

1-1-1966

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MARXIST ETHICS AND POLISH LAW*

Aleksander W. Rudzinski

POLAND BEGAN treading her own road to socialism after her "October" in 1956; but prior to that time her communist leaders kept their eyes fixed on Moscow. Soviet experience in the evolution of a system of social control through law was studied assiduously. One feature that was to have profound influence was the Soviet constitutional concept that citizens must respect the rules of socialist intercourse. Another was the much-discussed Article 1 of the Russian Republic's civil code of 1922 authorizing courts to depart from the strict application of code provisions when they were being exercised in contradiction to their social and economic purpose. This principle had been designed to meet the fears expressed by communists in 1922 that restoration of a civil code might be tantamount to handing society over to the capitalists, who were being given at the time a limited period of grace to aid in the restoration of the ruined economy.

The Poland of 1950, when the concept of respect for rules of socialist intercourse was introduced, was in something of the same position as the Russian Republic in 1922, yet she had an advantage from the point of view of the communists. She had a model to follow in Soviet practice, for Soviet courts had been active in applying a concept of Marxist ethics during the period of the 1920's, even though in later years, and especially after the end of the war in 1946, the Soviet judges were giving no indication that morals would be used to justify a policy of instability in the civil law.

The purpose of this paper is to investigate the rarely studied problem of the influence upon the law of Marxist ethics in a country that had a strong tradition of separation of legally enforceable provisions of the codes from a system of morals.¹

* This paper was written in the course of a research project on Comparative Communist Legal Systems headed by Professor John N. Hazard and supported by a grant from the Ford Foundation.

¹ The Soviet judicial practice of the 1920's has been analyzed by V. E. Greaves, *Social-economic Purpose of Private Rights. Sec. 1 of the Soviet Civil Code: A Comparative Study of Soviet and Non-communist Law*, 12 NEW YORK UNIVERSITY LAW QUARTERLY REVIEW 165-195; 439-466 (1935). The experience in the Province of Bukovina, Rumania, has been described in J. Fedynskyj, *Sovietization of an Occupied Area through the Courts*, 12 AMERICAN SLAVIC & EAST EUROPEAN REVIEW 44-56 (1953). See also Helmut Slapnicka, *Soviet*

I. THE DOCTRINE AND THE CODE

The Essence of Marxist Ethics. — Marxist ethics, sketchily drawn up by Marx and Engels, belong to the family of secular moral systems. They represent a specific amalgam of different and basically inconsistent principles and values derived from the Enlightenment (equality, brotherhood, and liberty — the latter mainly understood as freedom from exploitation and in a collectivist sense) and from utilitarianism. The influence of the latter doctrine is evident in the strongly relativistic trend in Marxist ethics. Not only are moral principles considered as relative to human ends and needs, but the moral value systems change historically in time together with social and economic systems. Action or behavior or a specific motive considered virtuous and worthy of moral praise — such as a contemplative life of prayer, mortification, or the profit motive — may represent vices morally condemnable in another, later social and economic epoch.

There are distinct elements of Darwinist thinking interwoven mainly by Engels into Marxist doctrine. Also, the influence of ethics of creativity and productivity is unmistakable in the Marxist approach to work and labor, as well as the creative arts.²

What are the broad outlines of Marxist morality that could be meaningful to a Polish judge? It would be a mistake to repeat here the text of the principles of socialist ethics as they are described in official communist documents such as the Soviet communist moral code of 1961, enumerating some broad and generally phrased principles.³ Since we are concerned here only with the influence of socialist morality on law, certain very broad terms, such as human relations and mutual respect between individuals — “man is to

Law as Model: The People's Democracies in the Succession States, 8 NATURAL LAW FORUM 106 (1963).

The following abbreviations will be used in the footnotes:

J. OF L.—JOURNAL OF LAWS OF THE POLISH PEOPLE'S REPUBLIC (DZIENNIK USTAW POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ).

P. I PR.—PANSTWO I PRAWO (STATE AND LAW), (monthly).

OSN—ORZECZNICTWO SADU NAJWYZZSZEGO (JUDICATURE OF THE SUPREME COURT).

OSP—ORZECZNICTWO SADOW POLSKICH (JUDICATURE OF POLISH COURTS).

OSP I KA—ORZECZNICTWO SADOW POLSKICH I KOMISJI ARBITRAZOWYCH (JUDICATURE OF POLISH COURTS AND ARBITRATION COMMISSIONS).

ZOSN—ZBIOR ORZECZEN SADU NAJWYZZSZEGO (COLLECTION OF DECISIONS OF THE SUPREME COURT).

² For an analysis of communist ethics see: EUGENE KAMENKA, *THE ETHICAL FOUNDATIONS OF MARXISM 195-199* (New York, 1962) (morality of free creativity and production); R. N. CAREW HUNT, *THE THEORY AND PRACTICE OF COMMUNISM 109-116* (Baltimore, 1963) (dynamic ethics of class struggle); KARL R. POPPER, *2 THE OPEN SOCIETY AND ITS ENEMIES 199-211* (London, 1962) (activism, historicist moral theory); and HAROLD J. LASKI, *COMMUNISM 116-122* (New York, 1927) (equality).

³ Program of the Communist Party of the Soviet Union, October 31, 1961. For text, see JAN F. TRISKA (ed.), *SOVIET COMMUNISM: PROGRAMS AND RULES. OFFICIAL TEXTS OF 1919, 1952 (1956), 1961*, pp. 112-113 (San Francisco, 1962).

man a friend, comrade, and brother" or "honesty and truthfulness, moral purity, modesty, and guilelessness in social and private life" — may be omitted as too unspecified for our purposes. More importantly, from the scholarly point of view it seems mistaken in presenting the contents of a religious or ideological moral system to take at face value what the high priests themselves proclaim. A view from the outside, taking into consideration practice and not only official theory, will be much nearer the truth. Furthermore, the fact must be borne in mind that the contents of the Marxist ethical code are subject to change and may vary in different communist countries.

With these qualifications, the primary elements of Marxist ethics emerge as the following:

1. Bourgeois morality is different from and incompatible with proletarian morality, which is a higher and more perfect moral system.
2. Class struggle will ensure the triumph of the perfect social and economic system, i.e., communism, and, therefore, acts and individuals helping to achieve the ultimate goal are good and those opposing this development are evil.⁴
3. It is the moral duty of the communist to hate the enemies of communist ideology and of the socialist (communist) state. This hatred is a moral virtue on the same level as love of the communist cause.⁵
4. There are no neutrals in the worldwide class struggle or in the domestic one. He who is not with us is against us and should be treated accordingly.⁶
5. There is a moral obligation to be partial, to favor in each controversy the proletarian over the capitalist, the party member over the outsider, a socialist state over its adversary. Impartiality is not only nonexistent in the communist, but if it should appear, it would be morally contemptible, for objectivism, i.e., the tendency to see good as well as evil traits in a capitalist, be it person or country, is equally morally wrong.⁷

⁴ This was Lenin's primitive and trivial interpretation of Marxism. It might be called the Stalinist or extreme wing of Marxist ethics, and would include the Chinese among its adherents. There are several consequences flowing from this view: the practical implementation of the professed principles of proletarian ethics is pushed into the far-distant future to follow the ultimate worldwide victory of communism. Meanwhile every means to achieve victory may be used without compunction.

In contradistinction to this extreme, a moderate branch of Marxist ethics, which may be called revisionist or anti-Stalinist, urges a certain moderation in the basic struggle, external and domestic, and makes the discovery that moral standards are applicable to acts in that struggle.

⁵ This virtue appears in the new "moral code" of the Communist Party of the Soviet Union under the slightly disguised name of "intolerance" and "uncompromising attitude to the enemies of communism, peace and freedom of nations."

⁶ Hungary's Kadar reversed this principle by stressing: He who is not against us is with us.

⁷ This attitude precludes the impartiality of courts, for courts and judges become simply organs of the state, and of the Communist Party. Legislation also cannot be impartial. This point was one attacked in the Polish struggle of 1955-56 and later for a return to "socialist

6. Man must not exploit man, which means in practice an almost total abolition of hired labor by private entrepreneurs where they are still tolerated.⁸

7. Man must work, exemplified by the Marxists' eager grasp of the maxim from the Gospel: "He who does not work, neither shall he eat."⁹

8. The social interest has priority over private and personal interests.¹⁰

Some of these fundamentals have been modified in Poland by anti-Stalinists since Stalin's death. The almost forgotten views of Engels have been revived insofar as he admitted that certain ethical principles such as "Thou shall not kill" have no class character but embrace all mankind and all men.¹¹ This approach seems now also to be reflected in the communist "moral code" contained in the 1961 program of the Communist Party of the Soviet Union. The section "The Affirmation of Communist Morality" suggests to the outsider that there are "fundamental norms of human morality evolved by the masses of the people in the course of millenniums as they fought against vice and social oppression" and "elementary standards of morality and justice, . . . inviolable rules for relations both between individuals and between people." Less clearly the language of the section may be taken to mean that justice is a fundamental and not a class-bound value.¹² Whether the revived moral principles of this type are called general humanistic ethics or socialist revisionist ethics is of secondary and doctrinal importance, for they are clearly conceived as relevant to contemporary problems.

Confusion needs to be avoided in considering family morals. Whereas in the early years of Soviet experience there was much that suggested the family's loss of moral standing as a bourgeois institution, there has been strong reaffirmation in the U.S.S.R. since 1944 of its essentiality to socialist society. Marriage and the family have been given a high place in Marxist ethics, albeit in a slightly different form.

legality." A return to impartial justice and the independence of judges was advocated. The principles enumerated in points 1-5 emphasized in a belligerent spirit constitute the core of extremist Marxist morality represented at present mainly by the Chinese.

