POLEMIKI

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Polish Jurisprudence in a Crooked Mirror

(a polemic with Tomasz Bekrycht and Rafał Mańko*)

1. *Introduction*. By 'jurisprudence', Tomasz Bekrycht and Rafał Mańko (the 'Authors')[1] mean legal theory and philosophy of law. Surprisingly, pursuant to the Authors, the period between 2000 and 2019, which they discuss extensively, belongs to the 20th century. The main part of the article relates to the period after 1990 and mentions almost exclusively books and articles published after 2000. In fact, the Authors give an extremely brief overview of the hundred years between 1900 and 2000 and deal with the first twenty years of the 21st century in a much more comprehensive manner.

Our claim is that this paper provides an inadequate, unbalanced, and rather skewed picture of Polish legal theory and philosophy of law. As a historical paper, it is obviously inaccurate, and as an overview, it does not serve its function very well. However, let us start with several general remarks.

Writing an overview of a discipline is not an easy task. Obviously, no author is able to give a full and detailed account. Authors have no choice but make a selection, as neither all scholars working in the discipline and all published papers and books can be included nor all topics covered. Such a selection cannot be fully objectivized, and a degree of discretion by the authors is unavoidable. However, there are also limits of such discretion. First, an overview must be balanced. The authors should accept that a certain approach or theory should not preclude them from devoting appropriate space in the overview to rival approaches or theories. Second, an overview should refer to papers and books which are representative of a given approach or theory and not to publications selected at random. Third, an overview must be unbiased, with authors refrain-

* T. Bekrycht, R. Mańko, *Polish Jurisprudence in the 20th Century: A General Overview*, Review of Central and East European Law 2020, vol. 45 (the 'Overview').

[1] The paper is available in open access on the journal website: https://brill.com/view/journals/rela/45/2-3/article-p181_181.xml (accessed 18 Nov. 2020). The Review of Central and East European Law (RCEEL) refused to publish our critical reply to this paper for reasons that remain not entirely clear.

ing from attaching excessive weight to the publications of their personal friends and collaborators. They must be very careful when referring to their own publications (we admit, however, that sometimes such a reference may be necessary). Fourth, if an overview is addressed to foreign readers, the authors should refer to publications which are accessible to foreign readers and, in particular, are written in English or any other international language (of course, it may not always be possible). We will argue below that none of these limits has been observed by the Authors.

In addition, an overview should be informative. A mere listing of people, topics and publications does not benefit the readers much. It is quite obvious for the reader that that this requirement has not been satisfied by the Overview.

One more remark: we deliberately chose not to refer to our own papers or books, as self-promotion is not our purpose. Rather, we aim to supplement the deficient description and the related misleading narrative by pointing to missing significant figures and sources, as seen from the perspective of an average reader of Polish legal theory. There is obviously much more that can be mentioned on any topic we – and the Authors – deal with. However, our aim is merely to provide a substantial supplement.

2. *Is the Overview balanced?* It is particularly difficult to discuss the part of the article which refers to the period between 1900 and 1990. The Authors devote just five pages (section 2) to this period, with few footnotes. Only two footnotes refer to original works of legal philosophers active in the last years of this period, namely Jerzy Wróblewski and Maciej Zieliński; all other footnotes mention only selected works of secondary importance, mostly ones published after 2000. We do not think that a foreign reader will benefit much from this. By way of example, we will refer to only one topic – normativism. Although in section 3 the Authors do mention one article by Kazimierz Opałek, they fail to mention other important critical accounts of normativism authored in the pre-war period by Jerzy Lande[2] and Czesław Martyniak[3]. With respect to the after-war period, they mention neither the fundamental book by Jerzy Wróblewski[4] nor important works of Kazmierz Opałek[5]; as far as more recent period is concerned, they ignore important books and papers by Monika Zalewska[6] and Tomasz Widłak[7].

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[2] J. Lande, *Norma a zjawisko prawne. Rozważania nad podstawami teorii prawa na tle krytyki systemu Kelsena* [Norm and Legal Phenomoenon. Investigations of the Fundaments of the Legal Theory from the Perspective of the Critique of Kelsen's System], Czasopismo Prawne i Ekonomiczne 1925, vol. 50, p 60–71.

[3] C. Martyniak, *Moc obowiązująca prawa a teoria Kelsena* [Validity of Law and Kelsen's Theory], Lublin 1938.

[4] J. Wróblewski, *Krytyka normatywistycznej teorii prawa Hansa Kelsena* [Critique of the Normativist Theory of Law of Hans Kelsen], Warszawa 1955.

