 59.

⁴⁸ Ibidem, p. 65.

literary achievements earned her an invitation to join the prestigious Albanian League of Writers and Artists. Anti-fascist and anti-nationalist by conviction, the use of the local vernacular and reference to the prevailing customs of the region rendered her writings unique. According to her great-niece, “Musine was ahead of her time and the place she lived in. To this day in Albania I cannot think of anyone to be compared to her.”⁴⁹ To a great extent, Kokalari knew well the value of “pockets of democracy”; she lived in literary circles that could rightly be described as such during times of peace, war, and political oppression.⁵⁰ Kokalari herself absorbed the world around her like an anthropologist; it is this gaze that shaped her views about the world and Albania’s place in it during her university studies in Rome, captured in her diaries at that time, when she experienced firsthand Italy’s transformation into a colonial power, its embrace of fascist rule and of war.⁵¹

In 1944 Musine Kokalari was arrested. She was released after the execution of her two brothers, Mumtaz and Vesim. Kokalari decided to set literature to one side and devote herself to politics. She founded the Social Democratic Party (*Partia Socialdemokrate e Shqipërisë*) and wrote for its paper *Zëri i lirisë* (The Voice of Freedom). Kokalari was open about her wish to obtain justice for the murder of her brothers. Towards the end of the Second World War Kokalari opened a bookstore. She was arrested on 17 January 1946. Before her arrest she sent a letter to the Allied Forces and in it called for free elections, knowing that she would likely be rearrested as a consequence. In that letter she called for moral support for free elections, emphasised their importance, and the importance more generally of freedom of expression, values championed in the thinking of *Rilindja Kombëtare*, or Albanian National Awakening, a movement that had flourished from the 1870s until 1912.

At her trial, Kokalari did not deny her political activities. She rejected the official position that her values and love for her country should be viewed as criminal. In addition to live broadcasts of the trial, her photograph appeared twice on the covers of the main Albanian broadsheets. While Kokalari was defending her view of the development of democracy in Albania, someone hysterically shouted from the trial venue: “String her up!”, after which the presiding judge asked: “Did you hear what people want for you, the accused?!”. Kokalari responded immediately: “One day they will say the same for you, your

⁴⁹ Ibidem, p. 75.

⁵⁰ Bajjola Gami Shatro provides a meaningful analysis of Kokalari’s diaries, published as *La mia vita universitaria* (My University Life, Rome, Viella 2016), see: B. Gami Shatro, *Essays on the Awareness of Loss in Contemporary Albanian Literature: Voices that Come From the Abyss*, Lexington Books, Lanham, MD 2024, p. 13–55.

⁵¹ Ibidem.

honour!”⁵² Schoolchildren were forced to attend the show trials in between lessons. In Kokalari's case, people tried to rip her hair out as she left the building. Kokalari was given the floor after the prosecution rested its case. She read out her defence but was interrupted by the court because it was felt that what she was saying did not relate to the charges. As what she was saying was beside the point, she was ordered to be silent; her written defence would be attached to the file. Her final words at the trial referred to Sami Frësheri: “I am a disciple of the renowned Sami Frësheri and in condemning me you seek to condemn renaissance.”

Kokalari would not remain silent. She took her experiences, from childhood, her family memories, university studies, and literary life with her to prison. There, and until the day she died, she created a space for herself in which lived freely, despite attempts by the state to take away her powerful voice and prescient thinking.

Harsh Penalties

The use of harsh penalties in a totalitarian system is of a perverse nature.⁵³ Not only are severe penalties supported widely across society but the arbitrary nature of the law and a broad definition of who is an enemy can involve the harshest punishment for seemingly innocuous behaviour. The court sentenced Kokalari to 20 years imprisonment in one of the most brutal labour camps, located in northern Albania. Kokalari asked for pardon in 1957, but her request was turned down by the Ministry of the Interior, which instructed the Supreme Court not to grant pardon on the grounds that Kokalari was not yet fit to re-enter society (this was after 11 years behind bars). After 16 years of incarceration, Kokalari was released and exiled for a period to Rrëshen, a city in the district of Mirdita, where she was forced to work as a manual labourer and forbidden to write. Kokalari joked that she was a “mortar specialist”. She was kept under surveillance for the rest of her life. “During work, she was what they [the *Sigurimi*] wanted her to be. But after work, she was what she wanted to be: well-dressed, beautiful, and with a book in her hands.”⁵⁴ She was committed to the existence of the “pocket of democracy”, no matter how small, that sustained her life and values. Kokalari succeeded in finishing a book about her political experience in 1972. It was written in secret and concerned the political vision she and her co-founders had, entitled *Si lindi Partia Social Demokrate* (How

⁵² A. Fijalkowski, *Law, Visual Culture, and the Show Trial...*, p. 76.

⁵³ A. Podgórecki, *Totalitarian Law...*, p. 25.

⁵⁴ Interview with Kokalari's great-niece, see: A. Fijalkowski, *Law, Visual Culture, and the Show Trial...*, p. 77–78.

the Social Democratic Party was Born).⁵⁵ She died from cancer in August 1983. In 1993 the then Albanian president Sali Berisha declared Kokalari, together with several other Albanians, a “Martyr for Democracy”. In Saimir Kumbaro’s 2012 documentary *The Martyrs*, the Albanian writer Ismail Kadare remarks that “[she] was a distinguished martyr of freedom. She is the first to have formulated in a lapidary manner the idea of pluralism in Albania. She defended herself at the trial, where among other things she said: ‘It is not necessary to be a communist to love Albania.’”⁵⁶ Her resistance to totalitarianism was exemplified in her protecting and maintaining the space to think, read, and write. It was a small space, but vital to her existence, and it was not destroyed by the state.

Legitimation

As discussed above, the other notable trials were conducted in the same vein as Kokalari’s, although they may have stressed other themes, namely, Western espionage, themes that tallied with other show trials being staged contemporaneously, such as those held in Central and East Europe.⁵⁷ They were all public events, with law as the key performance and participants playing a key role in its enactment.

Abuse of the Citizen’s Point of View

Kokalari knew that the abuse of the citizen’s point of view was what motivated Hoxha’s system. She recognised how her call for free elections was interpreted as a betrayal of the goals of the regime. This was demonstrated in her court statement.

Jiří Příbáň’s work on dissidents is instructive and relevant here.⁵⁸ Příbáň describes how in authoritarian and totalitarian regimes, dissent is controlled from outside the political system. In other words, any expression that is free is considered dangerous and results in the authorities attempting to shut it down immediately. Příbáň recalls how the role of dissidents in the immediate aftermath of the Second World War was based on Marxism-Leninism and then Stalinism. New legal doctrines were created to explain the nature of the new political system in legal terms. The mainstream legal theory bolstered an unpredictably

⁵⁵ Ibidem, p. 75.

⁵⁶ Ibidem, p. 78.

⁵⁷ G. Hodos, *Show Trials: Stalinist Trials in Europe, 1948–1954*, Praeger, New York 1987.

⁵⁸ J. Příbáň, *Political Dissent, Human Rights, and Legal Transformations: Communist and Post-Communist Experiences*, “East European Politics and Societies” 2005, vol. 19, no. 4, p. 553–572.

repressive policy with the concept of socialist legality, which used education alongside the throttling of dissent to realise the working-class struggle during the period of proletarian dictatorship. The state was not to wither away but rather intensify its repressive policy against political opponents. The early years of Albanian Communism laid the foundations of a state system that worked towards achieving Hoxha's vision. The regime could rely on its legal institutions to educate and throttle while preserving energy and applying terror in an arbitrary manner. On the surface state institutions appeared to be working in a legitimate fashion. Even its own institutions were not immune from repression and terror, however, rendering them intrinsically fragile.

The very manner in which Kokalari took the stand was itself an important critique of the totalitarian regime. The dissident writer knew what democracy meant, and she valued, thanks to her education, her experiences in the "pockets of democracy" and her connections with individuals who placed great importance on speech, protest, and elections. This was at the heart of the political party of which she was a member, where political dissent, its use of the concept of human rights, and its attempts to challenge the existing political system, were part of a more general endeavour to preserve and re-build political identity. This group understood its vision to be prescient. Towards the end of Communist rule, the notion of civil society would come to represent values and virtues such as individual freedom, cooperation, spontaneity, solidarity, public initiative, protest, intellectual critique, recognised political dissent, and many other aspects of communal life destroyed by communists. This explains why dissidents would mostly support pro-European politics, and the first post-communist presidents, such as Václav Havel, would rally to the European project of unity.⁵⁹ Kokalari could already see in 1946 how the removal of these basic human rights, under the guise of a legitimate state, would deny her country the chance to create a polity.

Dark Social Engineering

Control over our knowledge of Kokalari's fate continues on the part of the Albanian political elite, including in respect of exhibitions at the national museum and historical institutes dedicated to the memory of communism and political crimes, such as the Institute for the Study of Communist Crimes and Consequences in Albania. Consequently accountability for the maladministration of justice has not been realised, and Kokalari's life story continues to be

⁵⁹ Ibidem, p. 566.

manipulated, consumed, and appropriated, as if in a vicious circle.⁶⁰ This process is driven by her own image because the space between the individual and social imagination has permitted the state to control the legal historical narrative rather than tolerate a mediated discourse.⁶¹ Despite the exhibitions about the repression that Kokalari and her peers experienced during communist rule, there is no meaningful reckoning with the past nor deeper engagement with who Kokalari really was and, as a result, a missed opportunity to acknowledge the discourse about the sort of polity Kokalari and her colleagues envisioned for the wider Albanian polity.⁶² The Albanian political elite's initiatives noted here are presented as ones that are shared by the wider society. The reality is that these initiatives hide behind public spirited goals that are in fact rejected, nor do they reflect any interest in seeing individuals held accountable for the maladministration of justice.⁶³

Concluding Remarks

This discussion demonstrates the significance of Podgórecki's work for the Albanian cultural and historical context. The Polish sociologist had looked at several key aspects of totalitarian legal frameworks: the ground norm and its supremacy over the constitution; the servility of totalitarian law; the perverse perfection of totalitarian bureaucracy; oppression of and by the judiciary; legitimization; the derivational appearance of legality; use of the popular appeal of harsh penalties; abuse of the citizen's point of view; law as a dark instrument of social engineering. These aspects are all in evidence in the Albanian case. When considering a life such as Musine Kokalari's, Podgórecki's observations about totalitarian law are brought to the fore, given how law in Albania was remoulded to accommodate dictatorial rule, in form and application. Kokalari herself represents a vision of a polity that never went away despite the severe repression she suffered. Her experience is reflected in that of many others, and the wider Albanian case study provides an invaluable insight into the social forces that a totalitarian system generates.

⁶⁰ A. Fijalkowski, *Musine Kokalari and the Power of Images: Law, Aesthetics and Memory Regimes in the Albanian Experience*, "International Journal for the Semiotics of Law" 2015, vol. 28, no. 3, p. 594–595.

⁶¹ C. Bottici, *Imaginal Politics*, Columbia University Press, Columbia, NY 2019, p. 1–11.

⁶² A. Fijalkowski, *Law, Visual Culture, and the Show Trial...*, p. 80, 89–92.

⁶³ A. Podgórecki, *Totalitarian Law...*, p. 28–29.

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AGATA PRZYLEPA-LEWAK*

The Phenomenon of Social Oppression According to Adam Podgórecki¹

Zjawisko opresji społecznej w ujęciu Adama Podgóreckiego

Abstract

Adam Podgórecki was one of the most outstanding Polish sociologists of the second half of the 20th century. One of the issues that he has comprehensively analysed was the problem of human-induced social oppression. This concept was understood as an external or internal restriction of the available options of human behaviour with regard to an individual or group of individuals. According to Adam Podgórecki, not only does oppression affect the cognitive options of the available types of behaviour and expands the possibilities of human behaviour (as these can be legal and illegal), but it also limits, sometimes in the literal sense, the physical possibilities of behaviour. Moreover, it can often occur inadvertently. An interesting aspect of his theory is pointing to the fact that law often becomes the main mechanism of social oppression. The aim of the article is to present the phenomenon of social oppression in A. Podgórecki's view, which may help eliminate it from social life. At first, the essence of social oppression according to Adam Podgórecki will be explained, followed by a presentation of related phenomena, the significance of the law for the phenomenon of social oppression, and a description of the methods used to study it. The article has been written using the method based on the analysis of the available literature on the subject, critical analysis of A. Podgórecki's works, and the historical method.

Keywords: social oppression, social repression, sociology of law, law, social exclusion

Abstrakt

Adam Podgórecki był jednym z najwybitniejszych polskich socjologów drugiej połowy XX wieku. Jednym z zagadnień, które poddał kompleksowej analizie, był problem spowodowanej przez człowieka opresji społecznej. Pojęcie to rozumiał jako zewnętrzne lub wewnętrzne ograniczanie przez człowieka

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¹ This article expands on the issues raised by the author: A. Przylepa-Lewak, *Wkład Adama Podgóreckiego w powstanie i rozwój socjologii prawa*, Lublin 2020, p. 290–305.

dostępnych opcji ludzkiego zachowania jednostki lub grupy. Opresja, według Adama Podgóreckiego, wpływa nie tylko na opcje poznawcze dostępnych rodzajów zachowań i nie tylko poszerza możliwości zachowania człowieka (ponieważ mogą one być legalne i nielegalne), ale także ogranicza, czasami w dosłownym tego słowa znaczeniu, fizyczne możliwości zachowania. Dodatkowo może mieć miejsce w sposób częstokroć niewidoczny i niemal nieuświadamiany. Ciekawym aspektem jego teorii jest zwrócenie uwagi na fakt, iż częstokroć prawo staje się głównym mechanizmem społecznej opresji. Celem artykułu jest próba prezentacji zjawiska opresji społecznej w ujęciu A. Podgóreckiego, co może być pomocne w dążeniu do jego eliminacji z życia społecznego. Artykuł powstał przy wykorzystaniu metody analizy dostępnej literatury przedmiotu, analizy krytycznej prac A. Podgóreckiego oraz metody historycznej.

Słowa kluczowe: opresja społeczna, ucisk społeczny, socjologia prawa, prawo, wykluczenie społeczne

Introduction

Professor Adam Podgórecki² was one of the most eminent Polish sociologists of the second half of the 20th century. He created and carried out many pioneering research projects in the field of sociology of law, largely based on his meticulous empirical research. Undoubtedly, Adam Podgórecki's intellectual achievements are considerable and innovative in many respects. In some circles, Adam Podgórecki is considered a co-author of the contemporary concept of the sociology of law. He is well known not only in the community of legal sociologists but also among sociologists and legal theorists. He educated numerous devoted students in Poland and abroad who continued many of his projects.

The most important areas of his creative achievements, covered by his numerous works, are the sociology of law, sociological theory, methodology of social engineering, and sociology of morality.