⁸ This element has resulted in condemnation of income not based on work and substantiates a) legislative restriction of rent of apartment and office space to a token amount in city houses still privately owned; b) a legislative prohibition and criminal prosecution of "speculation" of any kind; c) attack on such principles established in continental Europe as recovery of damages for moral grief to next of kin of the deceased, and damages for pain resulting for physical injury; d) and attack upon the three months' severance pay system. These two latter developments will be discussed subsequently herein.

⁹ Communist states have translated this into legal obligations, as in Art. 12 of the U.S.S.R. Constitution. The Stalinist system in Poland went further to require support of community and communist goals by active participation in social, party, trade union, professional, and sports activities. Refusal could result in loss of employment.

¹⁰ This principle (transcending Marxian ethics) justifies privileges and exemptions for the state, its enterprises, and other socialist organizations and enterprises.

¹¹ See M. Fritzhand, *U podstaw etyki Marksa*, STUDIA FILOZOFICZNE no. 6, 1958, pp. 14, 25.

¹² See JAN F. TRISKA (ed.), *op. cit. supra*, note 3.

The Statutory Basis for Application of Marxist Ethics. — To turn to the statutory foundation of judicial action, the vehicle through which Marxist ethics have influenced the application of law by Polish courts is Article 3 of the General Provisions of Civil Law, adopted in 1950.¹³ This statute and the almost simultaneous statute on family law¹⁴ were attempts to introduce Soviet models into Polish law, although the language was not identical. One striking semantic difference is the Polish rendition of the Russian term "socialist intercourse" as "social intercourse," which carries a connotation of no specific type of social organization, yet, as practice has demonstrated, the meaning has been made the same.

Article 3 provides: "Rights cannot be exercised in a manner violating the principles of social intercourse in the People's State" ("*sposób który by naruszał zasady współzycia społecznego w Państwie Ludowym*" [emphasis added]). The same rule is applied to cause any legal transaction contrary to these principles (*sprzeczny*) to be null and void (Art. 41). They serve as a guide when a declaration of intent has to be constructed (Art. 47). If a condition precedent is contrary (*przeciwny*) to the principles, the whole legal transaction is null and void; if it is a condition subsequent, it has to be considered as not stipulated (Art. 62).

These provisions have to be analyzed in the context of Article 1 of the same statute of 1950 providing that "rules of law have to be construed and applied in accordance with the (fundamental) principles of the structure and the goals of the People's State" ("*zgodnie z zasadami ustroju i celami Państwa Ludowego*"). They must also be viewed with relation to Article 76 of the Polish Constitution of July 22, 1952, which was modeled on the U.S.S.R. Constitution of 1936. By Article 76 Polish citizens are required to observe the provisions of the Constitution and of the statutes as well as socialist labor discipline, to respect the principles of social intercourse and to fulfill conscientiously the duties toward the State. To this author's knowledge, Article 76 has never been quoted or invoked by Polish courts when dealing with problems of social intercourse, perhaps because it is vaguely phrased in requiring only "respect."

II. JUDICIAL PROTECTION OF ETHICAL PRINCIPLES

WITH THIS statutory background it is possible to turn to judicial practice. What has it been? Two main periods can be distinguished: 1950-1955, which was the time of rapid Sovietization when the influence of Stalin was

¹³ Statute of July 18, 1950, J. OF L. no. 34, item 311.

¹⁴ Statute of June 27, 1950, J. OF L. no. 34, item 308.

strong; and 1956-1958, when there appeared, preceding and following the Polish "October" of 1956, a noticeable renewal of traditional Polish legal concepts. Perhaps a third period is emerging, for since 1958 there seems to be evident a measure of retreat from traditional concepts of legality to a position of balance between the attitudes expressed in the first two periods.

The period 1950-1955 can be characterized in the words used by a Polish communist jurist in 1960:

The principles of social intercourse are moral norms of social ethics. They include also those moral norms which still are growing out of the vital needs of society, engaged in building socialism though they are not yet grounded in the consciousness of this society.¹⁵

He explains immediately that those principles include only "progressive" moral norms and exclude "backward" ones.

The Supreme Court of Poland seems not to have indulged in such blunt talk, and it never explicitly said during the period under review that socialist morality consisted of principles which had no support from Polish society but had to be imposed from above. The nearest point achieved by the Supreme Court to such a formulation was reached in its decision of 26 April 1952 when it set down directives for the application by the courts of Article 30 of the family code of 1950. The court introduced "the moral sentiments of the toiling masses" as a criterion of socialist morality and of the admissibility of divorce.¹⁶ Long experience in the U.S.S.R. and early experience in communist-oriented Poland have demonstrated that for the Communist Party this phrase does not require a public opinion poll, but rather a generalization by the party of what enlightened proletarians should feel, think, approve, and condemn. This generalization becomes "socialist morality."

More important than generalizations as to the principles of social intercourse in the work of the Supreme Court has been the sweeping use made of Article 3 of the General Provisions of Civil Law and related provisions. To understand the extent to which this usage has surpassed what might have been expected, a few words on the background of Article 3 and on its Western analogies or lack of them are in order. Article 3 may be described as a communist version of the confluence of two different but partly overlapping trends

¹⁵ Adam Lopatka, *Jaka rolę przyznac zasadom współżycia społecznego w nowym kodeksie cywilnym PRL*, P. 1 Pr., Nov. 1960, p. 601. See also Adam Lopatka i Zygmunt Ziembinski, *Proba systematyzacji zasad współżycia społecznego według orzecznictwa Sadu Najwyższego*, P. 1 Pr., April-May 1957, pp. 802-822; Aleksander Kunicki, *Art. 3 p.o.p.c. de lege ferenda*, P. 1 Pr., June 1960, pp. 969-976; Antoni Osten-Sacken, *Głos w dyskusji nad projektem Kodeksu cywilnego (Zagadnienie Art. 3, p.o.p.c.)* P. 1 Pr., July 1960, pp. 98-100.

¹⁶ Resolution of the full civil chamber of April 26, 1952, C Prez. 798/51, P. 1 Pr., July 1952, pp. 113-118.

in Western civil law. The doctrine of *abuse of right* developed over decades by French jurists and courts¹⁷ and accepted also by German civil law¹⁸ tended to overcome the traditional Roman maxim: *Qui suo iure utitur neminem leadit*. The doctrine focused on the right of property and other rights *in rem*. An abuse came to be considered such an exercise of those rights as was contrary to the social function and social purpose of property and inflicted serious damage on neighbors or the community.¹⁹ A somewhat narrower view regarded as abuse of right only those instances when it was exercised for the exclusive purpose of damaging or annoying neighbors or outsiders generally (*la chicane*).²⁰ Many jurists stressed the subjective and moral element of lack of good faith as a constitutive element of abuse of right.

The second stream of Western legal thinking restricting the exercise of legal rights concentrated on contracts, torts, and family relations and inheritance and stressed morality (*bonnes moeurs, die guten Sitten*) as a limiting factor.²¹ Common law lawyers preferred to invoke *public order* rather than morality,²² but the same notion of *ordre public* was used also by the French. A contract contrary to *boni mores* but not prohibited by law could not be enforced in court. It represented an *obligatio naturalis* (payment to a matchmaker, payment of debt from gambling, severance pay to a concubine, or betting). Once paid, such payment could not be recovered by way of a *condictio indebiti*.

Two points have to be stressed: 1) the yardstick (*boni mores*) consisted of traditional principles of ethics accepted and approved by the society concerned; 2) only the flagrant cases violating accepted morality were denied protection by the courts.²³ Therefore, the doctrine of abuse of right as

¹⁷ See, e.g., G. RIPERT & J. BOULANGER, 2 TRAITÉ DE DROIT CIVIL par. 962-74, pp. 362-368 (Paris, 1957).

¹⁸ See Sec. 226 of the German Civil Code and Art. 2 of the Swiss Civil Code, both dealing with abuse of right generally.

¹⁹ See, e.g., LEON DUGUIT, LES TRANSFORMATIONS GÉNÉRALES DU DROIT PRIVÉ DEPUIS LE CODE NAPOLEON 19-20, 23-51, 147-178, 196-202 (Paris, 1912). It is interesting that this French doctrine was translated into law by the early communist regime in Poland in 1946; Art. 5 of the decree of November 12, 1946, J. OF L. no. 67, item 369, provides that "private rights shall be exercised in accordance with their contents in a manner consonant with their *social purpose* and with the requirements of good faith. Actions contrary to this provision cannot be regarded as being an exercise of a right and are deprived of protection (of the law)."

²⁰ Analogously Sec. 226 of the German Civil Code (*Schikaneverbot*) and Art. 148 of the Chinese Civil Code of 1929.

²¹ See, e.g., Arts. 6, 900, 1131, 1172 of the French Civil Code (1804), Sects. 768 no. 4, 879, 1295 of the Austrian Civil Code (1811), Arts. 20, 41, 230, 326, 352 of the Swiss Code of Obligations (1911) and Sects. 138, 817, 826 of the German Civil Code (1896).

²² DENNIS LLOYD, PUBLIC POLICY, A CONTEMPORARY STUDY IN ENGLISH AND FRENCH LAW (University of London, 1953).

²³ Art. 2 of the Swiss Civil Code (1907): "Der *offenbare* Missbrauch eines Rechtes findet keinen Rechtsschutz." This article requiring in its preceding first sentence that everybody should act according to good faith (*Treu und Glauben*) in the exercise of rights and in the

applied by the courts in Western countries impinged on civil rights in everyday life only slightly and marginally. Naturally, it was and is normally futile in Western civil law to attempt to call something an abuse of right which is specifically sanctioned as legal by statute or decisional law.

