

Summary of professional accomplishments

1. Name and surname:

Grzegorz Ławnikowicz

2. Academic/artistic degrees and titles:

I was awarded a master's degree in law in 1994 from the Faculty of Law and Administration at Maria Curie Skłodowska University in Lublin. I graduated with a very good honours degree. I wrote my Master thesis entitled *Wpływ zmiany stosunków na zobowiązanie w świetle przepisów art. 357¹ § 1 k.c. i art. 358¹ § 3 k.c.* [The influence of the change of relations on the obligation in the light of the regulations of Art. 357¹ paragraph 1 of the Civil Code and Art. 358¹ paragraph 3 of the Civil Code] in the Institute of Civil Law under the supervision of Professor Zofia Policzekiewicz.

In 2001 I passed my judicial exam with a good grade.

In 2003 I was awarded a degree of doctor of legal science, having presented my doctoral dissertation entitled *Idea niezawisłości sędziowskiej w myśli prawniczej i porządku prawnym Drugiej Rzeczypospolitej* [The idea of judicial independence in the legal thought and the legal order of the Second Polish Republic] to the Faculty Board of the Faculty of Law and Administration at Maria Curie Skłodowska University. My doctoral dissertation advisor was Professor Lech Dubel; the reviewers were Professor Andrzej Sylwestrzak from the University of Gdańsk and Professor Antoni Pieniążek from Maria Curie Skłodowska University in Lublin. The above doctoral dissertation was awarded a distinction in the fortieth competition for the best habilitation and doctoral theses organised by *The State and the Law* monthly journal.

3. Employment in academic/artistic institutions

On October 1, 1994 I started my work in the Institute of History and Theory of State and Law at the Faculty of Law and Administration of Maria Curie Skłodowska University in Lublin. Since 2003 I have held the position of assistant professor in the Chair of Political and Legal Doctrines at the above-mentioned University.

In the years 1996-2012 I was employed (initially, on basis of a commission contract of performing a complete task) at the Higher School of Humanities and Natural Sciences in Sandomierz. In 2005 I was appointed to the position of assistant professor at the Faculty of Law and Economy of the above school.

In the years 2003-2011 I was employed (on the basis of a civil law contract) by numerous higher education institutions, including, for example, the College of Law and Administration in Lublin, Puławy Higher School, the Technical University of Radom, Jan Zamoyski College of Humanities and Economics in Zamość, University of Management and Administration in Zamość, or the Radom Academy of Economics, where I ran lectures and classes.

4. Indication of the accomplishment stemming from Article 16, item 2 of the Act of March 14, 2003 on Academic Degrees and Academic Title and Degrees and Title in Art (Journal of Laws No. 65, item 595, as amended)

G. Ławnikowicz, *Między koniecznością państwa a pochwałą autorytaryzmu. Koncepcja państwa społecznego Waława Makowskiego* [Between the necessity of the State and the praise of the authoritarianism. Waław Makowski's concept of the social State], Wydawnictwo UMCS, Lublin 2014, p. 454.

4.1. Preliminary remarks

The basic and the most general in its nature aim of the study was to decode the contents constituting Waław Makowski's concept of the social State. The so-determined aim consumed the basic thesis that was already included in the work's title, according to which Waław Makowski developed a concept, that is a certain systematic collection of interconnected ideas, theses and statements.

Apart from the basic aim, there are also some secondary aims. They are not independent (autonomic) in their nature; quite the contrary – they are subsidiary and serve as a means for a direct or indirect reconstruction of the elements of the concept of the social State.

The distinction between the aims was an element that determined the direction, scope and order of the research; it also influenced the structure of the work. It consists of two parts.

The former is entitled *W kierunku państwa społecznego* [Towards the social State], whereas the latter - *Państwo społeczne* [The social State]. Assuming that the criterion is the nature of the aim, it needs to be recognised that the former of the two parts distinguished, is the domain of the subsidiary aims, whereas the latter is directly oriented towards the realisation of the basic aim.

The direction and scope of the analysis and the structure of the whole work were additionally determined by two basic factors. The first one was Makowski's consistent solidaristic orientation, which urged him to recognise the existence of a kind of a dominant feature of the social life, whereas the other one was a dichotomy that was distinct of his approach to the State. The latter manifested in the existence of two parallel and overlapping states – the social state in the narrow sense and the social state in the broad sense. Their actual distinction was accompanied by the belief that the State, being a necessary state and the destiny of man, heads itself towards its destiny, which is the social character.

A preliminary analysis of Makowski's broadly-understood output, also encompassing numerous instances of political behaviour, including the non-verbal ones (omissions as well), urged me to conclude that the social state in the broad sense, that is a new specific type of the State, distinguished as a result of the evolution created by the action of certain objective mechanisms and forces, is a kind of a meta-destiny and meta-necessity in this case.

The explanation and justification of the above-mentioned mechanisms and forces was the dominant feature (the dominant feature of the social development, the solidaristic dominant feature) understood as a permanent and objectified direction of development, the establishment of which required, according to Makowski, an extensive historical research (also including the historical and legal research), as well as sociological and psychological studies. The reconstruction of these is attempted in Chapter 2 of the book. Certainly, the value of the dominant feature did not, either to Makowski or me, boil down to the vertical dimension. Of equal significance were the findings concerning its role in shaping a particular social and political reality that was fulfilled within the framework of 'false alternatives of modern times', i.e. the individualistic democracy and 'totalitarian States' (Chapter 3) and the social State (Chapters 4 and 5).

4.2. Aims and results of research operations

In Chapter 1 an attempt was made to establish the forms of Makowski's activity – to outline and partially reconstruct the information and hypotheses concerning his role in the

politics of the interwar Poland and his undertakings in the area of the political science. The objective was to outline a biography of limited subject matter against a merely briefly presented historical background. It was assumed that, in practice, it was sufficient to present general information and to remind of the facts that do not raise any major doubts or disputes today. Naturally, it did not exclude detailed studies conducted for the needs of the research, particularly those concerning the history of the process of codification and the works on the August Novelisation and the future April Constitution of Poland. The general objective, however, was to assemble and systemise the material that is fairly available today. Thus, I attempted to obtain data that would allow to understand Makowski's role and approach, or to develop preliminary hypotheses in this regard.

The historical perspective was adopted as the most obvious one. The research operations proved that Makowski was not only one of the co-authors of the Criminal Code of 1932, but also significantly contributed to unifying the military penal law, forming the foundations of the criminal procedure, attempts to rationalise the operation of the Polish administration system and the State's legislative apparatus, as well as had a marked influence on the shape of the August Novelisation; finally, he was a distinguished and active politician who was for many years connected with the freemasonry that was reactivated before the World War I. The examination of Makowski's actions proved that his main personality trait was conciliatoriness, which manifested in searching compromises.

Not all questions were ready to be answered at that stage of research operations. It was considered as premature to draw final conclusions as regards Makowski's actual influence on the shape of the April Constitution of Poland. In this case, I limited himself to making suggestions and quoting remarks that are present in the relevant science. The same applied to another intriguing discovery, which actually did not cast a good light on Makowski. The examination would unambiguously point to the fact that since the turn of the 1920s and 1930s, in particular, he followed the mainstream of politics, leaving his friends and ideals behind. In both cases providing final answers was considered to be premature, which was due to the absence of definite findings as regards *essentialia negotii* of the social State.

Chapter 1 is also a kind of a brief and propaedeutic guidebook to Makowski's output. Having established the directions of his research interests and the intensity of these studies and having generally outlined their evolution, I gained another tool for further interpretive works.

From the contemporary perspective in particular, Makowski turned out to be an exceptional personality. It was absolutely justified to ask about the reason why such a

versatile and diligent man, an undoubtedly good organiser, a distinguished practitioner of law and legislator, a scholar and politician, an erudite, a writer and literary critic, an outstanding orator and lecturer as well as a prolific publisher, fell into oblivion. Being satisfied with the establishment of two facts, i.e. Makowski's exceptionality and the equally exceptional oblivion he fell into, also in this case I decided to provide the ultimate answer in the final summary of the work.

Chapter 2 deals with the past. Perhaps the best justification for the research conducted in this chapter may be the words of Makowski himself. In 1924 he claimed that "the psyche of the contemporary man and community is still full of vivid elements of the past eras", and that "the citizen in the pure form is a fiction, and his actions are driven by emotions which are frequently laden with the remnants of the tribal era - slavery and tribal separatism, the monarchical era - serfdom and the battle against the State" (W. Makowski, *Obywatel a Rzeczpospolita/The Citizen and the Republic of Poland*, [in:] W. Makowski, *Rozważania prawnicze/Legal reflections*, Warszawa 1928, p. 9).

The subsidiary aims that are achieved in Chapter 2 particularly involve the specification of Makowski's ideas on the determinants of the social life, the beginnings of the social development, the origin and the evolution of the State. It was also considered as significant to reconstruct his views on the French revolution and its origin, as well as the foundations of the liberal individualistic democracy.

The examination showed Makowski to be a dialectician and an optimist. The source of the latter was both the history and the outlook into the future. He recognised the existence of multiple forms of social life, yet he did not believe in the permanent dominance of any of them; he would rather be convinced that all these forms are transitory, and finally that the currently existent system is always a reference point for the development of some new social quality. He also believed that the social life was a logical necessity and the destiny of the mankind. A look into the past would urge him to support the thesis of the ongoing tightening of social ties.

Makowski examined the changes that took place in the man and his surroundings. Not only was he among the first Polish authors to apply the term 'social psychology', but also acted like a social psychologist. Recognising the necessity to define the character of the dynamic correlation between two planes - the social (objective) one and the psychological (subjective) one, he actually recognised the presence of the overwhelming influence of life (the social element) on the man (the psychological element).

Fulfilling the above-mentioned aims, I reconstructed, among other things, the patterns of the phenomenon of anger and the process of its socialisation resulting in the development of revenge. It was established that as a result of his analysis of the evolution of anger, Makowski came up with a rule that was of universal character to him. According to the rule, the later and superior form does not eliminate *ex definitione* the earlier and inferior one. What was earlier does not simply disappear, and sometimes it lasts for a long time, becoming an ornament, the original content of which nobody remembers anymore.

It was also found out that as a result of his studies on the socialisation of anger, Makowski also formulated a triad marking the sense of social evolution. It was supposed to follow the axis marked by revenge (the past), punishment (the presence) and social defence (the future).

Examining Makowski's views on the social development, I reconstructed his beliefs concerning the course of this process, the relations inside the lineage, the family and the tribe and the mutual relations between these social structures. I have established a pattern of the historical development (the horde – the lineage – the family – the tribe) and a much more complex logical pattern based on two opposed elements – cooperation and competition, and the element of time that boosts the whole.

My own graphic representation in the form of diagrams helps to understand the antimony that is of extreme significance to the concept of the social State. Like Durkheim, Makowski claimed that in the course of the social development there emerges the prevalence of the sensitivity to individual – i.e. competitive - stimuli. This happened to the detriment of the cooperative stimuli that rewarded the community. On the one hand, thus, there was a consistent consolidation of the qualitative and the quantitative elements of social existence in the social life as the destiny of the man. On the other hand, there was the growth in the significance of individuality and egoism. In yet other words, Makowski assumed that the more competition and individuality there was, the more society there was and the higher was the extent of socialisation.

Makowski had no doubts that the State is a social product which may emerge under favourable social circumstances – it requires a proper degree of maturity of the psychical emotions of the community and the advanced processes uniting the social life. Thus, one thing was the emergence of the State, and another was the State's ability to last. An apparent contradiction in this case is the absence of an unequivocal rejection of the agreement and conquest as the grounds for the establishment of a particular State; to Makowski, these are the

technical elements, the measures sanctioning the maturity of the community to live in the state.