Exploration within the sociology of law and juxtaposing some basic regularities concerning the social determinants of law and its impact on social life led Adam Podgórecki to propose and disseminate the theory of the involvement of science in combating various social pathologies. This became another subject of his interest. He saw the need to develop interdisciplinary practical knowledge, the objective of which would be to propose more efficient methods and means of counteracting negative aspects of social life than those practiced at that time.

² For more details on Professor Adam Podgórecki's life, see, *inter alia*: A. Kojder, *Podgórecki Adam*, in: *Idee naukowe Adama Podgóreckiego*, eds. J. Kwaśniewski, J. Winczorek, Uniwersytet Warszawski. Instytut Profilaktyki Społecznej i Resocjalizacji, Warsaw 2009, p. 22–37; D. Wicenty, *Wokół projektu biografii Adama Podgóreckiego: wyzwania koncepcyjne, metodologiczne i społeczne*, "Przegląd Socjologii Jakościowej" 2013, vol. 9, no. 4, http://www.qualitativesociologyreview.org/PL/Volume24/PSJ_9_4_Wicenty.pdf (accessed: 06.12.2023); A. Kojder, Z. Cywiński, *Socjologia prawa. Główne problemy i postacie*, Wydawnictwa Uniwersytetu Warszawskiego, Warsaw 2014, p. 306–310; J. Kurczewski, *In Memoriam. Adam Podgórecki*, "Studia Socjologiczne" 1998, no. 3, p. 13–17; idem, *Adam Podgórecki*, in: *Socjologia na Uniwersytecie Warszawskim. Fragmenty historii*, ed. A. Sulek, Instytut Socjologii UW, Warsaw 2007; A. Przyłepa-Lewak, *Wkład Adama Podgóreckiego...*, p. 11–24.

Thanks to his extensive research, he was recognised as the founder of the Polish school of social pathology and the initiator of sociological research in this area.³ In 1969, he published *Patologia życia społecznego* [*Pathology of Social Life*], which was undoubtedly the first study of this type in the then communist countries. The author did not limit himself to details, but presented certain manifestations of social evil in a comprehensive way. It is worth noting that the definition of social pathology that he proposed is the one most often referred to in the literature on the subject. In the book, Podgórecki examined various aspects of social pathologies such as crime and deviancy, stressing that social oppression often results from the inefficiency of legal and administrative systems. He also introduced the concept of institution pathology in Poland, referring it also to the functioning of state institutions, which then became the subject of studies carried out by his followers – Jerzy Kwaśniewski and Andrzej Kojder.⁴

The culmination of Adam Podgórecki's work in the field of social pathology and deviation was the analysis of the problem of man-induced social oppression, which he addressed in his study published in a renowned series *Contribution in Sociology*, titled *Social Oppression*.⁵ He used to explain the reasons behind the study by the fact that, although an orientation geared towards the disclosure, description, and analysis of conflicts in society had been developing since the 1960s, there was no systematic inquiry into the problem of man-induced social oppression.⁶

³ The issue of social pathology was closely related to Adam Podgórecki's academic career, because, starting from 1969, he headed the Team for Research on Social Norms and Social Pathology at the Institute of Sociology of the University of Warsaw, and in 1973 he started working at the Institute of Social Prevention and Resocialization (IPSiR), of which he was the originator and co-organiser, and where he managed the Department of Sociology of Norms and Social Pathology. See e.g.: A. Kojder, *Podstawy socjologii prawa*, Oficyna Naukowa, Warsaw 2016, p. 138; A. Kojder, *Podgórecki Adam...*, p. 22–23; O. Halecki, *Prof. dr hab. Adam Podgórecki (1925–1998)*, <http://halecki.org/wybitni-polacy-w-kanadzie/prof-dr-hab-adam-podgorecki/> (accessed: 19.11.2023); K.A. Ziegert, *Adam Podgórecki's Sociology of Law: The Invisible Factors of the Functioning of Law Made Visible*, "Law & Society Review" 1977, vol. 12, p. 151–180.

⁴ J. Kwaśniewski, *Patologia struktur władzy i nadużywanie prawa w instytucjach polskiego państwa*, Referat przedstawiony 14 marca 2011 r. w ramach debaty Koła Naukowego Filozofii Prawa i Filozofii Społecznej pod patronatem WPiA UW; idem, *Patologie instytucji państwa i prawa w posttotalitarnej Polsce*, "Profilaktyka Społeczna i Resocjalizacyjna" 2013, no. 21, p. 225–232; A. Kojder, *Patologia instytucji*, in: *Dziesięciolecie Polski Niepodległej 1989–1999*, ed. W. Kuczyński, Fundacja Księgi Dziesięciolecia Polski Niepodległej: United Publishers & Productions, Warsaw 2001, p. 1018–1019; idem, *Podstawy socjologii prawa...*, p. 279; idem, *Zło szczególne: patologia instytucji*, "Rzeczpospolita" 06.10.1998, <http://archiwum.rp.pl/artukul/195934-Zlo-szczegolne-patologia-instytucji.html> (accessed: 05.12.2023).

⁵ A. Podgórecki, *Social Oppression*, Westport 1993.

⁶ Similarly to Adam Podgórecki, many other sociologists and social theorists have dealt with issues of social oppression. Here are a few of them: P. Bourdieu, *La distinction: critique sociale du jugement*, Minuit, Paris 1979; idem, *Outline of a Theory of Practice*, Cambridge University Press, Cambridge 2019; M. Foucault, *Discipline and Punish: The Birth of the Prison*, New York 1997; idem, *The*

As he himself pointed out, filling this “blank spot” in sociology, which is the absence of studies on social oppression, was possible primarily thanks to the rapid development of a new scientific discipline, which was the sociology of law.⁷ Thus, he was the first researcher to attempt a comprehensive description of the phenomena of oppression, repression, and persecution. First of all, he analysed man-induced oppression, observed especially in the modern era.

Adam Podgórecki's concept of social oppression provides a critical framework for understanding how laws and social structures can perpetuate inequality and limit individual freedoms. His emphasis on empirical research, the role of cultural norms, and the importance of intellectual resistance offers valuable insights for both scholars and practitioners aiming to address and mitigate social oppression.

The purpose of this article is to present and analyse the phenomenon of social oppression as conceptualised by A. Podgórecki. It aims to explore how social and legal structures can perpetuate inequality and restrict the freedoms of individuals and social groups. Podgórecki suggests that the law often becomes the primary mechanism of social oppression, which is a key element of his analysis. Additionally, the article seeks to identify tools that could be useful in combating social oppression and ultimately remove it from social life.

Essence of Social Oppression According to Adam Podgórecki

The word “oppression” derives from Latin, and its spelling in the original language is *oppressiō*. Social oppression means exclusion, marginalisation, or even annihilation of certain social groups, mainly in order to emphasise the superiority of the oppressors, make them privileged, and keep them in power. In modern Polish language, the word “oppression” (*opresja*) means a difficult and dire situation or trouble.⁸

Social oppression is a term that describes the relationship between two groups of people, in which regular abuse and exploitation takes place. Since

History of Sexuality, New York 1978; A. Giddens, *The Constitution of Society: Outline of the Theory of Structuration*, University of California Press, Berkeley 1984; L. Song, *Social Capital and Psychological Distress*, “Journal of Health and Social Behavior” 2011, vol. 52, no. 4, p. 478–492; W. Pinxten, J. Lievens, *The Importance of Economic, Social and Cultural Capital in Understanding Health Inequalities: Using a Bourdieu-Based Approach in Research on Physical and Mental Health Perceptions*, “Sociology of Health and Illness” 2014, vol. 36, no. 7, p. 1095–1110; E. Goffman, *Stigma: Notes on the Management of Spoiled Identity*, Prentice-Hall, New York 1963; H. Marcuse, *One-Dimensional Man*, Beacon Press, Boston 1964. Each of these researchers has made unique contributions to the understanding of social oppression, analysing different aspects of power, social control and resistance.

⁷ A. Podgórecki, *Social Oppression...*, p. 1, 13.

⁸ A.E. Cudd, *Analyzing Oppression*, Oxford University Press, Oxford 2006.

social oppression is something that occurs between people, it should not be confused with the oppressive behaviour of individuals. Social oppression refers to oppression which is inflicted through social measures, and which also has a social dimension, affecting entire categories of people. This kind of oppression includes the systematic maltreatment, abuse, and exploitation of a group (or groups) of people by another group (or groups) and occurs when one group has authority over another in society through the control of social institutions, along with laws, customs, and social norms.⁹ It should be added that it is a very broad concept and can be considered from numerous perspectives, as it touches upon various areas of social life. It covers various forms, including racial, gender, ethnic, religious, and economic discrimination. Oppression mechanisms can be both structural and interpersonal. Structural mechanisms include social, legal, and economic systems that favour certain groups over others. Interpersonal mechanisms, on the other hand, are acts of aggression, violence, or exclusion by individuals or groups of people who have greater power or social position.

As regards the conception proposed by A. Podgórecki,¹⁰ it should be first noted that he used to stress that mental and physical pressures, as well as economic or political exploitation or tyranny have also been scientifically analysed. Generally speaking, in the situation of economic oppression, victims are forced to provide work or services, or even surrender goods. Under political oppression, the oppressed are subordinated to the patterns of institutional hegemony and dominated by those in power. In the case of social oppression, the targeted persons are pressurized to comply with the norms imposed on them.¹¹

Man-induced or socially generated oppression, despite being ubiquitous like power, often remains unrecognised. A characteristic feature of man-induced oppression is the adoption of the concept of “free will” as a basic assumption. The existential idea that the individual can be the “master of one’s own fate” and even that he or she is “destined to be free” radically changes the perception

⁹ See: A. Crossman, *What Is Social Oppression?*, <https://www.thoughtco.com/social-oppression-3026593> (accessed: 02.12.2023).

¹⁰ His work on social oppression has been cited by researchers such as: A. Zybortowicz, *Anty-Rozwojowe Grupy Interesów: zarys analizy*, in: *Kręgi integracji i rodzaje tożsamości*, eds. W. Wesółowski, J. Włodarek, Wydawnictwo Naukowe Scholar, Warsaw 2005, p. 299–324; M. Łoś, A. Zybortowicz, *Privatizing the Police-state. The Case of Poland*, Macmillan Press, London 2000; R.A. Pape, *When Duty Calls: A Pragmatic Standard of Humanitarian Intervention*, “International Security” 2012, vol. 37, no. 1, p. 41–80; M. Caparini, H. Born, *Democratic Control of Intelligence Services: Containing Rogue Elephants*, Routledge, New York 2016; M. Łoś, *The Technologies of Total Domination*, “Surveillance & Society” 2004, vol. 2, no. 1, p. 15–38; K. Onur, *Exit the President Coercive Institution and Regie Breakdown in Tunesia*, London 2021, https://kclpure.kcl.ac.uk/ws/portalfiles/portal/168048128/2021_Kara_Onur_1337824_thesis.pdf (accessed: 10.05.2024); M.L. Marjanović, *Sistematika sociologije prava u istočnoevropskim zemljama*, “Zbornik radova Pravnog fakulteta” 2005, vol. 39, no. 3, p. 429–449.

¹¹ A. Podgórecki, *Social Oppression...*, p. 1.

of man-induced oppression from the traditional belief that human existence is about suffering and inflicting this suffering.¹²

A. Podgórecki criticised the definitions and typologies of oppression listed in the literature, e.g. exploitation, marginalisation, helplessness, cultural imperialism, and methodical violence. He pointed to their numerous defects in that they are value-laden, tautological, lack precision, and are not supported by empirical data. The researcher understood the concept of oppression as: “an external or internal human limitation of the available options for human behaviour of an individual or a group (if the individuals belonging to that group identify themselves with the group).” This definition stresses that oppression can come from outside or “from within”.¹³

According to Adam Podgórecki, oppression affects the cognitive options of the available types of behaviour and expands the possibilities of human behaviour (as these can be legal and illegal), but also limits, sometimes in the literal sense, the physical possibilities of behaviour. Moreover, it can often take place in an invisible manner, almost inadvertently. That is why it is sometimes treated as a natural and not questionable situation. Oppression is understood here as a constant, almost unconscious limitation of existing possibilities, or a limitation of available alternatives. Oppression can take many forms: legal, economic, political, ideological, cultural, or existential, and these forms are mutually reinforcing. For example, the essence of totalitarian regimes (to which A. Podgórecki paid the most attention) is ideological oppression, when there is a monopoly on acceptable beliefs and related practices.¹⁴

At this point, it is worth mentioning the assumption made by A. Podgórecki that in a situation in which the conflict takes the form of a legal struggle, its effects are easy to recognise, as they are specific. If a conflict is a clash of opposing social forces, its consequences are generally multidimensional, vague, and entail unexpected consequences. However, oppression always reveals an ongoing conflict and appears when there are at least two opposing sides pushing for contradictory views. In such a situation, the degree of oppression shows how far the oppressor is able to move and how much the oppressed can tolerate, indicating the ratio of forces of both sides. In extreme situations, the oppressed may actually be stronger and aware of their potential, they may deliberately hold off their attack until they can destroy their enemies. As a rule, however, the stronger party oppresses the weaker party. It is worth noting that, in Adam Podgórecki's opinion, human rights do not come from either “natural”

¹² Ibidem, p. 2.

¹³ Ibidem, p. 6.

¹⁴ Ibidem; A. Kojder, *Podgórecki Adam...*, p. 32.

or “divine” sources, but arise out of a type of oppression directed against those who sought these rights.¹⁵

Phenomena Related to Social Oppression

According to Podgórecki, in the history of mankind, individuals and small groups were initially subjected to direct oppression in their face-to-face interactions. This type of oppression was then replaced by anonymous pressure exerted by formalised social structures. The original functions of the institutions of social control also changed in the same direction. Traditional social control measures, such as the authority of the family, tribe, and community, have radically changed their objectives. Moreover, instruments of control held by institutions, organisations, and various formal structures based on rational behavioural models have replaced traditional social control measures, while these new, rational ones have successively overwhelmed people in a different, unprecedented way.¹⁶ In these increasingly rationalised conditions, law began to play a decisive role in shaping the image and reality of the “new world” and “new civilisation”. Therefore, law and its pathologies appear to be the main instrument of social oppression.¹⁷

According to A. Podgórecki, when oppression becomes a matter of formal, abstract, and rationalised means of coercion, social control enters the psyche of the individual through various social constructs with greatly amplified effects. Individuals are more or less forcibly socialised to approach and accept a new environment as a natural kind of environment. The essential feature of this type

¹⁵ A. Podgórecki, *Social Oppression...*, p. 7.