A. *Stalinist Period.* All these things were very different in Poland during the Stalinist period of 1950 to 1955. During this time Article 3 of the General Provisions of Civil Law was used on a massive scale by the courts and thus undermined any reliance on law and legal order by the citizens.²⁴ Article 3 also became a tool to change the binding prewar law in contravention of its specific and clear provisions. A kind of judicial legislation *contra legem* developed in Poland, a country belonging to the Romanistic statute law system where the courts never before had that power.²⁵

Decisions Contrary to Statutes.— Only a few significant features will be adduced as illustrations of what the Supreme Court was doing:

1) Pursuant to interwar Polish statutes concerning protection of tenants, a claim by the landlord for eviction was admissible only because of arrears in rent for longer than two months or because of serious and repeated infractions of apartment house regulations in force. It was never easy to secure a court sentence evicting a tenant. This remedy was completely shut off by the Supreme Court when it decided in 1952 under Article 3 that

every member of society has to support the goals outlined by the State. Since the State exerts particular efforts to provide homes for everybody, nobody can create a new need (for shelter) for the exclusive reason that he has a civil law claim for eviction.²⁶

Thus the right to evict a tenant was practically abolished without the benefit of amendment of the technically still binding statute. The exercise of the right to evict was declared to be a violation of socialist morality. It might be

fulfillment of duties—was probably the model for the Polish Art. 5 of the 1946 decree dealing with abuse of rights quoted above in note 19. (ADAM SZPUNAR, *NADUZYCIE PRAWA PODMIOTOWEGO* 153 [Kraków, 1947]). In the Swiss Civil Code the two streams merged for the first time but without drastic results.

²⁴ Antoni Osten-Sacken, *op. cit. supra*, note 15.

²⁵ However, the Polish Supreme Court delivered during the post-World War I inflation period a decision in 1922 which recognized the right of a creditor to recover the real and not the nominal value of the money due him, against the letter of the law, on grounds of equity (*Fliederbaum v. Kunke*, decision of the 1st Chamber of February 25, 1922 C 186/21 OSP vol. I, no. 461).

This sentence was followed in 1924 by the enactment of the so-called *lex Zoll* after its sponsor, the eminent Cracow professor of civil law, Dr. Fryderyk Zoll. But that was a unique exception in the postwar economic upheaval.

²⁶ Judgment of November 21, 1952, C 345/50, P. I PR., April 1951, p. 741.

noted that the reasoning of the Supreme Court follows a line akin to proclaiming eviction as contrary to public policy.²⁷

2) Pecuniary compensation for physical pain and for mental grief due to the death of a spouse, parent, or child has been a traditional Polish institution (*nawiazka za ból, zadoscuczynienie za krzywdę moralną*) considered as just and normal according to Article 166 of the Polish code of obligations of 1933 then still technically in force in communist Poland. Compensation for mental grief was practically abolished in the Supreme Court in 1951 as basically contrary to the principles of social intercourse. The members of the family of the deceased can only demand that an appropriate sum be paid by the party responsible for the death to a social institution named by them. A slight opening was left ajar by the Court in cases when moral suffering was connected with material damage not recoverable under Article 162 of the code of obligations.²⁸ This restriction of damages to purely material losses was, however, not extended to eliminate damages for physical pain due to injury.²⁹

The deeper motives behind this decision can only be guessed. Soviet influence is most probably the main source. Soviet law does not entitle a party to compensation for physical pain due to injury or to compensation for moral grief due to the death of a spouse, parent, or child. The Soviet-inspired draft of a Polish civil code, published in 1954 but not enacted, went even further than the Supreme Court by also abolishing money compensation for pain suffered due to physical injury, which the 1951 decision of the Supreme Court considered as "not excluded" but to be adjudicated in moderate amounts. The 1954 draft refrained from explaining in detail the reasons for the drastic step it proposed. It put them succinctly:

The institution of pecuniary compensation for moral injury (*krzywda moralna*) was not taken over by the draft from the extant law, proceeding from the premise that it does not correspond with the principles of socialist law.³⁰

The negative attitude of the Soviet doctrine of socialist law and morality

²⁷ Refusal to evict tenants was afterwards and still continues to be consistently based on Art. 3 (see, e.g., a recent far-going decision of May 2, 1964, III CR 84/64 OSN 1/1965, item 18).

²⁸ Decision of a panel of seven judges of December 1 and 15, 1951, C 15/51, OSN I, 1953, p. 19, P. I PR., Dec. 1952, pp. 877-881 reaffirmed by a resolution of the full civil chamber of Jan. 29, 1957, I Co 37/56, P. I PR., Dec. 1957, pp. 1141-43.

²⁹ Zbigniew Radwanski, *Zadoscuczynienie za szkodę niemajątkową w świetle zasad prawa PRL*, P. I PR. pp. 101-129 (July-August, 1955).

³⁰ PROJEKT KODEKSU CYWILNEGO POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ. WYDAWNICTWO PRAWNICZE 156 (Warszawa, 1954). After the 1956 developments this institution was reintroduced in the 1960 draft of the civil code (Art. 833, p. 139) and entered the present Polish Civil Code (1964) as Arts. 444 and 445 covering not only bodily injuries but also deprivation of liberty and subjection of a female to lewd acts.

towards claiming money as indemnity for moral suffering and grief might be analogized to the attitude of some early Christians that money is something impure, dangerous to the soul and the chances for salvation. Therefore, money cannot atone for a moral wrong done and injustice suffered; only the purely material damage can be repaired. Money cannot wipe the tears away, contrary to the traditional age-old Polish saying (*nawiazka na otarcie lez*, "additional compensation wipes the tears away"). Here the basic communist attitude condemning money comes to the fore. There is another socialist reason. Work is in Marxist doctrine the only source of value in economics and the only morally justified way of earning a living. Income and enrichment without work is condemned. Indemnification for a moral wrong could create small capitalists, and this is undesirable.

3) Under Article 39 of the decree of March 16, 1928, concerning the contract of work of white-collar workers, the latter were entitled to three months' severance pay in the event of the dismissal occurring without important reasons or the employee leaving through the fault of the employer. This provision and the decree were still in force in 1952 when the Supreme Court decided that as a rule only one month's severance pay should be paid for the legal three-month period when the white-collar worker had started during this period to work in another socialized enterprise. For an employee to draw simultaneously a salary from two socialized enterprises while working for only one of them was considered contrary to the principles of social intercourse.³¹ This decision, strictly *contra legem*, was based on Article 3 of the General Provisions of Civil Law.

The rule established in the 1952 case was extended on a *fortiori* grounds by the Supreme Court to cases where the dismissed white-collar worker preferred to claim his legal three months' severance pay to accepting available job openings during this period.³² The motives were twofold: socialist ethics impose an obligation to work as a social duty and condemn gain without work. The state, as employer, was obviously interested in cutting down severance payment. A third reason may have been the desire to diminish the differences between the rights of manual workers and white-collar workers, inherited from Polish prewar legislation — in other words, socialist equalitarianism. The judicial abolition of the three months' severance pay requirement resulted in January 1956 in a decree providing for one month's severance pay if the dismissed employee fails to ask for reinstatement, but providing

³¹ Decision of Dec. 24, 1952, C 1803/52, P. 1 Pr., Nov. 1953, p. 736; and decision of a panel of seven judges of 13/27 October 1952, N-C 2004/52, *ibid.*

³² Decision of May 16, 1952, C 783/52 OSN no. II/1953, p. 99, and decision of April 12, 1954, II CR 470/54 OSN no. IV/1954, pp. 66-67.

three months' severance pay if he does.³³ Any payment received by the dismissed employee from another enterprise has to be deducted.

4) Quite radical was a decision in 1953 extending the use of Article 3 to the institution of prescription. The court declared that the use by a respondent of his right to refuse to satisfy a claim against which the statute of limitations had already become effective was contrary to socialist morality under the specific circumstances, and it could, therefore, be overridden by the court as an abuse.³⁴

The legal institution of prescription is a classic example of a discrepancy between certain parts of civil law and morality. The debtor is entitled by law to refuse to pay a debt he owes or to satisfy another just and well-founded claim of his creditor for the sole reason that the latter failed to sue him during the time prescribed by law. Prescription has its foundations not in morality but in considerations of public policy, making it desirable to clear up civil debts within a certain period and to protect debtors afterwards. By introducing the element of morality into the institution of prescription, the Supreme Court effectively undermined the whole institution and deprived the debtors of any reliance on the effects of the lapse of time.³⁵ It is interesting to note that by applying Article 3 to a possible objection against claims, Article 3 resulted exceptionally not in thwarting a claim but in strengthening it. This rather individualistic use of Article 3 makes it understandable why it was reasserted at least three times (1957, 1959, and 1962) in the post-1956 period by the Supreme Court.³⁶

5) A legislative decision of the Supreme Court of 1951 stated bluntly *contra legem*: "Homicide under the stress of emotion . . . may mean one thing in the capitalist states and something else in our society in view of the basic differences between bourgeois and socialist morals." Vengeance and jealousy arising from craving for power of man over man are considered base emotions. "An offender guilty of the crime from such motives cannot

³³ Art. 10 and Art. 11 of the decree of January 18, 1956, *re* restriction of admissibility of termination of labor contracts without notice and securing the continuity of work, J. OF L. no. 2, item 11.

³⁴ Decision of June 19, 1953, II C 2212/52, OSN III/54, item 75.

³⁵ The canon law attempted to modify acquisitive prescription on moral grounds, by requiring good faith in the adverse possessor, Fourth Lateran Council, canon 41, 22 SACRORUM CONCILIIUM NOVA ET AMPLISSIMA COLLECTIO (J. Mansi and others eds., Paris, 1903). For a discussion see Robert E. Rodes, *The Canon Law as a Legal System—Function, Obligation, and Sanction*, 9 NATURAL LAW FORUM 51 (1964).

