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EVALUATIVE UTTERANCES IN ZYGMUNT ZIEMBIŃSKI'S THEORY OF LAW

ZWROTY OCENIAJĄCE W TEORII PRAWA ZYGMUNTA ZIEMBIŃSKIEGO

The study focuses on the methodological views of Zygmunt Ziemiński, against the background of the axiological issues addressed in his scientific investigations. In this respect, the author distinguishes three development periods in Ziemiński's work; the first was dominated by a psychologist and empiricist approach to axiology, whereas the onset of the second was marked by a semiotic-pragmatic turn. In both periods, the essence and properties of evaluative utterances became the chief object of inquiry. In the last phase of his work, however, Ziemiński devoted himself to the study of the values manifesting in law, writing chiefly about justice and the constitution.

Keywords: evaluative utterances; values; legal axiologies; justification; psychological points of view; semiotics

Opracowanie koncentruje się na poglądach metodologicznych Zygmunta Ziemińskiego na tle zagadnień aksjologicznych podejmowanych w jego dociekaniach naukowych. W tym zakresie autor wyróżnia trzy okresy rozwojowe w twórczości tego uczonego; w pierwszym dominuje psychologistyczno-empiryczne podejście do aksjologii, natomiast początek drugiego wyznacza zwrot semiotyczno-pragmatyczny. W obu okresach istota i właściwości wypowiedzi oceniających stały się głównym przedmiotem dociekań. W ostatniej fazie swojej twórczości Ziemiński poświęcił się jednak badaniu wartości przejawiających się w prawie, pisząc przede wszystkim o sprawiedliwości i konstytucji.

Słowa kluczowe: wypowiedzi oceniające; wartości; aksjologie prawne; uzasadnienie; psychologiczne punkty widzenia; semiotyka

I. Professor Zygmunt Ziemiński was an eminent representative of the generation of legal theorists who, in the course of very long studies they carried out in the difficult realities of post-war Poland, managed to salvage the achievements of the Polish analytic philosophy and develop its expanded ver-

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sion in the shape of analytic-linguistic philosophy of law. Along with Jerzy Wróblewski, Kazimierz Opalek, and Wiesław Lang, Ziemiński was one of the foremost researchers of that period. At the same time, the four scholars made efforts to ensure that the discipline they practiced would continue, establishing schools of legal theory also with the participation of their students.

With the exception of Ziemiński, all the above professors traced in their intellectual pedigree to a seminar conducted in Krakow by Professor Jerzy Lande, and thus to a large extent upheld the tradition of Polish legal theory deriving from the thought of Leon Petrażycki. Ziemiński, on the other hand, was a disciple of another eminent philosopher of law, Czesław Znamierowski.¹

However, all of the above were steeped in the analytical tradition that originated with the Lvov-Warsaw School. In the case of Professor Ziemiński, it was the thought of Kazimierz Ajdukiewicz which had crucial influence.

II. Ziemiński invariably intended his works to be read not only by legal theorists, but primarily by legal practitioners, which made it a very valuable contribution at the time. He noticed that the representatives of the specialized disciplines of jurisprudence tended to be unfamiliar with evaluative utterances, lacking sufficient grasp of the relevant conceptual apparatus in this field and failing to appreciate its complexity. Simultaneously, the author formulated his axiological proposals in very general terms, leaving the choice of specific solutions open. He was fundamentally focused on trying to devise a new point of view for the discussion concerning the relationship between law and morality. *Etyczne problemy prawoznawstwa* [Ethical Problems of Jurisprudence] was the first comprehensive work concerning evaluations that he put forward to the juridical community.²

The position which Ziemiński elucidated in that work may be encapsulated in several key statements. The fundamental philosophical solution is advanced already at the beginning of his deliberations. The author strongly advocated an anti-cognitivist approach, stating that evaluative and normative utterances ‘do not, however, in and of themselves describe, do not report on certain states of affairs, and therefore cannot be pronounced to be true or false, at least in the ordinary sense that of these words.’³

He also presumed that norms which are defined, for example, as legal, moral, religious, cannot be distinguished on the basis of any criterion pertaining to content or structure. What remains, therefore, is the manner of establishing norms, an action which in the future would be classified by Ziemiński among conventional acts. Ziemiński states that:

A norm with a certain wording, or even specifically this and not other utterance made by someone to the effect that one should act in a particular manner, may in certain cases be considered to be a legal norm, given how it was established or sanctioned, and a moral norm

¹ Cf. Smolak, Kwiatkowski (2020): 2.

² Ziemiński (1972), 231 pp.