One needs to recognise as significant the remarks on the relation between the State and the custom, particularly those dedicated to the change of the function of the custom from the legitimising to the delegitimising one, which the author linked to the centralisation of power, particularly within the framework of absolute monarchy.

In Chapter 2 I also decoded the content of Makowski's ideas on the origin of revolution, and at the same time the new liberal order. I established that he did not, in this case, limit himself to establishing the content of social processes, as he denied them the features of sovereignty, claiming that being linked to the sense of injustice, they remained under the influence of what was the equivalent of feeling, i.e. ideology. Makowski had no doubts that the sense of injury evoked the need for the ideological search, the result of which was action. He also claimed that although the sense of injury was a common and objective social phenomenon, injury itself was not objective; it was an emotional state – a human's sense. He emphasised the significance of the quantitative and qualitative element. It was, indeed, not an individual's sense of injustice, but the one of common or nearly common nature that could be one of the fundamental catalysts of changes. Resentment (the sense of injury) is according to him a creative factor that determines the scope and pace of social changes. However, it does not in itself constitute a complex justification for them. In the idea (ideology) Makowski saw two complementary and logically related elements. He was convinced that the negation of the reality and the recognition of this negation must be accompanied by the acceptance of an alternative vision of the world. Its vision must not only be suggestive, it must also be considered as a relatively more attractive one, it must 'captivate with its superiority'; this is the condition for its relative durability. This is a general law. It was no different, thus, in the case of the rise of the modern democracy and its later evolution towards organised democracy (the social State).

The fundamental aim of the period of transition becomes 'the pursuit of justice'. The history of the French revolution, but probably also a number of remarks cited in the book concerning the contemporary events, convinced Makowski that justice is a relative process that is relevant to a given actual reality. Thus, the actions remaining in the logical opposition are also just, for instance the famous revolutionary September trials, as well as the previous witch trials and the later condemnation of these acts of justice. Justice is harmony, a here and now state – it is what is approved of by a significant number of people at a given moment and in a given space. This relativised view on justice that was represented in the initial stage of

Makowski's activity, will later prove to contribute significantly to the work of legitimising and auto-legitimising the social State.

Makowski reconstructed both the doctrinal foundations of liberal democracy and the detailed elements constituting the new order, also in this case subjecting the manner of interpretation to the aims of legitimisation. It was the perspective of the social state that urged him not to see balance as an element of Montesquieu's concept of separation of powers; but quite the contrary, to perceive in it the approval of the coordination factor, or to recognise his approach to freedom as 'more complex and deeper' as compared to the later classical definition under Art. 4 of the Declaration of Human Rights. For similar reasons, Makowski considered Rousseau to be a supporter of the concept of separation of powers. I arrived at a conclusion that the separation, bearing Rousseau's features, *de facto* identical with a precise definition of distinguished functions, was not in conflict with the concept of the unity of state authority, the superiority of one body of this authority, the rejection of political institutions and brakes, or even the thought of coordination being placed in hands of one of the bodies.

The findings led me to conclude that Makowski's ideas were not free from contradictions or understatements, which found their way into the discussion on the status of the separation of powers and the social agreement as constituent elements of the liberal concept of the State and their later fate, particularly the practical approach to them at the time of the escalating crisis of liberal democracy. The approach to them, proving to be significant to the developed concept of the social State, also turned out to contribute greatly to its exegesis (Chapters 4 and 5).

Makowski dismissed as fictitious the concept of innate human rights, at the same time being exceptionally consistent and arguing with Duguit, he considered it to be objectively justified as resulting from the current stage of social development. Examining, in turn, the essence of equality, he finally concluded that an element of the new system of values was not so much equality as such, as its particular form – i.e. equality before the law – perceived formally, and not materially. It constituted an actual equivalent of the already stable legal order that was based on the universality and generality of the legal rule, thus it was 'a result of the development of organisational social processes' and the account of their current state. The idea of equality understood as such was not universally introduced. Apart from the criminal and the private law, there was yet the public law. In this sphere, the idea of formal equality was excluded by numerous qualifications contradicting the universality of political participation of atomised individuals. This restriction was coupled particularly with a deep

wealth inequality. The system which had the slogan of brotherhood inscribed on its flag, would, in fact, treat it as a mere cliché.

According to Makowski, the above-mentioned restrictions were linked to the exclusively negative approach to freedom. It went hand in hand with the narrow and formal approach to equality. He assumed that the realisation of the material aspect of the latter would require concessions to freedom as an obligation. Justifying this thesis, he referred to the meaningful example of the dismissal of universal education, which was a manifestation and evidence of the limitations of the liberal approach to freedom.

According to Makowski's approach, the liberal world was reduced to a simple dichotomous formula. There remained two structures in the battle field. The former was the collection of atomised individuals, whereas the latter was the State. Examining the relations between the indicated elements, the author came up with paradoxical assumptions. Firstly, liberalism is a war of all against all, and secondly liberalism is absolutism, and specifically absolutism of power. I assumed that one has to do here with a complex, not only nominal, paradox, as what also seems paradoxical is the very juxtaposition of paradoxes that appears to create a 'dually' logical structure. Does, indeed, chaos as an element of reality match absolutism? According to the classical account by Hobbes, these are two opposed elements. This opposition seems obvious. If we assume that chaos is the state of nature, then one will indeed consider as correct the assumption that the nation state based on absolute power suppresses egoism and guarantees safety, abolishing the war of all against all.

Makowski's approach is, however, different, with chaos and egoism being elements of the same reality that the absolute power is part of. The layout is linear (horizontal). The paradox is not at all as profound as it might seem. Makowski envisages, in fact, a reality that is internally complex and made up of two parallel and foreign structures. The former, to preserve his line of reasoning, can only conventionally be described as the social one, with the latter being of political nature. The former is the domain of individuals (atomism), whereas the latter is the domain of the State. The explanation of the paradox turns out to be simple. The problem lies in the scope of operation of the dominant subjects. It is absolute, which means that both the political authority and the individual are absolute within their own scopes.

According to Makowski, the distrust that the system was based on and the fear of the return of old political solutions, were significant enough to provoke the development of a particular defensive construction in the form of a system of negative guarantees. The system of negative guarantees is a term that Makowski would quite frequently apply. It was equally symbolic and vague. It covered rules of various significance, overlapping and complementary,

both material and formal in their nature. Having examined Makowski's writings, I was led to conclude that in spite of the vague boundaries, we have all the right to attribute to him the intention to distinguish two approaches to guarantees. One may be described as the general one – in this case they play the role of a symbol or emblem. The other approach, in turn, a more precise one, involves the indication of particular principles (the state under the rule of law, the principle of separation of powers, or the principle of equality that manifests, for instance, in the idea of arithmetic criminal justice).

In Chapter 3, I dismissed the vertical structure of relations and looked at the reality surrounding Makowski through his own eyes. There was a complex and vague matter in front of him. It was full of 'false alternatives' of the contemporary times, which included the evolving liberalism and totalitarian systems. It was alongside with these that the social State was to be developed.

Following in the footsteps of Makowski, I juxtaposed two principally different regimes. I was curious whether he posed questions and, possibly, how he answered them, and whether the systems present in the title were supposed, according to him, to have any positive common denominator. Or whether perhaps the only common element was to be the absence of coherence with the spirit of the era and the requirements of the contemporary times. Or, eventually, whether he altogether dismissed any relations between what is 'false' and the social State.

The structure of this part of the book included two narrower research fields. Their subject matters are individualistic democracy and totalitarian systems, respectively. Within the framework of the former one, I analysed the end of a certain idea, including its practical dimension. I attempted to establish what, according to Makowski, had happened to the system's original assumptions – i.e. to reconstruct the deconstruction. In doing this, I discovered the birth of a newly-defined society, I followed the attempts to determine the origin of this state, and I established the contents linked to the dynamic system of relations between the society and the State. Further, I examined the thoughts on the origin of parliamentarism, the role of political mediation, the evolution of the contents linked to negative guarantees.

Separately, I dealt with Makowski's ideas on the Polish parliamentary democracy and the quality of the Polish society in two periods – previous to and following the regaining of independence.

A separate aim was to describe Makowski's appraisals concerning the condition of the interwar democratic regimes.

Chapter 3 closes the synthetic presentation of Makowski's ideas on totalitarian systems. The need to undertake a study in this area can be justified with at least a few reasons. It was a common belief that the ideology and the political system of the Polish state, particularly following the enforcement of the April Constitution, were a manifestation of discovering the *modus vivendi*, i.e. the golden mean between extremes (the axiom of originality as examined in Chapter 5). Makowski shared this view. Apart from the study on the parliamentary democracy, I attempted to establish his ideas on *differentia specifica* of totalitarian systems. The centre of my interest were Makowski's views on the origin of totalitarian systems, ideas on the quality of man and the development of social ties, the consequences of the deficit of the latter, the issue of the integration and monopolisation of mediation and its superficiality as the result of the monopolisation. I also considered it as necessary to deal with the role of the culture of enthusiasm and the description of the author's ideas on the totalitarian view on the fundamental social institutions.

Makowski provided a detailed reconstruction of the origin of the contemporary society. He expressed the view that a liberal state was to be characterised by passivity; its activity and absolutism were realised only within a sphere that was strictly defined for it. Outside this sphere, the State was obliged to be passive. The same applied to the individual. It was also supposed to remain passive outside the sphere of its individual behaviour, i.e. in the sphere that is described today as public or common. Thus, a demarcating line separating two hegemony spheres was established – it was artificial. Its establishment is an abuse that is an expression of the lack of understanding for the natural inclinations of man. Makowski had no doubts that the man neither could nor wanted to live on his own, and objectively was not able to go beyond the boundaries of a social relation. Such a life would simply be contrary to its nature. The man freed from a great part of national ties and freed from family ties had to open himself to other people similar to him, and it was them that he began to be connected to by numerous ties. At the same time, there ensued the development of multi-level cooperation, unhampered and free from the State intervention. In this manner, the void that was left after the family was filled with the society, which the author described as the highest synthetic form of coexistence of freed people.

The essence of the upheaval involved the discontinuation of the conventional dependence, and the development of a new society as an independent phenomenon in contrast to a society that was previously identified with the State. According to Makowski, the birth of society was the ground for a multi-directional upheaval. It encompassed, among other things, the political thought (the emergence of new doctrines correlated to the new type of political

subjectivity), the sphere of practice (the emergence of the idea of representation expressed in the development of political parties, which was contrary to the ideas of liberalism), the change in the contents of negative guarantees (while at the same time maintaining the form which remained, in accordance with the previously described rules, as a kind of an ornament).

Makowski reconstructed the process of the society appropriating the spheres that were principally outside the State's scope of interest. He attributed the main role in this respect to political parties. He emphasised that they very quickly became monopolists in mediation, while at the same time exhibiting the lack of efficiency, impeding further social development, or even parasitizing on the society. The thoughts on the mediation of political parties were to Makowski a fundamental source of reflection on good and bad mediation. He was prepared to recognise the character of mediation, i.e. the positive relation towards the social service, as the criterion that positively quantified it.

Makowski paid attention to the re-evaluations within the contents constituting negative guarantees. The basic theses included the ultimate dismissal of the material bases of the legal state, the most extreme manifestation of which was according to him Kelsen's normative theory, and making the rule of separation of powers a frozen and non-contemporary, or even mystical, dogma, and giving freedom an apparently liberal, yet actually anarchic, character, as based on considering it as a non-legal phenomenon. The list of the guilty of the latter violation included Jellinek and Kelsen. I was forced to recognise Makowski's stance on freedom as a simplification serving to discredit the ideal that was foreign to him.