[5] K. Opałek, *Überlegungen zu Hans Kelsens "Allgemeine Theorie der Normen"*, Schriftenreihe des Hans Kelsen–Insituts 2980, vol. 4.

[6] M. Zalewska, *Problem zarachowania w normatywizmie Hansa Kelsena* [The Problem of Imputation in Hans Kelsen's Normativism], Łódź 2018.

[7] T. Widłak, *Teoria i filozofia prawa międzynarodowego Hansa Kelsena* [Hans Kelsen's Theory and Philosophy of International Law], Gdańsk 2018.

We will now concentrate on section 4.2 of the Overview, titled 'New currents after 1989'. We begin, however, with the last paragraph of section 4.1, where the authors state: '[t]he traditional approach of Polish analytical jurisprudence has been continued after 1989, especially in the Poznań-Szczecin school and at the Marie Curie-Skłodowska University in Lublin. However, individual representatives of traditional analytical legal theory continue to be active in all Polish universities.' This statement is not just surprising, it is shocking. Leaving aside for the moment the vagueness of the term 'analytical legal theory' and the Authors' strict association of analytical legal theory with the word 'traditional', let us note that currently in Kraków, there are five tenured professors (by a 'professor', we mean a scholar with *Habilitation*) plus a number of scholars with a PhD degree, who, under the vague criteria adopted by the Authors, certainly work exclusively on analytical legal theory (and a few others who also work on other issues).[8] In Katowice, there are three professors, and in Warsaw, there are at least two; at both universities, there are also a number of younger scholars who work on similar matters. The statement that they all are 'individual [i.e. 'isolated' – authors' note] representatives' is obviously false because all the authors we have referred to, as well as many others who were not mentioned, do take part in discussions at both the intra-national and supra-national levels.

However, a far more important thing is the Authors' understanding of 'analytical approach'. Footnote 8 suggests that they believe that 'both analytical jurisprudence and Kelsenian normativism gave the impression that law is a phenomenon which can be grasped in an objective, neutral and "scientific manner"'. That may be true of some versions of normativism and of analytical jurisprudence prior to the publication of *The Concept of Law* by Herbert L.A. Hart, but it certainly is not true of contemporary analytical jurisprudence on the global scale, even leaving aside the question of its vague boundaries. Obviously, analytical jurisprudence, defined as a methodologically 'analytical' approach to law, does not suggest that law can be thoroughly and objectively grasped. Rather, what can be grasped through 'analytical' methods is most often only a partial meaning or a shared understanding of certain concepts in certain contexts. Most analytic legal philosophers do not harbour any more serious metaphysical ambitions. In particular, they do not wish to provide the necessary and sufficient criteria for the concept-term application (in the way the classical analysts from Oxford school had suggested). Nonetheless, they believe that careful and organized scrutiny of the way officials and legislators use legal terms is a means to elucidate their meaning, or that certain expressions of legislative intention or judicial opinion should be systematically paraphrased.[9]

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[8] Also in Kraków there is an independent research centre called Jagiellonian Centre for Law, Language and Philosophy, a place of cooperation between analytic philosophers and legal scholars. The Centre cooperates with analytic legal scholars from major European universities (Paris, Milan, Zagreb, Surrey, to name but a few). In this case it is particularly misleading to describe the scholars cooperating in this context merely as [presumably 'isolated' – authors' note] 'individuals'.

[9] It would also be unfair to describe all analytically-oriented legal scholars working in recent years at Polish universities as interested in 'traditional, analytic legal theory', as the Authors do. Some young Polish scholars engage in international discussions

The entire section 4.2 (pages 188–199, representing approximately two-thirds of the whole paper) is based on the assumption that all 'new currents' worth mentioning are non-analytical or that they even oppose analytical legal theory. The Authors are not quite consistent, as in sub-section 4.2.3, they briefly describe the theory of interpretation developed by Ryszard Sarkowicz. This quite innovative theory belongs, without a doubt, to the analytical stream.