³⁶ Decision of October 25 and November 7, 1957, 2 CR 332/56, OSN no. 4/1958, item 112; decision of April 8, 1959, 3 CR 678/58, OSP i KA 1961, item 3; decision of January 2, 1962, 4 CR 769/61, P. I PR., January 1963, item 2, pp. 150-153. In a gloss to the latter decision Zofia Policzkiwicz-Zawadzka and Aleksander Wolter admonish the courts to be particularly cautious when applying Art. 3 to the statute of limitations because the rationale of the institution of prescription in a socialist system consists first of all in the social interest and not only in protecting debtors. (p. 153)

invoke a state of strong emotions."³⁷ In other words, socialist morality overrode clear and precise provisions of the Polish penal code of 1932 still in force. The privileged type of homicide foreseen in Article 225, paragraph 2, was abolished for all cases where the strong emotion was vengeance or jealousy.

Judicial Enforcement of Class Justice. — Article 3 was also turned in the period 1950-55 into a vehicle of class justice. A version of socialist ethics was applied to the effect that in a lawsuit between a proletarian and a member of the bourgeoisie, the first must prevail, since the lawsuit in this case is a class struggle. The Supreme Court did not hesitate in 1953 to instruct the lower courts to be vigilant in detecting (particularly in lawsuits emanating from rural conditions) apparent or hidden elements of class struggle fought especially in proceedings about property or possession or easement. It also ordered the courts to gather on their own initiative all evidence revealing the real circumstances and relations and to ascertain the true class position of the litigants. The latter point may have a fundamental significance for the proceedings.³⁸

A far-reaching decision was made in 1951 by the Supreme Court in a divorce case. It declared:

Marriage should be in the first place an ideological community. Such a community cannot exist and develop when there are basically contradictory views concerning fundamental political and social problems especially when one of the spouses represents a progressive ideology and the other a backward one.

The view of the lower court holding that such differences cannot constitute a basis for divorce was branded as erroneous.³⁹

³⁷ Decision of Jan. 23, 1952, I K 1575/51, P. 1 Pr., May-June 1952, pp. 895-897.

³⁸ Decision of the full civil chamber of June 27, 1953, C. Prez. 195/52, concerning the application in civil contentious proceedings of Art. 236 of the code of civil procedure quoted in KAZIMIERZ LIPINSKI, *KODEKS POSTĘPOWANIA CYWILNEGO*, WYDAWNICTWO PRAWNICZE 183 (Warszawa, 1957).

A rather interesting case of 1952 has been reported. A landlord of an apartment house in a city in western Poland sued a worker, his tenant, for removal of a pigeon coop from the back yard where he had placed it without his consent. The lower court was in a quandary because the defendant, lacking legal arguments, emphasized that he should not be deprived of a working man's favorite hobby, pigeon raising, by a bourgeois landlord. The lower court evaded a decision by using the procedural device of asking the Supreme Court to decide the following "legal problem raising serious difficulties": "Is the building of a pigeon coop by a tenant-worker in a back yard of an apartment building in a city admissible, and does the demand to remove the pigeon coop raised by the owner of the apartment house violate Art. 3 of the general provisions of civil law?" The Supreme Court dealt in its decision seriously and at considerable length with these questions and stressed strongly the class character of the lawsuit but preferred not to answer them one way or another and not to decide the case on its merits. It returned the case to the lower court for further elucidation. (Zygmunt Ziembinski, *Przyczyny formalne pytań prawnych z art. 388 kpc*, P. 1 Pr., August-September 1962, p. 351.) The end result could not be ascertained, but chances of the landlord winning his case in 1952 were poor indeed.

³⁹ Decision of Dec. 11/29 1951, C 1083/51, P. 1 Pr., Nov. 1952, p. 729.

The case recalls the Catholic *Privilegium Paulinum* by which a marriage between a pagan and a spouse newly converted to the Christian faith could be annulled in case the other spouse persisted in his pagan errors.⁴⁰ The religious analogy is by no means a coincidence.

The principles of social intercourse, narrowly construed along the lines of class struggle, were again introduced into divorce cases in 1952 and 1955, both times in directives addressed to the lower courts and binding for them under Article 24 of the statute on court structure as amended in 1949. Both directives stressed socialist morality as a foundation of marriage and family and used "the moral sentiments of the toiling masses" as a yardstick.⁴¹ However, the 1955 directive was less rigid, less specific and retreated from highly controversial moral positions enunciated in 1952.

Similarly, those principles were chosen in 1954 by the Supreme Court to guide the judgment of courts about the importance (or lack of it) of reasons for dissolution of an adoption.⁴² In marriages and adoptions across the class frontier bourgeois origin became a serious handicap in court.

An outspoken class struggle decision of 1951 related to rural conditions. One peasant tried to recover from another a plot of land which he had sold and transferred before World War II without a formal contract. The Supreme Court ordered the lower court to ascertain whether the peasant seller was compelled by the poor economic conditions prevailing in capitalist Poland for undersized farms to sell his plot of land to a kulak; to ascertain, in short, whether he was a victim of exploitation by the buyer. At the same time another possibility was also to be explored, namely whether due to the prevailing land hunger in Poland, the sale did not have a speculative character so that the claim for recovery would clearly constitute an abuse of right. The Supreme Court stressed furthermore that the present class status of the litigants had to be ascertained, and that this in no case could be ignored because in an individualistic peasant economy capitalism is being born "every day and every hour." The implication was clear: it was the *kulak* who had to lose the lawsuit and not the poor peasant. In addition, the decision proclaimed the obligation of the courts to apply *ex officio* Article 3 without waiting for any objection or motion of one of the parties to this effect.⁴³

A quite perverted sense of class morality and class justice was displayed by a lower court in a criminal decision of 1954. A man was held guilty of

⁴⁰ GRATIAN, DECRETUM 2.28.1. 2-9 in CORPUS JURIS CANONICI (ed. Friedberg, 1879).

⁴¹ Resolution of the full civil chamber of April 26, 1952, C. Prez. 798/51, concerning the application of Art. 30 of the family code, P. I Pr., July, 1952, pp. 113-118. Resolution of the full civil chamber of May 28, 1955, concerning the application of Art. 29 of the family code, P. I Pr., Nov., 1955, pp. 847-849.

⁴² Decision of February 22, 1954, C 1669/53, NOWE PRAWO, July-August, 1954, p. 184.

⁴³ Decision of Dec. 11, 1951, C 1573/51, P. I Pr., Dec. 1952, pp. 881-882.

an administrative misdemeanor (taking possession of an apartment without obtaining an assignment) for which fine or jail was the penalty under a 1945 decree. The lower court in Wroclaw decided to jail the accused for three months instead of fining him, because a fine would constitute a serious injury to the family of the accused, who was a poor worker. The Supreme Court had to reprimand the lower court and to explain that according to the lower court's decision poor citizens would have to be jailed and richer ones only fined for the same offense. That would constitute sheer discrimination and violation of the principles of equality of all citizens before the law.⁴⁴

It may be found ironical that the Stalinist practice of socialist morality by a court in Poland brought about a decision which accords with penal legislation prevalent in Western Europe during the time of more or less Enlightened Absolutism in the prerevolutionary eighteenth century. It was commonplace at that time in penal provisions in codes and regulations to stipulate fines for members of the propertied classes (including the third estate) and arrest for the members of the nonpropertied class — and this for an identical offense. Enlightened Absolutism found it natural that a working man cannot be punished by fines for the simple reason that he has no money. Communist judges inspired by socialist morality have surprisingly reached the same conclusion.

Prohibition of Speculation and Profit without Work. — In the period 1950-55 the communist regime in Poland introduced in cities a tight administrative regime concerning apartments and offices as well as commercial and industrial rental space. Rents were kept at the prewar level, thus making them purely nominal in view of inflation. The protection of tenants was neither the main nor the true reason for this. The landlords had to be deprived of gaining profit from their property without work.⁴⁵ Along the same line, the Supreme Court decided in 1950 under Article 3 that termination of a lease of an office or commercial building was inadmissible (even if the space was exempted from the public regime of rental space) if the termination was solely effected in order to achieve an excessively high rental under the prevailing circumstances.⁴⁶ Similarly, receiving an excessive rent for leasing a part of a one-family house (exempted from public regime) was inadmissible.⁴⁷ It must be noted that everything beyond the more than mod-

⁴⁴ Sentence of December 18, 1954, I KRN 1038/54, P. 1 PR., February 1955, item 3, p. 343.

⁴⁵ Jan Gwiazdomorski, review of a book by Zbigniew Radwanski, *Najem mieszkań w świetle publicznej gospodarki lokalami* (Warszawa, 1961), P. 1 PR., May-June, 1962, p. 934.

⁴⁶ Decision of Nov. 21, 1950, C 345/50, P. 1 PR., April 1951, p. 741.

⁴⁷ Decision of Jan. 24, 1956, R IV 60 65/55, NOWE PRAWO, June 1956.

erate rates paid by the State for its offices and enterprises was considered "excessive."

The Duty of Extracurricular Social Work. — Marxist ethics are strongly anti-individualistic and stress the moral obligation of the individual to society and mankind. This obligation to work for collective goals has several features. Mass solidarity and, on the higher level, "proletarian internationalism" come, at least in theory, first. Obligations of Communist Party members to the party belong in the same category. A moral obligation to support actively the goals set by the state extends to all citizens. This duty is by no means satisfied by working for a salary in one's own vocation. What it demanded is extra work, after working hours, without any salary, in what is usually called "social work." There are drives and campaigns concerning local or national objectives, inspired and directed by the Communist Party with mass participation. "Social work" may also consist of a permanent unsalaried activity in a trade union, youth organization, orchestra, or even a sports club. The moral obligation to work overtime for the collective was changed by the Supreme Court in 1953 and 1954 into a legal duty under Article 3. The Court declared that the citizens' duty to do social work represents one of the principles of social intercourse in the People's State. Therefore, a consistent refusal by an employee to take part in social work is sufficient ground for termination of his work contract.⁴⁸ The most severe economic penalty in a communist economy, i.e., loss of job, tantamount to starvation, was decreed for infringement of a purely moral obligation.