One needs to emphasise Makowski's findings regarding the reinterpretation of legal equality. He paid attention to the dissemination of a new positivist ideal dismissing the arithmetic and mechanical criminal law equality as injustice. It was to be based on the individualisation of justice and to rely on adjusting penalty (and in the future, the measure of social defence) to the perpetrator, and not the offence.

Not forgetting the complexity of the term of equality, the author also analysed its dynamism within the spheres of the private and the public law. In the former case, he saw a phenomenon analogical to the one in the criminal law, i.e. the departure from the formally perceived equality (the moratory acts, the protection of the contractual tenancy, and the agricultural reform), whereas in the latter – a contrary process, i.e. a gradual dismantling of the system of census exclusions. These contrary processes constituted, according to him, a stage of the pro-social evolution.

I also explore and examine the phenomenon of 'fetishisation of law' as described by Makowski. Its source was to be the naive belief in the stabilisation of law and its rules. The

common belief in the unchangeability and the permanence of rules proves, however, to quite the contrary, namely it is a signal of their end. The fetishisation, as he assumed, is based on the belief that in every single event of a social complication which needs to be solved, appropriate new norms need to be established. The multiplicity of complications triggers off the multiplicity of new norms. Obviously, there are more and more norms. Nobody knows them all or understands them, yet everyone is prepared to believe that there is no other way but to stick to this and continue this legislative action. The fetishisation of law is to entail, among other things, consequences such as the reduced quality of law-making, including a growing number of logical and constructional gaps and loopholes, the reduced legal consciousness and the emergence of the phenomenon of 'the cult of form'. The latter, which the author identified with a thoughtless acceptance of the legislator's all statements, and a common belief in the norm being able to cover all hypothetical facts of the case, was to result in the further destruction of citizens' attitudes and the approval of the social withdrawal and passivity. The situation was further complicated by the clash between the statics of law and the ever growing dynamism of social life. Makowski's reflections still sound current today.

Makowski assessed Polish people. He was certain that they were characterised by the lack of regularity and perseverance, while at the same time they had always been fond of 'showiness', superficiality as well as sudden and impressive revolts. Interestingly, liberalism was not originally, according to Makowski, a destructive force. Associated with the opposition to absolutism that was identified with invaders, it reinforced the sense of intranational solidarity. Given, in turn, the peculiar attitude of invaders which manifested in excessive passivity as regards the fulfilment of Polish needs, it extorted many equally excessive forms of social activity. Understood as such, liberalism, associated, against the original assumptions, with the resentment towards the State as an oppressive institution, became a burden to the reborn Poland. The fixed conceptual code required to treat Poland as any other state, and thus as a foreign subject. There emerged two parallel phenomena – the social action came to a natural halt, whereas the new and inexperienced State took over a number of tasks that had previously been performed by the society. A major problem was the typical post-partition attitude which manifested in the deficit of the sense of the social solidarity. In this complex system, a destructive role was also played by the tradition of *romp* as distinguished by Makowski from freedom combined with responsibility and obligation. The convergence of the negative factors indicated above, was to bring about 'a hideous ideology of individualism', which was characterised by passivity, excessive criticism and the praise of the civic abstinence. Makowski had no doubts that a proper educational action was

needed. The issue of educating the new citizen was to become the task of the new democracy, i.e. the social State.

The critical attitude towards the Polish parliamentary democracy would escalate with time. The study showed that, not being too original in the selection of arguments, Makowski went from the idealistic faith, through the moderate criticism, to the permanent condemnation of both institutional solutions and the political practice. The latter was already the participation of the author consciously erecting the constructions of the social State.

Looking at other democratic regimes, Makowski supported the thesis that there no longer existed pure liberal democracy. I was forced to describe the research field as basically extensive, as I established that he examined the discussed systems already from the perspective of the political turnaround that had taken place in Poland. It is understandable that the main objective of his reflections was to confirm and justify the direction chosen by Poland.

I considered as particularly important the questions and doubts concerning France. Makowski perceived two Frances, one based on a demo-liberal semblance, and the other heading towards a new social reality. The examination of the attempts at the evolutionary domestication of syndicalism finally led him to contrary conclusions, which contradictions were not eradicated even at the moment of the final assessment. Most importantly, he accepted the modern phenomenon of the integration of syndicalism by means of the absorption of trade unions and all sorts of social organisations by the State.

Equally important were his reflections on the Baltic states and the USA. In the former case, Makowski offers an original and sensible justification of the source of the victory of the liberal, or even radical liberal, model of the State. He links it to the past and the social structure. It was particularly the dominance of the rural population and the secondary role of industry that contributed to the caution towards the socialist and syndicalistic concepts. Examining, in turn, Roosevelt's policy, he saw it as an attempt to socialise the excessive American individualism, to successfully socialise the spheres that had previously been left to the freedom of individuals, and at the same time to implement the rules of the social justice. Drastic transformations entailed a crisis. He expressed the conviction that that America exceeded France in the work of socialisation. The source of this advantage was to be the political culture that France inherited from England, and which appreciated the role of practice.

The common denominator of false alternatives was, according to Makowski, mediocrity. He distinguished its two extreme forms, the liberal and the collective one. The

former was to be based on the average individual, whereas the former – on the mass of average individuals. Thus, in the background of my analysis there was the question about the role of mediocrity in the social State.

As a result of the examination undertaken in the final section of Chapter 3, I arrived at several conclusions. Generally speaking, Makowski makes no attempt at a holistic approach or a complex discussion of totalitarianisms. Certainly, his writings abound in numerous brilliant and surprisingly fresh reflections. Occasionally, they intermingle with some naive-sounding theses. A good explanation for the above fault, may probably be the absence of an appropriate historical perspective, an occasional deficit of information, or the more or less successfully veiled attempt to protect own ideological convictions. Makowski's interests are not evenly distributed. Distinctly dominant are the Soviet issues. With all the reservations to the systems discussed, the only example of sympathy to be encountered here is the one towards Italy. I assumed that the value of discussions on totalitarian systems manifests in the inevitability of comparisons to the social state. In such circumstances, the answer to the question about what Makowski did about the intrusive similarities between the systems, was undoubtedly rudimentary. I assumed that we would obtain information on the social state both from the author's interpretations that needed to be verified, and from his ignorance or, at best, belittlement of possible analogies.

With reference to the detailed questions, the most significant remarks are the ones about the quality of man and the development of social ties. The analysis of these led me to conclude that Makowski assumed the existence of the following relation – the more organic solidarity there is, the smaller the threat of totalitarianism is. What according to him was to facilitate the success of totalitarianism, was the phenomenon of elimination. It was, as one may conclude from his remarks – the source and a characteristic of communism, and, due to the basically higher level of the social development, only a characteristic of the Nazi and fascist system.

Makowski attributed a significant role to the deficit of social ties. He treated totalitarian systems as an attempt to solve the dilemma of the individual tired of individualism and the helplessness against the more and more complicated reality. The author would suggestively argue about the natural advantage of an emotional moment as being more accessible to an average man. He would claim that he wanted unity, as he did not have it before because he was deprived of it by liberalism which coupled with the complication of life. This observation is a partial explanation for the Italian and German totalitarianisms, while at the same time being, according to Makowski, a highly limited explanation of the

origin of communism. What was, however, of universal significance in the case of all systems, was the argument of the social instinct which urged the individual to live in groups.

Other characteristics of the totalitarian State include uniformity (Makowski notices the multiplicity of functions of this characteristic) as well as the integration and monopolisation of mediation. The author saw mediation as a means of integration. The monopolisation of mediation, in turn, is identified with the nationalisation expressed in the rule of a mono-party as well as the superficiality and fictitiousness, i.e. the actual absence of mediation. The author noticed that although independent mediators who were the curse of liberalism would disappear, yet their place was taken instead by one totalitarian mediator – the State, which integrated the society by means of its mediatory function.

The source of the success of the totalitarian State is also a skilful creation of the culture of enthusiasm. It comprises two elements – the technical (identified with propaganda) and the ideological one. Their efficiency grows with the growing degree of uniformity. The strength of propaganda is also determined by the relation between the subjective element (the propaganda content) and its mediums (the state officers). In their case, this relation is expressed in the internalisation of the contents making up the culture of enthusiasm (ideology and propaganda).

Part II of the work comprises **two chapters**. This structure represents the assumption of the existence of two social States, which was indicated at the beginning of the present paper. Consequently, I dedicated Chapter 4 to the social State in the broad sense (*Państwo społeczne sensu largo. Essentialia negotii nowej syntezy/Social state sensu largo. Essentialia negotii of the new synthesis*), and Chapter 5 - to the particular Polish social State (*II RP jako państwo społeczne (sensu stricto)/The Second Polish Republic as the social state (sensu stricto)*).

Within the framework of the former of the above units, I conducted the analysis following the path established by Makowski himself. It proceeded from the society (point 1), through the State (point 2), to the new rules of the social order (point 3).

It seemed particularly necessary to establish the author's ideas on the essence of the consolidating processes and the rules constituting various forms of social life, and to reconstruct the definition of the social State, the concept of authority, types of leadership, the degree of the openness of the social State *sensu largo*, and thus the preparedness of its constructions to absorb various kinds of reassessments conditioned by the dynamics of social relations. I also attempted to define the essence of socialisation, particularly this element that Makowski described, in the social meta-language, as the national integration of social

associations. No less significant seemed the issue of political mediation, and thus I aimed to establish the author's thoughts on the public opinion, the political advertisement, good and bad political mediation, the value of the individual as an element of social processes, the culture of enthusiasm and its constituent elements. Within the analysis of the rules of the new social order, I brought law to the fore. I aimed to decode the contents of the rules of the politics of law, and then to explore and verify the construct of a legal norm and the legal order. It seemed essential to determine the contents linked to the new social meaning of equality, freedom, property, work and social justice.

I attached key significance to the issue of defining equality, including the social dilemma of the social equalisation of inequalities. This resulted in the need to analyse the measure of the new equality – the total social value and the criteria of distinguishing the individual status (individualisation to the top, individualisation to the bottom).

I assumed that the continuation of the study on freedom should encompass the reflection on the degree of the ability of a conscious choice of limitations stemming from the development of social organisation as allowed by Makowski, including the relation between freedom and consciousness, as well as the responsibility and the character of the relation between freedom and law.

The final issue was to establish the contents defining the syllogism of the new justice. The above necessitated to precise Makowski's ideas on the classical, based on property, formula of justice (*suum cuique tribuere*), and to compare the result with the new formulas, based on work and need.

In Chapter 4, I attempted to indicate the sources and the scope of scholarly inspiration.

In Chapter 5, I adopted the temporal element as the most obvious criterion of the analysis. It corresponds to Makowski's evolution. It proceeded from the cooperation discussed under point 1 (*Submodel kooperacji/The sub-model of cooperation*), through the coordination transforming into integration, the features of which I sought for under point 2 (*Organizacja społeczeństwa w jego państwowym współdziałaniu. Między koordynacją a integracją/ The organisation of the society in its national cooperation. Between the coordination and the integration*), finally to the integration as the state registered by the author at the end of the Second Polish Republic (*Submodel integracji/The sub-model of integration*).

The research aims are the questions, related the sub-model of cooperation, about the desired status of the State bodies, particularly including courts and the optimal model of social relations (point1).