We strongly disagree with the assumption that scholars whom the Authors tacitly count as part of the analytical tradition (and whom they therefore fail to mention at all) do not represent any 'new currents'. Let us provide a few examples. In providing these examples, we will accept the Authors' bizarre convention according to which the first two decades of the 21st century still belong to the 20th century. The examples are as follows:

The novel theory of interpretation developed by Marcin Matczak, found in his two books and a number of papers, published mostly in high-ranking international journals. His theory is based on Milikan's evolutionary theory and biosemantics as well as Kripke-Putnam semantics.[10]

Important works on the legal interpretation by scholars from Katowice (Zygmunt Tobor, Agnieszka Bielska-Brodziak, and Mateusz Zeifert), based on empirical research and cognitive linguistics.[11]

Innovative empirical research on the understanding of legal texts with the application of sophisticated psychological methods conducted by Marcin Romanowicz.[12]

Pioneering works on constitutional interpretation authored *inter alia* by Tomasz Stawecki, Jan Winczorek, Marek Smolak, and Sławomira Wronkowska.[13]

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regarding relatively new methods of analysis of the concept of law, like the Canberra-style analysis (P. Banaś, F. Gołba, *Canberra Style Analysis and Law: A Critique of Andrei Marmor's Farewell to Conceptual Analysis*, Ratio Juris: An International Journal of Jurisprudence and Philosophy of Law 2017, vol. 4(30), p 549–559)

[10] M. Matczak, *Summa iniuria. O błędzie formalizmu w stosowaniu prawa* [Summa Iniuria. On the Fallacy of Formalism in Application of Law], Warszawa 2007; M. Matczak, *Imperium tekstu* [Text Empire], Warszawa, 2019; M. Matczak, *Three Kinds of Intention in Lawmaking*, Law and Philosophy 2017, vol. 36, p 651–674.

[11] Z. Tobor, *W poszukiwaniu intencji prawodawcy* [In Search of the Lawgiver's Intention], Warszawa 2013; A. Bielska-Brodziak, *Śladami prawodawcy faktycznego: materiały legislacyjne jako narzędzie wykładni prawa* [Following the Real Legislator; Legislative Materials as a Tool of Interpretation of Law], Warszawa 2017; M. Zeifert, *Gramatyka przepisu jako przesłanka decyzji interpretacyjnej* [The Grammar of a Legal Provision as Grounds for Interpretative Decision], Katowice 2019, plus a number of their papers published in English.

[12] *Inter alia*, M. Romanowicz, *Cognitive Efficiency within the Context of Legal Expert Knowledge. The Eye-tracking Study on the Polish Legal Notaries*, Law and Forensic Science 2015, vol. 9.

[13] T. Stawecki, J. Winczorek (eds.), *Wykładnia Konstytucji. Inspiracje, teorie, argumenty* [Interpretation of the Constitution. Inspirations. Theories and Arguments], Warszawa 2017; T. Stawecki, *Autonomous Constitutional Interpretation*, 4(25) International Journal for the Semiotics of Law 2012, p 505–535; S. Wronkowska, *O niektórych osobliwościach konstytucji i jej interpretacji* [On Certain Peculiarities of the Constitution and its Interpretation], [in:] M. Smolak (ed.), *Wykładnia konstytucji. Aktualne prob-*

A novel account of purposive interpretation developed by Marek Smolak[14] and an important book on extensive interpretation authored by Krzysztof Płeszka[15].

Application of the Gricean and post-Gricean concepts of conversional implicatures to legal interpretation in a book by Izabela Skoczeń.[16]

Olgierd Bogucki's innovative works on the so-called functional interpretation of law.[17]

Agnieszka Choduń's series of books and papers on the language of law in the context of interpretation.[18]

The above examples (the list is by no means exhaustive) refer only to the theory of legal interpretation. Let us quote a few more examples of innovative approaches from other fields:

(i) The theory of validity developed by Andrzej Grabowski in his *opus magnum*, as well as his innovative papers on post-positivism; Andrzej Grabowski also translated from Spanish into English a forgotten paper by Herbert L.A. Hart, which was published in the *Oxford Journal of Legal Studies* with his comments.[19]

(ii) Development of the theory of legislation in the works by (*inter alia*) Sławomira Wronkowska, Mikołaj Hermann, Piotr Zwierzykowski, and Krzysztof Płeszka.[20]

(iii) Works on institutional facts and constitutive rules authored *inter alia* by Stanisław Czepita and Marek Smolak.[21]

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lemy i tendencje [Constitutional Interpretation. Current Problems and Trends], Warszawa 2016.

[14] M. Smolak, *Wykładnia celowościowa z perspektywy pragmatycznej* [Purposive Interpretation from the Pragmatic Perspective], Warszawa 2012.

[15] K. Płeszka, *Wykładnia rozszerzająca* [Extensive Interpretation], Warszawa 2010.

[16] I. Skoczeń, *Implicatures within Legal Language*, Springer 2019.

[17] O. Bogucki, *Model wykładni funkcjonalnej w derywacyjnej koncepcji wykładni prawa* [Model of Functional Interpreration in the Derivational Conception of Legal Interpretation], Szczecin 2016.