Privileges of the State Economy. — The condemnation of private enterprise as exploitative entails a privileged position for state enterprises and cooperatives in relation to the remnants of private enterprise where it still coexists with the socialized sector. A sweeping ruling was made by the Supreme Court in 1952: "An individual cannot use his right deriving from his private property in such an inconsiderate manner as to create serious difficulties [*sic*] in the implementation of tasks which a unit of the socialized economy has to achieve according to the economic plan."⁴⁹

Another broad interpretation was made by the Supreme Court in 1952. Invoking Article 3, it transferred the administrative regulations binding state

⁴⁸ Decision of April 29, 1953, II C 243/53, *Przegląd zagadnień społecznych* no. 6/54, p. 54; decision of July 29, 1954, II C 757/53, OSN no. II 1955, p. 86. A somewhat less rigid view was taken in a decision of August 5, 1954 (II C 18/54 and II CR 594/54, P. 1 Pr., Jan. 1955, p. 152): dismissal may be justified when the refusal to undertake social work creates such a loss of confidence toward the worker that his further employment even for a short time becomes impossible and when the refusal reveals such a hostility on the part of the worker that his further presence would endanger the normal activity of the enterprise.

⁴⁹ Decision of Oct. 16, 1952, C 1940/52, P. 1 Pr., May-June 1953, p. 821.

enterprises in their mutual relations into the legal relations between private entrepreneurs and state enterprises. These regulations thereby superseded civil law that was still in force. The Court declared it inadmissible that the shrinking private capitalist sector of the economy should enjoy a more far-reaching legal protection of its interests than the units of the socialized sector. Therefore, the norm regulating civil relationships inside the socialized sector can also regulate relations outside this area. This may result despite the fact that these norms do not immediately bind as legal norms outside of the socialized sector.⁵⁰ This was a far-reaching decision *contra legem*.

Another privilege *contra legem* was granted to state enterprises by a decision of 1951. The Supreme Court ruled that the "socialist employer" is not affected by the one-year statute of limitations provided for in Article 473 of the code of obligations for recovery of shortages from an employee. The reasoning was that the latter statute of limitations concerns only claims arising exclusively from the contract of work. The present claim arose, allegedly, not from a contract of work but from the fundamental principles of the popular legal order (which call for special protection of socialist property).⁵¹ The vague constitutional principle was used to override a clear and specific legal provision without the benefit of implementing legislation.

The court's favoring of state enterprises went even beyond granting them a privileged position. There was a tendency to uphold even an action contrary to the interest of a worker when it happened to be committed by a state enterprise. A decision of 1953 illustrates the point. The Court stated that termination of the work contract with an employee by the management was valid and effective even if the collective labor agreement contained a requirement that the dismissal should be effected in agreement with the factory council (*rada zakladowa*) and the management had failed to seek the agreement of the factory council.⁵² Factory councils had been introduced as workers' representation in industry by decree of February 6, 1945.^{52a} The decision of the Supreme Court was in disregard of Article 445, part 1 of the Polish code of obligations of 1933, which provided that a collective labor agreement has the force of contract between persons affected by it.

B. *The Transitional Period.* The Supreme Court was not entirely consistent during the period 1950-56 in pressing a sweeping application of Article 3. It vacillated at the beginning and began to apply the brakes seriously in

⁵⁰ Decision of Jan. 9, 1952, C 1940/52, P. I PR., May-June 1953, p. 821.

⁵¹ Decision of December 4, 1951, C 1539/51, P. I PR., August-September 1952, pp. 372-373.

⁵² Decision of December 30, 1953, OSN IV/1954 item 84, quoted in OSN IV/1961, item 115, p. 86.

^{52a} J. OF L. no. 8, item 36.

1955 and 1956 during the rising ferment preceding the June and October revolts of 1956.

In 1951 the Court decided that Article 3 was a basis for refusing legal protection and enforcement but did not constitute a source from which claims and rights could be derived, not even claims for reducing or changing the respondent's obligation.⁵³ The Court followed this ruling during the transitional de-Stalinization period in 1955, holding that the exclusive function of Article 3 consisted in sheltering the debtor but not in granting him any claims against the creditor.⁵⁴ This view, well-intentioned as it was as a way of avoiding the extremes of ideological bias, went counter to Western legal doctrine concerning abuse of right. It is accepted in the West that when, e.g., a neighbor suffers damages from an owner's using his own land to create noxious fumes, produce excessive noises, or dump chemicals, the property owner has to pay compensation. Abuse of right under such circumstances constitutes a tort. The Supreme Court initially upheld the Western position in 1950.⁵⁵ It was to return to it again in the post-1956 period.

Another attempt at restricting Article 3 was made in 1952. The Court stated that Article 3 can be applied only when the violation of principles of social intercourse is clear and evident, i.e., when "the use of norms of law would clearly offend the moral sentiment of the toiling masses."⁵⁶

The onrush of Supreme Court semilegisative decisions based on Article 3 and changing specific provisions of the law *contra legem* occurred in 1951-53. During the last year of this period an important attempt was made to stop the proliferation of these decisions. The Court proclaimed that "the principles of social intercourse can never lead to a modification of explicit provisions of socialist law in the People's State."⁵⁷ The addition of the word "socialist" before "law" meant, however, that prewar Polish legislation, still technically in force, could be "modified" as originating from "a previous social formation" (as the pre-World War II period is now called in Poland).

Climactic action was taken much later during the refreshing era of free discussion of the errors and crimes of Stalinism preceding the Poznan riots and rebellion of 1956. A radical and dramatic return to legality was undertaken in February 1955 in a plenary resolution of the Civil Chamber of the Supreme Court:

People's legality means the duty of citizens to observe the laws in force.

⁵³ Decision of April 17, 1951, C 603/50, ZOSN no. 2/1952, p. 179.

⁵⁴ Decision of April 25 and May 7, 1955, IV CR 395/55, NOWE PRAWO no. 12/1955, p. 104.

⁵⁵ Decision of Nov. 18, 1950, C 221/50, P. I PR., April 1951, p. 90.

⁵⁶ Decision of Oct. 13 and 27, 1952, C 2104/52, OSN no. III/1953, p. 105.

⁵⁷ Decision of Sept. 5 and 19, 1953, C 1874/53, NOWE PRAWO, no. 2/54, p. 92.

While imposing this duty on the citizens it is not permitted to obscure the actual meaning of the law and to expose citizens to unexpected situations and surprises. It is a basic postulate of legality that insofar as possible, the law which has not been formally repealed be given full effect even if there is a need for reform of that law. Until this reform is introduced, strict observance of those provisions which are still formally in force, except when patently contrary to the Constitution, is the duty of all.⁵⁸

This was a complete reversal, a real breakthrough to legality, preceding by a full year the XX Congress of the Soviet Communist Party of 1956.

Later in 1955 the Court repeated its view declaring that "a presumption exists that the provisions of law are in conformity with the binding principles of social intercourse."⁵⁹ Note the word "binding" before "principles." It implies that there may exist some other principles of socialist morality not, or not yet, implemented by the present legal norms in force, but these non-binding principles may be ignored by the courts. A corollary of this presumption was announced by the Supreme Court during the post-1956 period: "Article 3 . . . cannot be applied when the statute itself provides in a concrete norm the legal basis for abolition or limitation of the right whose use the court is asked to consider as an abuse of right."⁶⁰ A political upheaval was needed to reach such a conclusion.

C. *The Post-1956 Period — Legality.* The most important feature of the anti-Stalinist drive was the widely and energetically voiced demand for a return to legality (*praworządność*), or as it is called in the United States, the rule of law. The decisive step had been already taken by the Supreme Court in its important resolution of February 12, 1955, set out above. Since in the Stalinist period Article 3 had been one of the means of perverting the law in the name of Marxist morality and had thus helped to create the pervading climate of insecurity, fear, and uncertainty as to one's legal rights, it had to be cut down to size.⁶¹

The new spirit of legality was strongly evident in a decision of 1961 in which a cooperative was evicted by a landlord. The Supreme Court branded the behavior of the respondent cooperative as "illegal and arbitrary, com-

⁵⁸ Resolution of the full civil chamber of Feb. 12, 1955, P. 1 Pr., July-August 1955, p. 290.

⁵⁹ Decision of Nov. 3, 1955, III CR 999/55, OSN no. II/1956, p. 74.

⁶⁰ Decision of Sept. 11, 1957, 3 CR 888/57, OSP 1958, item 229.

⁶¹ Characteristic was the voice of a Polish appellate judge condemning the tendency of courts "to replace the whole [body of] law by Art. 3" and stressing the resulting danger of "legal nihilism." (Ignacy Rozanski, *O bledach w orzecznictwie niektórych sądów powiatowych przy stosowaniu art. 3 p. p. c.*, NOWE PRAWO, Oct.-Dec. 1956, pp. 138ff.)

pletely contemptuous of the rights of the owner of the building, violating in a flagrant manner the binding legal order.”

The sanctioning of such a conduct would under these circumstances violate the sense of legality. . . . A claim for eviction from a (non-apartmental) usable space (industrial or commercial) may be considered as inconsistent with the *generally founded* (*powszechnie ugruntowane*) principles of morality, and as inadmissible under Article 3 . . . e.g., when the execution of this claim would directly endanger a common and fundamental social interest. However, a demand for eviction cannot be considered an abuse of right only for the reason that a unit of the socialized economy has to be evicted, particularly when the actions of the latter, constituting the basis of eviction, consist in violations of the law. . . . A unit of the socialized economy does not enjoy in its relations with other persons any exceptional prerogatives not following from provisions of the law.⁶²

The extraordinary appeal (*rewizja nadzwyczajna*) of the Minister of Justice based on Article 3 and asserting an infringement of the interests of the People's State by the lower courts was rejected and the eviction upheld.