Further in the chapter, I aimed to establish Makowski's manner of identification of the idea of the social State. It is a complex research field. It involved the necessity to determine the relation between the idea of the social state and the norm and practice of authoritarianism. I adopted in advance that the derivative of the subordination to the solidaristic dominant must be a specific relation to the idea of the social State, and hence the thesis, formed already at the beginning of the work, that Makowski approved of the rule of the secondary nature of the idea. It was also essential to establish the contents of the evolving views on the society and the State. The order of research operations corresponded to the structure of the analysis included in Chapter 4. I, thus, aimed to ensure maximal clarity of description, and to facilitate comparative studies. I attributed most significance to the reconstruction of Makowski's views on the decalogue of the April Constitution, which he described as the declaration of social solidarity. I was particularly interested in the author's approach to Article 7, which negated the individualistically-perceived principle of equality. This stemmed from the need to determine the role of elitism as a component of the social State. The analysis aimed to bring the reader closer to the answer to the question about Makowski's influence on the final shape of the decalogue. In the part devoted to the State, I aimed to capture the current stage of the evolution of Makowski's ideas on the aims of the State, functions of the State bodies and their mutual relations.

In the last section of Chapter 5, I aimed to compare the freshly-established idea and norm (the decalogue) to the practice. I also dealt with the technique, or more specifically the reconstruction of Makowski's explanations for the dynamics of the decomposition of the *Sanacja* camp and its assumptions that were, for a brief moment, registered in the constitution.

My analysis resulted in numerous detailed observations and conclusions. However, here I am forced to limit myself to synthetically presenting only the most significant ones.

The initial hypotheses concerning the degree of Makowski's scholarly independence that were formed in the introduction, were proved to be correct. In the work, in its second part in particular, I had an opportunity to indicate numerous, mainly solidaristic, inspirations and borrowings. The author himself was aware of the fact that he did not act in a vacuum, either social and political, or scientific one. Although I happened to comment on particularly clear analogies (such as Petrażycki, Duguit, Hauriou), I did not and I do not have any doubts that they do not undermine the independence and originality of the construct developed by the author. It was not a compilation, but quite contrary, a coherent and consistent (although evolving) vision of the State.

The methodological assumption involving the distinction of two social States, proved to be justified. It undoubtedly facilitated the analysis and presentation of Makowski's output. The examination showed the overlapping of both States, the inspiring influence of the theory upon the practice as well as the reverse phenomenon. The inspiration manifested in many dimensions, from the procurement of a general reflection, or a confirmation of one of solidaristic truths, to the direct influence manifested in the development of concrete tasks. I noticed such relations, for instance, between the reflections on the status of president and the theoretical concept of power and leadership and the distinction of the concept of supremacy. On the whole, the completion of concrete tasks required to undertake actions at both planes of the Social state. The former, i.e. general, plane, was the place of the accommodation of the new contents to the existent system of statements, as if the adaptation of a new, changed or specified element. Simultaneously, at the other plane, Makowski had to undertake much more specific actions, frequently political ones, for instance involving the creation of 'the culture of enthusiasm'. Naturally, these tasks were completed by means of the measures making up the social State *sensu largo*. The specific actions also included drafting proposals of legislative changes and justifying them, or only justifying them by means of the meta-tools developed within the framework of the meta-state. Obviously, this did not negate Makowski's independence. Moreover, it even justified the thesis on the degree of independence growing proportionally to the growing generality of reflections. The principle that stemmed from the essence of both approaches was the greater generality, and thus also greater permanence of the social State *sensu largo*. Naturally, there were also some 'frictions'. Makowski himself must have been embarrassed on many occasions, while adapting elements belonging to two States, particularly given the difficulties in determining the pace and direction of the dynamics of the political life in the Polish social State. This was the case, for instance, with the problem of providing an unambiguous definition of the social State that was widely discussed in the book. The instability and vagueness of the attempts to provide such a definition that I indicated in Chapter 4, was obviously linked to the changeable, as regards the direction and the scope, influence of the processes belonging to the concrete, Polish social State specifically. Undoubtedly, the construction of the social State *sensu largo* was prepared to absorb various sorts of re-evaluations that were due to the dynamics of the social relations.

In its both dimensions, the concept of the social State was based on solidarism. In the light of the findings of the book, it seems a particularly handy tool to anyone who aims to legitimise new social orders. Against what Duguit thought, Makowski, and obviously he was not the only one to do so, would bring a political and quasi-doctrinal dimension to it.

Understood as such, solidarism would frequently become a source of easy, because general and broad, answers to difficult questions. This appraisal goes hand in hand with the declaration by previously mentioned Duguit, as described in Chapter 4, which concerned the need to replace the concept of ‘solidarity’ that was appropriated by politics, with a less medial, or at least relatively politically neutral, concept of ‘interdependence’ (*interdépendance*).

Justifying the construction of the discussion, I emphasised the significance of the solidaristic dominant. Its role turned out to be versatile. Essentially, every element of the concept of the social State was a derivative of the ideas that constituted it. The essence of the dominant came down to objectivising the inability to specify the direction of social development. Makowski would consistently claim that social life, as the destiny of man, is subject to progressing complication. He would also invariably express the belief that it is based on consolidating processes and that none of its forms was of permanent nature and hence would be replaced with a new, objectively more perfect, one. The former assumption, certainly based on the authority of Petrażycki, sounds particularly optimistic. This, however, is just an appearance. Originally tinted with liberalism, which manifested, for instance, in the belief in the world without punishment, it transformed, indeed, into a cynical and instrumental legitimisation of anything that was new, and thus more perfect *ex definitione*.

The studies proved that the concept’s integral elements were dynamism and openness. When translated into the language and practice of politics, they would open up the field to sanction strictly pragmatic phenomena. Such was the nature of, for instance, the concept of political reason. The examination showed that the mentioned characteristics, by relativising and subjectivising the concept of the Polish social State, urged Makowski to accept the non-constitutional political practice, both previous to and following the enforcement of the April Constitution. In such circumstances, the concept of the social State would become a scientific alibi for the transformations taking place in Poland, and the idea, in this case manifested in the form of the social State, would begin to justify the system that would marginalise it itself. It turned out that Makowski rejected the rationalistic and individualistic belief in the supremacy of the idea and the necessity to coordinate the programme, the norm and the political practice with it. In doing so, he acknowledged the stratification imposed by the dynamic reality. What was meant by the new path to be followed, were respectively the practice, the norm and the idea. It is significant that the dominant role of practice was not undermined in this case either by the transition to the sphere of norm, or the accomplishment of some, eventually only transitional, ideological (or policy) construction. .

A confirmation of the above observations are Makowski's reflections on authority and law. He assumed that authority is a social relation being realised within the framework of correlative psychological emotions. He also assumed that power is a characteristic and not the essence of authority, whereas coercion is not its source, but its result. Significantly complementary to these theses was the belief I expressed that the power of authority remained related to the intensity of coercion. To be more specific, the less coercion there is, the more powerful the authority is. Neither did Makowski have any doubts as regards the scope of operation of authority as a social function. In his opinion, it should not and cannot face any limitations. It is the authority that determines the scope of its own activity that is identical to the scope of the State's activity, and makes firm decisions within its framework. Having interpreted Makowski's ideas, I had all the right to claim that in the light of his approach, authority was without parallel.

The quoted assumptions are an introduction to undermine the classical function of law, and at times they even depreciate the role of the normative element. I posed a rhetoric question whether the norm associated with coercion, and thus weakness, is allowed to aspire to the role of the basic tool of governing. This is not the most significant, though. Makowski came up with a thesis on the cumulative character of the elements determining the existence of the norm. He distinguished three such elements, i.e. the origin from the state, the active state of the binding force and the actual action. Further, he would, yet, assume that it is only the latter that is obligatory. I considered the above to be a mystification, the framework of which is determined by the very clash with the tough political reality. No one probably needs to be convinced that, particularly under the conditions of the authoritarian State, such a state is not possible. This is further confirmed by the remarks of Makowski himself, who exposing the mechanism of the individualistic fiction about the ability of extensive civic participation in power, at the same time created a realistic, based on elitist grounds, concept of the State. The author admitted, indeed, that 'the will of the nation' is nothing more than 'the collective approval of the individual initiative', and that 'the source' of, as he put it, 'the alleged will of the people' is 'the activity of agents', who form the people's perception of what the social need is. In this perspective, 'the allegedness' refers not only to the will, but also to the need. The latter is the need of the social leaders or, alternatively, a projection of their ideas on the need identified with the social good. Interpreting Makowski's concepts, it may be claimed that the agent acts as a mediator – he creates and identifies the needs, and then argues about the necessity to satisfy them. The latter task is completed in two ways. One consists in

identifying the initiative with the approval, whereas the other – in successfully imposing his will (remedial initiative) on ‘the organ of social approval’. In the practical dimension of the Polish social State, the above translated into Makowski’s acknowledgment of the supremacy of the executive over the legislative, and it also entailed the arrogation of the parliament’s classical competences by the President and the government (decrees) and the suggestively formed impression of the lack of professionalism on the part of parliamentarians. The latter of the cited appraisals was the justification of the limitation of the legislative competence of chambers and the formulation of a fictitious, i.e. impossible to be realised by the weakened parliament, postulate to reinforce its controlling function. It may, thus, be claimed that contrary to his own suggestions, Makowski, having both feet on the ground, would bring back to life two depreciated elements that determined the existence (the binding force) of the norm.

Another thing is to establish the content of what is binding. However, also in this respect, there is no fear of chaos connected with the individual appraisals by the individual. The manner of understanding the norm originating from the State is determined by the State itself, i.e. its organs. The author justified the necessity to subordinate to the interpretation that is done in the course of law application. In Chapter 4, I established that Makowski did not reject sanctions. What is, indeed, sufficient under the conditions of the national life, under the conditions of the authoritarian State in particular, to ensure the obedience to what the authority recognises to be the binding norm, is the mere fact of the existence of means that constitute coercion, and the concepts on these means. There emerges another threat. Makowski approves of something that was described in the interwar discourse as the essentialness of law; he is the supporter of the indeterminate phrases that create the significant area of the discretionary power. Therefore, he accepts the state of the uncertainty of law that is realised as a result of subjecting the bodies applying law, courts in particular, to the organised political pressure. Makowski’s detailed concepts sanction this state. Unfortunately, what is particularly proved by the findings of Chapter 5, the general diagnosis – law and the practice of its application become in accordance with the rules of the new triad (the practice-the norm – the idea) a tool of political practice - finds its confirmation with reference to law.

On the whole, if we look at the system that Makowski supports from the perspective of the individual, we will see it is no longer based on law. It does not limit the State authority any longer, and the good ‘negative guarantees’ that were the individual’s tool against the State disappear. As the social life abhors a vacuum, the reduction of the role of law results in the reinforcement of the position of custom and the current political practice, and these

additionally and consequently reinforce the position of authority. This process consolidates the degraded social and political role of the 'old': 'mediators' and 'the mediator', i.e. parties and the parliament.

Authority and the participation in authority understood subjectively, is invariably linked to the issue of the new social stratification and the problem of the elite. This remark refers to both dimensions of the social State. During my study on Makowski, I would ask the following questions – 'How and on what foundations should the elite be created?' 'Can it remain unperverted by the fact of participating in authority?' These are obvious, yet very necessary, questions to ask. Makowski searched for and justified the *raison d'être* of the political elite, which he himself was part of. Writing about the issue of the elite, I naturally referred to the antique tradition, i.e. the Platonic faith, and then the loss of faith, in the elite (the concepts of the ideal State and the concepts of the just State) and Cicero's reflections on the new aristocracy, which, what is significant, were tinted with fatalism and conformism and steeped in determinism.