[18] *Inter alia* A. Choduń, *Aspekty językowe derywacyjnej koncepcji wykładni prawa* [Linguistic Aspects of the Derivational Conception of Legal Interpreration], Szczecin 2018.

[19] A. Grabowski, *Juristic Concept of the Validity of Statutory Law. A Critique of Contemporary Legal Nonpositivism.* Springer 2013; A. Grabowski, *The Missing Link in the Hart–Dworkin Debate,* Oxford Journal of Legal Studies 2016, vol. 36(3), p 476–481.

[20] To give just a few examples: M. Hermann, S. Wronkowska, *Intertemporal Issues in Constitutional Law: Basic Considerations*, [in:] J. Mikołajewicz, W. Szafrański, A. Godek (eds.), *The Intertemporal Problems – Polish Legal Perspective*, Poznań 2017, p 9–47; P. Zwierzykowski, *Nowelizacja jako sposób zmiany prawa* [Novelization as a Method of Changing the Law], Poznań 2016; M. Araszkiewicz, K. Płeszka (eds.), *Logic in the Theory and Practice of Lawmaking*, Springer 2016.

[21] S. Czepita *Reguły konstytutywne a zagadnienia prawoznawstwa* [Constitutive Rules as a Problem of Jurisprudence], Szczecin 1996; M. Smolak, *Prawo, fakt, instytucja* [Law, Fact, Institution], Poznań 2018.

(iv) A series of books authored by Wojciech Patryas on, *inter alia*, legal presumptions and performatives in law.[22]

(v) Fundamental analysis of legal principles in the books by Marzena Kordela and Sławomir Tkacz along with a number of articles on this topic authored by others[23].

(vi) Works on legal argumentation authored *inter alia* by Jerzy Stelmach, Bartosz Brożek, Andrzej Grabowski and Michał Araszkiewicz (mostly published in English)[24], as well as numerous papers on artificial intelligence and law published by Michał Araszkiewicz[25].

(vii) Important works on the role of precedent in continental legal systems authored *inter alia* by Leszek Leszczynski and Marek Zirk-Sadowski.[26]

(viii) Application of Brandom's analytic pragmatism to legal philosophy in numerous papers authored by Maciej Dybowski.[27]

(ix) Maciej Kłodawski's innovative works on redundancy in legal texts.[28]

The two sets of examples given above refer only to works which the Authors of the Overview would probably classify as the 'analytical approach'. We strongly believe that these examples demonstrate that the analytical approach can also be innovative. However, the Authors fail to mention many important non-analytical contributions. Let us thus list the most important omissions of the Authors. These include:

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[22] W. Patryas, *Próba wyjaśnienia domniemań prawnych* [An Attempt at Explanation of Legal Presumptions], Poznań 2011; W. Patryas, *Performatywy w prawie* [Performatives in Law], Poznań 2005.

[23] M. Kordela, *Zasady prawa. Studium teoretycznoprawne* [Legal Principles. A Theoretical Study], Poznań 2012; S. Tkacz, *O zintegrowanej koncepcji zasad prawa w polskim prawoznawstwie (Od dogmatyki do teorii)* [On the Integrated Conception of Legal Principles in Polish Jurisprudence (From Dogmatics to Theory)], Toruń 2016.

[24] J. Stelmach, B. Brożek, *Methods of Legal Reasoning*, Springer 2006; Bartosz Brożek *Defeasibility of Legal Reasoning*, Kraków 2004; J. Stelmach, B. Brożek, *Rationality and Discourse. Towards a Normative Model of Applying Law*, Warszawa 2007; A. Grabowski, *Judicial Argumentation and Pragmatics: A Study on the Extension of the Theory of Legal Argumentation*, Kraków 1999; M. Araszkiewicz, J. Savelka, *Two Methods for Representing Judicial Reasoning in the Framework of Coherence as Constraint Satisfaction*, in: *Legal Knowledge and Information Systems. JURIX: The Twenty-Fourth Annual Conference*, K. Atkinson (ed.), *Frontiers in Artificial Intelligence and Applications*, vol. 235, Amsterdam 2011, p 165–166, as well as numerous other articles written by him.

[25] *Inter alia*, M. Araszkiewicz, *Towards Systematic Research on Statutory Interpretation in AI and Law*, Kevin Ashley (ed.), *Frontiers in Artificial Intelligence and Applications*, vol. 259, Amsterdam, 2014, p 15–24.