¹⁶ At this point, it is worthwhile to briefly present three levels of social control distinguished by A. Podgórecki: primary, secondary, and tertiary. Primary control is the influence that a small social group exerts on its members toward compliance with the behaviours prescribed by generally accepted norms in a given situation. This type of control is based on community bonds developed through long-term, multifaceted contacts in various areas of social life. Secondary control, on the other hand, does not have individualistic features established in face-to-face relationships, and is characterised by formalism, impersonalism, an extensive apparatus of formal control, as well as the existence of a system of clearly solidified and recognised sanctions. The essence of the tertiary level of control is that it treats already existing social control measures as elements that can be used to obtain the results currently defined by those who are able to seize them at a given moment. The control seeks, in principle, to attain goals which are not generally known or recognised by the public, and is implemented by means which may include elements of manipulation. See: A. Podgórecki, *Kontrola społeczna trzeciego stopnia*, in: *Problemy profilaktyki społecznej i resocjalizacji*, ed. H. Dziewanowska, Wydawnictwo Uniwersytetu Warszawskiego, Warsaw 1976.

¹⁷ A. Podgórecki, *Social Oppression...*, p. 7; J. Příbáň, *A Sociological Critique of ‘Socialist Jurisprudence’: on Podgórecki’s Contribution to the Study of Totalitarian Law and Society*, “Societas/Communitas” 2013, vol. 15, no. 5, p. 183–189.

of environment is the shift from external control of the person's body and social environment (attitudes, roles, status, etc.) to a new unprecedented internal and actual control. This control (a ubiquitous, totalitarian control) is instilled directly into the psyche of the individual, as it is the individual who is the target of the modern civilisation, and such a technique of social control will ensure that the behaviour of individuals is in line with the core values of the social order. The new means of social control "overwhelm" people in new and unprecedented ways, and the influence of the control is constantly growing. This advanced type of control tends to include in the available resources the individual self, the self of each human being. In other words, it is inclined to include, under its strategic control, those categories of self that are considered the most valuable elements of human life. In Carl Gustav Jung's terminology, the self is the centre of psychic life and the entire psyche. From the level of the unconscious, it attempts to direct the psyche of the individual. It is the axis around which the human psychological structure is organised. It is responsible for the flow of information from the conscious to the unconscious and vice versa.¹⁸ Selves are formed as a result of the expectation of socialisation processes intended to ensure that their effect, continuously tested through a process of trial and error, will be beneficial to society as a whole.¹⁹ As a result, the individual is controlled not from the outside, but from within, which is the very centre of his or her existence. In order to throw more light on this phenomenon, A. Podgórecki undertook to develop his own classification of social selves.²⁰

He distinguished the following types of self: (1) instrumental "me" – goal-oriented, which in times of accelerated social change plays a leading role in enabling the individual to get through various obstacles and dangers created by contemporary circumstances of social life.²¹ In such situations, the individual can be influenced by instilling the conviction that all methods are allowed to survive, even illegal ones²²; (2) facade "me" – such self can be used by people who want to demonstrate their enormous possibilities, even though they do not have them. This is intended to impress others; (3) the mirror image of "me" – the self associated with the facade type of self that provides the person with information about how he or she is perceived by others, and allows the person

¹⁸ See: C.G. Jung, *Aion. Przyczynki do symboliki Jaźni*, transl. R. Reszke, Wrota, Warsaw 1997; O. Vedfelt, *Kobiecość w mężczyźnie: psychologia współczesnego mężczyzny*, transl. Piotr Billig, ENETEIA – Wydaw. Psychologii i Kultury, Warsaw 2004, p. 23.

¹⁹ A. Podgórecki, *Social Oppression...*, p. 18.

²⁰ See: *ibidem*, p. 8, 19–33.

²¹ It is misleading to think that the instrumental attitude is usually destructive, individualistic, as it can also be constructive, e.g. in the case of an MP who cares about the welfare of a larger group. See: *ibidem*, p. 18.

²² This type of self is related to the problem of a "dirty community" discussed by A. Podgórecki in his studies; see: A. Podgórecki, *Socjologiczna teoria prawa*, Interart, Warsaw 1998, p. 89–92.

to determine whether the image of his or her personality matches a predetermined model. The consequence may be the assessment of reality using the other person's perspective; (4) principled "me" – a self that is focused exclusively on adherence to established norms. It forms the basis of a legalistic way of thinking and the basis of formalistic behaviour; (5) the ideal "me" – includes an individual perception of self-image, indicating how it should be and not how it is. The ideal "me" is built on the most precious human dreams and the most sacred moral values. This type of self can help preserve human freedom, but it can also be one of the strongest forms of oppression. It can become a tool of torture. The ideal "me" keeps repeating: "you are still not good enough, not only do you have a long way to go, but in fact you will never be able to reach the goal"; (6) the true "me" – includes all the material and physical factors that affect the life of the individual (e.g. health, character traits, wealth); (7) dependent "me" – if someone has not been able to create their own outlook on life and believes that the lives of others are more exciting than their own, if they identify themselves with the views that were prescribed by others, then they can accept someone else's "me" as their own; (8) private "me" is the most effective identifying symbol of all the selves.

The private "me" plays a major role in regulating people's behaviour. It is known only to a given person, it includes the person's own opinions, views, and intimate experiences, free from the influence of others according to the principle of "what is private, is valuable." If someone controls something that is private, they are in possession of something that has special value. Hence, not only individuals, but also governments, especially totalitarian ones, use many technical and psychological strategies to enter the private self, which gives them an opportunity to blackmail someone. The actual or potential oppression can be twofold: the knowledge about the private "me" may be used to force someone to behave in a certain way or the consequences of disclosing obtained secrets may be used.²³

A. Podgórecki, when analysing this issue, noted that in discussing the problem of social control and oppression, we generally refer to supervisory tools such as the police (including secret services), courts of law, bureaucratic apparatus, power elites, education, religion, political ideology. Such tools play a diverse and important role in supervision and complement each other in the effort to bring human activity to the expected standards. Some of these institutions use techniques that are visible and manifestly abhorrent, while others use techniques that are subtle and attractive to individuals. This catalogue of different strategies includes not only torture and promotions, but also toxic psychological manoeuvres in the form of malicious gossip or intrigue, and, on the other hand,

²³ A. Podgórecki, *Social Oppression...*, p. 31–33.

flattery and compliments. As a result of its noticeability, such pressures were described in more or less detail using a specialised analysis of human relations in diverse social conditions. However, A. Podgórecki emphasised that it is easy to overlook that special kind of control that hides deep in the human psyche. It is based on patterns that are embedded in the human soul, work automatically, and can be stronger than all the institutions that are spectacularly oppressive or, as he wrote, seduce imperceptibly, imposing social conformism all the time.²⁴

Finally, in order to better identify the covert, but nevertheless crucial, forces of social control, A. Podgórecki, concluded that it was necessary to analyse various kinds of techniques to ensure the compliance of society's behaviour with the core values of the social order. One of the most important techniques of this kind is just implanting in the psyche of each member of society the right kind of a socially functioning "me" (self). Social systems are the product of different types of human "me", individual selves, they shape different types of self and are themselves shaped by them. It can be stated metaphorically that the pool of existing selves in a given social system is its superstructure. Adam Podgórecki confronted this subjectivist point of view with the results of research and came to the conclusion that the two typical modes of behaviour in situations of oppression are withdrawal (in the sense ascribed to it by R. Merton) and hyperconformism, i.e. extreme submissiveness. Above all, the social sense of lawfulness; namely, compliance with the law, is degraded.²⁵ The sense of the rule of law (that is, the social sense of the rule of law) can be degraded in situations of social oppression for several key reasons. Under conditions of oppression, individuals may be forced to obey the law not out of recognition of its moral value, but out of fear of the consequences of disobedience. When the law is seen as a tool of oppression, its moral legitimacy is undermined. Additionally, when the legal system is used by dominant groups to maintain inequality and suppress dissent, individuals may lose faith in the justice of the law. Oppression can lead to the erosion of traditional social and moral norms that have been the foundation of compliance with the law. As individuals become increasingly focused on survival under oppression, they may neglect or ignore these norms, further degrading society's sense of the rule of law. Extreme compliance (hyperconformism) in response to oppression can lead to a situation in which people obey the law not because they accept it, but because they feel compelled to. This, in turn, leads to mechanical, unreflective compliance, which undermines a true understanding and respect for the values the law is meant to protect. When oppression becomes pervasive and internalised, individuals can adopt attitudes that reinforce their enslavement, rather than challenging it.

²⁴ Ibidem, p. 18.

²⁵ Ibidem, p. 57–60; A. Kojder, *Podgórecki Adam...*, p. 32.

Instead of being an instrument of justice, the law becomes a way to perpetuate the status quo, which makes it appear unjust and repressive.

Significance of Law for the Phenomenon of Oppression

A. Podgórecki viewed law not merely as a system of rules but as an instrument that can be used to oppress certain groups while benefiting others. He believed that the legal system often reflects the interests of dominant social groups, thereby maintaining and legitimising existing power structures. This perspective aligns with critical legal studies, which emphasise that laws are not neutral but are embedded in social power relations. He noted that the change in forms of oppression from direct oppression to that resulting from anonymous pressure from formalised social structures is also accompanied by a change in the role of law and its numerous pathologies. Law becomes the main mechanism of social oppression. In formalised structures, legitimised situations of oppression are created by positive law.²⁶ A similar role in structures with a low degree of formalisation is played by intuitive law. As A. Podgórecki used to point out, it would be a mistake to assume that only official (positive) law can perform oppressive functions because intuitive law can also play an oppressive role.

As he argued, the law constitutes a solidified (established in a specific form) oppression. As duties are basic components of law and since they constrain human behaviour, then, to the extent that constraints on human behaviour constitute oppression, law oppresses human behaviour. The elusive phenomenon of power should be understood as the relationship between duties and rights manifested in certain spheres of human behaviour. As a result, the more duties, the more oppression, and the more rights, the less oppression. The heavier the oppression, the stronger the power, and the weaker the power, the more lenient the oppression.²⁷

According to Adam Podgórecki, law is oppressive in a threefold sense. Firstly, it is oppressive in itself, because it limits the available options for human action, quite often physically enforcing certain types of behaviour. Secondly, it prosecutes

²⁶ A. Podgórecki understands positive law as the law that is enacted or recognised by authorities that have the tools to impose their will when it comes to the content and application of the law. Intuitive law is the law based on voluntary cooperation, based on the awareness of one's rights and duties in relation to other people. See more: K. Motyka, *Socjologia prawa: Od Petrażyckiego do Podgóreckiego*, in: *100 lat socjologii w Katolickim Uniwersytecie Lubelskim Jana Pawła II*, ed. W. Szymczak, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, Lublin 2018, p. 251–255; idem, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland under Communism*, in: *Leon Petrażycki. Law, Emotions, Society*, eds. E. Fittipaldi, A.J. Treviño, Routledge, New York 2023, p. 50–57.

²⁷ A. Podgórecki, *Social Oppression...*, p. 117.

certain behaviours and uses the whole machinery of social control (of the first, second or third degrees) in case its rules are breached, threatening in advance to use this machinery. Thirdly, it plays a fundamental role in the distribution of various types of pressure: taxes, fees, fines, duties, tariffs, levies, etc.²⁸

One of the most distinctive features of law are its related sanctions, which may be formal, as is the case with official law, or informal, as in the area of intuitive law. Formal sanctions may be strengthened by informal sanctions. The application of informal sanctions or the public announcement of a warning that they may be used has been introduced to anchor or solidify oppression by prohibiting certain types of behaviour. In this sense, the law itself is solidified oppression. Using formal or informal (in the case of intuitive law) sanctions, it directs the behaviour towards the aim desired by the legislature. It may be helpful to point out that formal sanctions, although perceived by classical case law as primary legal factors, are only of secondary importance. They become part of the social reality only if the prestige of the law is not strong enough to provide it with the necessary support. People who do not understand the nature of the contradiction between official and intuitive law generally underestimate the importance of the prestige of the law.²⁹

As A. Podgórecki noted, when examining various legal systems, especially in a totalitarian state, the law takes on the characteristics of a solidified oppression, because it applies there conditionally, and the political authority uses it in an extremely instrumental way.³⁰ During prolonged periods of pathological rule, not only does the law openly violate traditional principles, but it also violates the moral values and intuitive attitudes of the population. The pathological totalitarian regime “injects” a “psychological venom” into these attitudes, which have a tendency, by inertia, to act in conditions where the dominant totalitarian structure has already been destroyed and cannot be eliminated in a short period of time. In the post-totalitarian era, they are autonomous and still exist as an internal negative force. It can be assumed that the mental heritage of the totalitarian era is like a “breath” held and ready at any moment, and with increasing strength to overwhelm the society involved in the rebirth process. These assumptions have been tested in the historical reality of one particular

²⁸ Ibidem.

²⁹ Ibidem.

³⁰ Ibidem, p. 117. It should be noted that A. Podgórecki, in a study preceding his *Social Oppression*, namely in *Socjologiczna teoria prawa*, carried out an analysis of totalitarian law and post-totalitarian law as solidified oppression. See also: A. Podgórecki, *A Concise Theory of Post-Totalitarianism* (Poland — 1989/1990), “The Polish Sociological Bulletin” 1991, no. 94, p. 89–100; A. Podgórecki, *Reappearance of Ex-Communist Structures as a Test for the Integrative Theory of Law*, “Polish Sociological Review” 1996, no. 115, p. 199–213; A. Podgórecki, V. Olgiati, *Totalitarian and Post-Totalitarian Law a Sociolegal Analysis*, Dartmouth Publishing Co., Aldershot 1996.

society, namely Polish society. The most frequent of these venoms, according to A. Podgórecki, are the suspicion of neighbours, family, and sometimes even one's own children, instrumental and altruistic denunciations, erosion of friendships, corruption in administration, ubiquitous dirty communities, transformation of respectful traditional symbols, negative slogans, widespread fear, reluctance to speak the truth and constant self-censorship.³¹

Adam Podgórecki's reflections on the role of law in social oppression led him to a new understanding of law, not as a set of external sanctions, as assumed in classical jurisprudence (although, from the point of view of formal law, external sanctions are its key element), but as a set of socially created selves, expressed in intuitive law, having decisive importance for the functioning of law. As a consequence, as Adam Podgórecki put it, law should be seen as a double oppression, sometimes mainly external and sometimes internal.³²

Adam Podgórecki's final conclusion was: firstly, social oppression may in some situations be purely regulative, usually criminal and repressive, and secondly, not only can social oppression be introduced into social life by means of direct instructions in the form of specific legal norms, but it may also result from the general legal culture.³³ In his analysis, Podgórecki often referred to the "invisible factors" that influence how law is perceived and applied. These include cultural norms, social expectations, and informal practices that are not codified but still exert significant control over the behaviour of individuals.³⁴

Methods of Researching the Phenomenon of Oppression

Finally, it is worth taking a closer look at the method proposed by A. Podgórecki for the researching of the phenomenon of social oppression. Its normative nature and, at the same time, the normative nature of law make it necessary to find a special research method that combines an evaluative perspective with the requirements of an empirical approach. Hence, the appropriate method for the study of the issue of oppression, according to A. Podgórecki, is a "multidimensional approach". It assumes the development of a comprehensive methodological

³¹ Ibidem, p. 101, 130. A. Podgórecki understood the totalitarian system as a social system dominated by a homogeneous ideology imposed on society by a single party with its oppressive apparatus. A post-totalitarian system, on the other hand, emerges when the one-party formula formally ceases to dominate, but the deep-rooted bureaucratic structure remains in place and the values, mores, and basic mechanisms generated under the totalitarian system continue to prevail.