³ Ziemiński (1972): 26 f.

due to its connection with certain evaluations which are recognized as moral judgments, and a customary norm due to the fact that has become established in a particular circle of societal habits of complying with a given norm, and so on.⁴

A norm is classified as belonging to a certain type by virtue of its justification. Ziemiński asserted that no utterance 'which may serve in a given language to convey a requirement that someone should act or behave in a certain manner, may be said to be, in and of itself, a legal, moral, religious, moral, aesthetic or any other such kind.'⁵ For the jurist, the most important conceptions of morality are those which see it as a set of rules of good social coexistence, because 'jurists are interested in norms only as a means of modifying relations between people, not as recommendations on how to assure oneself happiness or achieve perfection.'⁶ The nature of the legal norm is therefore sociological and psychological. At the same time, a legal norm which can be supplied with a thetic as well as axiological justification in the form of a moral evaluation that is characteristic of a particular morality, is called a legal norm which is just from the standpoint of that particular morality.⁷ Ziemiński rejects the claim that law constitutes a minimum of morality, since 'not every legal norm possesses a directly moral aspect.'⁸ Legal norms merely refer one to moral norms, whereby the purpose of such reference lies in the fact that 'moral evaluations and norms which, to an extent, subsidiarily supplement and correct the system of legal norms, principally consist of those evaluations and norms which the judges of higher instances find socially approved, or rather worthy of being approved as moral norms.'⁹ According to Ziemiński, the substance of criminal law represents the most explicit and direct expression of the moral judgments of a body of lawmakers, 'based at the same time on the premises of some primitive or scientific social engineering, the concept of educational effect in particular.'¹⁰ Also, administrative actions are subject to moral evaluation, because they are intended to serve the good of individuals or the good of society as a whole.¹¹ At the same time, moral evaluations of legal norms carry substantial political significance. This is evinced in the fact that they are not shaped merely as a result of the unconstrained influence of the spontaneous interactions between the members of society, 'but [are] the object of organized indoctrination measures both on the part of the state and of various types of organizations, dependent or independent of the state, or even oppositional to the latter.'¹² Ziemiński recognized that a conflict may ensue between moral and legal norms, but believed that its resolution is primarily a political decision:

⁴ Ziemiński (1972): 46 f.

⁵ Ziemiński (1972): 46.

⁶ Ziemiński (1972): 56.

⁷ Ziemiński (1972): 117.

⁸ Ziemiński (1972): 119.

⁹ Ziemiński (1972): 137.

¹⁰ Ziemiński (1972): 187.

¹¹ Ziemiński (1972): 190.

¹² Ziemiński (1972): 205.

The fact that legal norms arise as a result of decision-making by at most a narrow group of people, and even one-person decision-making (formally at least), which in addition relies on the means of coercion at the legislators' disposal, provokes bilateral concerns: the legislators may fear that a temporary impossibility of using coercion may result in political disaster, while the addressees of legal norms may fear being subject to the licence of the legislators, regardless of any restrictions on their activity.¹³

Such concerns are the reason for the persistent emergence of various iterations of the conception of natural law. Professor Ziemiński adopted the stance of a legal positivist, though he did not express this explicitly nor did he associate himself with the prevalent philosophical and ideological stance. He mainly conveyed that position by criticizing the doctrines of natural law. He justified moral norms by drawing on moral judgments,¹⁴ which in their turn are not justified, even though the author's saw a strict correlation between the justifications of moral norms and moral evaluations. Furthermore, he did not analyse the relation between law and normative ethics because, in keeping with the spirit of the times, his attention focused on a comparison between law and the science of morality, in the version proposed by Maria Ossowska.¹⁵ Professor Ziemiński suggested two variants of evaluations: subjectified (which distinguishes intentions) and objectivized (which highlights the outcome).¹⁶ The problem which arises at that point is whether it is possible to evaluate the act as such, as opposed to its intentions or outcomes alone. Hence, it may be suspected that the work refers to utterances on evaluations, not the evaluations themselves, all the more so since already in the introduction the author circumscribed the study of morality to what is commonly referred to as morality.¹⁷

III. The deliberations outlined above were only the starting point in the dynamic development of that conception of legal theory and philosophy. As an eminent humanist, Ziemiński also expanded his views by drawing on historical events that manifested in novel legal institutions, and although certain moments proved enduring, he embarked – as we will see further on – on a conception of axiology without confining himself to a merely descriptive theory of morality. Ziemiński's constancy was evident in his aversion for all hypostases, for everything tinged with idealist metaphysics of the Platonic variety. He rejected cognitivism and its latent naturalistic error, whereas as far as philosophy of law was concerned, he was inclined to embrace legal positivism for the same reasons. This first stage of Ziemiński's axiological inquiry is deceptively reminiscent of the original axiological studies that began in the twentieth century. Their characteristic categories included mental life, desires and feelings approached as psychological categories. In the early investigations

¹³ Ziemiński (1972): 102.