Several features of this decision besides legality are worth stressing. Although the phrase “sentiment of socialist morality” is still used, the latter has obviously changed profoundly. The landlord has again a chance of winning a lawsuit in court against a socialized enterprise when the law is on his side. There is no longer automatic bias in court for the state and cooperative enterprise and against the private citizen, even a landlord. And the Supreme Court does not hesitate to reject a procedural device by the Minister of Justice if it is convinced that his case is wrong. The court returns to the French doctrine of Duguit teaching that abuse of a right occurs if and when a general and fundamental social interest is directly endangered. Furthermore, the principles of socialist ethics are no longer those which are only preached by the Marxist doctrine; neither do they have to be imposed from above because they are not accepted by society. They have now changed into those moral principles which are, in fact, generally accepted and approved by the population.

Is socialist morality the same as socially accepted morality? An affirmative to this question seems implicit in a 1958 decision. The case concerned the validity of an agreement between husband and wife arrived at after the breakdown of their marital community through the husband's fault. He agreed to reimburse his wife for the costs of his higher education paid by

⁶² Decision of June 12, 1961, 4 CR 163/61, OSN no. II/1962, pp. 112-116 (emphasis added).

her during the marriage. The Supreme Court declared such an agreement not to run counter to the principles of social intercourse in a People's State and therefore valid. It added a reason: "such actions and agreements which find approval in society are not in contradiction to these principles."⁶³ Understandably, this decision was strongly criticized in a gloss printed simultaneously by Seweryn Szer, a prominent Soviet-oriented, orthodox Stalinist jurist.⁶⁴ Szer protested against a danger of "commercialization" of the relationship of mutual support in marriage, stressing the personal and moral character of marital relations. He did not attack directly the new conception of social morality. This new concept is now being freely used by leading Polish jurists in legal discussion.⁶⁵

A return to legality was accompanied by a revival of the tendency to dispense justice dispassionately and impartially by weighing the merits of each case and thus avoiding crude bias against former members of landowning gentry and bourgeoisie, solely because of their class origin. A good illustration of the new spirit may be found in a 1957 divorce decision concerning a former teacher of peasant origin and his wife, a rich widow from the landowning gentry. The question was whether the husband was exclusively guilty of the breakdown of the marriage community or whether the wife was also at fault, though to a lesser degree. The husband emphasized strongly that during their marital quarrels she hurled at him epithets which tended to deride his low social origin. There can be no doubt as to the result of such a confrontation in the Stalinist period. Now the court decided on the basis of the husband's overwhelming guilt: "if the behavior of the spouse who has initiated the breakdown is particularly flagrant and to be condemned, then even more serious transgressions of the provoked spouse (though, of course, relatively much smaller ones) can be considered as a justified reaction."⁶⁶

Sympathy for the unhappy, maltreated elderly woman is evident throughout the court's detailed presentation, and no trace of the old class bias can be found. The apparent disappearance of bias and hatred against the pre-war ruling classes reflects the stabilization of the communist regime in Poland and its acceptance by the population in the January 1957 elections rather than a revival of old class loyalties. The same reason helps explain, at least in part, why it is safe for the ruling communist party to tolerate the new

⁶³ Decision of June 13, 1958, 4 CR 548/58, P. I PR., Jan. 1960, pp. 176-178.

⁶⁴ *Id.* at 178-181.

⁶⁵ E.g., Tadeusz Rowinski in his gloss to a 1956 Supreme Court decision: "We do not sense the endeavor of the creditor to prevent his claim from lapsing (by statute of limitation) as being wrong or unjust. Therefore, Art. 3 . . . has been misapplied by the Supreme Court" (P. I PR., June 1961, p. 1039).

⁶⁶ Decision of September 10, 1957, I CR 1121/56, OSN no. III/1959, item 72, p. 52.

conception that the principles of social intercourse stand for socially approved and accepted morality. A substantial part of Marxist ideology has been actually accepted by the Polish intelligentsia, though in a Westernized version.

Under such circumstances, it is not surprising that Polish Marxists and jurists rediscovered the long-forgotten fact that Marxist ethics have also, at least in part, a *universal* content, embracing equally all members of the human race.

An interesting decision of 1960 dealt with the question whether in a vehicular homicide case the fact that the person killed was "an individual socially valuable in every respect" could be considered as an aggravating circumstance justifying a stiffer penalty. The Supreme Court answered in the negative, stressing the lack of deliberation on the part of the driver and the accidental determination of the victims of reckless driving.⁶⁷ But a more basic approach was visible and was brought boldly to the fore in a gloss by Igor Andrejew. Marxist ethics, he argued, are on this point completely in agreement with the Christian ethics. Both proclaim the "*sanctity of life*," of the life of every human being, irrespective of his social value to society. "Man is a purpose in himself overriding all other purposes—that is the universal human basis of the class directives of Marx's ethical system which it shares with Christianity."⁶⁸

Small wonder that the Supreme Court found it difficult to remain on this lofty level at all times. The spread of hooliganism induced it to a broadening of the doctrine concerning self-defense in criminal law. It held in 1960 that a person commits no excess of self-defense when, being attacked, he uses all available means to repulse the criminal attack on him, even if the proportion between the value endangered and the value sacrificed has been violated. The case involved a nocturnal assault of three drunk individuals on a passerby who used a knife in self-defense and caused the death of one of the assailants. The defendant had a bicycle when the attack occurred, but the Supreme Court declared that the person attacked was not obliged to flee.⁶⁹ This broad construction of the right of self-defense, even at the expense of human life, was reiterated in 1962.⁷⁰ Both decisions were immediately criticized as violating Article 3.⁷¹ It was argued that such a broad right to kill in self-defense, irrespective of the disproportion of values involved and under circumstances when such drastic action was not absolutely neces-

⁶⁷ Decision of January 5, 1960, IV K 1015/59, P. 1 PR., December 1961, p. 1071.

⁶⁸ *Ibid.*

⁶⁹ Decision of Oct. 12, 1960, IV K 582/60, P. 1 PR., April-May 1961, p. 836.

⁷⁰ Decision of January 10, 1962, III K 958/61, P. 1 PR., August-September 1962, p. 496.

⁷¹ Glosses by Henryk Rajzman in P. 1 PR., April-May 1961, p. 838; and by Janusz Wojciechowski in P. 1 PR., August-September 1962, p. 499.

sary, constituted an abuse of right of self-defense, as a violation of the principles of social intercourse.⁷² What seems on the surface to be a return to traditional Polish individualism was motivated by the mounting plague of nightly assaults on passersby by drunken young hooligans in Polish cities.

A decision of 1959 runs towards a universal morality embracing all human beings without distinction. The matter involved a mentally abnormal tenant in an apartment house. The Supreme Court expressed the view that fellow tenants "are required in accordance with the principles of intercourse to practice a certain tolerance toward their mentally abnormal fellow tenants, to disregard certain of their doings and not to provoke them to undesirable reaction." At the same time, however, the court ordered the defendant to be confined to a mental asylum.⁷³

Partial Return to Traditional Morality. — Socialist morality as reshaped after 1956 very often resembles traditional Polish moral values particularly in the field of intramarital and family relations. The reception of traditional values in these fields was greatly facilitated by the fact that the communist revolution in the Soviet Union had, after an initial hostility, taken over the institution of a monogamous family and now supports this institution in a spirit of Victorian Puritanism. A 1960 decision of the Supreme Court where the court specified the moral duties under Article 3 of a good son toward his father came easily. The father allowed his son to build a house on the father's plot of land and promised to donate it to him, but later went back on his promise. The son physically assaulted and insulted the father and was punished by a fine in criminal court. Thereafter, the son sued the father for transfer of title to the plot, because he had built in good faith. The Supreme Court considered his claim an abuse of right under Article 3, stressing that it was his moral duty to persist in his previous behavior as a good son toward his father, even after the latter had gone back on his promise.⁷⁴

A moral conflict between the desire of the spouses to have children and the danger to the wife's health was resolved in favor of the latter by the Supreme Court in 1959. The wife refused to undergo a dangerous cure destined to remove a cause of sterility. The Court stated that having children is one of the purposes of matrimony; a sterile spouse is supposed to undergo necessary medical treatment. However, the demand of a spouse

⁷² Such a broad right of self-defense was advocated by prominent Polish criminologists (Sliwinski, W. Wolter) of the individualistic, liberal school before World War II, but not by theoreticians of the Catholic school (E. Krzymuski). The courts before World War II followed generally the individualistic line.

⁷³ Decision of February 2, 1959, 2 CR 772/58, OSN no. IV/1960, item 96.

⁷⁴ Decision of January 13, 1960, 2 CR 1013/59, OSN no. III/1961, item 67, p. 34.

cannot exceed the limits of common sense; it cannot extend to a demand that the other spouse sacrifice her health.⁷⁵

A strongly traditional flavor is found in a 1960 decision. An employee was summarily fired without legal grounds. A lower court ordered his re-hiring in his previous job. The employer (a socialized enterprise) complied but fired him again the same day. The Supreme Court declared that since the second dismissal was a chicanery, it constituted an abuse of the employer's right, an abuse colliding with the principles of social intercourse in People's Poland. Therefore, the employer's action might be the foundation of the employee's claim that his former job be again restored to him.⁷⁶ The lack of partiality in favor of a socialized enterprise was notable. The Supreme Court correctly regarded the abuse of right in this case as a tort creating a claim for restitution on the part of the aggrieved employee and justly disregarded its own well-intentioned but erroneous decision of April 17, 1951, mentioned in Part B.⁷⁷

The Collectivist Factor. — It would be wrong to assume that the upheaval of 1956 turned Marxist ethics of the Stalinist type into the pre-World War II kind of late bourgeois morality mitigated by the spirit of the welfare state. That was not the case; no such result was desired. The aim was to achieve a sort of humanistic, Western-style socialism along the lines of the left wing of the British Labor Party or the kind of state socialism practiced in Sweden or Finland. The achievement fell short of this goal. What is important to remember is that the revolt was not inspired by a revival of individualistic values and thinking along the line of the Manchester school of liberalism; the superiority of collective, particularly notional, values over individual ones was never questioned. What was passionately desired was more personal and political freedom and legal security — the more the better, a Western-style democracy inside the socialist state. A balance between the public and the individual interest was sought, a balance fair and acceptable to both.⁷⁸

⁷⁵ Decision of December 2, 1959, 2 CR 74/59, OSN no. I/1961, item 14, p. 63.