³² Ibidem.

³³ Ibidem.

³⁴ All of this had an impact on the perception of the law and its prestige. See in detail: A. Przyłępa-Lewak, *Legal-Sociological Research of the Prestige of Law*, "Studia Iuridica Lublinensia" 2021, vol. 30, no. 1, p. 219–235.

and conceptual framework that enables the analysis of social issues from different perspectives, so as to better capture different facets of social reality. As he wrote:

It is impossible to see in detail a complex structure in the dark unless it is illuminated simultaneously from different angles. If the light is incident at only one angle, the resulting image is completely devoid of the intriguing complexity that characterises the whole. Such a vision reduces the actual image.³⁵

The multidimensional approach adopted by Adam Podgórecki was intended to be a counterbalance to the dominant strategy of using only abstract terms in law, aptly ordering them in pre-arranged combinations, and reinforcing one empirically worthless claim with another equally worthless claim. The multidimensional approach also has its flaws, as it does not, for example, provide any new unifying theory. Nevertheless, it reveals various, often lesser-known elements of contemporary social reality.³⁶ Such an approach is consistent with A. Podgórecki's general view of speculation in science, as he wanted to free science from it.

One of the central tools in the multidimensional approach is social empathy,³⁷ i.e. learned understanding of other human beings surrounded by the social world, an understanding of what belongs to the social world that is alien to a given individual. In other words, social empathy enables a person to enter into a world of social existence other than their own, and this is done by experiencing, directly or indirectly, the existential specificities of other people. There is thus possible an insight into various types of socio-personal experiences, other than those belonging to one's own internal world.³⁸

A. Podgórecki wrote that if the data obtained as a result of social empathy is to be used in social practice, it must usually be transformed into dependent or independent variables. To this end, they need to be extracted from a mixture of existing matter and the flow of current events and then operationalised into constructs and concepts suitable for empirical research. As this process deprives the data of its particular authenticity and uniqueness, it is advisable to "flavour" it with everyday elements, even with anecdotes, in order to make their authenticity more visible.³⁹

In conclusion, it can be assumed that the transformation of these data into such variables allows for their systematic analysis and application in various

³⁵ A. Podgórecki, *Social Oppression...*, p. 12 (own translation).

³⁶ Ibidem, p. 13.

³⁷ A gradual introduction of the concept of social empathy can already be seen in the theories put forward by Leon Petrażycki, Henri Bergson, Anthony Giddens or Wilhelm Dilthey.

³⁸ A. Podgórecki, *Social Oppression...*, p. 12.

³⁹ Ibidem, p. 13.

fields, including the legislative process. Legislators can use the data obtained through social empathy to formulate policies and create laws that better respond to real social needs and problems. In addition, before introducing new legislation, lawmakers can use data obtained from social empathy to better understand the potential social impact of proposed regulations. This data can also help identify areas where existing laws are not working effectively or are even contributing to social problems. This allows lawmakers to make necessary changes that better reflect social needs.

Summary

The concept of social oppression according to A. Podgórecki is a complex approach to analysing how social and legal structures can act in oppressive ways to limit the freedom of individuals and social groups. Social oppression, in his view, includes the various forms of control that social institutions and the law exert on individuals, often in order to maintain the status quo and protect the interests of dominant social groups. Social oppression, defined as a regular violation of rights, freedoms, and dignity of individuals or groups by stronger or dominant forces in society, is a phenomenon that has been present throughout history. As A. Podgórecki's disciple A. Kojder wrote:

Although for centuries people have been constantly thinking about how to increase freedom of each individual and build harmonious social relations free of exploitation and oppression, at the same time they continue in their efforts to subdue the weak, take their land and captivate their minds.⁴⁰

Despite advances in human rights and social equality, oppression is still a problem in many societies around the world. Social oppression has negative consequences for both individuals and society as a whole. At the individual level, it can lead to low self-esteem, depression, anxiety, and even suicide. Oppression can also limit access to resources, education, health care, and professional opportunities for oppressed groups. On the society-wide scale, oppression can lead to exclusion but also contributes to increased social inequality, conflict, and social instability.

The result of social oppression is that groups in society are divided into different positions within the social hierarchies of race, class, gender, sexuality, and ability. Members of the controlling or dominant groups benefit from the

⁴⁰ A. Kojder, *Przedmowa*, in: *Przymus w społeczeństwie*, ed. A. Kojder, Instytut Socjologii Uniwersytetu Warszawskiego, Warsaw 1989, p. 7.

oppression of other groups through increased privileges over others, greater access to rights and resources, better quality of life, and better chances in life in general. Those who experience the burden of oppression have fewer rights, limited access to resources, less political power, lower economic potential, worse health and higher mortality rates, as well as lower overall life prospects. While some people are aware of how social oppression works in society, many are not. Oppression mainly persists through the apparent honesty of life, and the winners are simply more hard-working, wiser, and more deserving of the riches of life than others. Although not all people in dominant groups are actively involved in supporting oppression, everyone ultimately takes advantage of it as members of society.⁴¹

Social oppression boils down to systematic damage that is morally wrong, unjustified, and unfair. It is implemented through unfair social restrictions that affect the oppressed group. Due to its omnipresence in various areas of social life, its invisibility, and unawareness of its existence and social harm, it is necessary to agree with A. Podgórecki that social oppression should definitely be the object of continuous, comprehensive research and analysis, and that a comprehensive approach to solving the problem of social oppression is necessary. This requires action on many fronts, including social education, institutional reform, and support for people affected by oppression. Only by promoting tolerance, equality, and respect for the rights and dignity of each individual can we create a society that is free from oppression.

Social oppression is a complicated and complex phenomenon that is difficult to eliminate completely. Despite progress, forms of oppression still exist in many areas, including developed democracies, affecting the lives of numerous people. Striving to reduce oppression is a noble goal, but it requires continued effort, reform, and education, as well as an awareness that new forms of oppression may emerge as societies develop.

⁴¹ A. Crossman, *What Is...*, <https://www.thoughtco.com/social-oppression-3026593> (accessed: 26.05.2024).

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Legalists and Revolutionaries – Public Opinion on Compliance with the Law

Legaliści i rewolucjoniści – opinia społeczna
o przestrzeganiu prawa

Abstract

This article is part of the sixty-year-old tradition of sociological and legal research initiated by Adam Podgórecki. The presented results and conclusions concern obtaining opinions on the observance and validity of the law, as well as the attitudes adopted towards it – from absolute respect for the provisions to acceptance of their circumvention or violation. The authors' intention was to conduct two types of analyses: a comparative analysis of the distribution of answers obtained between 1964 and 2023, as well as the content of the respondents' extensive narratives relating to the justification of their positions. Data were collected using an online self-administered questionnaire, using a university panel and "Google Forms" made available through social networking sites. Based on the research conducted, it can be concluded that commonly accepted terms such as "legalists", "opportunists" and "anarchists" are not always adequate to the presented attitudes towards the law and are losing their relevance.

Keywords: law, legitimization, legalists, opportunists, anarchists

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Abstrakt

Niniejszy artykuł wpisuje się w sześćdziesięcioletnią tradycję badań socjologiczno-prawnych, zapoczątkowanych przez Adama Podgóreckiego. Zaprezentowane wyniki i wnioski dotyczą poznania opinii na temat przestrzegania i obowiązywania prawa oraz przyjmowanych wobec niego postaw – od bezwzględnego respektowania przepisów po akceptację ich omijania lub łamania. Zamiarem Autorów było przeprowadzenie dwóch typów analiz: porównawczej rozkładów odpowiedzi uzyskanych w latach 1964 – 2023, a także treści rozbudowanych narracji respondentów, odnoszących się do uzasadnienia zajmowanych stanowisk. Dane zebrano za pomocą kwestionariusza online do samodzielnego wypełnienia, przy wykorzystaniu panelu uniwersyteckiego i formularza „Google”, udostępnionego przez portale społecznościowe. Na podstawie przeprowadzonych badań można stwierdzić, że zwyczajowo przyjęte terminy, takie jak: „legaliści”, „oportuniści” i „anarchiści” nie zawsze są adekwatne do prezentowanych postaw wobec prawa i tracą na aktualności.

Słowa kluczowe: prawo, legitymizacja, legaliści, oportuniści, anarchiści

Introduction

In 1964, Adam Podgórecki initiated a tradition of sociological and legal research that has lasted for many years in Poland and is an attempt to learn the Polish society’s opinion about the law, its observance and validity.¹ The most persistent question in Polish research is whether the law must be strictly observed, or whether it can be avoided or even broken in some situations. In addition to the general answer to this question, Adam Podgórecki was looking for, among others: relationships between the declared attitudes and the characteristics of people convinced of the need to strictly comply with the law, as well as the characteristics of people who support the possibility of avoiding or breaking it. The answers obtained in 1964 are compared below with the results obtained in response to an almost identical question asked nearly 60 years later, in 2023.

Table 1. Opinions on compliance with the law from 1964 and 2023

	1964 ²	2023 ³
You should always obey ⁴ the law, even if you think it is unfair/unjust	45%	48%
Unfair/unjust regulations should only be complied with in appearance; in practice, they should be avoided	23%	21%
Unfair/unjust regulations should not be applied at all	19%	10%
It is hard to say/Different opinion/Refusal to answer	10%	19%
No data	3%	2%

Source: own study.

¹ A. Podgórecki, *Prestiż prawa*, Wiedza i Książka, Warsaw 1966.

It is noteworthy that after almost 60 years we receive almost identical answers in Poland regarding the need to comply with the law. A certain difference is noticeable in the case of breaking the law, which was more often advocated in 1964, and “other” responses (including hard to say, refusal to answer etc.), which were significant in 2023. Does this mean that attitudes towards law enforcement have not changed significantly over the years? To answer this question, we will compare legalistic responses, i.e. those of people convinced of the need to strictly comply with the law, obtained over the following years.

Table 2. People who share the view that the law should always be obeyed⁵

1964	1988	1990	1992	1993	1994	1995	1996	1998	2014	2016	2023
45%	27%	28%	33%	43%	43%	49%	42%	47%	45%	48%	48%

Source: own study.

As we have already written, the research provides grounds to claim that legalism at a level of approximately 43–48% can be considered typical for Polish

² Research carried out under the supervision of A. Podgórecki, from March to June 1964, on a sample of 2,820 people, representative mainly in terms of place of residence (urban-rural), but also taking into account basic socio-demographic characteristics, such as gender, age, education, marital status and profession. Data were collected using a survey (questionnaire interview technique, not a self-administered questionnaire). From: A. Podgórecki, *Prestiż prawa...*, p. 144–145.

³ The survey was conducted by CBOS on 21–26 April 2023 on a quota sample of 1,038 respondents representative in terms of gender, age (18–24, 25–44, 45–64, 65+), education (primary + vocational, secondary, higher), size of locality (village, town below 100 thousand inhabitants, city 100–500 thousand, city above 500 thousand) and voivodeship (16), reflecting in this respect the structure of adult residents of Poland. The study was financed by the National Science Center project “Legislative/regulatory inflation in Poland: a legal, economic and social perspective” implemented at the University of Economics in Krakow.

⁴ In 2023, the questions were: We should always strictly obey the law, even if we think it is unjust; If we encounter legal regulations that we consider unjust, we should only obey them in appearance and in practice avoid them; We should not comply with regulations that we consider unjust.

⁵ The surveys between 1988–2016 were carried out successively by the renowned OBOPiSP and CBOS public opinion polling public agencies, with the exception of the measurement made by Andrzej Kojder in 1995 (A. Kojder, *The Prestige of Law 30 Years Later*, “Polish Sociological Review” 1996, no. 4, p. 353–364). This means that the methodology of the subsequent waves of research was similar and provides a basis for comparing the results of individual measurements. There is, therefore, a close connection between the results obtained over the entire period, starting from 1964 and ending in 2023. By similarity we mean an identical or similar sample of respondents (1000–1100 people), selection of respondents (random, random-quota, quota), standardized material collection technique (traditional or online questionnaire interview), similar analysis technique (correlational, quantitative content, etc.), as well as the statistical representativeness of the results. Individual waves may have differed slightly in the wording of the questions and single-choice answers. For example, in 1993 the word “unfair” appeared, and in the remaining ones “unjust” predominated (M. Fuszara, J. Kurczewski, *Spory i ich rozwiązywanie. Elementy popularnej kultury prawnej*, ZW Nomos, Kraków 2017, p. 83). However, linguistic or stylistic issues had no impact on the respondents’ understanding of the content or the way they answered.

society, but it has not remained stable throughout the period of political turmoil and turns in our history.

We do not have data here for the period of the ‘Gierek revival’ and ‘Gierek stagnation,’ the ‘Solidarity years’ and martial law, but the data from 1988–1993 are dramatic. It seems that the crisis of 1976–1989, when the communist government lost its legitimacy due to the passive acceptance of the population, together with the riots in Radom, the August strikes of 1980 and the explosion of Solidarity, as well as the martial law introduced in 1981 by General Jaruzelski, undermined the delicate compromise between moral sense and public sense of the average Pole. From a historical perspective, it also seems that the level of legalism in 1964 was achieved thanks to reaching this compromise after October 1956, when – initially – Gomulka’s liberalizing party dictatorship replaced the Stalinist terror. The very fact that Podgórecki was able to carry out a public opinion poll, even if he was not allowed to ask about everything, clearly proves this compromise, which was later violated again and was only restored after 1989 with the transition to democracy, which by no means ended Polish problems in general, or problems with the law and the justice system in particular.⁶

We will not provide here data on possible relationships between the socio-demographic characteristics of people who support strict compliance with the law, especially since the studies from different periods used different categories and ranges, such as those relating to the age of respondents. We can only cautiously conclude that both in the past (1964) and now (2023), legalistic attitudes tend to be characteristic of slightly older age groups, and younger people are more likely to advocate avoiding or breaking the law, which is not surprising given the widespread nonconformity and reluctance to obey any orders attributed to young people. The latest research clearly shows that with age, the declaration of respect for the law increases, even if one considers it unfair, while the majority of the youngest people believe that it is best to avoid such law. Legalism, which has been observed since A. Podgórecki’s research in 1964, is also more common among people with higher education. This result is thought-provoking and requires further interpretation; it is also worth emphasizing that absolute obedience to legal precepts is declared by Poles more often than obedience to religious precepts.