In Chapter 4, when I attempted to establish the essence of equality in the social State, I applied, following Makowski, such terms as 'the total social value' or 'the criterion of the leading role'. I paid attention to the mysteriously sounding assumption that this criterion was fulfilled by 'real social values', the measure of which is 'the relation to the ongoing social transformation'. The assumptions were logically supplemented by the emphasis of the particular role of the emotion of obligation. What also stems from this description and the findings is the praise of conformism; also as the attitude of those who, like Makowski, were part of the widely-understood elite, and those whose position within the system was actually a derivative of 'the relation to the ongoing social transformation'.

Returning to the question posed in Chapter 1, I was curious what led Makowski to the positions he adopted in the late 1930s. Already the analysis of the course of works on the future April Constitution indicated his specific status in the governing group and showed that he never became a full member of the narrow governing elite. In my opinion, the above appraisal is not contradicted even by his further promotions and his ever closer identification with Piłsudski's elite. Over time, only a few were left out of the people who were close to him due to their past and ideals. Hence probably the approval of the political line of *Sanacja* when Kościłowski became the prime minister. In the conclusions, I inquired about the sources of the approval, or indeed even the affirmation of the practice that having abolished Kościłowski, supported Sławoj, or the active support of the system based on a clear breakup

with the letter of law and, as related to it, taking a stand against a member of *Sanacja* in the person of Sławek. It seemed legitimate to pose a straightforward question why Makowski still supported further evolution of the system with his own surname. I did not come up with one single answer – all previous findings indicated that it must have been complex. In this ambiguous system, a certain role must have been played by the vanity connected with the very fact of participating in the authority. I did not, however, attach any major significance to it. In my opinion, other reasons were more important – the previously indicated analogies to stoicism or stoic determinism, and the mentioned conformism, in particular. What turned out to be important was the fact that Makowski did not form any clear break-even points and did not erect any qualitative barriers. The belief in the existence of something reminding of the Aristotelian-Thomistic syneresis, was also foreign to him. His *arete* was wisdom, rejecting the rebellion against the facts determined by the changeability and the kinetics of social life, the existence based on interdependence. This resulted in not really dignified behaviours, steering away from those who stood in a dead spot and did not understand the spirit of the new times, and a symbolic break-up with the past by renouncing the ties with the freemasonry. In such circumstances, the boundaries of the moral acceptance of what is external and inevitable, turned out to be particularly wide. I did not, however, doubt that he had been long prepared for it. It is sufficient to remind the ideas on the essence of justice and equity that were reconstructed in Chapter 2. In the light of the findings, it is hard to speak of any ideological reorientation on the part of Makowski at all. It cannot be otherwise if he was prepared to acknowledge that the dominance of rational practice was an element of a social ideal.

Makowski kept being forgotten. He would remain in the shadow. He was never perceived, and rightly so, as the main actor, and he never gathered any coherent group, including a scientific one, around himself. Given that situation, there were no natural candidates to mention his merits, which were quite great, indeed. His manner of writing was not the gateway to posthumous glory, either. The works on the State, which were naturally the centre of my interest, were usually placed somewhere between the journalistic and the strictly scientific writing. Makowski wrote mainly for the erudite, who are always in the minority. His writings were and are not (including the historical barrier) accessible to the average reader.

It turned out that the author of the titular concept, while acting at many planes and skilfully formulating, or at times only artfully picking up, various detailed concepts, was not able to engage in any of them entirely. Colloquially speaking, it was full of Makowski everywhere, yet he was not able to dot his i's anywhere. It was to the detriment of the

criminal law discourse, but paradoxically the State law did not win a full-size and devoted swordsman instead, either.

5. Presentation of other academic research (artistic) accomplishments

5.1. The research area encompassing the status of the judiciary in the Second Polish Republic

General characteristics

The research encompasses the theoretical and dogmatic aspects of the status of the judiciary. Its main aim is to explore the mutual relations between the elements making up the complex issues of the judiciary, and to explore and determine the sense of the objective and universal threats to the state of independence, and consequently to the position of the citizen.

5.1.1. *Idea niezawisłości sędziowskiej w porządku prawnym i myśli prawniczej II RP* / The idea of judicial independence in the legal order and the legal thought of the Second Polish Republic, Toruń 2009, p. 424

The book constitutes a modified version of the doctoral dissertation that was awarded a distinction in the fortieth competition for the best habilitation and doctoral theses organised by *The State and the Law* monthly journal. The publication is an extensive and multilevel study. I aimed to capture and explain the basic relations between the status of courts and judges and the discourse concerning these, and the sphere of the political practice.

The work begins with the remarks on the axiological foundations of the legal order of the State (Chapter 1). I aimed to register the dynamic political context, to explore its evolution, to determine the specific features of contrary axio-normative assumptions of two opposing systems, i.e. the parliamentary democracy and the Polish authoritarianism. Thus, I focused on gaining tools enabling to understand (to interpret) what I made my main research area. The basic objective was to identify the components of two opposing social and political approaches – the individualistic and the universalistic. In the further part of the book, I searched for the answer to the question about the contents connected with the functional (intermediate) guarantees of judicial independence. I examined the principles of the

separation of powers, the independence of courts and the rule of law (the State of law). I was interested in capturing the sense attributed to these principles, and consequently developing a reliable answer to the question about their guarantee function. I took into account the dynamics of social processes, as a result of which I corrected the contents of the principles and their varying guarantee influence. The previously defined conceptual categories of individualism and universalism came in handy as tools of analysis.

In Chapter 3, I established the legal status of courts and judges in the Second Polish Republic. That is the greatest part of the work, which is due to the exceptionally extensive, both from the objective and the subjective perspective, scope of analysis and the ‘permanent’ evolution taking place within the framework of the normative order of the State. Assuming that the directions and the scope of the above evolution are one of the basic axes of the inspiration of the discussion on the idea, and also assuming that the normative order itself (its content) is the source of knowledge about it, I could not afford a more synthetic approach to this issue. In this part of the work, I discuss the process of unification and codification of justice, the position of the judiciary in both constitutions and in the ordinary legislation. I bring to the fore the analysis of the law on the system of the common courts of law. It is of historical nature – I begin with the findings referring to the act in its original form, then proceeding to describe its short-lasting liberalisation, and then the profound reaction of subordinating courts to the executive. The chapter concludes with a separate analysis of the status of judges, associate judges and jurors of other courts.

The judiciary was doomed to the ever-advancing process of subordination to the executive. The content of the regulations and the process of the evolution they were subject to, correspond to the findings of Chapters I and II. The implementation of the idea of solidarism required sacrifice for cementing the union between the citizen and the State, including the sacrifice on the part of judges and the judiciary. The revision of the pragmatic regulations showed that the universalistically-oriented State could not, and did not want to, afford a highly advanced risk of the contestation on the part of judges.

Chapter 4 naturally closes the reflections. Embarking on the description of the discussion, I intended to present its character and course in a synthetic manner. Here, I had at my disposal a unique tool in the form of the findings of Chapters II and III (a critical analysis of the interwar interpretations of pragmatic regulations). It facilitated the analysis and simplified it, for instance by means of the possibility of making references to the issues discussed earlier in the work. In Chapter IV, I attempted to generally describe the discussion on the idea, and to

systematise the basic concepts. The direction of the further analysis resulted from the systematisation undertaken. First, I presented the discussion on the guarantees of formal independence (constitutional and procedural), and then - the actual independence (internal and external).

As a result of the study, I concluded that the course and openness of the discussion were determined by the executive's actions involving law-making and law enforcement. It turned out that the level of the guarantees (*de iure* and *de facto*) was not satisfactory, and the discussion itself could hardly be considered a deep one from the theoretical and legal point of view. I had to admit, however, that these appraisals become not that strong when we dismiss the modern perspective and the modern standards, and look at the subject of the study in a relative way, adopting the then times and their realities as the reference point.

5.1.2. Konstrukcja katalogu gwarancji niezawisłości sędziowskiej w myśli prawniczej Drugiej Rzeczypospolitej/ The construction of the catalogue of the guarantees of judicial independence in the legal thought of the Second Polish Republic, [in:] *Doktryny polityczne i prawne u progu XXI wieku/Political and legal doctrines at the threshold of the 21st century* (ed. M. Maciejewski i M. Marszał), Wrocław 2002, pp. 501-509.

This work is an attempt at a theoretical approach to the relations between various kinds of guarantees of judicial independence. Its major aim was to establish the optimal criteria of classifying the guarantee of independence in the Second Polish Republic. The paper originated from the research conducted for the needs of a doctoral dissertation, and was a record of its current stage. The findings were partially applied in the future doctoral thesis.

5.1.3. Niezawisłość sądów w myśli prawniczej Polski międzywojennej/The independence of courts in the legal thought of the interwar Poland, "Studia Iuridica Lublinensia" 2007, vol. IX, pp. 51-79

The work provides a detailed examination of the discussion on the desired constitutional position of courts of law in the Second Polish Republic. The criterion that systematised the description and the interpretation of the discussion was the distinction of its two stages. The former encompasses the period of the dominance of individualism and the development of the foundations of the new universalistic order, whereas the latter – the times of the fixed dominance of universalism.

The article reconstructs two opposed types of approaches that correspond to the above-mentioned stages of the discussion. I establish that the individualistic approach involved the distinction of the broadly-understood independence of courts including the sphere of passing verdicts and the administrative (organisational) one. I also describe the specific relation between the independences of courts and judges, based on the assumption that judges, who are independent in passing verdicts, are administratively dependent on the fully independent collective, i.e. the judiciary. This work provides a reconstruction of ideas and concepts by authors that are virtually unknown today, including, for instance, I. Kondratowicz, J. Jamontt, or Z. Sitnicki. Slightly simplifying, they boiled down to acknowledging the need for the full independence of the judiciary as the third authority, the manifestation of which was to be the appointment of the independent subject – the Chancellor of Justice (the First President of the Supreme Court) - as its head. I present the painful clash between the idealistic assumptions (of the turn of the 1920s and 30s, in particular) and the universalistic practice, i.e. the Polish authoritarianism. I describe the fall of the idea and the principle that must have undeniably had the legitimising dimension to the Polish authoritarianism as well. This must have been the source of the absurd, from the scientific point of view, attempts to derive the principle of the independence of courts from the prerequisite in the form of a merely formal declaration of judicial independence as stipulated by the April Constitution.

5.1.4. *Międzywojenne rozważania o granicach sędziowskiego imperium i polityce orzecznictwa*/The interwar discourse on the boundaries of the judicial empire and the policy of jurisdiction , [in:] *Najnowsze kierunki badań w dziedzinie historii doktryn politycznych i prawnych*/The recent research directions within the area of the history of political and legal doctrines, ed. R. M. Małajny, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2008, pp. 216-226.

The study aimed to indicate the reasons and the historically justified regularities of the discourse on the authority of the judge and his political dependence. The article points to the existence of parallel development paths, both dogmatic and practical. I link their existence and recurrence to the generally understood type of political regime. I examine the analogy between the system of the French absolutism and the Polish authoritarianism, and between Montesquieu's theses and the concepts of the authors at the time of the Polish authoritarianism. The interpretation of the remarks (and actions) of the Polish judges (the analysis of the studies by B. Wróblewski and W. Świda, the remarks by judges Eimer, Wolski

and Lewandowski and others) shows a specific state of disorientation and uncertainty. It is due to the following interrelated reasons: the extension of the judicial empire (within the area of criminal law, in particular) and the weakening of the bases of the judicial independence.