[26] L. Leszczyński, J. McClellan Marshall, *Precedens w procesie orzekania. Perspektywa sędziowska w ujęciu porównawczym* [Precedent in Adjudication. The Comparative Judicial Perspective], Lublin 2019; L. Morawski, M. Zirk-Sadowski, *Precedent in Poland*, [in:] N. MacCormick, R. S. Summers, A. L. Goodhart (eds.), *Interpreting Precedents*, Routledge 1997, p 219–258.

[27] See, *inter alia*, M. Dybowski, *Teoria prawa wobec wyzwań pragmatyzmu analitycznego* [Legal Theory Facing the Challenges of Analytical Pragmatism], Archiwum Filozofii Prawa i Filozofii Społecznej 2017, vol. 1, p 17–33.

[28] M. Kłodawski, *Redundancja w tekście prawnym* [Redundancy in Legal Text], Toruń 2017.

(i) Numerous important books by Jerzy Zajadło and his team in Gdańsk, relating mostly to the fundamental ethical problems of law, including Radbruch's formula, the problem of *Mauerschützenprozesse*, and the problem of humanitarian interventions.[29]

(ii) Wojciech Załuski's important books, in which a conception of law based on the theory of evolution is developed.[30]

(iii) Although the Authors mention 'legal cognitivism' briefly (probably having in mind cognitive science), they fail to take note of several important books by Bartosz Brożek, published mostly in English, including his last book published by a top-ranking international publishing house.[31]

(iv) Several important works of Grażyna Skąpska, published mostly in English, relating to the socio-theoretical aspects of transformation in East and Central Europe.[32]

(v) Important publications of Andrzej Bator, Zbigniew Pulka, and Włodzimierz Gromski on, *inter alia*, instrumentalization of law and post-analytical legal theory.[33]

(vi) Jolanta Jabłońska-Bonca's important book on legal myths.[34]

Moreover, the Authors mention none of the numerous publications on the topic of human rights. They also seem to believe that Christian legal philosophy has ceased to exist, as they ignore publications of scholars from Catholic University in Lublin.

The above list of important 'new currents' that the Authors fail to mention in their Overview is certainly not exhaustive. Many others should be added.

We can envisage two types of arguments the Authors may use in their defence. First, they may argue that the assessment of which works represent 'new

[29] J. Zajadło, *Formuła Radbrucha. Filozofia prawa na granicy pozytywizmu prawniczego i prawa natury* [Radbruch's Formula. Legal Philosophy on the Border of Legal Positivism and Natural Law], Gdańsk 2001; J. Zajadło, *Odpowiedzialność za mur: procesy strzelców przy Murze Berlińskim* [Responsibility for the Wall. Mauerschützenprozesse], Gdańsk 2003; J. Zajadło, *Judges and Slaves*, Gdańsk 2019; S. Sykuna, J. Zajadło, *The Theory of Hard Cases and Humantarian Intervention,* Polish Review of International and European Law 2012, vol. 1.

[30] W. Załuski, *Evolutionary Theory and Legal Philosophy*, Edward Elgar, London 2009; W. Załuski, *Law and Evil. The Evolutionary Perspective*, London 2018.

[31] B. Brożek, *The Legal Mind. A New Introduction to Legal Epistemology*, Cambridge 2019; B. Brożek, *Rule-Following. From Imitation to the Normative Mind*, Kraków 2012.

[32] *Inter alia*, G. Skąpska *From Civil Society to Europe: A Sociological Study of Constitutionalism after Communism*, Leiden–Boston 2012.

[33] A. Bator, *Postanalityczna teoria i filozofia prawa: nowe szanse, nowe zagrożenia?* [Post-Analytical Theory and Philosophy of Law: New Chances, New Threats?], Przegląd Prawa i Administracji 2015, vol. 102, p 21–44; M. Anderson, J. Anderson, A. Bator, *Analytical Theories of Law: Negation or Adaptation*, [in:] A. Bator, Z. Pulka (eds.), *Legal Theory and Philosophy of Law: Towards Contemporary Challenges*, Warsaw 2013, p 115–134; Z. Pulka, *Struktura poznania filozoficznego w prawoznawstwie* [The Structure of Philosophical Cognition in Jurisprudence], Wrocław 2004; W. Gromski, *Autonomia i instrumentalny charakter prawa* [Autonomy and Instrumental Character of Law], Wrocław 2000.