The above-mentioned answers to the questions are representative of Polish society, but they do not give us an answer to the question of how one’s views on observing or breaking the law are justified. Therefore, the authors decided that it was worth asking this in the first place, taking as a starting point the “classic”

⁶ J. Kurczewski, *Prawem i lewem. Kultura prawna społeczeństwa polskiego po komunizmie*, “Studia Socjologiczne” 2011, vol. 200, no. 1, p. 613–614.

question of whether laws should be strictly observed, or whether they should be avoided or broken if one considers them unjust.

Research Methodology and Sample Characteristics

We collected the material that became the basis for our considerations using an online questionnaire to be completed by respondents themselves.⁷ The tool was turned into the Internet version and distributed using two systems: the “Sona”⁸ university panel and social networking sites (mainly “Facebook”) in the form of “Google Forms”. The data collection stage lasted from 7 to 25 November 2023, and the questionnaire consisted of seven open and closed questions as well as five so-called “records” (concerning gender, age, education, place of residence and assessment of one’s own financial situation). The study involved 402 participants (170 used the university panel, and 232 completed a questionnaire adapted to the “Google” service and distributed via social media). The initial qualitative analysis of the open-ended responses was performed by Maria Świetlik, and the authors of this text further processed the results.

The selection of respondents was not random, but the results obtained and the conclusions formulated can be generalised in a typological (not statistical⁹) sense to the general population. The study involved significantly more women (approx. 74.65%) than men (26.63%), and three people marked their gender identification as other. The majority (60.95%) of respondents declared higher education (245 indications), 38.31% secondary education (154 indications), 3 primary/vocational education. The age distribution of respondents is as follows: 32 people under 20 years of age; 152 aged 20–29; 19 aged 30–39; 45 aged 40–49; 44 aged 50–59; 65 aged 60–69; 39 aged 70–79 and four aged over 80 (three people did not provide their age). Therefore, the collected sample is dominated by young people, up to 49 years of age (approximately 62% in total).

Most respondents are residents of large cities, with over 500,000 inhabitants – “city with a population of 501,000 and above” was indicated by 279 people (69.40% of responses), “city with a population of 101,000 to 500,000” –

⁷ Name of the technique after: A. Krzewińska, K. Grzeszkiewicz-Radulska, *Klasyfikacja sondażowych technik otrzymywania materiałów*, “Przegląd Socjologiczny” 2013, vol. 62, no. 1, p. 16.

⁸ This is an online platform of the Faculty of Psychology of the University of Warsaw: <https://uw.sona-systems.com/Default.aspx?ReturnUrl=%2f> (accessed: 13.05.2024). The research panel consists mainly of university students.

⁹ The study did not maintain quantitative proportions reflecting the structure of adult Poles in 2023. The majority of participants in the project were women, people with higher education, young people (aged 20–29) and from large cities (over 500,000 inhabitants). This is a different study than the one conducted by CBOS in the same year (on April 21–26), the results of which are presented in the Introduction of this article (p. 20–23).

23 people (5.72%). As a place of residence, “town with a population of 20,000 to 100,000” was chosen by 41 people (10.20%), “town with a population of less than 20,000” – 17 people (4.23%), and “village” – 42 people (10.45%).

The majority of respondents assessed the financial conditions of their own household as good or rather good (“good” or “rather good” was indicated by a total of 294 people – 38.06% and 35.07% of the responses, respectively – a total of 73%). The option “neither good, nor bad” was chosen by 91 people (22.64%), and the fewest people described their conditions as bad (“rather bad” 2.49%, “bad” – 17 people i.e. 1.74%).

To Obey Every Law, Even Those Considered Unjust

The main question of the questionnaire was: “What is your opinion on compliance with the law?”. It had a closed form, and the respondents’ task was to indicate one of four answers including: apparent compliance with legal provisions perceived as unfair; unconditional respect for law; non-recognition and non-compliance with harmful regulations; and a different opinion on the subject. Based on the frequency distribution obtained (Table 3), it can be said that nearly 80% of respondents chose one of the views previously proposed in the single-choice answers, while the rest formulated them individually. The most frequently indicated behaviours towards unjust laws were circumventing them to be circumvented and absolute compliance with them (32% and 31%, respectively). It is worth noting that these groups are almost equal in size. The proposed answers to this question also became the main analytical framework and categories that allowed for organizing the justifications and arguments for a specific choice.

Table 3. Frequency distribution of answers to the question: “What view of law enforcement do you agree with the most?”

Answers	an. (n=402=100%)	%
If we encounter legal provisions that we consider unfair, we should only obey them in appearance and try to avoid them in practice.	130	32.34%
We should always strictly obey the law, even if we think it is unfair	125	31.09%
We should not comply with regulations that we consider unfair	66	16.42%
I have a different opinion on this topic	81	20.15%

Source: own study.

In addition to answering this general question, we asked for justification for one's view, and these justifications proved particularly interesting and prompted further reflection on attitudes towards the law.

If Not to Obey an Unjust Law, Then When and Why

An analysis of the answers given by the respondents (mostly female respondents) allows us to conclude that the group of respondents is dominated by supporters of the natural law approach. We encounter them not only among those who claim that a law that one disagrees with should be obeyed only in appearance and in fact be avoided, but also among those who declare that a law which one considers unjust should not be applied at all, and also among those who chose the "other answer" option. These are people who believe that positive law is not the only or highest system of norms and behavioural patterns that should be followed. Some people directly referred to definitions of law that weakened the extremely legal-positive approach to law: "I share Radbruch's view on this issue. Law is law when it meets the requirement of a moral minimum, otherwise it becomes lawlessness. This is what the history of the Nuremberg trials teaches us" (F 19¹⁰). This group is not homogeneous, as we encounter two different approaches, depending on where the respondents see the source of higher, more important guidelines regarding proper conduct. Some of them see them in a system of universally applicable moral norms ("The highest law is moral law, not statutory law" (F 52), "The law is not always moral" (M 18), "The law is above moral law, it works against the good" (F 52)). It can be cautiously said that this is a group that seeks guidance in certain general norms, but these lie in the external world, so they are representatives of the heteronomous approach. However, there is an even larger group emphasizing the value of moral autonomy, looking for guidance on proper conduct in one's own conscience ("A person should develop their own morality and not follow the rules" (M 26), "It may happen that the law is contrary to conscience. (...) you have to be guided by your own discernment" (F 62), "For me, my own conscience is a more important determinant of my behaviour than the law" (F 20)). It is worth recalling that many years ago Jacek Kurczewski stated that Poles have developed not only attitudes that allow them to assume that their own beliefs and conscience are more important than statutory law, which is understandable especially in totalitarian or semi-totalitarian systems, but also a "Protestant" approach to

¹⁰ The quoted statements from the interviews are accompanied by basic information about the socio-demographic profiles of the respondents. The gender (F – female, M – man, Other) and age expressed in number of completed years are given in brackets.

the Roman Catholic faith, because they gave themselves the right to act in the way they chose not only when they knew that this behaviour was prohibited by law, but also when they knew that the action was a sin.¹¹ It is similar in this case – awareness of the validity of legal norms is not a sufficient condition for complying with them, since there are “norms of a higher authority”, with which the law should be consistent, and our own conscience, which is always decisive.

The answers given to questions about compliance with the law and the reasons for compliance, and especially non-compliance, show the importance of current events, which influence the right not to comply with the law with regard to oneself and others. Examples of current debates and problems related to the question of the shape of the law appear repeatedly in the respondents’ statements. The most frequently cited example was the legal regulation of pregnancy termination.¹² This example was cited as one that indicates the possibility, and sometimes even necessity, of not complying with the applicable law. Possibility – because such a law is considered unjust, violating women’s basic rights (and therefore contrary to a higher system of norms: “You should not agree with a law if it is unjust, e.g. the ban on abortion” (F 43)), and necessity – in cases that pose a threat to a woman’s health or even life (“Compliance may directly endanger us or our loved ones – e.g. abortion law in Poland” (F 22), “The ban on abortion threatens women’s lives and health. It limits freedom and human rights” (F 21)).

Another recent example relates to helping refugees crossing the eastern border¹³ (“If the law states that people who have entered the country illegally must be expelled, which means they face a real risk of death, it means that the law is

¹¹ J. Kurczewski, *Grzechy cielesne, a prywatyzacja ciała (notatki z badań)*, in: *Bóg, szatan, grzech. Studia socjologiczne*, vol. 1., eds. J. Kurczewski, W. Pawlik, Miniatura, Warsaw 1990, p. 157–190.

¹² In Poland, in the years 1956–1993, access to abortion was relatively easy. After the socio-political changes in 1989, right-wing parties submitted bills to parliament banning abortion. Heated discussions led to the so-called abortion compromise of 1993, according to which termination of pregnancy was possible in three circumstances – when there was a threat to the woman’s life and health, when the pregnancy was the result of a crime, when tests indicated serious and irreversible defects of the foetus. There were many attempts to change the law in later years. After right-wing parties came to power in 2015, it was proposed to remove this third condition. These attempts led to mass street protests. They peaked in 2020, when the Constitutional Tribunal found this condition to be unconstitutional. In the opinion of many sociologists, this change was the reason for the activation of women and young people, which led to the opposition winning the elections in 2023. In Poland, a woman who undergoes an abortion is not punished, but everyone who helped her have an abortion is punished, not only doctors, but also people who, for example, donated, sold or supplied abortion pills. For this reason, this example is probably particularly important for those responding.

¹³ Since 2021, we [meaning Poland] have been dealing with organised illegal smuggling of people from various countries, especially from Afghanistan, the Middle East and Africa, from the territory of Belarus to Poland, Lithuania and Latvia, and therefore into the territory of the European Union. The behaviour towards migrants in Poland is controversial – border guards try to prevent their influx, even using push back. Residents and non-governmental organizations are trying to help migrants who managed to cross the border illegally, who are often exhausted and in poor condition.

above moral law, it works against the good. Therefore, you should not follow such regulations” (F 52), “It may happen that the law is contrary to conscience. (...) you have to be guided by your own discernment” (F 62)).

The third example, indicated as a legal regulation that is objectionable and inconsistent with current legal solutions in other countries or – even more importantly – the needs of citizens, is the inability to enter into a same-sex marriage or the need to sue one’s parents in the event of gender reassignment. These examples show that some people treated the survey as an opportunity to speak openly about unfair, inappropriate and unjust laws, because these are situations in which breaking the law is practically impossible, unless we treat as such, for example, getting married by people of the same sex abroad, and therefore against Polish law. However, since such a marriage is not recognised by Polish law, it is difficult to treat such examples as anything other than an objection to the applicable law.

An important argument in favour of circumventing or breaking the law, according to the respondents, is the fact that the law may be unfair and out of date – it does not respond to changing needs, and this discourages compliance with it (“Some laws may be outdated or harmful to minorities” (F 20)). One should not obey a law that, in their opinion, is anachronistic, incompatible with the current perception of the world, their rights and the rights of other people (“The law is not adapted to a part of society and our realities. Such a law is, for example, the ban on providing assistance in abortion, which clearly limits the personal freedom of a huge number of people” (F 26)).

The above-mentioned arguments were given by people who believe that the law should be obeyed only apparently, by people who chose the “other” option, and by those who believe that the law should not be obeyed at all because it is unjust. However, people who chose the last answer (“We should not comply with regulations that we consider unfair”) relatively often justified their view in another way, not found in other groups of respondents. They refused to legitimise the legislator, believing that the law is shaped by various groups not in the general interest, but in their own interest or in the interest of other influential groups (“It [legislation] usually represents the interest of only some people, those who participate in its writing or are perceived by legislators as important” (F 47)), and is also primarily a tool for control and exercise of power (created “to ensure that those in power maintain control over society – by pursuing a number of their own interests” (F 21), “There are situations in which we are dealing with gross injustice, resulting from blatant manipulation in the interpretation of regulations by institutions standing in a privileged relationship with the person against whom the injustice is happening, which, unfortunately, is not a rare phenomenon” (M 36)), determined without consultation and public participation (“Norms are most often established without even our minimal

participation” (M 21), “The state imposes on us views that are inconsistent with public opinion, e.g. religious issues” (F 21)). Occasionally, the statements of this group of people included extremely negative assessments of legislators (“Laws are sometimes made by idiots in the name of their cynical interests, not the interests of the general public” (F 68)).

The reason for the lack of legitimacy of the legislator is also the fact, often cited, that a law in Poland was made in violation of the constitution, so such a law cannot be observed (“The law was made contrary to the Constitution” (F 63), “Human rights enshrined in the Constitution set the boundaries of other provisions, the conflict of which with human rights may result in the invalidity of the former” (M 28)). Therefore, the respondents claim that one should not obey regulations imposed by an authority which, in their opinion, lacks legitimacy to exercise it and is undemocratic (“Regulations imposed by an undemocratic authority should not be obeyed (...)” (F 40), “If the law was imposed on me by force or by someone whose power I deeply disagree with, because it is absolutely alien and hostile to me. Like during the occupation, but also in the situation of the rule of someone like Trump, Kaczyński, Ziobro, Czarnek (...)” (M 53), “If only because compliance with the law created by tyrants and regimes leads to crimes” (F 62)).

People choosing the option of opposing the law that they consider unjust also directly or indirectly referred to the idea of civil disobedience (“A citizen (not an authority!) may refuse to execute a given law as part of the so-called civil disobedience” (M 45)). This is a fundamental difference compared to supporters of bypassing unjust legal regulations, who believe that such law should be complied with, but only apparently. Recall that according to Joseph Raz’s simple definition of civil disobedience, such behaviour is “a politically motivated breaking of the law that is intended directly to change the law or social policy, or to express someone’s protest and lack of appreciation for the law or social policy.”¹⁴ Other features of civil disobedience are primarily its peaceful nature and the desire to change those elements of power to which we do not consent. One of them is law. We will return to the duties of a “disobedient citizen” when presenting the consequences that, in the respondents’ opinion, are associated with the methods of behaviour they choose when encountering legal regulations with which they do not agree.

¹⁴ J. Raz, *Autorytet prawa. Eseje o prawie i moralności*, transl. P. Maciejko, Dom Wydawniczy ABC, Warsaw 2000, p. 264.