¹⁴ Ziemiński (1972): 49.

¹⁵ Ziemiński (1972): 23.

¹⁶ Ziemiński (1972): 57.

¹⁷ Ziemiński (1972): 8.

into evaluative utterances, Ziemiński's writings followed the new conception of axiology which emerged at the beginning of the twentieth century and stemmed from the departure from metaphysical analyses of values.

IV. It may be recalled that the theory of values (axiology) was distinguished as a branch of philosophy at the turn of the twentieth century in the milieu of the Brentanists and neo-Kantians.¹⁸ The groundwork was laid when the conviction took hold that one should separate description and evaluation as well as being and duty (Hume, Kant), and that a series of analyses within descriptive psychology is indispensable (Brentano, Meinong). *System der Werttheorie* (1883) by the Brentanist Christian von Ehrenfels is considered to be the first work in that current of axiology. Next to the Brentanists and neo-Kantians, axiologies were elaborated by the British analysts, American pragmatists and, above all, the phenomenologists (Scheler, Hartman). Simultaneously, just as axiology began to develop, the scientificity of the discipline was challenged by the neo-positivists. The term 'axiology' was introduced by P. Lapie (1902) and N. Hartman (1908). Today, the paradigm of this branch of philosophy encompasses the following¹⁹: 1) the nature (essence) and kinds (types) of values; 2) a possible hierarchy of values; 3) the manner in which values exist; 4) the manner in which values are known; 5) the nature of utterances about values; and 6) the position of values in being, in human life and in human culture. It is anything but easy to align axiology with a framework of straightforward approaches, such as cognitivism and anti-cognitivism, naturalism and anti-naturalism, as one can hardly make sense of the axiological deliberations in which, for example, Kant or the phenomenologists engage. Undoubtedly, the predominant characteristic of contemporary axiology is its great fragmentation, whereby the inquiry is undertaken mainly in specific domains of values, while the fundamental, general issues are neglected.²⁰ Moreover, Professor Ziemiński was not interested in axiology as a separate branch of philosophy, because first and foremost he was a scholar who sought to augment the methodology of jurisprudence which, on top of that, was understood as a practical and empirical science. He had no ambition to advance universal solutions. Although his works were concerned with the issues of legal theory, what he did not wish to tackle in this field were problems with a high degree of generality, akin to philosophy. Regarding the theory of values, his sole intention was to demonstrate an approach which lawyers may find the most useful when they consider the notion of evaluations in the language of law. He attached great importance to the fact that the semiotic status of the utterances formulated by the legal sciences varies. Moreover, Ziemiński did not intend to compare the methodology of jurisprudence with a particular model of science and, on such grounds, to pronounce on the scientificity or non-scientificity of jurisprudence. He was of the opinion that scientific methods are primarily concerned with

¹⁸ Stępień (1975): 52 f.

¹⁹ Tatarkiewicz (1970): 207–219, 220–257.

²⁰ Ingarden (1970): 220.

substantiating assertions, whereas jurists not only strive to formulate assertions, but also investigate and construct evaluative and directive solutions themselves, in whose case the methodology of formulating assertions does not apply. Despite such a stance, the multiplicity of methods (approaches) within axiology itself compelled Ziemiński to make the necessary attempts at putting these issues in some kind of order and outline the essential methods of studying values.²¹ It appears that when classifying the trends within the above paradigm of axiology, especially the first and the fifth of the aforementioned areas, one can distinguish – in somewhat simplified terms – five basic modalities of studying values: 1) psychological (introspective); 2) empirical; 3) phenomenological; 4) transcendental; and 5) analytical. Anticipating the final conclusions of this paper, it may already be stated that Professor Ziemiński's deliberations relied chiefly on the psychological, empirical (thus bypassing the reflection of introspective psychologism) and analytical methods. It was as part of the latter method that Ziemiński's views underwent the most extensive evolution. As the first part of this study attempted to demonstrate, psychologism provided a point of departure in Professor Ziemiński's investigations into legal axiology. Immediately complemented by empiricism, it protected his deliberations from introspection and engagement in metaphysical disputes. The second goal he achieved with that research attitude was to successfully protect jurisprudence, and in particular legal theory, from the threat of ideologization that jurisprudence and the humanities faced at the time.

V. It is important to note that axiology essentially derives from psychologism. The contributions of Meinong and Ehrenfels, considered to have been the first attempts at building a theory of values, were based on the so-called psychology of acts.²² According to Meinong, the occurrence of an experience of value was contingent on an existential judgment. An object is valuable when a sensation of pleasure occurred upon stating that it exists. Such a statement is followed by the feeling of annoyance or pleasure. Value would thus manifest subjective emotional experience. Ehrenfels maintained that existential judgments alone are not enough to attribute a certain value to an object since mental states, such as the clarity and vividness of representations of the object, feelings, do play a role as well. An approach based on the introspective method produces no more than a description and classification of the valuation processes. However, numerous instances of using the introspective method were still noticeable in the psychology of the early value theories.

Still, in the psycho-empirical approach used by Ziemiński such uses were unacceptable. On the other hand, a more elaborate iteration of such empirical psychologism – applicable in axiology and more variegated – was available in the works by Ossowska, who distinguished several versions of it, depending on the kind of psychological experience one has in mind. These distinctions are vital in order to determine how axiological psychologism relates to emotivism

²¹ Cf. Zirk-Sadowski (1984): Chapter II.

²² Meinong (1917); Ehrenfels (1897/98).

and subjectivism. Following Ossowska, one can therefore speak of emotional, voluntaristic and intellectual psychologism.²³ In the emotional modality, object *P* arouses particular feelings in one, and is therefore valuable. Voluntaristic psychologism asserts that *P* is valuable, which is tantamount to stating that *P* engenders some aspiration in one. Finally, intellectual psychologism is a position in which stating that '*P* is valuable' is equivalent to saying that one experiences certain convictions with respect to *P*. Once accepted, the distinction between these three mental spheres affects the characterization of axiological psychologism, depending on which one is drawn upon in the introspective analysis.

Another distinction that can be made within psychologism, and which will also tally with the above divisions, is the distinction between current and potential psychologism. In the former, the psychological experience in question is always being currently experienced by the given person, while in the latter it suffices to speak of a disposition to experience certain sensations.

The traditions in which these classifications are rooted are considerably dated. Although many authors today avoid using them, one may venture a claim that they tend to be used most often in practical discourse. In Ziemiński's reflections, the designation of ethical (axiological) psychologism subsumed all the aforementioned versions of that approach.

As for the empirical position, it may also be said to include the view according to which stating that *P* is valuable is intended to convey that people belonging to a certain group respond to *P* with certain psychological sensations, or demonstrate a psychological proclivity for such a response, as Ziemiński explained in the work discussed here.

What, then, is the relationship between axiological psychologism and emotivism? First of all, emotivism is usually a label describing one of the schools of metaethics which studies the language of normative ethics. Taken very broadly, metaethics is concerned with the vocabulary of normative ethics as well as the rules of reasoning and formulation of utterances within normative ethics. Thus, emotivists seldom discuss the properties denoted by the words which express values, but most often confine themselves to characterizing the utterances which attribute such properties to things. In this sense, axiological psychologism is a more profound concept, because it involves characterization of the essence of values, as opposed to examining ethical expressions only.

When describing the characteristics of such expressions, emotivism commonly draws on the conception of valuing by means of which emotional states are articulated. Here, emotional states infrequently undergo a thorough psychological analysis, because the objective of emotivism is not to provide a complete characterization of consciousness, but to present the linguistic means through which feelings are expressed. Thus, it studies the language-mediated indicators (linguistic functions), which serve to communicate these feelings. In contrast, axiological psychologism places more emphasis on the concept of consciousness, which provides the sole basis for drawing conclusions about

²³ Cf. Ossowska (1957): 66. She distinguished the aforementioned versions of subjectivism.

values. Therefore, psychologism does not always link values with the realm of feelings. Unlike in emotivism, the concepts involved attribute values to the sphere of volition or conviction. Even if emotivism does consider the issues of acts of will or belief, they are usually not provided with an in-depth psychological characterization, whereas the sphere of feelings or emotions is discussed in general terms. Finally, it should be noted that while axiological psychologism appears to preclude views which only state that evaluations are utterances formulated under the influence of feelings, views of this kind may readily be included in emotivism. This is because the latter restricts its considerations to the linguistic sphere, therefore the ontological characterization of values is irrelevant.

Another question that could be asked with regard to Ziemiński's axiological psychologism concerns the relationship between subjectivism and axiological psychologism. In axiology, subjectivism is an ambiguous term and it is therefore necessary to establish what 'subjectivity of values' denotes. Several meanings of the term can be identified, but only four are crucial.²⁴

The first associates the subjectivity of values with the experience of the person who makes the evaluation: with a certain assertion about the state of his or her consciousness. Value subjectivity means that evaluation is identified with a psychological proposition. Since this is how the term is used most commonly, let us call it subjectivism proper. In the second sense, subjectivism is the view that only humans assign value to things when making evaluations, and that there is no empirical property of an object whose emergence would determine that the object is attributed a value. A third variety of subjectivism sees its essence in the unjustifiability of evaluations. Finally, the fourth notion of subjectivism boils down to the assertion that non-relativized evaluations are meaningless.

We are not going to analyse the issues that each of the four approaches to subjectivism entails in any greater detail. This division could certainly become even more subtle if one were to separate the meanings of 'subjectivism' in the phrases concerning the nature of evaluations from its usage in considerations unrelated to language.²⁵ Here, the important point is that axiological psychologism represents subjectivism in the first sense and, possibly, in the others senses as well, but a precise determination would require expanding the list of assertions that make up a particular conception of subjectivism.

Axiological psychologism is thus a type of axiological subjectivism. It defines value as a phenomenon entirely dependent on, and therefore secondary to, consciousness. The only way in which the world of values exists is as an object of psychological interest. For the jurist, this conception has one fundamental defect: it deprives value of the model function and therefore becomes a useless category from the standpoint of normative tasks. In particular, it hinders the axiological justification of general norms. Hence, Ziemiński did not circumscribe the issue of norms and evaluations within the psychology of

²⁴ As discussed by Pawłowski (1972: 326 f.) and Ossowska (1957: Chapter III).

²⁵ Pawłowski (1972): 323.

the subject. He did recognize this element as important but, anxious to avoid the pitfall of the transcendental position, he supplemented the mental aspect with the social dimension in which an individual recognizes normative and evaluative utterances.

VI. Having cleansed his deliberations of metaphysics, Ziemiński did not opt for the other extreme. Aversion towards speculation made the positivism of the Vienna Circle self-assured that semantic and logical analyses are the only valid tests in philosophy. To achieve these goals, the positivists began to reject one problem after another. Each issue became a pseudo-question the moment its original phrasing did not fit the preconceived notions of meaningfulness and verification. Most positivists restrict the label 'scientific' to two types of sentences; analytical *a priori* and synthetic *a posteriori* (empirical). Analytical sentences (mathematics and logic) say nothing about the external world, relying on the stipulations how certain terms are to be used. Synthetic sentences, which inform one about the external world, are hypothetical propositions that are verified or verifiable by virtue of certain sensory data. Advanced by Hume, this strict dichotomy removes value judgments from scientific discourse. Instead of realizing that such a strict division cannot account for value judgments, the positivists – in order to uphold Hume's dichotomy – dismissed evaluating assertions as pseudo-assertions and invoked the vague notion of emotional significance as a simple solution to the difficult problem of valuation and value.

Just like the Lvov-Warsaw School, Ziemiński did not deny that norms and evaluations make sense, but emphasized justification of the utterances which, once analysed, become specific norms or evaluations. Value terms – such as good and bad, right or wrong – are meaningless as normative notions, and the statements in which they are employed are pseudo-sentences. The presence of an ethical symbol in a sentence contributes nothing to its factual content. It only serves to show that its articulation is accompanied by certain feelings in the speaker. It is only through their justification that one identifies a kind of normativity or valuation.²⁶

VII. Let us now consider the second stage in the evolution of Professor Ziemiński's views on evaluative utterances, which may be called a semiotic-pragmatic phase. Such an approach to the study of the utterances in legal language was prompted mainly by the emergence of a discourse in the Polish legal sciences which focused on performatives.²⁷

Having recognized the pragmatic and semiotic aspect of language, Ziemiński expanded the concept substantially, reaching a watershed signalled by his *Metodologiczne zagadnienia prawoznawstwa* [Methodological

²⁶ This would follow from the previously cited observation in Ziemiński (1972): 46.

²⁷ The original theories of performatives may be found in the works of their author, John L. Austin (1993).

Issues of Jurisprudence],²⁸ though it may be noted that the verbal formulation of thoughts is addressed as early as the first part of Ziemiński's *Logika praktyczna* [*Practical Logic*].²⁹ In its first chapter, entitled *Speech*, the sign is defined from the pragmatic standpoint as a perceptible arrangement of things caused by someone, an arrangement which – according to some clearly established or customary rules – should connote thoughts with a specific content. Compared with previous work, the novelty is that the author departed from the concept of justifying utterances in favour of the pragmatic category of a speech act. He distinguished the descriptive function: utterances whose particular form serves to describe that so-and-so is or so-and-so is not; the expressive function, which consists in communicating our experiences of various feelings and desires through an utterance; the suggestive function, when an utterance has an effect on its recipient; the performative function, by virtue of which utterances made in a certain social arrangement, perform acts of a contractual or conventional nature and, respectively, norms by referring to the suggestive function.

Ziemiński characterizes evaluations as speech acts which perform the expressive function and, respectively, the norm through reference to the suggestive function. Thus, he subscribed to the current which still predominates in logical-linguistic research today, whereby language is distinguished from speech in the study of utterances. To date, these issues have been very extensively explored in Polish theoretical-legal literature, starting with the works of Tomasz Gizbert-Studnicki.³⁰ It should be emphasized that Professor Ziemiński's works on the relation between the norm and the legal provision, as well as those devoted to conventional acts, constitute a very significant contribution to the semiotic-pragmatic conception of utterances in legal and juridical language.

With respect to evaluations, a notable study in that period of Ziemiński's work was *Uzasadnianie twierdzeń, ocen i norm w prawoznawstwie* [*Justification of Statements, Evaluations, and Norms in Legal Studies*], co-written with Zieliński.³¹ In the monograph, the authors demonstrated how important the novel approach to utterances was.³²

Other authors were largely of the opinion that the most innovative was undoubtedly Chapter 9 of the latter work, in which the authors devised an original model to substantiate propositions in legal dogmatics. Also, considerable importance was attached to the notion of justification and its apparent corollaries: the relationships between the concepts of argumentation, justification, proof and defence. According to the authors, justification is a special instance of argumentation, while proof is a special instance of justification.³³ The role of justification relative to argumentation is that the former consists in demonstrating the grounds on which a given view may be accepted in line

²⁸ Ziemiński (1974): 286.

²⁹ Ziemiński (1959).

³⁰ Cf. reprints of said works in Gizbert-Studnicki (2019): 13–39.

³¹ Zieliński, Ziemiński (1988): 308.

³² Zieliński, Ziemiński (1988): 11–20.

³³ Zieliński, Ziemiński (1988): 6–7.

with the cognitive methods adopted in a given milieu (or methods employed to demonstrate the rightness of evaluations or the validity of norms). In this approach, the notion of justification is relativized depending on whether an utterance (an evaluation, a norm) is admissible with a certain audience. The same sentence may be justified for a certain audience and unjustified for another. There have been objections in the literature arguing that such an approach, albeit practically convenient, seems epistemologically insufficient. The suggestion that justification is relativized to a 'critical and intellectually sophisticated' audience is also deemed to be inadequate. Even if one overlooks the essential vagueness of that proposition,

the epistemologically rather than psychologically compelling question concerns the criteria of objective or rational justification, that is, justification which is independent of the random qualities of any audience. When asking whether a judgment is justified, what we have in mind is precisely this epistemological interpretation of the problem of justification, as opposed to a psychological interpretation.³⁴

As Grabowski and Gizbert Studnicki aptly observed in their review, the issues which had been the traditional objects of inquiry within the philosophy of law had been too arbitrarily defined by the authors as verbal disputes, which is particularly important when seeking to determine the ontological status of the norm. Meanwhile, the crucial question is what is actually justified, not what is considered justified. The authors of the monograph did examine justification in its epistemological interpretation, which resulted from their evidently aphilsosophical stance.³⁵ In consequence, the ontological problems underlying norms and evaluations disappear. However, it seems that, as in the first period of his work, Ziemiński once again displayed his radically anti-metaphysical position that is characteristic of legal positivism.

Consistently defining only the meaning of the word 'evaluation', Zieliński and Ziemiński assumed that it means an experience in which one adopts an emotional attitude to some actual or merely imagined states of affairs or events.³⁶ Against that background, they outlined a division into essential spontaneous and essential instrumentally supported evaluations. With evaluations, the existential premise of the evaluative utterance formulated explicitly is: "There is ([has] existed, will exist) a state of affairs *R* – and I approve/disapprove of the state of affairs *R*."³⁷ Here, the authors distinguished between the utterances which describe acts of evaluation and the manner of evaluation, because when confused they give rise to serious semiotic consequences. It is somewhat doubtful whether the psychological account of evaluations offers the possibility of their being clearly distinguished from utterances that are referred to as evaluations. If one does not adopt the aforementioned philosophical position, such a division describes no more than differences in the levels

³⁴ These critical remarks originate from a review of the study in question by Grabowski and Gizbert-Studnicki (1990): 292, 293.

³⁵ Grabowski, Gizbert-Studnicki (1990): 293.

³⁶ Zieliński, Ziemiński (1988): 40–41.

³⁷ Zieliński, Ziemiński (1988): 48.

of language but has no epistemological ramifications. This is also tangible in Chapter 7, in which the authors deliberate on the justification of evaluative utterances, since the category of justification once again requires an analysis of the psychological categories and degrees of language. It follows that the use of the semiotic apparatus was not entirely consistent. Moreover, the consequences of abandoning the category of values also became apparent as the authors constructed their legal axiology.

VIII. It was only in the final period of his work – after 1988 – that Professor Ziemiński began to address the issue of values in law directly. Beginning around 1991, it may thus be regarded as the third stage of his axiological studies.

Ziemiński's manner of writing about theory of law changed at the time, as he gravitated towards philosophical reflection. His studies assumed the form of short monographs, which were nevertheless extremely interesting and very useful educationally to the legal audience – the one he had called 'critically-minded and intellectually sophisticated' in the previous period.

Broadly speaking, Professor Ziemiński saw embarking on the issue of material values – sometimes referred to as intrinsic or non-relativized – as a need arising from the historical moment in which Polish law found itself. He gave a very compelling account of his own intellectual situation at the time in the introduction to the study entitled *O pojmowaniu sprawiedliwości* [On the Understanding of Justice].³⁸

The analysis of justice that Ziemiński conducted there does not introduce any novelty into the conception of axiology. Instead, he took a position on the disputes concerning that value among jurists, arguing that the word had once had a broader meaning: it used to be synonymous with moral goodness, righteousness, integrity, honesty, but also godliness, innocence, justness, truth, impartiality. Presently, the term 'justice' is socially oriented and associated with the current of morality informed by solidarity. Just conduct consists in compliance with general and abstract norms (known as formulas of justice) which indicate morally approved action towards other people (groups, society), particularly where it applies to the provision of goods or burdens. No strict criteria of justice are in operation, because we do not have absolute knowledge of the actions that cause the greatest amount of good of any kind in the world, although we strive towards that goal.

Hence, the justice of an act or the justice of a norm of conduct draws on the general premises of the social system, if not with respect to solving specific problems, then in terms of the place attributed to values such as – on the one hand – security, stability of social arrangements, the possibility of satisfying basic biological and cultural needs and, on the other, the ability to act freely, make use of one's talents and life energy.³⁹

³⁸ Cf. Ziemiński (1992): 9–11.

³⁹ Ziemiński (1992): 28–29.

Thus, Ziemiński maintained, the idea to rank the fundamental values which determine the substance of the norms of justice depends more on ideology than on scientific knowledge or social engineering directives. It should be noted that Ziemiński approached compensatory justice as a kind of distributive justice, since both are based on the principle of equality: good for good, evil for evil.⁴⁰

He also believed that a multifaceted formula of social justice is to be taken on board within the legal system and in the application of law. A model of social order and blueprint of how to arrange human relations needs to emerge.⁴¹ There is no one universal answer to the questions of how far this model should extend: whether it should be applied to a particular nation or be international scope; to all citizens or only to specific groups. According to Ziemiński, the principles of social justice are not the same as 'principles of law', 'for the latter more closely delineate the substance of the constitutional principle which prescribes that the principles of social justice be realized'.⁴²

In his reflections, Ziemiński clearly remained considerably disinclined towards attempts at explaining evaluations and values through philosophical inquiry. This is probably the reason why he did not analyse the relationships between evaluations and values.

It is only in *O stanowieniu i obowiązywaniu prawa* [On the Enactment and Validity of Law] that we find statements on the role of values when constructing the category of the validity of law.⁴³ Ziemiński asserted that it is not possible to devise a functional system of norms without drawing on a set of evaluations and the values they establish, but this does not mean that evaluations of a state of affairs alone are able to determine whether a norm which prescribes such a state of affairs to be attained is valid.⁴⁴ He also rejected the natural law conceptions which advanced a set of absolute values. It may thus be inferred that further evolution of Ziemiński's views tended towards soft positivism.

Certain philosophical observations relating to axiology were also communicated by Ziemiński in *Wartości konstytucyjne* [Constitutional Values]⁴⁵, where he reiterated the notion of the essence of evaluations; specifically, 'evaluation' means one's experience of approval or disapproval of some state of affairs or event. He rejected reducing evaluations to utterances about evaluations, and dismissed having evaluations equated with a statement of empirical properties.⁴⁶ Hence, the reservations expressed previously with regard to such a position still hold valid.

In *Wartości* [Values], the category of values is introduced in Chapter 1, where it is acknowledged that one can speak of values in a philosophical sense

⁴⁰ Ziemiński (1992): 139–141.

⁴¹ Ziemiński (1992): 157.

⁴² Ziemiński (1992): 62.

⁴³ Ziemiński (1995), 119 pp.

⁴⁴ Ziemiński (1995): 89.

⁴⁵ Ziemiński (1993), 98 pp.

⁴⁶ Ziemiński (1993): 17.

or as something that is either valued or not by some sets of people.⁴⁷ In the philosophical sense, values are conceived as a certain modality of existence or even particular beings, whereas in the latter case, let us call it the practical dimension, one can speak of values in the sociological sense, which is relevant from a political standpoint. Therefore, when discussing constitutional values, it is more advisable to understand values as a sociological phenomenon; the cohesion of the entire state system depends on the consensus on the axiological foundations of the constitution.⁴⁸ In order to appreciate the essence of values, one should identify the sources of values: the subject that performs the evaluation, as this bears crucially on their interpretation. Another aspect which proves vital for the law is the typology of values one tends to apply in view of their normative nature.

According to Ziemiński, philosophically construed values are only secondary in terms of importance, while their adoption, particularly if they are determined by the religion professed, involves the problem of regulating pluralism in the constitution. Ziemiński observed that one can distinguish a certain set of supreme values used by the circle of ‘people of good will’, a notion he borrowed from a statement by Pope John XXIII.⁴⁹ In hindsight, this was an extremely optimistic, not to say naïve view, as it preceded both the disputes over the shape of the 1997 Constitution of the Republic of Poland and the disputes sparked by the constitutional crisis after 2015. The development of the democratic discourse in Poland has shown that achieving an enduring conception of the human rights contained in the Constitution and resolving the fundamental systemic issues clearly entails philosophical choices. Nevertheless, Professor Ziemiński’s work provided a sound starting point in the initial phase of rebuilding public discourse in Poland. The considerable complexity of the public discourse today has recently been very interestingly discussed in the latest works of the Poznań School.⁵⁰

IX. Using the analysis of Ziemiński’s views on the essence of evaluations and values as a background, one can characterize the philosophical and methodological stance of this scholar. It seems, moreover, that they were shared by the entire group of legal theorists educated in the tradition of the Lvov-Warsaw School. Also, it appears that similar assumptions may be found in the thought of Opalek, Lang and Wróblewski.

The school’s tradition of practicing linguistic analysis nurtured Ziemiński’s philosophical minimalism in his studies on legal theory. He perceived philosophy only as a source of answers to concrete problems, hence he did not use it to derive an all-encompassing vision of the world, as he doubted the possibility of creating comprehensive philosophical systems.

⁴⁷ Ziemiński (1993): 15.

⁴⁸ Cf. broader commentary in Kropiwnicki (2018): 103–115.

⁴⁹ Ziemiński (1993): 16.

⁵⁰ Por. Smolak, Sadurski, Chirkowska-Smolak (2021), 382 pp.

Ziemiński recognized the methodological pluralism of the contemporary humanities and wanted to put it to good use in jurisprudence, yet he did not seek one single scientific method in the humanities. Law can be studied by means of multiple methods and the results of such inquiries yield a multifaceted picture of law. He never made explicit assertions about the ontological and epistemological distinctiveness of positive law itself; likewise, nor did he indicate his own methodological framework for the theory of positive law, often noting that the formal-dogmatic method was insufficient for contemporary dogmatics and legal theory.

As for the philosophical method, he insisted that it maintain linguistic clarity, intersubjective testability, and communicability. Towards the end of his life, he relaxed that very strict requirement somewhat, seeing the need for a philosophy of law mainly through reflection on axiology.

Just as the other scholars mentioned above, Ziemiński found that moderate constructivism played an important role in the analysis of law, describing it as a negation of both descriptivism and extreme constructivism. In the descriptive approach, the study of language and its usage by certain social groups is concerned with the actual practice of language with all its imperfections and inconsistencies. On the other hand, moderate constructivism attempts to find rational structures which are 'hidden', as it were, in the actual language practices and rationalize their correctness.

Ziemiński's views should be categorized as anti-naturalist. Although he valued empiricism, he perceived that observation – the foundation of the scientific cognition in natural sciences – enables only fragmentary insights into law, because it fails to capture the entire sphere of cultural meanings.

As a representative of a certain generation, he espoused its philosophical minimalism, anti-cognitivism, relativism, moderate constructivism and anti-naturalism. He also treated these traits of cognitive reflection as prerequisites in the scientific inquiry on law. Although he tapped into philosophy to find solutions to specific theoretical-legal problems, he never formulated a comprehensive delineation of his philosophical stance. Still, it seems that he was most partial to the positivist approach to science. Professor Zygmunt Ziemiński's outstanding personality as a scholar stood him in excellent stead with the students as well, which is why he may rightly be credited with the emergence of one of the foremost scientific milieus in Poland, known as the Poznań School of Legal Theory.

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