[34] J. Jabłońska-Bonca, *Prawo w kręgu mitów* [Law in the Circle of Myths], Gdańsk 1995.

currents' and which are interesting is a matter of taste, and therefore, any decision in this respect is discretionary. *De gustibus not disputandum est.* That is certainly true. If they, however, use this argument, we would be forced to say that their taste is quite bad, even if only non-analytical works are concerned. They would have to admit, for example, that Sławomir Oliwniak's papers referring to the works of Giorgio Agamben (fn. 42) are more important than the evolutionary theory of law developed by Wojciech Załuski in two books published by a top international publishing house. They would have to admit that two papers on Stanley Fish's theory of interpretation authored by Jakub Łakomy (fn. 36) are more important than the book by Bartosz Brożek published by Cambridge University Press. They would also have to admit that two papers authored by Bronisław Sitek on the professional ethics of a certain narrow category of state officials are more important than a profound study of Radbruch's formula by Jerzy Zajadło. We could provide many more examples, however, that would bore the readers. Quite frankly, any successful argument of this kind would demand a careful comparison of the juxtaposed works, with the result that the presumption that the best world publishing houses are associated with good quality would be breached. Such a result is unlikely.

The second defence might be along the lines of 'we are sorry, but the limited space did not allow us to include X or Y.' Of course, the length of each paper is limited. We do not wish to say that the authors should have included all the topics listed above. Our point is that they should have included at least some of them. It seems to us, however, that the Authors did not even try to economize on space. Let us give several examples. The Authors decided to provide an almost complete list of Tomasz Bekrycht's publications on phenomenology (one book and four articles in fn. 63). The Authors decided to devote a half-page to an, otherwise very interesting, theory of Artur Kozak (section 4.2.6), although the same volume of the RCEEL contains a comprehensive description of this theory by Rafał Mańko. Would a cross-reference in footnote 50 not suffice? Furthermore, the Authors could have economized on the space by reducing the number of references to their own publications: Tomasz Bekrycht has five and Rafał Mańko has eight (plus two references to collective volumes co-edited by him), or even by substantially reducing references to some other scholars: Adam Sulikowski – thirteen publications plus two references to collective volumes edited by him; Hanna Dębska – five; and Sławomir Oliwniak – six. That would make section 4.2.4 (in which footnotes occupy more space than the text itself) more transparent and would give them the opportunity to include other scholars.

There is, however, one very peculiar merit in all of this, as writing about one's own works rarely results in a distortion of the author's views. However, regretfully, in the case of the Overview, this practice is rather counterproductive considering the purpose of the whole enterprise.

3. *Is the Overview representative?* As underlined in the Introduction, the Overview should refer to papers and books which are representative of a given approach or theory, not to publications selected at random. We do not think that this quite obvious requirement has been satisfied. Let us substantiate this claim with some examples.

In this short list, we deliberately omitted a wide range of more interdisciplinary works, such as works related to problems of law and justice as seen from the perspective of political philosophy.

4. *Naturalistic currents.* We think there is considerable confusion in this section (4.2.1.). First, there is a general methodological problem of naturalization of legal science. Many important publications on this general topic exist. In footnote 20 the Authors mention only one collective volume and fail to note that the possibility and scope of naturalization is a highly controversial issue. There are many other important contributions to this general problem authored *inter alia* by Jerzy Stelmach, Bartosz Brożek, Wojciech Załuski, and Tomasz Pietrzykowski.[35] But these works deal d with a meta-problem: the possibility and scope of naturalization. Second, there are many possible directions and routes of naturalization. The Authors are probably right in saying that Law & Economics is one of those routes. In footnotes 18 and 20, they refer to two important contributions (a book by Mariusz Golecki and a book by Jerzy Stelmach, Bartosz Brożek, and Wojciech Załuski). Two other articles are mentioned, but both are purely descriptive and do not bring any new ideas. They fail to mention the important book authored by Wojciech Załuski.[36] They could also have mentioned certain important publications of Katarzyna Metelska-Szaniawska and Piotr Bystranowski, relating to specific issues in this field.[37] Another important route of naturalization relates to the application of cognitive science and neuropsychology. Here the books authored by Bartosz Brożek should be mentioned.[38] Further, the application of evolution theory to law is without a doubt a major contribution to naturalization. We have in mind here two books and numerous papers authored by Wojciech Załuski.[39]

The entire subsection 4.2.1 'Naturalistic currents' is regrettably only 12 lines long. In our opinion (although we personally do not work in this field), Polish works relating to the application of cognitive science, neuropsychology, and evolution theory constitute the most innovative, original and productive contributions of Polish legal theory to the global discussion and as such they definitely deserve more attention in any overview.

5. *Legal ethics.* This short subsection (9 lines plus footnotes) is surprising, to say the least. First, the Authors seem to confuse legal ethics with the professional ethics of various legal professions. They only mention two other problems,

[35] See, for example, T. Pietrzykowski, *Naturalizm i granice nauk prawnych: esej z metodologii prawoznawstwa* [Naturalism and the Borders of Legal Sciences: Essay in the Methodology of Jurisprudence], Warszawa 2017.

[36] W. Załuski, *Game Theory in Jurisprudence*, Kraków 2013.

[37] K. Metelska-Szaniawska, *Economic Effects of Post-Socialist Constitutions 25 Years from the Outset of Transition. The Constitutional Political Economy Approach*, Frankfurt 2016; P. Bystranowski, *Ekonomiczna analiza prawa wobec problemu optymalnej precyzji dyrektyw prawnych* [Economic Analysis of Law in View of the Problem of Optimum Precision of Legal Directives], Państwo i Prawo 2016, no 5, p 18–33.

[38] See fn. 32.

[39] See fn. 31.

namely, the legal status of animals and the ethics of interpretation. Let us start by stating that the four scholars mentioned in this subsection belong to the top league: Paweł Skuczyński, Przemysław Kaczmarek and Marcin Pieniążek (with respect to professional ethics) and Tomasz Pietrzykowski (with respect to certain other issues). What surprises us is that footnote 29 lists two relatively unimportant papers on the rights of animals, while failing to mention the important book and articles authored by Tomasz Pietrzykowski, who profoundly analyses the legal status of non-human subjects.[40] Tomasz Pietrzykowski is an internationally-recognized expert in animal rights.

Mentioning animal rights as practically the only topic besides professional ethics in this subsection is clearly misleading. The Authors fail to note numerous publications relating to bioethics and law, which is, in our opinion, the most important problem within broadly understood legal ethics. Here, we would first consider the works authored by Marta Soniewicka devoted to genetic selection and other bioethical problems relating to law.[41] Moreover, the authors fail to note numerous works by Polish authors relating to the ethical and legal problems of abortion, euthanasia, and in vitro fertilization,[42] among others.The Authors appear to think that the problem of justice is irrelevant for legal philosophy, as they do not mention even one publication related to this topic.[43] They also fail to take note of important publications on the problems related to the ethical and philosophical aspects of humanitarian interventions.[44]

Generally, the Authors' claim that legal ethics encompasses only professional ethics plus animal rights is simply false.

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[40] T. Pietrzykowski, *Personhood beyond Humanism: Animals, Chimeras, Autonomous Agents and the Law,* Springer 2018.

[41] M. Soniewicka, *Selekcja genetyczna w prokreacji medycznie wspomaganej. Etyczne i prawne kryteria* [Genetic Selection in Medically Assisted Procreation. Ethical and Legal Criteria], Warszawa 2018; M. Soniewicka, W. Lewandowski, *Human Genetic Selection and Enhancement. Parental Perspectives and Law*, Berlin 2019

[42] See, for example, J. Malczewski, *Eutanazja: Gdy etyka zderza się z prawem* [Euthanasia: When Ethics and Law Collide], Warszawa 2012; W. Ciszewski, T. Żuradzki, *Conscientious refusal of abortion in emergency life-threatening circumstances and contested judgments of conscience*, American Journal of Bioethics 2018, vol. 18(7), p 62–64; W. Ciszewski, *Rozum publiczny w praktyce: kwestia legitymacji moralnej wniosku grupy posłów o stwierdzenie niekonstytucyjności przesłanki aborcyjnej* [Public Reason in Practice: The Moral Legitimacy of the Constitutional Complaint Lodged by Polish MPs Challenging the Constitutionality of the Abortion Law], Ruch Prawniczy, Ekonomiczny i Socjologiczny 2018, no 3, p 17–31; M. Klinowski, *Zarodki, komórki macierzyste i natura ludzka* [Embryos, Stem Cells, and Human Nature], Diametros 2009, no 5, p 55–65; M. Klinowski, *O niemoralności aborcji: koherencja przekonań, biologiczne człowieczeństwo i słuszne interesy* [On the Immorality of Abortion: The Coherence of Convictions, Biological Humanity, and Just Interest], Diametros 2008, no 16, p 10–40.

[43] See, for example, M. Soniewicka, *Granice sprawiedliwości, sprawiedliwość ponad granicam* [The Borders of Justice, Justice beyond Borders], Warszawa 2010; W. Załuski, *The Limits of Naturalism: A Game-Theoretic Critique of Justice as Mutual Advantage*, Kraków 2006.

[44] See fn. 29.

6. *Philosophy of interpretation*. The Authors say that legal hermeneutics has been developed especially by Jerzy Stelmach, Henryk Leszczyna, and Marek Zirk-Sadowski. This is undoubtedly true with respect to Jerzy Stelmach and Marek Zirk-Sadowski. If the Authors, however, had read the book by Henryk Leszczyna, they would certainly not claim that it was an important contribution to hermeneutics. They also fail to note other Polish contributions, published mainly in international journals.

7. *Transitional justice.* The Authors fail to mention Michał Krotoszyński's important book and papers.[45]

8. *Is the Overview unbiased?* Subsection 4.2.4 (Postmodern and critical currents) comprises 5 pages, which is one-third of the whole Overview (excluding the abstract and conclusions). As far as the period after 1990 is concerned, this section constitutes more than half of the Overview. We would like to stress that, in our opinion, Critical Legal Studies and certain other streams linked to CLS, such as feminist jurisprudence and critical race jurisprudence (for the sake of simplicity, we will refer to all them as 'CLS') are very important parts of contemporary jurisprudence. By no means, however, can CLS be considered to be the dominant part (and certainly not in Poland). By devoting so much space to CLS, the Authors seem to suggest that CLS is a sort of key approach in Polish legal theory, which is simply false and misleads foreign readers. If the Authors are so fascinated with CLS and want to focus on the development of CLS in Poland, they should have written another paper describing the achievements of CLS.

The above leads us to the conclusion that the Overview is biased, as it is driven by the personal engagement of one of the Authors in CLS.

9. *Do the Authors refer to publications accessible to foreign readers?* A foreign reader, after having read the Overview, may come to the conclusion that Polish jurisprudence is a purely local and isolated enterprise. Books and papers published in English are rarely referred to in the footnotes. Among more than 100 publications mentioned in the footnotes, only 24 are English publications of Polish scholars working in Poland. Only 10 out of these 24 publications in English were issued abroad, and only a handful of them in reputable journals and publishing houses.

This may create an impression of the parochiality of Polish jurisprudence, which impression would be false. Starting from approximately 1970, more and more articles by Polish authors have been appearing in internationally recognized journals (in the initial phase, in German, English and French, and in the last 30 years, unfortunately, almost exclusively in English, which has become the *lingua franca* of legal philosophy). In recent years, increasing numbers of books have appeared in top-ranking international publishing houses. We have mentioned some of them in the footnotes above. The Authors fail to recognize (possibly with the exception of the CLS movement) the active Polish involvement in

[45] M. Krotoszyński, *Modele sprawiedliwości tranzycyjnej* [Models of Transitional Justice], Poznań 2017; M. Krotoszyński, *Transitional Justice Models and Analytical Philosophy: Towards Theory*, Polish Political Science Yearbook 2017, vol. 2(46), p 9–21.

the contemporary discussion on the philosophy of law. Out of the numerous congresses, conferences and other international events organized in Poland, including the World Congress of Legal and Social Philosophy in Kraków in 2007, they mention just one: CLS conference in Wrocław.

As far as Polish publications are concerned, it is surprising that the Authors refer quite frequently (especially in subsection 4.2.4) to papers published in journals edited by newly established private colleges without faculties of law. The same applies also to certain collective volumes mentioned by the Authors. We are afraid foreign readers will not be keen to follow publications in such journals.

10. *Conclusion*. In our opinion, the Overview is misleading, unbalanced, unrepresentative, and strongly biased. It gives a false picture of Polish legal theory and philosophy of law. The qualification made by the Authors that 'the paper presents exclusively the personal views of the authors' (p. 199) is not a sufficient excuse. The Authors are free to promote solely their own personal views. However, if they do so, the title of their paper should instead read: 'What We Like in Polish Jurisprudence in the last 30 years' or perhaps 'Polish Jurisprudence in the Last 30 Years: Us, Our Friends, and a Few Insignificant Others'.

Polska teorii i filozofii prawa w krzywym zwierciadle

Artykuł zawiera krytykę obrazu dwudziestowiecznej teorii i filozofii prawa, jaki przedstawili Tomasz Bekrycht i Rafał Mańko w artykule pt. Polish Jurisprudence in the 20th Century: A General Overview, opublikowanym na łamach Review of Central and East European Law (2020, nr 45). Argumentujemy, że wskazany artykuł nie jest niewyważony i stronniczy, w związku z czym przedstawia nietrafny obraz polskiej teorii i filozofii prawa.

Słowa kluczowe: prawoznawstwo, Polska, interpretacja prawnicza, metodologia prawoznawstwa, analityczna teoria prawa

Keywords: *jurisprudence*, *Poland*, *legal interpretation*, *methodology of jurisprudence*, *analytical legal theory*

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