⁷⁶ Decision of September 29, 1960, 3 CR 541/60, OSN no. IV/1961, item 115, p. 85.

⁷⁷ Such decisions appealing to traditional morality under Art. 3 were not completely absent from the pre-1956 period either. For example, a person accepted by a family of tenants of an apartment as a sublessee obtained from the housing authority the assignment of the apartment to him and sued the tenants for eviction. His claim was branded as an abuse of right, because he violated the moral obligation of good faith (*lojalnosc*) binding citizens in their mutual relations under Art. 3. (Decision of March 4, 1953, IC 61/53, OSN no. 1/1954, p. 51.) In more traditional language: deceit and fraud are not protected by the law.

⁷⁸ I avoid deliberately the term "compromise," because it has a bad moral connotation not only among the communists but on the Continent generally. The Anglo-Saxon conviction that a compromise of interests is an honorable thing as long as you are firm on matters of principle is not convincing to continental Europeans. They doubt that a line can be drawn in practice between the two and are less inclined to admit that a specific

A reflection of this spirit can be found in a 1960 decision concerning responsibility for damages arising from car accidents. The problem was whether the owner of a car is responsible for damages inflicted by an accident caused by the driver in his employ when the latter uses the car for his private purposes against the owner's express or presumed will. The answer in a 1950 decision was in the negative. In 1960, a quasi-legislative plenary resolution established positive responsibility in such cases. The fact to bear in mind is that automobiles and trucks are owned as a rule in Poland by state offices and enterprises. Only in recent years has there been an increase in private vehicles. The court effectively pointed out the need to divide and spread the burden of damages striking the individual among the society through the socialized organizations who were the main users of these machines. The victim of a car accident is usually weaker economically and has to get a large measure of legal protection. Only the removal of a car from the disposition of the owner and its use by a stranger through an illegal act cancels the responsibility of the owner.⁷⁹ The significant point in this resolution and in a great number of other decisions of the Supreme Court after 1956 is that the balance between the public and the individual interest tends to be struck at a point where the interests of the individual are being satisfied, particularly if he is a worker or employee or a victim in a damage suit. The fact that a state or cooperative enterprise is the defendant serves no longer as a sufficient reason to decide in its favor. There are decisions going still in the opposite, Stalinist direction, but they seem to be in a minority, the exception rather than the rule.

No one should jump to the conclusion that the new spirit of social care for the welfare of the aggrieved and economically weaker individual embraces a sympathy for the person deriving profit without work from his property. In such a confrontation of a private capitalist with a state institution the old socialist condemnation of profit without work still holds good. Or maybe it has slightly changed into something similar to the Catholic medieval doctrine of *iustum pretium* but with an important difference: the price charged to a state institution has to be more modest than the one charged to a private person. A 1957 decision holds that the parties are entitled to enter into a

conflict is over interests; they prefer to translate it into a clash of principles. It is therefore symptomatic that the Polish Supreme Court in 1958 avoided speaking of a "compromise," but preferred to advocate "a wise taking into account" of both the right of a worker and the interest of the (state) enterprise, since for ideological and constitutional reasons they cannot be completely opposed. (Decision of September 23, 1958, 4 Co 18/58, P. 1 Pr., December 1959, p. 1085.)

⁷⁹ Plenary resolution of the full civil chamber of October 29, 1960, IV, 20/60, OSN no. III/1961, item 61, pp. 5-10; compare with decision of December 20, 1950, LC 986/50, ZOSN, 1951, item 1.

contract fixing a rent higher than the market level for office space, but such contracts are always subject to appraisal from the point of view of their harmony with the principles of social intercourse. If the party undertaking the obligation to pay rent is a unit of the socialized economy, the appraisal must be particularly penetrating because the constitutional principle of special protection of social property has to be applied. In other words, if a contract entered into by a unit of the socialized economy stipulates for the lessor a benefit substantially departing from the average benefit due, such a contract is as a rule null and void as contrary to the principles of social intercourse. Rent should be fixed within moderate limits if the lessee is a unit of the socialized economy.⁸⁰

The condemnation of profit without work does not extend to royalties from patents or creative work of authors and artists. In 1960 a lower court dismissed a claim for royalties from a patented device used by a factory and expressed the view that the claim "is based on provisions deriving from a past social formation" and contrary to Article 3; it was strongly rebuffed by the Supreme Court, which held that the postwar People's legislation has amended but otherwise retained in force the prewar protection of patent rights. The legal capacity of owners of patent rights to exploit them profitably through contracting license agreements or otherwise is an important incentive for making discoveries and favors technological progress. Therefore, the enforcement of provisions protecting patent rights, far from being contrary to the structure and purposes of the People's State, is furthering its essential interest.⁸¹

D. *The Civil Code of 1964.* Alongside with a return to socialist legality and a change in the contents of socialist morality, which lost its cutting edge, the upheaval of 1956 brought about demands for the complete removal of Article 3. The latter was accused of creating the danger of "legal nihilism" through a tendency of many courts to "substitute Article 3 for the whole [body of the] law."⁸² The new draft of a civil code actually omitted such a general provision.⁸³ But the lack of any rule governing misuse of rights provided to be a too radical step both for routine-minded practicing Polish lawyers and for Stalinist-oriented party members who managed step by step to regain influence after 1959. During the public discussion of the 1960

⁸⁰ Decision of May 20, 1957, I CR 589/56, OSN no. III/1959, item 68.

⁸¹ Decision of September 15, 1961, 3 CR 1029/60, P. I Pr., March 1962, item 3, p. 540.

⁸² Ignacy Rozanski, *op. cit. supra*, note 61.

⁸³ PROJEKT KODEKSU CYWILNEGO POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ, WYDAWNICTWO PRAWNICZE 7 (Warszawa, 1960). It included, however, the principles of social intercourse in a number of other articles.

draft, strong opposition developed against total omission of Article 3. Finally, the following provision was included as Article 5 of the new civil code of 1964 (in force since January 1, 1965):

A right cannot be exercised in a manner contrary (*sprzeczny*) to its social-economic destination or to the principles of social intercourse in the Polish People's Republic. Such an action or omission of the entitled (person) is not considered as an exercise of a right and does not enjoy the protection [of the law].

The introduction of a second measuring rod (social-economic destination) was, according to official comment, intended to make the criterion of appraisal more specific.⁸⁴ Such a result might have been achieved by a cumulative coupling of both criteria. Instead they have been joined only alternatively.⁸⁵ Abuse of a right exists already when a contradiction with only one of the two criteria is present. Therefore the question of what has to be understood as the content of "principles of social intercourse" remains as crucial as before.

The only point beyond dispute in Poland is that those principles do not form part of the positive written law which refers to them; they are extra-legal "moral" or "social" principles.⁸⁶ Most writers seem to consider them as referring to moral convictions, values, and attitudes prevailing in "the minds of citizens," representing a kind of "social conscience." The latter terms would seem to suggest values and attitudes accepted by the population. These moral standards are not static; they evolve and change as a result of transformations of social and economic relations.⁸⁷

Some attempts have been recently made, based on Supreme Court decisions, to formulate more concretely the contents of those principles.⁸⁸ It has been suggested that the role of those principles consists in the protection of the "general and basic social interest" (Meszorer) or of "interests of a higher rank" (Rybicki) against formally legal claims. The examples quoted by the latter author (until recently Polish Minister of Justice) suggest that some of

⁸⁴ PROJEKT KODEKSU CYWILNEGO POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ 203 (Warszawa, 1962).

⁸⁵ Art. 281 of the Greek Civil Code of 1940 contains a similar alternative conjunction of at least three criteria: 1) *bona fides*, 2) *boni mores*, and 3) the social or economic purpose of the right exercised. There is, however, an important difference. To be prohibited, the exercise of a right must obviously ("manifestment") transgress at least one of those limitations.

⁸⁶ ALEKSANDER WOLTER, *PRAWO CYWILNE, ZARYS CZĘŚCI OGÓLNEJ* 62-64 (Warszawa, 1963).

⁸⁷ Jan Wasilkowski, *Metoda opracowania i założenia kodeksu cywilnego*, P. I. PR., May-June, 1964, p. 745.

⁸⁸ Albert Meszorer, *O zasadach współżycia społecznego*, *NOWE PRAWO*, Jan. 1964, pp. 9-20; Marian Rybicki, *Znaczenie Kodyfikacji prawa cywilnego w okresie budownictwa socjalizmu*, *NOWE PRAWO*, June 1963, pp. 616-617.

those "higher interests" represent socially useful institutions (pharmacy, kindergarten, peasant farm in eviction cases), while others are moral values (in cases of economic exploitation, the guarantee of a minimum standard of life to the debtor). That would place the principles somewhere between the Stalinist belligerence and rigidity of 1946-1956, and the Westernized humanistic social-minded attitude of the 1956-58 period. The contents of socialist morality still remain vague.