If You Follow an Unjust Law, Then Why

It is time to analyse the arguments of people who believe that we should follow the law even when we consider it unfair. Supporters of this view refer to three types of arguments: one of them is the need to maintain law and order, preventing chaos, which would be inevitable if we massively disobeyed general norms established by the law, and instead were guided by subjectively determined, individual norms and views. Proponents of this view believe that the law provides order and stability: “The law exists to maintain order (...)” (F 23), “Failure to comply with the law leads to chaos, and in the long run this is worse than injustice” (M 26), “Compliance with the law is a necessity, otherwise we would be dealing with chaos, or maybe even lynchings” (F 72), “The law fulfils the function of regulating social life and as such it applies to everyone” (Other 25). Some narratives include references to the effects of anarchy, for example in the form of harming people and making living conditions more difficult. This latter view is similar to the second of the arguments we have distinguished in favour of the need to obey the law. It refers to interpersonal relationships and the possibility of violating the rights of others if one fails to comply with the law, as well as injustice towards those who do obey the law: “Failure to obey a law, even a senseless one, is unfair to honest people who are also bound by the same law” (M 22), “Since others obey the law, it would be unfair to them to break the law in our favour” (M 23). Following a subjective interpretation may lead to dangerous consequences in the long run and violate the equality of citizens: “If we assume that each citizen can decide for themselves what is fair and what is not, we will quickly create a lawless state and some people will, for example, rob the richer in the name of justice and equality” (M 20), “Law is the basis for the functioning of society. Strict observance of the law contributes to the maintenance of order and ensures equality before the law for all citizens” (F 19). Supporters of this view, unlike the others, did not refer to morality, human rights or any other system of norms with which the law may be consistent or inconsistent. However, they emphasised that compliance with the regulations is beneficial because it ensures social order, order and stability, prevents the unequal situation of people who obey and disobey the law, and allows them to avoid sanctions for breaking them. Thanks to the clarity of the rules, the law facilitates everyday functioning in society and contributes to equal treatment of all citizens.

And finally, the third argument in favour of strict compliance with the law, regardless of how we evaluate it, is fundamental – the law should be obeyed and that’s it – it is an axiom that does not require further justification. The well-known principle *dura lex, sed lex* was quoted several times, and the objective fact that legal rules apply to everyone was emphasised: “The law is the law and

regardless of whether we like it or not, it should be obeyed” (F 68). In this context, the educational role of law was sometimes mentioned: “Derogations and freedom teach bad habits” (M 57). Contrary to the opinions of people who allow circumvention or violation of the law, in this case there was sporadic reference to the law-making process itself and its social roots. However, it was more often stated that despite the need to comply with harmful regulations, efforts should be made to change them. This proves a greater sense of agency compared to simple legalism: “Unjust law can be changed” (M 26), “Instead of breaking the law, it would be better to take a civic initiative to change it in order to make it more sensible and transparent” (M 22), “If we believe that the law is unjust, we should strive to influence the legislator to change it” (F 22). Several narratives referred to the state and its law as a certain superior value: “Compliance with the law is the only way for the proper functioning of the state (...) and is the simplest expression of patriotism” (M 65), “It is a necessary condition for maintaining the state of law and social order. No exceptions” (F 80).

In understanding the arguments relating to obedience to the law, even when it seems unjust, it is helpful to compare key concepts with opposite meanings, such as: order vs. chaos, objectivity vs. subjectivity as well as egalitarianism vs. inequality, or unconditionality vs. freedom and selectivity. The narratives of this group of people refer, much more often than in the case of other categories, to trust in the state, its institutions and the law it creates, as well as a certain reflection on its creation and causality. One can, and often should, try to change harmful regulations, but they should be followed until the change is made.

There is one more important point. We received many responses indicating the influence of current affairs and debates on the views of the respondents. The variety of experiences cited (authoritarian governments, PiS governments, Nazi Germany) meant that the answers were often not general, but relativised to specific situations. This was put most succinctly by one of the respondents who, in response to the question of whether the law should be obeyed, said: “In a state of law, yes. In a lawless country, no” (F 74).

The Consequences of Our Views and Behaviours

Behaviour often described as “conformist” or even “opportunistic”, i.e. following the provisions of the law on the surface and bypassing them when one considers them unjust, inappropriate, or issued by an authority whose legitimacy one denies, is clearly connected with awareness that open violation of the law exposes one to unpleasant consequences. However, a more detailed analysis of the answers indicating the reasons for such behaviour shows that it is not, or at least not always, behaviour that the authors would be ready to consider

conformism or opportunism. We are inclined to say this in relatively straightforward cases, when the respondents give examples of regulations that in their opinion are absurd and make everyday functioning difficult, and therefore they support non-compliance with them, but in a way that does not expose them to consequences in the form of penalties. The most frequently mentioned in this context were road traffic regulations, especially the prohibition of crossing the road on a red light even when there are no vehicles on the road. The respondents believe that: “it makes no sense. For example, I cross on a red light when the road is completely empty...(...)” (F 44), “You must always obey the law with common sense, e.g. if the car is not moving and I want to shorten my route, I can cross the streets” (F 22). The justification for the advisability of circumventing the law in a way that does not expose one to unpleasant consequences applies especially to such situations. By circumventing the law in such cases, no harm is caused to anyone, nothing bad happens, yet open non-compliance with the law would expose one to unpleasant consequences: “(...) it is worth pretending to avoid punishment” (F 21), “Sometimes the regulations are absurd, but for your own good it is better to keep a low profile” (F 21), “The law serves the proper functioning of society. If they are unfavourable to someone due to the imperfect way they were written (because it was people who created them), no one loses by breaking the law. For example, who is harmed by crossing an empty street” (M 21), “Not all laws always make sense and in some cases it is better to avoid them. Of course, without exposing yourself to the usually unpleasant contact with the authorities (...)” (F 19). In this case, failure to comply with the law is dictated by one’s own convenience and the awareness that no one is being harmed, yet such an attitude is not supported by values important enough to express the need to openly oppose the legal regulations or strive to change them.

More complex motives were indicated when compliance with legal regulations would go against conscience or a higher value, in the opinion of the respondents. In this case, too, failure to comply with the law is often indicated as appropriate, but in a covert manner that does not expose the people who avoid the law or other participants in the interaction to consequences. In this case, this higher value may be the well-being of people who one believes are hurt by a harmful and unfair legal regulation. As one of the respondents said: “you can try to break them [the laws] to the best of your abilities if you believe that, for example, you are helping those who are harmed by them” (F 19). In such cases, references were often made to specific examples, similar to those already mentioned, primarily assistance in abortion and help for refugees: “If the law states that people who have entered the country illegally must be expelled, which means they face a real risk of death, it means that the law is above moral law, it works against the good. Therefore, you should not follow such regulations” (F 52), “You should not agree with a law if it is unjust, e.g. the

ban on abortion. If you have the opportunity, you can do it quietly, so as not to get into legal trouble” (F 43).

Thus, although people do not openly break the law and have chosen the answer that in such cases the law should be circumvented in a way that does not expose them to unpleasant consequences, we would not want to call them either opportunists or conformists. These are people who consistently support the natural-law approach, believing that there is a system of higher standards than the official law to which we should be faithful, which does not mean that we should expose ourselves to penalties because of it.

Our research shows that the respondents’ opinions on compliance with the law are more complicated than the proposals presented by A. Podgórecki nearly 60 years ago. We have already written that supporters of the natural law approach, which gives a higher status to norms other than statutory law, are found not only among people who choose the answer that allows breaking the law, but also among those who support circumventing the law, as well as numerous people who choose the answer “other” and expressed their own opinions that did not fit into the division proposed by the researchers. The same is true of people who believe that we should work to change laws we do not agree with. We found such people, which was surprising to us, in all groups of respondents – even among those who believe that the law must always be obeyed. They are also found – which we expected more – among those who believe that unjust laws should be avoided and those who believe that one should break laws that they do not agree with and which in their opinion are unjust. In general, such legalists hold the view that although the law should always be obeyed, if one considers it unjust, they should strive to change it: “We should obey the law and at the same time act to change it if we believe it is unjust” (F 43), “You should comply, but at the same time take action to change/eliminate unfair regulations from legal circulation” (M 62), “You should comply with the established law, but strive for change” (F 24). Similar statements are found among supporters of bypassing unjust laws: “I should try to change or bypass a law that is inconsistent with my perception of morality, but disagreeing with the law does not give me the right to break it” (F 20). Another form of action is to ask a given office to explain the state of affairs. This is certainly a milder form of protesting against unjust laws, but it also expresses the attitude of an “active citizen”: “You should always obey the law, but if I consider something unjust, I turn to the appropriate institutions or people to explain this state of affairs” (F 55).

The need to take action to change a law is most clearly expressed in the statements of respondents who believe that such a law should not be applied at all. As mentioned above, these people often referred to the idea of civil disobedience. They impose on themselves and society as a whole the obligation to oppose, even rebel, and work for change: “Civil disobedience should be exercised and

efforts should be made to change both this law and the authoritarian power that establishes such a law” (F 53), “Regulations imposed by undemocratic authorities should not be obeyed = the right to civil disobedience” (F 40). The idea of civil disobedience was expressed most clearly by the respondent who stated: “In the case of statutory lawlessness or non-statutory law, when laws or actions to which the state gives the sanction of law, but which are not law because the act in question was not created in accordance with the rules of law-making, it is possible to disregard, such laws with full awareness of exposure to the consequences of non-compliance (civil disobedience)” (M n.d.).

Let us recall that the theoretician and practitioner of the concept of civil disobedience, H.D. Thoreau, emphasised that it is the duty of every citizen who does not act in isolation but is part of society and therefore should feel responsible for the fate of the state and society. As he wrote: “It is our duty to make sure that we do not act as instruments of the injustice that we condemn.”¹⁵ The views expressed in our research by people who believe that clearly unfair regulations should be broken are consistent with this understanding of civic duties. Seeking to change unjust laws is often perceived and defined as a duty and moral imperative, as evidenced by the frequently used form “one should” or “we should”. These are undoubtedly active citizens who have a sense of agency towards the state and its rules. They are convinced that efforts must be made to introduce favourable and satisfactory changes to the law. Usually, no specific indication was given as to who (or which institution), and by what methods, would undertake these activities. It was often emphasised, which is also consistent with the concept of civil disobedience, that increasing the power of influence should be the result of collective actions and mass contestation in the form of protests, wide-ranging discussions and publicising the issues, rather than through individual ‘do not comply’ behaviour. Law-making is part of a larger structure, which is the state with its institutions, procedures and civic involvement. This is well illustrated by the statement of a respondent whom we can call a “legalist – an informed citizen”, who claims that the law should always be obeyed, but at the same time: “I would add that it is worth fighting to look for other opportunities to change this law (taking part in elections, getting involved in state matters)” (F 23).

In the responses of people who support open violations of the law, there are clear phrases indicating the need to fight for change and implementation of one’s beliefs: “Unjust, e.g. oppressive laws should be fought, not just avoided” (M 62), “One should fight against unjust laws, protest openly” (F 62). In this

¹⁵ H.D. Thoreau, *Obywatelskie nieposłuszeństwo*, transl. H. Cieplińska, Dom Wydawniczy Rebis, Poznań 2006, p. 33.

group, we meet Merton's "rebels"¹⁶ who often reject officially defined cultural goals and the means to achieve them: "Revolution and protest require breaking the law and the existing order" (M 40). This is especially true in the statements of people who believe that what is needed is not only a change in the law, but also a broader socio-political change:

There were many times when the laws have been established in violation of the Constitution, the basic principles of ethics and human rights – e.g. laws are currently being passed in Poland that are inconsistent with the Constitution. These laws are not to be obeyed, but fought against. Very often it turns out that those who acted against the applicable but unjust law were right (F 63).

We encounter similar questioning of the goals and the means to achieve them in the statements of people referring to current phenomena – abortion or helping refugees: "The law is not a value in itself, it should generally be respected, but not if it harms people (e.g. by prohibiting abortion (Poland), or helping immigrants (Hungary))" (F 21), "I do not agree with the current law regarding abortion. I believe that in its current form it is harmful for many people, as the last few months and the deaths of some women have shown" (F 23).

Open breaking of the law is associated with rebellion and harsh forms of action, which are intended to bring about not only legal change but also broader social change. However, in the case of bypassing harmful and hurtful regulations, the moral imperative of rebellion is softened when compared to open disobedience and breaking unjust laws. This is evidenced not only by other forms of behaviour, but also by the terms used, because instead of the imperative "must", there is often an impersonal "should" or the use of a formula allowing for optionality ("and/or"). This is shown, for example, by the comparison of two statements: "One should strictly obey the law, but if we consider it unjust, we should strive to change it for the better" (F 30), "We must fight against unjust law, openly protest" (F 62).

The above observation indicates that supporters of changes in the law are found in all groups – those who believe that the law should always be obeyed, those who grant themselves the right to avoid the law, and those who believe that unjust laws should not be obeyed. In response to the question of whether the law requires serious changes, the majority of respondents (as many as 55%) gave an affirmative answer. It is true that such a belief is most often expressed – obviously – by people who admit that they have the right to break the law (64%), but there are slightly fewer of them in the group of people who support

¹⁶ R. Merton, *Teoria socjologiczna i struktura społeczna*, transl. E. Morawska, J. Wertenstein-Żuławski, ed. 2, Wydawnictwo Naukowe PWN, Warsaw 2002.

the possibility of circumventing the law (57%) and in the group of legalists, in which they also constitute the majority (54%). Of course, the problem requires further research, but we can cautiously conclude that the belief that the law requires or does not require changes is independent of the beliefs about whether it should be obeyed or whether it can be avoided or broken.

Instead of Conclusion

The research results presented above constitute, in our opinion, an important complement and complicate the problem that has been bothering sociologists of law since the pioneering research of A. Podgórecki, especially those who are interested in the opinions and attitudes of Polish society towards the law. Our study should undoubtedly be supplemented with research on a representative sample of Polish society, but we would like to emphasise that our respondents can be treated as “competent informants”, because they themselves felt the need to comment on the topic we proposed. This probably means that there are more respondents with crystallised views in our group than in representative samples. At this stage of our research, we want to draw attention to three issues:

1. In previous research in Polish sociology of law, it was customary to call “legalists” those who believed that the law should always be obeyed, even when we consider it unjust, “opportunists” those who believed that unjust laws could be avoided, and “anarchists” those who believed that unjust laws should not be obeyed. Our research indicates that these terms – to put it very carefully – are not always adequate to the declared attitudes. Instead of the existing categories, we propose that the term “legalists” be reserved only for those people who believe that the law has to be obeyed simply because it is the law, i.e. legal fundamentalists. The Latin maxim *dura lex, sed lex* quoted by some of the respondents is the most concise expression of such an attitude towards observance of the law. In the same group that was previously referred to as “legalists”, we propose to distinguish also a group of “legalists-reformers”, i.e. people who believe that as long as a law is official and binding, we have a duty to obey it, but we should strive to change laws with which we disagree.
2. The term “opportunists” does not apply to the attitudes of the people who took part in our research. This is indicated primarily by the motives for choosing this option, as cited by the respondents. Among the justifications, we did not find a simple fear of punishment or a belief that it is better to obey even an unjust law in order to have peace of mind. The justifications were much more complex, and therefore we propose to change the term used to describe this group. We propose the term “de facto reformers” to de-

scribe the attitudes of the respondents who believe that unjust laws should be obeyed on the surface, but in fact bypassed. These are people who apply the principles they believe are right, as if without taking into account the official law. Therefore, it can be said that through their behaviour, they somehow “reform” the system, adapting it to the existing needs and expectations. Their motivations are varied – sometimes these are simply cases of non-compliance with regulations that are illogical in the opinion of the respondents (e.g. prohibition of crossing the street even if nothing is approaching). More often, however, it is a motivation resulting from the assumption that it is necessary to defend important values (e.g. a woman’s right to choose and decide about her own body and reproductive rights) without exposing oneself and others to harmful consequences. Finally, we would like to emphasise that, contrary to earlier definitions, we did not encounter “anarchists” among the surveyed. Instead, some respondents did not advocate the rejection of the law or the state in general, but claimed that open non-compliance with the laws which they believe to be harmful is necessary to change the system for the better. Many of these people openly declared that this was civil disobedience, so their attitude was not anarchist, but on the contrary – in their opinion, it was intended to improve the state. We propose the term “revolutionaries” to describe this group, which was used by one of the respondents belonging to this group. We chose this term not because they would like to overthrow the state power (perhaps they do, but we do not know that), but because they are in favour of a quick and fundamental, and therefore revolutionary, change in the law.

3. It turns out that beliefs about compliance with the law and the need to change it are independent of each other. The need for change is recognised not only by those who believe that the law can be broken if they do not agree with it, but also those who believe that the law can be circumvented in such cases, as well as those who believe that the law should always be obeyed. We make this statement with caution, as we believe that it requires further research, but it is of fundamental importance for further considerations on the law and its legitimacy. However, it should be borne in mind that our research was not conducted on a representative sample, and the fact that the respondents were “volunteers” who decided to complete an online survey may cause them to have above-average crystallized attitudes towards the law. That is why we propose to add two categories that are “empty” in our survey, but can be expected to occur in society. The first is the category of “opportunists” to describe people who are not interested in the law, are indifferent to it and believe that it should be obeyed regardless of the content, just so as not to get into trouble. On the other hand, we propose to reserve the category of “anarchists” for people who believe that the law and the state

are unnecessary or even harmful, if only because of the creation of hierarchy and the imposition of power by the stronger group on the weaker group, and only the abolition of the state, and with it the official law, can remedy this situation. However, confirmation of the usefulness of these developments requires more in-depth research.

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JANINE WEDEL*

Dirty Togetherness: From Poland Under Communism to Weaponised Corruption Today

Brudna wspólnota:
od Polski pod rządami komunizmu
do dzisiejszej korupcji orężnej

Abstract

The concept of “dirty togetherness” appears even more significant today than when Adam Podgórecki identified the phenomenon in 1980’s communist Poland. Then, it captured the dynamic of a resource-scarce society in which trusted family and friends operated in informal social networks to secure goods and services. Through cliquish and close-knit networks, they coped with shortages and distrust of the state. In the decades since, “dirty togetherness” took on new dimensions, as these informal networks adapted to, and helped shape, market and democratic institutions of the new Poland. Today, the currency of the concept extends beyond Poland and post-communist space. Dirtily together networks engaging in “weaponised corruption,” the use of corruption for geopolitical ends, pose a palpable threat to democracy. In this essay, I explore Podgórecki’s concept, the legacies associated with it, and its applicability beyond its originating context. I suggest guiding questions for research.

Keywords: dirty togetherness, social networks, informal systems, informal exchange, informality, corruption, social structure, flex nets, institutional nomads, clans, weaponised corruption

Abstrakt

Koncepcja „brudnej wspólnoty” wydaje się dziś jeszcze bardziej znacząca niż wtedy, gdy Adam Podgórecki zidentyfikował to zjawisko w komunistycznej Polsce lat 80. Wówczas ukazywała ona dynamikę społeczeństwa niedoboru zasobów, w którym zaufana rodzina i przyjaciele działali w nieformalnych

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sieciach społecznych, aby zapewnić sobie dobra i usługi. Poprzez klikowe i ściśle powiązane sieci ludzie radzili sobie z niedoborami i nieufnością wobec państwa. W kolejnych dekadach „brudna wspólnota” przybrała nowe wymiary, ponieważ te nieformalne sieci dostosowywały się do instytucji rynkowych i demokratycznych nowej Polski i pomagały je kształtować. Obecnie aktualność tej koncepcji wykracza poza Polskę i obszar postkomunistyczny. Istotnym zagrożeniem dla demokracji są brudne sieci powiązań i to, jak strategicznie posługują się korupcją, używając jej jako oręża. W tym eseju badam koncepcję Podgóreckiego, związane z nią dziedzictwo i jej zastosowanie poza jej pierwotnym kontekstem. Sugeruję pytania przewodnie do badań.

Słowa kluczowe: brudna wspólnota, sieci społeczne, nieformalne systemy, nieformalna wymiana, nieformalność, korupcja, struktura społeczna, elastyczne sieci, nomadzi instytucjonalni, klany, korupcja z użyciem broni

Introduction

The concept of “dirty togetherness” (*brudna wspólnota*) appears even more significant today than when sociologist Adam Podgórecki first identified the phenomenon in communist Poland in the 1980s. Then, it captured the dynamic of a resource-scarce society in which trusted family and friends operated in informal social networks to secure (often basic, yet difficult to obtain) goods and services. Through these cliquish and close-knit networks, people coped with shortages and distrust of the state. In the decades since communism, “dirty togetherness” took on new dimensions, as these informal networks morphed as they adapted to, and indeed helped shape, the new democratic Poland.

The currency of the concept has come to extend far beyond Poland. The informal networks and groups that arose with the unravelling of communism in Central and Eastern Europe and the former Soviet Union and became a signature feature of the 1990s recall key aspects of Podgórecki’s dirty togetherness.¹ Because of this, I have employed the concept to help illuminate certain kinds of networks, including those that nowadays engage in “weaponised corruption,” the use of corruption for geopolitical ends, and that often reach beyond post-communist space. Today, an amplified dirty togetherness appears to thrive far and wide, now presenting a palpable threat to democratic structures and possibly even to democracy itself. It is my experience that grappling with the concept of dirty togetherness can help us unpack this crucial force and its capacity to undermine democratic systems.

In this essay, I explore Podgórecki’s concept, the legacies associated with it, and its potential applicability beyond the context in which it originated. With a nod to his concept, I suggest some guiding questions for research.

¹ A. Podgórecki, *Polish Society: A Sociological Analysis*, “Praxis International” 1987, vol. 7, no. 1, p. 57–78.

Dirty Togetherness Under Communism

“Dirty togetherness” emerged in the years of communist rule following World War II. I observed the phenomenon in action and learned about Podgórecki’s concept when I conducted field research for my doctoral dissertation in Poland in the early 1980s as a budding social anthropologist. My dissertation and resulting book, *The Private Poland*² (and its translation a quarter century later – *Prywatna Polska* – with retrospective introduction³), discuss the informal social and economic networks through which people manoeuvred when they did not trust the official system or its information, which did not sufficiently deliver. This unofficial system, which arose to circumvent monopolistic state power and bureaucracy, was so ubiquitous that an entire vocabulary had evolved to convey its transactions and conditions.⁴ Skirting the system became a way of life with its own language and habits of secrecy.

During those years, I was fortunate to have the opportunity to become acquainted with Podgórecki’s former student and then collaborator, Professor Jacek Kurczewski, a legal sociologist who headed the Institute of Applied Social Sciences at Warsaw University (Instytut Stosowanych Nauk Społecznych), which previously had been led by his mentor Podgórecki. In the early to mid-1980s, Kurczewski spearheaded innovative research focusing on informal exchange in which dirtily together networks played a role. Employing participant-observation and interviewing tools, Kurczewski and his research teams studied the activities and behaviours of informal distribution, including, for example, those occasioned by the rationing system imposed during martial law of the early 1980s⁵ and those associated with queuing, that is, the informal rules and exchange that governed standing in line *en masse* for scarce goods and services.

The result of all this activity, charted by me⁶ and a handful of Polish scholars at the time, e.g., Firlit and Chłopecki, Gliński, Kawalec, Kurczewski, Pawlik, Śmigielska,⁷ was an elaborate unofficial system of informal rules, reciprocal understandings, etiquette, and distribution of goods and services that often

² J.R. Wedel, *The Private Poland*, Facts on File, New York, NY 1986.

³ J.R. Wedel, *Prywatna Polska*, transl. S. Kowalski, Trio, Warsaw 2007. New introduction to paperback version in Polish: *The Private Poland. A Quarter Century Later*, https://janinewedel.info/prywatna_polska_intro.html.

⁴ Terms like “załatwić sprawy”, “kombinować”, and “organizować”, hardly translatable into English, could be adequately conveyed only in context.

⁵ *Umowa o kartki*, ed. J. Kurczewski, IPSiR UW, Warsaw 1985.

⁶ J.R. Wedel, *The Private Poland*...

⁷ E. Firlit, J. Chłopecki, *When Theft Is Not Theft*, in: *The Unplanned Society: Poland During and After Communism*, ed. J.R. Wedel, Columbia University Press, New York, NY 1992, p. 95–109; P. Gliński, *Acapulco Near Konstancin*, in: *The Unplanned Society*..., p. 144–152; S. Kawalec, *The Dictatorial Supplier*, in: *The Unplanned Society*..., p. 128–143; *Umowa o kartki*, ed. J. Kurczewski, IPSiR UW, Warsaw

overshadowed the official economy as it widely organised life across social and economic institutions.

Podgórecki delineates key aspects of this system with his work on dirty togetherness.⁸ His work on the subject is confined almost entirely to communist Poland. He does, however, reflect on the phenomenon in non-communist contexts, perhaps from his perch in Canada (to which he emigrated in 1979). He observes that “dirty togetherness, though on a smaller scale, also functions in non-communist countries [where it] appears in politics and business, especially in North America.”⁹

Wherever dirty togetherness operates, it is my conviction that exploring the characteristics and underpinnings of the dirty togetherness outlined by Podgórecki may help us analyse these informal networks and the practices and structures they forge – practices and structures that, wherever in operation, are incompatible with democratic principles and accountability.

The following principles can be distilled from Podgórecki’s writing.

Firstly, he specifies that the “informal social structure” of dirty togetherness is grounded in the “mutual ties” of equals (that is, “those in the same status category”), which “constitute the unusually strong and vital fabric of the inner life of Polish society.”¹⁰ It is this kind of tie, he observes, that “may transfer or degenerate itself into... ‘dirty togetherness.’” Examples of transactions that manifest this degeneration are “the acceptance into a medical school of a daughter of a highly placed person in return for the possibility of buying the unaccessible cement for building a house; [or] the privilege of immediately

1985; W. Pawlik, *Intimate Commerce*, in: *The Unplanned Society*..., p. 78–94; J. Śmigielka, *There’s the Beef*, in: *The Unplanned Society*..., p. 110–121.

⁸ Over roughly the same time frame (largely 1990s) during which Podgórecki’s concept of dirty togetherness was intensely discussed among Polish sociologists, so was the notion of “amoral familism”, sometimes in the same breath, and as key to understanding Polish social-economic reality under communism. The notion of amoral familism, based on fieldwork by the American political scientist Edward C. Banfield (1958) in poor regions of southern Italy, concerns strategies of coping and survival. Banfield described an atomised society in which impoverished people, suspicious and envious of one another, pursue short-term goals to benefit their nuclear families (only), while lacking public spirit and the capacity for goal-oriented community action (E.C. Banfield, *The Moral Basis of a Backward Society*, The Free Press, Glencoe, Illinois 1958). Tarkowska and Tarkowski suggested that this amoral familism bore similarity to the “social disintegration of Poland in the 1980s” marked by scarcity of consumer resources, “concentration on the present and immediacy”, “a climate of distrust”, and “the application of a dual ethic – one for one’s ‘own’ people and another for ‘others.’” E. Tarkowska, J. Tarkowski, *‘Amoralny familizm’, czyli o dezintegracji społecznej w Polsce lat osiemdziesiątych*, in: *Grupy i więzi w systemie monocentrycznym*, IFiS PAN, Warsaw 1990, p. 37–69.

⁹ A. Podgórecki, *Socjologiczna teoria prawa*, transl. Ł.M. Kwaśniewska, R. Smogór, Wydawnictwo Interart, Warsaw 1998, p. 89 (translation into English by J. Wedel).

¹⁰ A. Podgórecki, *Polish Society: A Sociological Analysis*..., p. 67.

buying a car in exchange for admission to a well-equipped, specialised hospital for an elderly aunt.”¹¹

Undergirding such degeneration is, secondly, the population’s wide rejection of the legal system that has been imposed on it, which it sees as “unjust” and “undemocratic”,¹² and which results in the suspension of certain traditional norms. Dirty togetherness, explains Podgórecki, “means that elements of traditional social control, plucked from ethical emotions, are so saturated by various erosive influences that they eventually lose their character as agents of social control and assume new traits of specific ‘perverse’ loyalty.”¹³

Participation in networks of dirty togetherness entails, thirdly, this perverse loyalty, which also assumes a self-perpetuating quality. Family ties, private transactions, and what Podgórecki calls “mutual fiddling services” (perhaps better understood in English as “finagling”) serve to cement loyalty.

Fourthly, loyalty is secured through a community enforcement of loyalties, in which one’s peers exert social control and compel loyalty. Podgórecki notes “the possibility of mutual blackmail in case of violations of the reciprocal code of collaboration – when the behaviour known to the hitherto tested partners is disclosed.”¹⁴

Fifthly, dirty togetherness enjoys a form of legitimacy among the population. This legitimacy, Podgórecki assesses, is “based on the existence of the superstructure of ‘dirty togetherness.’” If a “complicated infrastructure of mutually interdependent interests” stands behind a legal system that lacks popular legitimacy,

then this legal system may become accepted, not on the basis of its own merits, but because it creates a convenient cover-system for the flourishing phenomenon of “dirty togetherness.” Then each institution, factory and organization serves, independently from its own production tasks, as a formal network which gives a stable frame of reference for an enormous amount of mutual semi-private services, reciprocal arrangements... In this situation, the formal legal network, irrespective of its own questionable, productive efficiency, becomes a very precious cover-scheme. It is clear that individuals who operate inside this system will, after a while, start to support this legal matrix not because they accept it (as a system, which has a normative validity, or a system which is supported on the basis its own inherent virtues), but because they become familiar with it, with the rules of its game, with its “who’s who” background and with its conditions of efficiency¹⁵.

¹¹ Ibidem, p. 68.

¹² Ibidem.

¹³ Ibidem, p. 67.

¹⁴ Ibidem.

¹⁵ Ibidem, p. 68–69.

This, clarifies Podgórecki,¹⁶ is how it can be that dirty togetherness “defend[s] itself against the official ‘hostile system’ in which it operates,” yet at the same time operates within it and thus “supports [it] perversely.” As such, dirty togetherness plays a double role.

Even so, it enjoys a robust superstructure. The superstructure and legitimacy of dirty togetherness serve to, sixthly, help bind the social system, thus fortifying it against the official system. As Podgórecki explains, “clusters of ‘dirty togetherness,’ when they link themselves (or are perceived by the public as interrelated) into a developed frame or superstructure... may bond the social system together as a whole.”¹⁷ Moreover, he assesses, “these ties [of dirty togetherness], manipulative and instrumental in their character, serve to establish stronger links than the impersonal, rational relationships, and in turn create their own superstructure which dominates the social system in which they prosper.”¹⁸

The public perception that dirty togetherness constitutes a sort of bulwark against the official system that is capable of constraining it can be seen, Podgórecki writes, in

the strong conviction that only those public programmes have a chance to be materialized which will not be confronted with counteraction by the superstructure of the “community of dirty interests”. When there is a reason to expect counteraction, or even retaliation, the agents of that community will extinguish any attempts of actions threatening them.¹⁹

At the same time, however, the perceived bulwark against the official system may not actually function as a united front due to “various attitudes of social insecurity” among the populace.²⁰ The insecurity arises from “the fact that ‘dirty togetherness’ usually is perceived as an influential superstructure by the public at large,” and there is “uncertainty” about “where its decision-making centre is ‘located.’” While Podgórecki does not detail this revealing dimension of dirty togetherness, it warrants further exploration. How, and in what ways, one wonders, might social insecurity affect the ability of ruling regimes to manipulate the populace – a point to which we will return later.²¹

¹⁶ Ibidem, p. 69.

¹⁷ Ibidem, p. 68.

¹⁸ Ibidem, p. 67.

¹⁹ Ibidem, p. 68.

²⁰ Ibidem, p. 67–68.

²¹ It is illuminating to reflect on dirty togetherness in light of the ethos of the Solidarity movement of 1980–1981. Solidarity, as Kurczewscy observe, sought to “create a new community, a ‘clean community’ that directly and viably opposed the ‘dirty togetherness’ of real socialism.” “[A]bove all,” it would be an “open, inclusive community” that constituted a break with the previous ‘dirty togetherness’ of totalitarian conformity.” This community of people with “clean” interests would stand in

The Through Line of Dirty Togetherness

While Podgórecki coined the term “dirty togetherness” to describe Poland during the communist period, the phenomenon and the conditions that engendered it evoke historical legacies that predate his work. With the nation occupied by foreign powers for large swaths of its history (1795–1918, 1939–1945) prior to communist rule, lack of respect for the occupying powers’ legal systems became an informal norm – even a patriotic obligation. Survival strategies deployed to circumvent imposed systems and their laws tend to live beyond the conditions that give rise to them. A forceful argument to this effect was made by the prominent literary critic Kazimierz Wyka in August 1945, on the heels of six years of occupation and World War that had devastated Poland, and only a few months after war’s end in Europe. Wyka penned a powerful article, “The Excluded Economy,” describing life under German occupation. The article (translated into English and published in my 1992 edited collection *The Unplanned Society: Poland During and After Communism*) documents the ubiquitous black market and bribery practices of the day – practices that as Podgórecki²² puts it, “depended on the suspension of social, moral, and legal norms with such a strength that this relatively short period accumulated a considerable potential.” In fact, writing in 1945, Wyka warned that

the excluded economy of our nation has left behind a residue difficult to cleanse and eradicate and all too likely to continue in the new state and society. Yet, if nothing else succeeds, the residue must be torn out of the psyche of our society *even if it means losing some skin along with it*. Otherwise, the moral corruption is bound to last longer than what is still forgivable and acceptable as the echo of circumstances that no longer exist.²³

Wyka’s words were scarcely heeded. The survival strategies would persist, long after the circumstances that created them had vanished.

New circumstances with echoes of the old were instated with communism, and this same pattern would be repeated after its fall decades later. In other words, the long-standing informal institutions and social networks honed under

stark contrast to the “dirty” system”, a system that “forced people to fake political loyalty in exchange for the regime’s tolerance of various forms of dishonesty – from theft and bribery to nepotism to the usual shirker behaviour and wastefulness” with which people treated state property and employment. J. Kurczewski, J. Kurczewska, ‘Solidarność i Obywatelskie Nauki Społeczne, in: *Ku Demokracji. Księga z okazji jubileuszu prof. dr hab. Iwony Jakubowskiej-Branickiej*, eds. M. Sfitat, B. Kamiński, B. Walczak, Wydawnictwo Akademickie Dialog, Warsaw 2024, p. 43–59 (translation into English by J. Wedel).

²² A. Podgórecki, *Polish Society: A Sociological Analysis*..., p. 63.

²³ Originally published in the literary journal “Twórczość”, “The Excluded Economy” was reprinted in 1959 and 1984 in Wyka’s book *Życie na Niby. Pamiętnik po Kłęsce* with very few changes; K. Wyka, *The Excluded Economy*, in: *The Unplanned Society*..., p. 56–57.

communism hardly disappeared with the entrance of market and democratic institutions. Informal institutions would impede, facilitate, and otherwise interact with the newly established market and democratic institutions.

Dirty Togetherness After Communism

In the 1990s, as I studied informal networks and groups in the region, I adapted Podgórecki's notion of dirty togetherness – this time to help illuminate economic, political, and social structures of emergent post-communist systems.²⁴

In late 1980's Poland, as communism was unravelling, I saw elites, operating in long-standing informal networks rise to take control of their lives – to reduce state constraints on private business, lobby for environmental cleanup, and build private schools and homes, and, when the communist regime fell in 1989, to fill leadership vacuums in state and other organisations of the newly democratic Poland.

In this new order, the same kinds of networks I had previously observed now placed their members in key governmental and nongovernmental organisations – for instance, in top positions in a privatisation ministry, a national branch of an international bank, a think tank or a foundation – to coordinate their influence and to sway the distribution of newly available state resources. Here, notably, we see how Podgórecki's dirtily together networks “serve to establish stronger links than the impersonal, rational relationships” and may even “create their own superstructure which dominates the social system in which they prosper.”

Sociologists Antoni Kamiński and Joanna Kurczewska aptly dubbed such actors – pivotal players in the emergent system – “institutional nomads” (*nomadzi instytucjonalni*).²⁵ They were so named because their members migrate among institutions – governmental and nongovernmental – to achieve the concrete goals of their circle, placing primary loyalty to it above that to any formal organisation with which they might be affiliated at a given time. They put their fingers in many pies – government, politics, business, think tanks, foundations, NGOs, and international organisations. They circulate among and traverse the spheres of state and private and the domains of politics, economics, and law – all the while principally serving their fellow nomads. Their mutual loyalties are cemented not only by the access to resources and opportunities that their

²⁴ E.g. J.R. Wedel, *Dirty Togetherness: Institutional Nomads, Networks, and the State-Private Interface in Central and Eastern Europe and the Former Soviet Union*, “Polish Sociological Review” 2003, no. 142, p. 139–159.

²⁵ A.Z. Kamiński, J. Kurczewska, *Main Actors of Transformation: The Nomadic Elites*, in: *The General Outlines of Transformation*, eds. E. Allardt, W. Wesolowski, IFIS PAN Publishing, Warsaw, p. 132–153.

pooled efforts reap, but also by the mutual awareness that they are all involved in dirty togetherness.

Such networks and groups were so ubiquitous and instrumental in shaping economic, political, and social development, that sociologists and journalists throughout post-communist space devised organic terms for similar phenomena.

In Russia, scholars and journalists called them “clans” – invoking a kinship connotation of brotherhood and mutual support where no actual family relationship generally existed. Sociologist of elites Olga Khrystanovskaya wrote that

A clan is based on informal relations between its members, and has no registered structure. Its members can be dispersed, but have their men everywhere. They are united by a community of views and loyalty to an idea or a leader (...). But the head of a clan cannot be pensioned off. He has his men everywhere, his influence is dispersed and not always noticeable (...). Unlike the leaders of other elite groups, he does not give his undivided attention to any one organization.²⁶

Clans might have formal power, but they must have informal power, and they indirectly control formal power. Even without necessarily holding direct power, clans perform pivotal roles in shaping economics, politics, and society. In 1990's Russia, for example, clans mobilised to control valuable portfolios, including natural resources such as oil, gas, metals, internal security, economy, and the military.²⁷ Parts of these clans were built on relationships created through the KGB and its successor institutions. Each clan ran its own kleptocratic resource-extraction and offshoring operation.

A symbiotic relationship arose between the political and criminal-business worlds. The Russian clan I studied in the 1990s,²⁸ which cornered the country's privatisation and economic restructuring portfolios (and foreign aid to carry them out), was practiced: (1) at making end runs around the bureaucracy and the democratically elected parliament, (2) closely guarding information, and (3) and straddling multiple and mutually reinforcing formal and informal roles across government and private organisations, including those underwritten by foreign aid.

Dirtyly together networks operating in Russia and other parts of post-Soviet space were much more likely to cross into criminal activity than, say, in Poland

²⁶ O. Kryshatanovskaya, *The Real Masters of Russia*, in: *Argumenty i Fakty*, May 1997 (reprinted in *Johnson's Russia List*).

²⁷ E.g. E. Kosals, *Essay on Clan Capitalism in Russia*, “Acta Oeconomica” 2007, vol. 57, no. 1, p. 77.

²⁸ J.R. Wedel, *Tainted Transactions: Harvard, the Chubais Clan and Russia's Ruin*, “The National Interest” 2000, no. 59, p. 23–34; J.R. Wedel, *Collision and Collusion: The Strange Case of Western Aid to Eastern Europe*, Palgrave, New York, NY 2001; J.R. Wedel, *Shadow Elite: How the World's New Power Brokers Undermine Democracy, Government, and the Free Market*, Basic Books, New York, NY 2009.

and other parts of Central and Eastern Europe, where there was comparatively little evidence of criminal infiltration in political establishments.

Still, clans and institutional nomadic groups share a powerful mode of organising: they have their feet firmly planted both in segments of the state and private sector organisations, as well as in civic organisations relevant to achieving their group's agendas. This means that the same people, with the same agenda, constitute or power both the clan or institutional nomadic group and the relevant state authorities. It also means that these network structures are inconsistent with democratic accountability.²⁹

Podgórecki's "dirty togetherness", with its emphasis on mutual reciprocity within a network of equals and rigorous loyalty of members to their fellows, also fittingly characterises today's tightknit networks, whose members snake through business, politics, and government to achieve their often underhanded agendas. Further, under communism as well as after it, dirtily together networks garner resources for their in-group at the expense of outsiders. Both the process itself and its outcome are antithetical to democracy.

Weaponising Corruption through Dirty Togetherness Networks

Dirty togetherness has not confined itself to communist and post-communist space. An equally, if not more potent, form of potential dirty togetherness has been proliferating over roughly the past decade and a half, as networks and perhaps even "clusters of dirty togetherness"³⁰ have expanded onto other landscapes. Can the concept of dirty togetherness help illuminate the networks that underpin "weaponised corruption" in Western democratic countries?

In Vladimir Putin's model of this strategic corruption, which not only weaponises oil and gas to dominate European energy markets and distribution

²⁹ My concept of "flex nets" builds on observation of clans and institutional nomads. A flex net is a self-propelling multiplex and dense network. A flex net's membership is drawn from a limited circle of players who continually resurface in different roles, both inside and outside government, to achieve their group's goals over time. Its members pursue a shared agenda by working at the interstices of state and private power and conflating their own interests with those of the state. Members of the flex net pool their efforts, resources, sponsors, and roles. They circumvent and/or reorganise standard government processes and structures and create alternative not-quite-state, not-quite-private entities and authorities. The strength of the flex net lies in its interpenetration of state authorities and organisations and in its ability to reorganise them for its own ends. Ibidem; J.R. Wedel, *From Power Elites to Influence Elites: Resetting Elite Studies for the 21st Century*, "Theory, Culture & Society" 2017, vol. 34, no. 5-6, p. 153.

³⁰ A. Podgórecki, *Polish Society...*, p. 68.

networks,³¹ dirty money is channelled into shadow lobbying and political action in Western target countries to “compromise [their] political stability and defense capabilities” and “erod[e] the political legitimacy of democratically elected leaders.”³² Networks of security-political-business-criminal actors are also highly active in today’s influencing operations, serving as handmaidens of Putin’s foreign policy.³³

As dirty togetherness networks operating in the interests of weaponised corruption position themselves to powerfully reshape economic and political structures, they threaten democratic systems and sustainability.

Conclusion: Guiding Questions for Research

The following questions, which arise from Podgórecki’s analysis, and are also informed by my own work, may help analyse contemporary dirty togetherness networks.

- How do these “dirty togetherness” networks and groups coalesce? Do they invariably draw on “equals”, as Podgórecki specifies, and what difference might this make in their operations?
- How are the networks and groups organised *vis-a-vis* state, market, and civic organisations?
- What are the mechanisms of social control within these networks and groups? Through what means are loyalties enforced and do these means and their results recall Podgórecki’s “perverse loyalty”?
- In what ways, and to what extent, do today’s dirty togetherness networks and groups enjoy societal support and legitimacy among the population at large, based on a superstructure of dirty togetherness, as did networks of the communist period outlined by Podgórecki? And what difference does this support or lack thereof make in their operations?

³¹ E.g. C. Belton, *Putin’s People: How the KGB Took Back Russia and Then Took On the West*, Farrar, Straus, Giroux, New York, NY 2020; A. Orbán, *Power, Energy and the New Russian Imperialism*, Praeger Security International, London 2008.

³² O. Huss, J. Pozsgai-Alvarez, *Strategic Corruption as a Threat to Security and the New Agenda for Anti-Corruption*, 16.03.2022, p. 3, <https://www.corruptionjusticeandlegitimacy.org/post/strategic-corruption-as-a-threat-to-security-and-the-new-agenda-for-anti-corruption> (accessed: 17.09.2024).

³³ E.g. K. Bennhold, *The Former Chancellor Who Became Putin’s Man in Germany*, “The New York Times” 23.04.2022, <https://www.nytimes.com/2022/04/23/world/europe/schroder-germany-russia-gas-ukraine-war-energy.html> (accessed: 14.08.2024); R.S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, vol. 1, 2, U.S. Department of Justice, Washington, D.C. 2019 (redacted version of 18.04.2019).

- What role do attitudes of “social insecurity”, mentioned by Podgórecki, play in the spaces in which dirty togetherness today thrives? Does this insecurity play a part in controlling the populace?
- In what ways, and to what extent, do dirtily together networks and groups reorganise the state and private structures around them, as do “flex nets”? Do the networks under study qualify as flex nets?
- How do practices associated with dirty togetherness proliferate across networks to forge cultures resistant to democratic principles and accountability? And what are the particular ways in which these networks, their practices, and the infrastructures they create supersede or reshape heretofore democratic institutions?

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