The findings of the work and the analysis of the extremely interesting discussion on the policy of jurisdiction (remarks by L. Sumorok and S. Plich), prove that the judge's wide scope of authority combined with the authoritarian political system, result in multiple threats – primarily, to the citizen, and secondarily, to the judge. The former loses the support of law, whereas the latter, similarly as in the absolutistic France, becomes the object of potentially successful pressures from the executive. The above would also explain the paradoxically-sounding remarks by judges Kondratowicz and Brodacki who urged to limit the scope of the judicial empire for the sake of fulfilling Montesquieu's ideal.

5.1.5. *Uposażenie sędziów w II RP. Norma – praktyka – idea. Przegląd podstawowych problemów*/Salaries of judges in the Second Polish Republic. The norm- the practice – the idea. A review of basic issues, [in:] W. Witkowski (ed.), *W kręgu historii i współczesności polskiego prawa. Księga jubileuszowa dedykowana Profesorowi Arturowi Korobowiczowi*/In the circle of the past and the presence of the Polish law. The jubilee book dedicated to Professor Artur Korobowicz, **Lublin, 2008, pp. 144-160.**

The work is dedicated to one of the key guarantees of the judicial independence. As indicated by the title itself, I examined the issue of salaries at three interrelated planes: normative (the analysis and appraisal of the solutions of positive law), practical and doctrinal. I examined the salaries act, idealistic in nature, of 13 July 1920 (equal basic salary for all judges), the subsequent act of 5 December 1923 and a number of salaries regulations from the years 1933-1935.

The studies on the discourse and the practice showed quite a specific state – the participants to the discussion were convinced both about the necessity to guarantee substantial salaries to judges and the reasons for the above. Not all participants to the contemporary debates were, however, honest. I was particularly forced to note the hypocrisy of the representatives of the executive, in the interest of whose was to maintain the state of affairs as so far shaped by themselves. Its essence was the discretionary character of salaries of most judges (the conferment of the power to qualify judges to different salary groups to the minister of justice), the existence of a system of delegations (permanent and temporary) to

lucrative posts of notaries public and registrars of mortgages and the maintenance of the institution of free legal apprenticeship and assessment.

The study confirmed the thesis that the more ideal the system is, the less attention we are prepared to pay to the guarantee function. Things are quite different when the system strikes with its disfunctionality, when it is unclear and based on discretion and refers to arbitrary political appraisals. What apparently seemed as a paradox, namely that the value of the discourse increases as the actual scope of the guarantee function of the salaries system decreases, turned out not to be one. The faults in the system inspire a discussion, may be and usually are a starting point to making various generalisations. The study also proved that the interwar regulations and the interwar practice are a value that is hard to be overestimated, even from the modern perspective.

5.1.6. *Spuścizna zaborcza a unifikacja postaw w dyskursie na temat pożądanego statusu trzeciej władzy*/The heritage of the Partitions and the unification of attitudes in the discourse on the desired status of the third authority, [in:] **submitted for publication**

The starting point is a synthesising, and controversial, remark by S. Dąbrowski. Indicating the influence of the legacy of the Partitions, he assumed the existence of regularities manifested in the consistent maintenance of the system of administrative subordination of common courts to the minister of justice in the Polish system since 1929 (the enforcement of the act on the system of common courts of law) until today (the current law in force – the act on the system of common courts of law) .

I considered it to be of great importance to answer two rudimentary and relatively complex questions. Firstly, could all traditions being the legacy of the Partitions objectively be equally important, and secondly, what was the correlation between the tradition, attitudes and the social status (social roles) of the subjects which manifested them? In the latter case, things were complicated by the fact that the titular matter belonged to the sphere of detailed legal consciousness, and as such actually remained outside the scope of interest, and certainly beyond the perception of the major part of the society. Eventually, I thought it would be justified to examine the attitudes represented by the subjects that were potential bearers of detailed consciousness, i.e. primarily, judges, and further – professionals other than judges (other lawyers, in fact) and politicians (frequently also being lawyers). I also accounted for the element of time that dynamised the relations under analysis. I deepened the analysis by

distinguishing two spheres in which these attitudes were expressed – external (declared) and internal. I established the scope (manner) of influence with reference to each of the three groups distinguished.

The work presents the clash of two approaches that symbolically, though not necessarily honestly, referred to the post-Partition traditions – post-Austrian and post-Russian. Both of them, particularly following the regaining of independence, idealised the past and were based on the thesis of the supremacy of the solutions and the practice of law during the Partitions. The former, the post-Austrian one, was based on the belief in the clerical character of the judicial service. If there were any distinct features (desired distinct features) of the status of judges noticed, these were limited to indicating the clerical specificities of the judicial service. The post-Russian approach, in turn, was strongly associated with the non-Russian regulations of the Provisional Council of State, and emphasised the independence of courts and the executive and the role of the collective (self-governing) bodies in the judiciary.

The unification of attitudes represented by judges took place relatively fast. Regardless of the origin and the past, ‘the post-Russian model’ seemed closer to them. The explanation of the above process was, among other things, the fact that judges as a professional group would obviously unite around what was in conformity with its particular interest. In the case of the other two groups, a contrary process would take place. The Polish political discourse was dominated by people shaped by the Austrian tradition. It was them, who only had a vague idea of justice, that would impose their point of view on others. In the circumstances of the democratic regime and in the first period following the May Coup, there were no major discrepancies between the sphere of the declared attitudes (the external sphere) and the manifested ones (the internal sphere).

Thereafter, particularly following the enforcement the law on the system of common courts of law, under new circumstances connected with the consolidated authoritarianism, significant re-evaluations took place. While assessing the attitudes of judges, I noticed the discrepancy between the sphere of the declared attitudes (the open, silent support of the system) and the sphere of the manifested attitudes. The observation of the then personal policy concentrated in the hands of the minister, allows to make an assumption of the weakening of this discrepancy. Shortly speaking, more and more judges, the young ones in particular, would consciously accept ‘the logics’ of the new system, with such people being protected by the system. This conclusion may be drawn while observing the active attitude of Minister Grabowski in the youth circles and analysing the utterances and actions of judges.

In the case of politicians and lawyers the discrepancy was not that significant. It depended on the social roles and the degree of legal consciousness. The active critics of the administrative dependence of courts, were former judges. To politicians (with few exceptions), regardless of their orientation and political affiliations, the issue was never of primary importance. In the case of some of them, those previously interested in courts regardless of their political affiliation, the ongoing changes meant a return to normality.

The examination of the interwar reality, particularly the final period of the Second Polish Republic, allows to formulate a reasonably-sounding law of broader character. Its essence lies in reducing the degree of discrepancy between the declared and the manifested attitudes. This phenomenon took place, and still does, proportionally to the duration of the administrative dependence of courts. Thus, this law, *toutes proportions gardées*, first worked in the authoritarian order of the pre-war, and then post-war, Poland. Looking at our modern solutions from the perspective of the Polish past, I concluded that the present administrative dependence would seem as ‘an unattainable ideal’ to the interwar and post-war judges. A question may also be asked, while wondering about the correctness of the term, whether such understood dependence is not, in fact, interdependence, and thus a consequence of the constitutional rule of the separation of powers?

Planned research and publications

I intend to continue the studies within the research area discussed. I am in the process of preparing an extensive article on the role of collegiality and individuality as the guarantees of judicial independence in the Second Polish Republic. A novelty is the widened historical framework, which now also includes the past closer to us. An example of the above are two papers, the works on which are quite advanced now. One of them is dedicated to the issue of the judicial self-government in the law on the system of common courts (the years 1929-1985), whereas the other – to the certainty of the position of judge in the same period. I am also planning to prepare a much larger work on the status of the judiciary in Polish constitutions.

Related teaching activities

Monographic lecture: *Idea niezawisłości sędziowskiej w II RP*/The idea of judicial independence in the Second Polish Republic

5.2. The research area encompassing the axiology of political and legal systems

General characteristics

What is brought to the fore here is the study on authoritarianism. I am particularly interested in the origin and practice of the authoritarian systems in Poland, Bulgaria, Yugoslavia, Spain, Portugal and Turkey; as well as totalitarianisms: fascist (Italian), communist and Nazi. The centre of my interest is also Islam and the welfare State. The research is interdisciplinary, and it encompasses the historical element, which is obvious, but also strictly doctrinal, comparative, historical and legal and historical and comparative ones, and it also applies the perspective of the sociology of politics. At present, the material effects of the research are papers on the Polish authoritarianism.

5.2.1. *Koncepcja jednolitości władzy państwowej – antyteza „starych porządków” i uniwersalistyczny aksjomat. Przykład II Rzeczypospolitej*/The concept of the unity of the State authority – the anti-thesis of ‘the old order’ and the universalistic axiom. The example of the Second Polish Republic, [in:] **L. Dubel (ed.), *Idee jako źródło instytucji politycznych i prawnych***/Ideas as the source of political and legal institutions, **Lublin 2003, pp. 457-475.**

In the present article, I review the research on the status of the principle of the unity of the State authority in the Second Polish Republic. I show the inevitability of the ideological and normative transformation as the consequence of the political re-evaluations following the May Coup. I examine and establish the sense of relations between two values – the old myth of separation of powers, the roots of which go back to the beginnings of the liberal order, and the new assumption of the inevitability of the unity of the State authority, which disavows the former myth. I describe their specific role in the new social and political order. I quote and assess the arguments of authors supporting the thesis of the maintenance of the division also following the enforcement of the April Constitution. Most importantly, however, I am interested in determining the features of the unity of authority as one of the axioms of the new authoritarian political system.

5.2.2. *Idea uspołecznienia państwa w myśli polityczno- prawnej polskiego międzywojnia*/The idea of socialisation of the State in the political and legal thought of the Polish interwar period, [in:] **M. Marszał, M. Sadowski (ed.), *Na szlakach niepodległości. Myśl polityczna i prawna w latach 1918-1939***/On the trails of independence. The political and legal thought in the years 1918-1939, **Wrocław 2009, pp. 177-193.**

The aim of the work was to describe the origin, content and role of the titular concept. The subject of the discussion was mainly the theses put forward A. Skwarczyński and W. Sławek. Only briefly did I refer to the ideas of W. Makowski, who made use of the term ‘social State’. I assumed that the distinction between the terms ‘socialisation of the State’ and ‘the social State’ was made consciously.

The study showed that the concept was an attempt to explain and justify the new reality created by way of practice, based on the axiom of the reversed triad recognising the logical supremacy of the practice over the norm, and the norm over the idea. Its underlying foundations included anti-parliamentarism and policy adocrtrinality, which *de facto* were elements of the doctrine.

The concept developed within the sphere which is today described as non-directive. Consequently, it was an efficient tool of mitigating conflicts between the State and the citizen (the State – the community), and could also, in the longer term, when appropriately and thoroughly specified, become the (ideological) grounds of the operations of the State.

The underlying basis of the concept was a paradox. On the one hand, the society was not believed in, whereas on the other, it was assumed that it was capable of bearing the burden of building a new State.

In such circumstances, there arises a major question of how to raise such a new man and how to make him make an effort for the benefit of the public? There was yet another question lurking in the background, namely how to ensure the State where the intermediate way is realised, and thus how to protect the individual from the over-excessive dominance of the State? I established that neither Skwarczyński nor Sławek provided unanimous answers to these fundamental questions. According to the former, awakening the social consciousness was a long-term process. Skwarczyński assumed the necessity of the consistent development of appropriate structures. He particularly emphasised the role of the increased importance of social organisations based on the ideas of cooperation and mutual aid. It was these that were supposed to shape a new man and be the basis of the construction of the State. Sławek’s approach was entirely reverse. His concept of the State was founded on the deficit of faith in

the individual – the citizen and the lack of time. Unlike Skwarczyński, he would search for quick solutions. He did not start building ‘from the bottom’, as Skwarczyński did, but ‘from the top’. His approach was paternalistic and involved a clash of two different versions of the concept. The former was ‘self-generating and organic’, whereas the latter – ‘artificial and patronly’, constructed by means of law.