Extensions. — The importance of socialist ethics has been strongly enhanced by the introduction of its principles into as many as 26 other specific articles of the new civil and family codes of 1964. Some of them represent key provisions such as the definition of the right of property⁸⁹ and the provision governing the admissibility of divorce.⁹⁰ Such a wide dissemination throughout the civil law of a somewhat nebulous yardstick was deliberately undertaken by the authors of the new civil code in order to make its provisions flexible and to enable the adaptation of the code to the requirements of a changing social and economic structure.⁹¹

The authors certainly were familiar with the vehement attacks made by Soviet jurists and their East German imitators against the introduction of "general clauses" based on morality into the German and Swiss capitalist civil codes of the period of imperialism. Such clauses were branded as symptoms of bankruptcy of bourgeois legality.⁹² It seems therefore that the new Polish general clauses based on morality represent potential escape clauses from socialist legality. They create the possibility of overriding legal rules if politically necessary.

Limitations. — But this danger seems a thing of the future. Since 1961 an obvious tendency in the opposite direction has become visible in Poland, a trend to restrict and to weaken the application of Article 3 (since 1965 Article 5). The problem arose in connection with lawsuits "on a massive scale" for eviction of purchasers and possessors of peasant farms and lots informally acquired before 1957, i.e., without the legally indispensable notarial deed of conveyance, and whose sellers legally still remained the owners. Such morally questionable lawsuits hitherto had almost unhesitatingly been rejected as contrary to Article 3.⁹³ An increasing number of them now coincided with the initiation

⁸⁹ Art. 140 of the civil code of 1964. The inclusion of socialist morality into the very contents of the right of property as its intrinsic limiting barrier constitutes a significant change.

⁹⁰ Art. 56, para. 2 and 3 of the family code of 1964.

⁹¹ Jan Wasilkowski, *op. cit. supra* note 87, at 745, and Marian Rybicki, *op. cit. supra* note 88, at 617.

⁹² See, e.g., HANS KLEINE, *DAS ZIVILRECHT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK* 56-57 (Berlin, 1958) ("It is a small step indeed from the general clause to the Fuehrerbefehl [order of the Fuehrer]").

⁹³ See text to note 40, *supra*.

by the party and the government of a policy aimed at the prevention of the atomization of peasant farms by sale, donation, and inheritance in the interest of raising farm productivity.⁹⁴ The protection by courts of purchasers of small plots and farms below the newly introduced legal minimum size ran counter to this policy. Therefore a Supreme Court decision established in 1961 that Article 3 does not give the right to reject the claim for recovery by the formal owner and seller of the lot once and for all. The court may only postpone *temporarily* the eviction of the purchaser and possessor in order to prevent hardship.⁹⁵

More general language was used in 1962:

The purpose of Article 3 does not consist in a cancellation of the rights of the creditor. It confines these rights within such limits which ensure that their implementation will not violate the principles of social intercourse. . . . The establishment of whether such violation takes place depends in each case on a consideration of all circumstances of a concrete factual situation. However, in view of a too hasty application of Article 3 in court practice and the resulting undermining of the stability of the creditor's rights, it must be emphatically stressed that an indispensable necessity represents the limit of application of Article 3. . . . When choosing restraints the court should pick the mildest one from the point of view of the creditor able to reach the goal envisaged by the legislator. . . . Therefore a rejection of the claim, cancelling permanently or for a longer period the right of the creditor can take place only in exceptional situations, when milder measures would not prevent an infringement of principles of social intercourse.⁹⁶

Even more extreme language can be found in a recent 1964 resolution:

The restrictions prohibiting the division of farms and excluding persons without proper qualifications from acquiring them aim at protecting a social-economic interest particularly important for the whole economy of our country. The observation of these restrictions is thus an economic necessity even in cases where it leads on the one hand to decision favorable to a person whose actions are questionable from the point of view of principles of social intercourse and on the other to results harmful to the other party. In other words, the social-economic interest consisting in maintaining a correct structure of farms is in such cases superior to other values which animate the proper administration of justice. It follows

⁹⁴ Statute of June 29, 1963, J. OF L. no. 28, item 168.

⁹⁵ Decision of September 11, 1961, OSP i KA, item 290/62 quoted in Aleksander Wolter, *Rola zasad współzycia społecznego w nowych Kodeksach*, NOWE PRAWO, Nov. 1964, p. 1039.

⁹⁶ Resolution of April 20, 1962, OSN item 7/63 quoted in A. Wolter, *op. cit. supra* note 95, at 1042.

that Article 3, which aims at mitigating, for reasons of morality, the harshness of law, should not be applied in such cases.⁹⁷

An almost complete reversal of positions has been accomplished at least as far as farms are concerned. Socialist morality is no longer considered practically over and above the law, overriding the latter when a conflict arises, but on the contrary, positive law overrides socialist morality when a specific party policy, translated into law, has to be put into effect.

At the same time, a sharply worded admonition was voiced by one of the authors of the new civil code against the still excessive use of the new Article 5. He indicated a number of limitations on its use, among others that the new civil code rejected the Soviet system of a presumption of fault; and he pointed out that there can equally be no presumption of an unethical use of legal rights. He asked rhetorically and with some bitterness: "Are things in Poland really so utterly bad that a claimant pursuing his rights before a court has to be *ex officio* x-rayed by way of a gadget called principles of social intercourse?"⁹⁸

It seems, therefore, that Article 5 is at present being played down, its use curbed, and its influence declining. This trend coincides with the general tendency in Poland towards stabilization and preservation of things as they are and the improvement of their efficiency within the present framework.⁹⁹ Nevertheless, the principles of social intercourse, firmly and broadly entrenched in the new Polish civil code, *may* be used any time in the future by the party and the courts as a lever and a tool to push Polish society and Polish economy a radical step or two towards the goal of full communism. Such a possibility has been deliberately left open.

III. CONCLUSION

THE COMMUNIST regime in Poland undertook during the years 1950-55 a Sovietization of Polish law by the unusual method of superimposing on the body of binding codes and statutes the general principles of Marxist ethical doctrine in its crude Leninist-Stalinist version. In the name of "socialist morality" the Supreme Court and the lower courts under its guidance overrode specific provisions of the law in force, paradoxically performing a quasi-legislative function contrary to the restricted powers of law application granted to the courts by communist constitutional doctrine. The years 1950-55 in Polish

⁹⁷ Resolution of September 10, 1964, III Co 45/64, OSN, 9/1965, pp. 3-4. A temporary postponement may be granted in exceptional cases.

⁹⁸ Wolter, *op. cit. supra* note 95, at 1042.

⁹⁹ See Aleksander W. Rudzinski, *The New Czechoslovak and Polish Civil Codes (A General Appraisal)*, 41 INDIANA LAW JOURNAL 33 (1965).

legal practice become in the light of what has since transpired an unsuccessful experiment in the introduction on a large scale of the rules of socialist morality into the body of the law.

The intriguing question posed by this lack of success is whether it indicates a universal incompatibility between morality and law and the wisdom and advisability of keeping them strictly apart. The answer to this very broad question seems to be in the negative. The years 1950-55 were unusual in Poland. A moral system — rigid, doctrinary, and fanatical, resented by the population as alien — clashed with a composite legal system consisting of two layers: one originating from the prewar late capitalist system and yet still in force, the second of recent communist origin. In this unusual situation, an attempt was made to impose hastily the principles of socialist morality as they had been established in the U.S.S.R. for a people with a different culture. Society in Poland was restive, and the attempt failed. However, this failure was not a total one. A Westernized, more humanistic kind of socialist ethics was accepted in the process by a large part of the Polish intelligentsia. The rejection of the Soviet-type moral code was accompanied by a partial conversion.

Since 1955 the Polish jurists have been seeking to solve their problem by three interconnected measures: (1) return to the priority of specific provisions of law in force over principles of morality, taking the form of a strong drive for "socialist legality," which may be a distant cousin of the Anglo-American concept of "rule of law"; (2) return to the traditional legal view that when the norms of morality are invoked by courts, there is in mind a system of ethics accepted and approved by society and not supported by doctrine; and (3) restriction of the rule of socialist morality to eliminate from the practice of law only the crasser and more flagrant discrepancies between law and socialist morality, thus preventing the situation where, as the Roman maxim goes, *summum ius summa iniuria*. Here again the strong qualification must be added that in spite of this limitation the role played by socialist morality in a legal system oriented toward Marxism is greater and more pervasive than the role played by morals in the West.

The lesson that may be learned from the Polish record in the years 1950-55 seems to be that if there exists too great a discrepancy between an alien moral code which has not (or not yet) been accepted by society and the legal system which society has come to approve over long years and to which it is accustomed, an attempt to impose such a moral code on the law and to enforce it by legal machinery will fail, and a breakdown of the legal system may ensue.

While such a lesson stands out from the Polish record, no one can over-

look the fact that in all societies there exists a certain tension between morality and law. Morality tends to demand more than the law requires. Sometimes morality may condemn some legal provisions as immoral. If the tension and the margin are kept within limits, as they are in the overwhelming majority of societies, the situation is healthy and dynamic and will give rise to gradual changes in law by adaptation to the moral conscience of society.

Parenthetically, it must be noted that the legal system itself develops its own ethos. The observance of law becomes a moral duty and a virtue. The conformity of an action to the law tends to become sufficient moral justification of it. This latter tendency may sometimes lead to moral obtuseness on the one hand and to a renewal of a conflict between law and morality.

Present-day communist Poland is still far from the "normal" tension between law and morality, and since 1958 there has been an uneasy balance between law and morality; recently some symptoms of backsliding have appeared. The Soviet-type of socialist morality has begun to reassert itself. The principles of social intercourse have been introduced on a large scale into civil and even criminal legislation. At present a drive is under way to diminish the use of these principles by the courts. But the primacy of law over morality established in 1955-56 is still insecure.