Juxtaposing the concept of the socialisation of the State and the concept of the social State, I arrived at a conclusion that the opposition of the concepts is relative, and these are, as if, two sides of the coin. The idea of the socialisation of the State is an authoritarian utopia, whereas the social State is an authoritarian reality. The former, in view of the objective impossibility of realisation, may at best be considered – as expressed by W. Maliniak – as a proper fiction – proper, as legitimising the authoritarian realities of the social State.

5.2.3. *Aksjologiczne podstawy państwa społecznego w ujęciu dekalogu Konstytucji kwietniowej*/The axiological bases of the social State as expressed in the decalogue of the April Constitution, [in:] **A. Sylwestrzak, D Szpoper, A. Machnikowska, P. Dąbrowski (ed.), *Kultura i myśl polityczno-prawna, Materiały z VII Ogólnopolskiego Zjazdu Katedr Doktryn Politycznych i Prawnych***/Political and legal culture and thought, Papers from the 7th National Polish Congress of Departments of Political and Legal Doctrines, **Sopot 2010, pp. 226-236.**

The work’s main aim was to establish and define the basic values of the decalogue that constituted an attempt to develop the concept of the social State. There were also two other, auxiliary, planes of discussion that seemed quite obvious to me. One of them encompassed the doctrinal sphere and involved the necessity to determine the concept’s constitutive features, whereas the other was concerned with answering the question about the manner of translating the theoretical assumptions into the peculiar legal language of the decalogue of the constitution.

I focused on reconstructing the basic constituents of the concept of the social State as seen by Skwarczyński, Sławek and Makowski. I examined the key norms of the decalogue and its most controversial elements. I reviewed the opinions of the supporters and apologists of the act as well as the critical remarks of its opponents. I paid great attention to the idea of the common good, which concept consumed the assumption of the active and organisational function of the State and its officers. I linked the last of the indicated elements to the dismissal of the individualistic principle of equality by Art. 7 of the April Constitution. I saw the elitism

of the system created by the constitution as a check for the concept and its authors, and a measure of the weight and the sincerity of the dilemma of its supporters, i.e. the question whether to build the State ‘from the bottom’ or rather ‘from the top.

5.2.4. *Koncepcja państwa społecznego W. Makowskiego, „Studia nad Faszysmem i Zbrodniami Hitlerowskimi”/ W. Makowski’s concept of the social State, Studies over fascism and Nazi crimes, 2011, no. XXXIII, pp. 277-287.*

The article offers a synthetic outline of the concept of the social State. The research operations aim to capture the basic elements of the construct created by the Warsaw scholar. Here, I examine the relation between the remarks by Skwarczyński and Sławek on the one hand, and these by Makowski, on the other. I also inquire about the sources of the scholarly inspirations of the latter. I put forward and defend the thesis that the fact that the active participants to political life would make use of separate terms, i.e. ‘the socialisation of the State (Skwarczyński and Sławek) and ‘the social State’ (Makowski), must have at least been a conscious expression of the will to be distinguished from each other. I point to the authors whose views inspired Makowski (Petrażycki, Hauriou, Duguit, Radbruch, Stamler, Smerd, Le Fur). I focus a lot of attention on reconstructing Makowski’s views on the origin of the contemporary society and the dynamic (evolving) system of relations between the individual, the community and the State. I am particularly interested in reconstructing his views on the tasks and functions of authority. I pay special attention to his belief that the power of authority grows as the extent (scope) of coercion decreases. I acknowledge this assumption to be a mystification that serves some specific political aims, particularly the defence of the new balance of powers based on the distinct dominance of the executive. The article also presents a synthetic picture of the modern administration and the new model of presidency that goes back to Constant’s ideal of neutral authority.

5.2.5. *Status prezydenta w koncepcji państwa społecznego W. Makowskiego/The status of president in W. Makowski’s concept of the social State, [in:] Suweren – Zwierzchnik -Reprezentant Państwa. Głowa państwa w polskiej współczesnej refleksji politycznej, Studia politologiczne/The sovereign – the superior – the representative of the State. The head of the State in the contemporary Polish political discourse. A political*

science study, ed. **R. Ptaszyński and T. Sikorski**, **Wydawnictwo Sejmowe, Warszawa 2013, pp. 27-47.**

The chapter is part of the monograph which aims to decode the content of the elements constituting the view of presidency within Makowski's concept of the social State. The titular issues were presented against the background of the regularities of the broadly-understood social life and specific interwar political conditions. I also attempted to determine the direction and the scope of the evolution of Makowski's views on the desired status of president. The consequence of the studies undertaken was the distinction, and then analysis, of three consecutive stages of reflection on the titular issue. These were the periods of: cooperation (the praise of the balance between the bodies of authority), coordination (the president as the coordinator of the actions of the State bodies) and integration (the affirmation of the assumption that the president is the symbol and epitome of the social integration). As I established, these corresponded to the essence of the qualitative political transformations connected with the construction and evolution of the Polish authoritarianism.

5.2.6. *Rola praktyki politycznej w kształtowaniu się podstaw polskiego międzywojennego autorytaryzmu, Państwo – Prawo – Polityka. Księga poświęcona Profesorowi Henrykowi Groszykowi*/The role of political practice in forming the foundations of the Polish interwar authoritarianism, the State-Law - Politics. The jubilee book dedicated to Professor Henryk Groszyk, **I. Nowikowski, J. Kostrubiec, M. Chrzanowski (ed.) Lublin 2012, pp. 218-229.**

The starting point was the distinction of two orders, individualistic and universalistic(over-individualistic, organic), as made by A. Peretiałowicz and based on the realities of the times. I cite and analyse the descriptive definitions of these concepts. I juxtapose the findings with the Polish interwar realities. I find these to be original and modern. I reconstruct the model of the formation of the Polish authoritarianism and I verify the legitimacy of Peretiałowicz's diagnosis which acknowledged the existence of the Caesaristic system in Poland. In this case, I am also prepared to acknowledge the acuity of the synthetic picture of the essence of the issue.

I am interested in the practice, and I indicate its role and relation to the norm and the idea. By referring to instructive examples, for instance, reconstructing the mechanism of

subordinating courts to the executive, I show the instrumental function of law (the norm) and the idea, which are subjected to pragmatically understood politics.

Planned research and publications

In the nearest future, I plan to publish a work on *laiklik* as an element of *Altı ok*, which stems from my particular interest in the Kemalist system

Related teaching activities

The monographic lecture: The axiology of modern political and legal systems.

The lecture: The history of political and legal doctrines

The lecture: The philosophy of security

BA and MA seminars

5.3. The research area encompassing the legal deontology

General characteristics

The interests include the issue of the source of particular professional deontologies, the opposition of the deontological rules of particular professional groups as a consequence of different professional functions and tasks, the issue of the significance and functions of the norms stemming from the codes of professional ethics and the norm-setting role of the professional oaths. The undeniable foreground of the analysis of the specific issues, is the interest in judicial deontology. I also focus on the issues connected with the deontological status the prosecutor (the issue of impartiality) and the notary public (the issue of the assessment of the consequences of the conflict between the norms set under the code of the professional ethics of notaries public and the statutory norms.

5.3.1. *Między II a III RP. Refleksje o podstawach deontologii sędziowskiej w ujęciu dwóch tekstów prawa o ustroju sądów powszechnych*/Between the Second and the Third Polish Republic. Reflections on the bases of judicial deontology as seen by two texts of law on the system of common courts, [in:] *Moralność i władza jako kategorie myśli politycznej*/Morality and power as the categories of the political thought, J.

Justyński, A. Madej (ed.), Monografie Lex, Wolters Kluwer, Warszawa 2011, pp. 435 – 452.

The article is comparative in its nature. In this work, I interpret and juxtapose the obligations stemming from two normative acts, the President's act of 1928 *Law on the system of common courts*, and the act of 2001 *Law on the system of common courts* as currently in force. A fundamental role was also played by the interpretation of the ordinance of the Council of Ministers of November 22, 1919 on the new wording of the oath to be taken by ministers, officers and judges. It was this that determined the wording of the judicial oath almost throughout the whole interwar period.

The research operations primarily aimed to determine the similarities and differences in understanding the catalogue of norms as a whole and the particular norms, even identical from the linguistic point of view.

I did not have any doubt that despite the linguistic similarities of the regulations compared, the role of the law on the system of common courts in forming the bases of the judicial deontology in the two periods compared, was significantly different.

I attributed the main role to the existence of interdependence between the content and the role of particular deontological norms and the respect of the judicial independence and its guarantees.

As a result of the detailed analysis conducted for the needs of the publication, I came up with several observations. I particularly acknowledged that the ethical dilemmas of the contemporary judge are of an entirely different nature. They are not linked, in principle, to the visible dangers of political nature, as these, if present at all, are episodic. As the basic contradictions between law and morality have become less apparent, the contemporary judges face entirely different problems. They are, paradoxically, a consequence of the consolidated position of courts and judges in the modern democracy. It would be a simplification to see authoritarianism or totalitarianism as the only states posing a threat to the existence of deontological norms.

I argued that it would be a simplification to believe it was sufficient to consolidate the position of the judge and the scope of his discretion, and to make it administratively dependent only to its own (judicial) internal official hierarchy, and to immediately expect his increased independence and a greater prospect of the fulfilment of the deontological obligations. What would be salutary in authoritarianism, i.e. the strong position of the judge, may turn out to be destructive in democracy. Human character may, indeed, be perverted both

by the pressure from the evil authority, as was the case in the interwar Poland, and by the very fact of having it. Democracy generates multiple threats, mainly due to frequently referring to equally firm as unclear paradigms. They frequently absolve the actions that are unworthy of the judge, and, in the absence of efficient control, lead to the consolidation of unacceptable attitudes, the sense of impunity, in particular.

One of the conclusions is that if we make such frequent references to Montesquieu, then we should look for the golden mean and to take what is still current out of his concept, i.e. the mechanism of balance, instead of separateness as preferred by some. In circumstances of the modern democracy (the democratic system), this should extort the acknowledgment of the authorities' impact on one another (interaction) that is, for instance, seen in the sphere of appointment decisions, or the establishment of clear criteria of assessments that promotion is based on.

Planned research and publications

I intend to intensify my studies on the deontology of the bailiff. A handbook and a collection of writings that help to study the professional deontology are to be published soon. The latter publication will include legal acts or excerpts from them (laws, codes of professional ethics and the selected decisions of disciplinary courts). I am also currently working on two articles. Their working titles are: *Conscientiousness of the judge as a deontological obligation* and *The decisions of the Supreme Court as a disciplinary court and the forfeiture of the judge's right to resign*.

Related teaching activities:

The lecture: Legal ethics

MA seminars at the Faculty of law

5.4. The research area encompassing the status of bodies of authority in the contemporary Poland

General characteristics

The central interest is the issue of the status of the judiciary, particularly the constitutional and pragmatic aspects. What still remains my invariable priority is the comparative research, in the historical dimension, specifically.

5.4.1. *Z problematyki granic niezawisłości sędziowskiej*/Selected issues on the boundaries of judicial independence (co-author S. Pilipiec), [in:] M. Mozgawa, M. Nazar, J. Stelmasiak, T. Bojarski (ed.), *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa*/The Poland of the 1990s. The transformations of the State and law, Wydawnictwo UMCS, vol. III, Lublin 1997, pp. 523-538.

The text is devoted to the status of the judiciary in the Constitution of the Republic of Poland then being enforced. The work provides an interpretation of the regulations of Chapter VII of the new constitution. It also attempts to determine the trends in viewing the judicial independence following the turnaround of 1989, and to define the character of the ongoing theoretical and dogmatic re-evaluations.

5.4.2. *Trzecia władza. Sądy i trybunały*/The third authority. Courts and tribunals, [in:] L. Dubel, J. Kostrubiec, G. Ławnikowicz, Z. Markwart, *Elementy nauki o państwie i polityce*/The elements of the science of the State and politics, Wydawnictwo Wolters Kluwer, Warszawa 2011, pp. 272-317.

5.4.3. *Kontrola państwowa i ochrona prawa*/The State control and the protection of law, [in:] L. Dubel, J. Kostrubiec, G. Ławnikowicz, Z. Markwart, *Elementy nauki o państwie i polityce*/The elements of the science of the State and politics, Wydawnictwo Wolters Kluwer, Warszawa 2011, pp. 318-325.

These are the handbook chapters that go beyond the typical handbook approach. The aim of the former was to present the status of courts and tribunals in the contemporary Poland. The starting point are the general remarks on the essence of the judiciary and the constitutional status of courts and judges and the position and competences of the National Council of the Judiciary. Then, I proceed to discuss the rules of the operation of courts and tribunals. The analysis encompasses both constitutional and pragmatic issues. I focus on such issues as, for instance, the manner of appointing (dismissing) and the competences of the bodies of courts, detailed information on the obligations of the judge (including deontological ones), the analysis of the appointment system and the professional career paths of judges,

their material status, the principle of apoliticality, the certainty of position and the disciplinary responsibility. The analysis is conducted separately for particular types of courts and accounts for their specific function. The description includes a brief review of the competences of particular courts and tribunals, and partially also the rules of proceedings before them. The text is based on the interpretation of laws and other legal acts, including ethical codes and the decisions of courts and the Constitutional Tribunal. The extensive footnotes are intended not only as an illustration but also as a good basis to expand the student's knowledge.

In the other of the two indicated chapters, I discuss the position of the Supreme Chamber of Control, the Ombudsman and the National Broadcasting Council. The text is a systematic summary of the regulations determining the constitutional position of the above bodies, bases of their operation, and the internal structure and competences of the bodies.

Planned research and publications

The issues discussed by the works mentioned above remain linked to the planned further complex studies, on the status of the judiciary in the contemporary Poland, in particular. These studies will overlap with the historical area of analysis (the issue of the status of the judiciary in Polish constitutions). I intend to pay special attention to the position and tasks of the National Council of the Judiciary.

Related teaching activities

The lecture: The science of the State and politics

Seminars: The science of the State and politics

5.5. The research area encompassing the issue of the sources of law

General characteristics

The problem interests me from the point of view of the rules of the legal deontology, particularly the status of the codes of professional ethics (the issue examined during the lectures on the legal ethics. It is marginally represented in the output by a brief text on the sources of the law of the European Union.

5.5.1. Źródła prawa Unii Europejskiej/The sources of the law of the European Union, [in:] L. Dubel, J. Kostrubiec, G. Ławnikowicz, Z. Markwart, *Elementy nauki o państwie i polityce*/The elements of the science of the State and politics, Wydawnictwo Wolters Kluwer, Warszawa 2011, pp. 343-351

I explain the significance of the Lisbon Treaty, and describe the relations between such concepts as the European law, the law of the European Union or the community law. The reader is provided with the preliminary information on *acquis communautaire* and the hierarchy of the sources of law. I analyse the concept of primary and secondary law and the complex issue of precedence, and thus, to simplify, the system of relations between the community norms and the legal orders of member States.

Planned research and publications

I plan further research and publications on the status of the codes of professional ethics

Lectures: The science of the State and politics , The legal ethics

5.6. The research area encompassing the philosophy of security

General characteristics

It is a relatively new research area which remains linked to the appointment to the position of the lecturer on the philosophy of security in the Department of Internal Security at the Faculty of Law and Administration of Maria Curie Skłodowska University. The current subject of interest is the native Renaissance and Enlightenment discourse on the multi-aspect security.

5.6.1. Andrzeja Frycza Modrzewskiego „De bello”, czyli o sztuce pokoju/ Andrzej Frycz Modrzewski’s *De bello*, that is on the art of peace, [in:] M. Karpiuk, K. Orzeszyna (scientific ed.), *Bezpieczeństwo narodowe Rzeczypospolitej Polskiej. Wybrane zagadnienia prawne*/The national security of the Republic of Poland. Selected legal issues, Warszawa 2014, pp. 197- 225

The former and narrower of the areas mentioned above includes the specific research problem, which is the issue of Modrzewski's ideas on war and peace. The title is perverse and contains the text's major thesis. In the work, I prove that to Modrzewski, the art of peace was more important and more perfect than the art of war, as he saw war - if and only if just - as a means to an end, that is peace. Peace perceived as an element and guarantee of security, was not, according to him, identical with it, and was one of the prerequisite conditions of security as the supreme value. I established that Frycz's art of peace was the activity aimed to prevent war and irrespective of time, thus encompassing actions that are valid during the peace, during the war and after the war ends.

Claiming that the art of peace is realised at two overlapping planes, that is good preparation to war and activities aiming to maintain peace, I presented a detailed description of the means discussed by Modrzewski.

What comes to the fore among the many issues I discuss, is the one of the just war as a war that cannot be lost, which issue seems a little distorted today. This would be clear evidence of the scholar's naivety. While interpreting Modrzewski's discussion, which is not always precise, I notice two kinds of the just war. The broader one (the just war *sensu largo*) encompasses the just war *sensu stricto* that is identified with the actions undertaken in the presence of a just cause and the fulfilment of the formal condition of declaring a war. Moreover, it includes a new, specific to it only, element in the form of life filled with acts approved by God ('life in accordance with the teachings of Jesus Christ'). In the work, I prove Modrzewski's concept to be flexible. Given the moral defects of the mankind that he frequently mentioned, it would be impossible to imagine a war which 'would be preceded by living in accordance with the teachings of Jesus Christ'. In such case, every lost war would be, to him, evidence of not living up to the excessive standards of the broadly-understood just war, and a kind of God's call to cease from sin. Behind the victor who was not right, there was God who was right. Such a victory must have been apparent and short-lasting, particularly with the prospect of the correction of the defeated that pleased God.

Planned research and publications:

I have plans to publish synthetic research papers, first on the Polish philosophy of security in the periods of Renaissance and Enlightenment, and then, on the Polish philosophy of security *in genere*.

Related teaching activities

The lecture: The philosophy of security

5.7. The research area encompassing the constitutional systems of the Balkan states, with particular focus on Bulgaria

General characteristics

I focus my attention on the contemporary systems and their dynamics. Apart from Bulgaria, the studies are majorly focused on the bases of the systems of Croatia, Serbia, Montenegro and Bosnia and Herzegovina.

5.7.1. *Samorząd terytorialny w republice Bulgarii*/The local government in the Republic of Bulgaria, [in:] M. Czuryk, M. Karpiuk, J. Kostrubiec (red.), *Samorząd terytorialny w państwach Unii Europejskiej*/The local government in the European Union member States, **Wydawnictwo Akademii Obrony Narodowej, submitted for publication (planned date of publication – September 2014, p. 21)**

This is an extensive work which provides an analysis of a young and dynamic system. It particularly presents the basic rules of the political system of Bulgaria, the status of the local government in the Constitution of Bulgaria and in its common legislation. The text is based on the presentation and interpretation of a number of normative acts, with the Constitution of Bulgaria being the only one that has been translated into Polish so far. The degree of difficulty resulted from the dynamics mentioned above. The act on the local government and administration is the only one among the basic acts discussed that goes back to the beginnings of the transformations (*Закон за местното самоуправление и местната администрация*, Обн. ДВ. бр.77 от 17 Септември 1991г.)

Most of them were enforced over the last decade, with part of them, including the electoral code (*Изборен кодекс* у ДВ. бр.19 от 5 март 2014 г.) and the act on the public finances (*Закон за публичните финанси* Обн. ДВ. бр.15 от 15 Февруари 2013г.) being enforced only recently or at the time of writing this text.

The work includes comparative studies (mainly, yet not exclusively, in the historical aspect), with the analysis covering the basic issues of the broadly-understood practice,

including Bulgaria's recent statistic data (*Преброяване на населението и жилищния фонд през 2011 година, Том 1. Население, Книга 1. Население по области, общини и населени места*, София 2012, *Финансова рамка за дейността на общините през 2013*). The assessment of the prospects of the Bulgarian local government, results in my cautious optimism. The ongoing revision of the legal system of the contemporary Bulgaria that was extorted by the membership in the European Union is only an element of an extremely complicated process. Its complexity is determined by the weakness of the population, which is linked to the consistent decrease in the 'civic' potential of most Bulgarian municipalities, the economic stagnation that makes the municipalities rely on the state grants, or the politicisation of the Bulgarian municipalities. While discussing the Bulgarian local government, one cannot forget the deep demographic changes, which partially are a consequence of Bulgaria's access to the EU and particularly the opening of the EU's work markets, and partially are caused by the level of Bulgarian salaries and low living standards. In the short run, these phenomena will result in the continued weakening of the local potential (the emigration of the most active individuals), whereas in the long term, they may, however, lead to the consolidation of pro-local attitudes, for instance as a result of the re-emigration of 'those infected with the ideas of self-government'.

Planned research and publications

I intend to continue the studies on the systems of the Balkan states. In the short term, I plan to publish a work on the status of the contemporary Bulgarian judiciary.

Related teaching activities:

The lecture: The axiology of contemporary legal systems

5.8. The area of research on the organisation of legal studies

General characteristics

The area is correlated to the studies on the legal career paths (currently and at the time of the Second Polish Republic) and is functionally linked to the research on the status of the judiciary.

5.8.1. *Rola studiów prawniczych w przygotowaniu do pełnienia służby sędziowskiej. Dyskurs i praktyka II RP*/The role of the legal studies while preparing to serve as the judge, a paper prepared to be presented at the All-Polish Conference of Historians of Law in Cracow (22-25 September, 2014)

The paper aims to describe the Polish interwar views on the desired system of relations between the organisation of the legal studies and the proper level of competences of people serving (or preparing to serve) as judges. I am particularly interested in describing the views on the degree of intensity of the above relationship. I conduct my analysis within two overlapping research areas, subjective and objective.

Within the former framework, I reconstruct the ideas on the catalogue of the contents constituting an optimal curriculum, and then, on the role it attributed to the historical and theoretical (not dogmatic) matters.

The other of the indicated areas includes the study on the influence of subjective factors on the presented views – hence the distinction and the analysis of the ideas of three groups of participants to the discussion (academic staff, judges and students of law).

Within my research operations, I do not ignore the issue of the influence of the dynamic political context on the ongoing re-evaluations of attitudes represented by the participants to the discussion. I understand the practice in the broad sense. Therefore, I mean both the legislative practice involving the making and the application of proper normative regulations, and the actual organisation of the legal studies and the judicial apprenticeship.

Planned research and publications

In the nearest future, I intend to conduct an analysis of the contemporary model of judicial career (its efficiency, in particular).

Related teaching activities:

The lecture: The idea of judicial independence

5.9. Other research

Other interests include particularly the issues of the social legislation and the administration of the healthcare. Both remain linked to my appointment as a lecturer to conduct corresponding courses. I conducted my examination with a view to prepare extensive and detailed syllabi that would include the comparative analysis (also in the historical aspect) of legal regulations, the practice of law application and the use of statistic data.

A handwritten signature in black ink, appearing to read "Stepano". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail.