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**ECHOES OF SOVIET LAW  
IN THE LEGAL LITERATURE OF  
THE SECOND REPUBLIC OF POLAND –  
OUTLINE OF ISSUES**

World War I brought about far-reaching ideological and constitutional changes in the whole of Europe. Social revolutions, the rebirth of states, and the notions of victory and defeat felt by the nations were the springing force of these changes. With the benefit of hindsight, the phenomenon of creating totalitarian states can be perceived as a series of unusual experiments carried out on a living body. Its aim was to form new societies functioning in new legal systems. The key factor of all these transformations was the negation of the status quo that was either previous and traditional or the one long in force. The Russian Revolution of 1917 together with the formation of the Soviet system were the elements of these changes.

It can be stated that the changes in Soviet law from a comparative perspective – the law's theoretical grounds, penal and civil law, as well as constitutional order – were a fascinating issue for the lawyers of the Second Republic of Poland. The 1920s have brought about an entire stream of individual and institutional research.<sup>1</sup> Among the institutions, the most important was the Research Institute on Eastern Europe, whose founders (among others were Stefan Ehrenkretz, Wiktor Sukiennicki, Stanisław Swianiewicz, Witold Staniewicz, Marian Zdziechowski) coming from the Stefan Batory University are considered the progenitors of the Polish school of Sovietology.

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<sup>1</sup> See Kornat M., *Bolszewizm. Totalitaryzm. Rewolucja. Rosja. Początki sowietologii studiów nad systemami totalitarnymi w Polsce (1918–1939)*, Kraków 2004 and there further literature on this issue; Mohyluk M., 'Prawo radzieckie w nauce i publicystyce prawniczej II Rzeczypospolitej – stan badań i problemy badawcze' in *Miscellanea historico-uridica*, vol. II, Białystok 2004, pp. 67–81.

The first typically legal publication dealing with the constitutional law of the Soviet Union during the Second Republic was I. Czuma's commentary entitled *Konstytucja Rosji Sowieckiej* from 1923.<sup>2</sup> The author was quite cautious while describing some of the constitutional decisions of the Soviet state. The approach he applied was, firstly, to translate the articles of the constitution and then either to quote the theorists' opinions or the founders of the Russian Republic or to cite excerpts from other states' constitutions. Therefore he quoted, among others, K. Marx, G. Jellinek, Zinoviev, Bucharin, and Lenin, as well as the laws of German, Polish, Swiss, French, or even Japanese constitutions. Having presented such an introduction, he himself tried to interpret and sometimes to confront the given problems. Although there are many oversimplifications, inaccuracies, and wrong conclusions there, the work itself was a pioneering undertaking. The author himself conceded that "bolshevism is a stage of a great process whose forms change, develop and finally lead to quite unpredictable results."<sup>3</sup> I. Czuma's work should be treated as the starting point of Soviet research in the Second Republic. It is worth stating that this professor from Lublin quite willingly and systematically worked on this matter during the time of the Second Republic. The interesting publications entitled *Dzisiejsza filozofia sowieckiego prawa a romantyzm prawniczy*,<sup>4</sup> *Filozoficzne punkty styczne zachodu z bolszewizmem*<sup>5</sup> (both from 1930) prove this point.

Chronologically, the next legal analysis of the Soviet legal system was Konstanty Grzybowski's work entitled *Ustrój Związku Socjalistycznych Sowieckich Republik. Doktryna i konstytucja* from 1928.<sup>6</sup> Not only did this professor of Jagiellonian University (Cracow) interpret the Soviet concept of state and law as a lawyer but also he also analysed it in terms of psychology and sociology.<sup>7</sup> K. Grzybowski made great use of Western achievements of science. Doing his research, he used the German lawyers' findings (Carl Schmitt, Max Weber just to name only a few). In the first part of his

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<sup>2</sup> Read more about I. Czuma in Ignacy Czuma. *Absolutyzm ustrojowy. Wybór pism* with the introduction by M. Marszał, Kraków 2003. Marszał M., 'Państwo i prawo w poglądach Ignacego Czumi' in *Wybitni prawnicy na przestrzeni wieków*, ed. by Marszał M. and Przygodzki J., Wrocław 2006.

<sup>3</sup> *Ibid.*, p. 3.

<sup>4</sup> Czuma I., *Dzisiejsza filozofia sowieckiego prawa a romantyzm prawniczy*, Lublin 1930.

<sup>5</sup> Czuma I., *Filozoficzne punkty styczne zachodu z bolszewizmem*, Lublin 1930.

<sup>6</sup> Grzybowski K., *Ustrój Związku Socjalistycznych Sowieckich Republik. Doktryna i konstytucja*, Kraków 1929.

<sup>7</sup> Read more about Grzybowski K. in Konstanty Grzybowski – *myśliciel sceptyczny*, Kraków 2000; Kornat M., *Bolszewizm. Totalitaryzm...*, vol. I, pp. 353–373.

work he described the doctrinal basis of the Soviet system; in the other, he thoroughly examined Soviet constitutional law, including the constitutions of 1918 and 1923. An outstanding achievement of K. Grzybowski was the observation that the Soviet perception of the role and importance of the constitution in the state was different from the Western one. "Here, in the West, we are used to treating a constitution as a manifestation, as an embodiment of a programme, as an expression of putting ideas into practice and of enforcing them, as a stable point in a changeable social life. Here, to the contrary, there is no stable point. What exists is constant change, constant new creation.<sup>8</sup> As K. Grzybowski puts it, the Soviet constitution lays down the preliminary budget for the interim period to win the confrontation with the hostile world.<sup>9</sup> The constitution is, therefore, a response to the need of the moment, the changeable means of motivating the society, the way of getting by at the time when the world splits into two enemy camps: the capitalist and the socialist one.<sup>10</sup> While analysing the dictatorship of the proletariat from a legal perspective as a system doctrine, he stated that the final voice in Soviet law had class interest, and legal norms were to keep and protect this interest. That is how this subjectively-biased law was to comply with 'the revolutionary aim'.<sup>11</sup> That is why revolutionary conscience, which took a leading position, could ruin any hierarchy of norms to make it possible to achieve specified aims of party and state bodies. "The concept of a general norm as binding also those who put it into practice, is non-existent in Soviet law", K. Grzybowski wrote.<sup>12</sup> "In this system, overruling a lower-level body decision by a higher-level body takes place as a result of the aim's and not the binding rule's discrepancy."<sup>13</sup> In the USSR each body had legislative, executive, and judicial powers. K. Grzybowski specified a number of features typical of and distinguishing the Soviet political system from the European and American ones in force then. These were as follows:

- the simultaneous existence of the state powers system together with one legal communist party system,

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<sup>8</sup> Grzybowski K., *Ustrój Związku...*, p. 5.

<sup>9</sup> Kornat M., *Bolszewizm. Totalitaryzm...*, vol. I, pp. 358–357.

<sup>10</sup> Grzybowski, *Ustrój Związku...*, p. 23 and the following; *Konstanty Grzybowski – myśliciel sceptyczny*, Kraków 2000; Kornat M., *Bolszewizm. Totalitaryzm...*, vol. I, pp. 353–373.

<sup>11</sup> *Ibid.*, p. 13.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

- the Soviet system was a political manifestation of the doctrine of the proletariat dictatorship,
- the Soviet state **was not a a state of law**; objective binding legal norms that were previously published and subject to amendments only in strictly defined circumstances were not the basis of the state authority code of action. The norms of written law were, in the Soviet system, only general guidelines, “technical instructions”,
- the Soviet state was a class state,
- the Soviet state did not accept the separation of powers.

K. Grzybowski’s work was the first “Polish” attempt at a scientific and objective analysis of the Soviet legal system. He did not create a comprehensive synthesis of the USSR system, as he stated himself that those studies could only be an introduction to further discussion. He returned to these studies in 1947 by publishing a work entitled *Ustrój Związku Radzieckiego*.<sup>14</sup>

When it comes to discussing the interpretation of Soviet constitutional law, the monographs of the Vilnius scientists are definitely worth mentioning. This is due to their cognitive and scientific values and also due to their objectivity. Among them the most outstanding are W. Sukiennicki’s *Ewolucja ustroju Związku Socjalistycznych Republik Radzieckich* (part I) from 1938,<sup>15</sup> Franciszek Anczewicz’s<sup>16</sup> *Stalinowska koncepcja państwa*, and Waclaw Komarnicki’s<sup>17</sup> *Nowy ustrój Związku Sowieców*. These publications should be treated as the most representative of the period of the Second Republic. What do they have in common? The authors – all of them lawyers – and the time period – the time after the publication of Stalin’s constitution of 1936 – which is important when we take into consideration the dynamics of the changes in the Soviet Russia from 1917 till 1939.

Waclaw Komarnicki, a professor of constitutional law and civics at the University of Stefan Batory, when interpreting the Soviet constitutions paid a lot of attention to the fact that real power in the Soviet system was in the hands of a bureaucratic oligarchy. After the revolution of 1917, Russia was taken over by an “organised and armed minority, which, taking over power by force, keeps it by resorting to terror implemented by the state authority.”<sup>18</sup> He wrote that the Soviet state, by denouncing the separation of powers and parliamentary ideas and by employing the only one political or-

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<sup>14</sup> Grzybowski K., *Ustrój Związku Radzieckiego*, Kraków 1947.

<sup>15</sup> Sukiennicki W., *Ewolucja ustroju Związku Socjalistycznych Republik Radzieckich* (part 1), Wilno 1938.

<sup>16</sup> Anczewicz F., *Stalinowska koncepcja państwa*, Wilno 1939.

<sup>17</sup> Komarnicki W., *Nowy ustrój Związku Sowieców*, Wilno 1938.

<sup>18</sup> Komarnicki W., *Nowy ustrój...*, p. 184.

ganization, made itself the dictatorship of the proletariat, the dictatorship of the communist party. In his opinion this dictatorship was the practice of the rule of the minority over the majority. Stalin's constitution did not change the regime. The government was still the "party oligarchy". The introduction of forms of "developed democracy" was only to serve decorative and propaganda aims, and this oligarchy transformed into Stalin's single-authority government. Summing up his deliberations, W. Komarnicki called the system of government in the Soviet Russia "ideocratic oligarchy."<sup>19</sup> According to this Vilnius professor, "ideocratic oligarchy" was characterised by its universalist aims (namely to encompass both all future and already existing social republics) springing from the revolutionary belief in the possibility of making a 'new order', which endowed bolshevism with characteristics different from fascism and national socialism. Obviously, you can argue here with W. Komarnicki and begin to ponder the role of ideology in totalitarian systems. Was it not instrumentally used so as to control the masses (Oswald Spengler)? Was it not a replacement of religion? Or maybe it was something inherent, a kind of "spiritual" emanation of materialism? W. Komarnicki was definitely right while stating there is no point in understanding totalitarian states if this is not preceded by an understanding of their ideologies. This Polish lawyer aptly stated that that concept of communism is in direct opposition to constitutionalism because constitutionalism by nature limits state authority and such a limitation was non-existent in the USSR.<sup>20</sup>

These profound conclusions of W. Komarnicki are definitely worth noticing and bearing in mind. The scientist had an influence on the entire Vilnius legal profession (he was also dean of the Department of Law and Social Sciences of the USB). His student was Franciszek Anczewicz, who also reviewed the postdoctoral dissertation of Wiktor Sukiennicki. And these people were, in turn, the people who took an active part in the Vilnius Research Institute on Eastern Europe, an institution existing from 1930 to 1939, whose aim was (according to the Statute of the Higher School of this Institute) to propagate "knowledge and skills connected with the present state and the history of the land, the state structures situated between the Black and the Baltic Sea, as well as people inhabiting this land."<sup>21</sup>

Sukiennicki's research aim was the wide-scale analysis of the transformation of the legal system of Soviet Russia from the October Revolution

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<sup>19</sup> *Ibid.*, pp. 184–185.

<sup>20</sup> *Ibid.*, p. 206.

<sup>21</sup> Kornat M., *Polska szkoła sowietologiczna 1930–1939*, Kraków 2003, p. 610.

to the coming in force of new Stalin's constitution in 1936. In his work, W. Sukiennicki did not use archive material but, as he clearly explained in the title, based his work on the official publications of the Soviet government (which were to present not the existing reality but the "imaginary" one). He analysed the articles of Soviet laws, numerous propaganda newspapers, articles, dissertations of theorists, and the creators (direct and indirect) of the Soviet state. The legal system of Soviet Russia, in Sukiennicki's opinion, possessed a feature that had not been previously observed in other state systems, namely "the spirit of dynamics" – the ability to adjust to the constantly changing political and economic conditions of the country.<sup>22</sup> The USSR constitution made the union a dynamic body with no fixed, self-contained territorial boundary. The border line was open to every country so transformation into a World Soviet Socialist Republic was possible.<sup>23</sup> In the totalitarian state system everything remained unstable and temporary. The Soviet constitutions were to make the revolution come true, to protect its achievements. The main conclusion drawn by W. Sukiennicki in his work was the belief that the Soviet system implemented the rules of party and state bureaucracy "on behalf of the proletariat."<sup>24</sup> The USSR state system evolution started from the abandoning of Lenin's system of councils and went on to the limitless power of governing. The bureaucratic party-state body had in its power the means of production and decided about elections to councils on all levels. The scope of the power apparatus was not specified or limited in the constitution of 1936. Therefore, the evolution of revolution led to the creation of a system of power "isolated and independent of the masses."<sup>25</sup> While reading W. Sukiennicki's study, after having looked at the bibliography, careful reasoning, and objectivity, one can come to the conclusion that he is not an anticommunist publicist. W. Sukiennicki called his approach "a third way" of thinking about Soviet Russia. It was neither a compliment nor the ideological-didactic denouncement. The reality created for the sake of Soviet propaganda unveiled its secrets under the scientific eye of the Vilnius researcher. It was denounced by both the Second Republic and the People's Republic of Poland – was it pro- or anti-Soviet?

W. Sukiennicki's methodological approach was also applied by Franciszek Ancewicz in his dissertation *Stalinowska koncepcja państwa na tle*

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<sup>22</sup> Sukiennicki W., *Ewolucja ustroju...*, p. 166.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., p. 284.

<sup>25</sup> Ibid., p. 103.

*ewolucji ustrojowej Związku Socjalistycznych Republik Radzieckich* (1939).<sup>26</sup> He analysed the changes in the Soviet legal system in the years 1917–1936. In this work not only did he present the evolutionary stages of the Soviet state, but he also analysed the texts from a dogmatic angle, and, what is more, often compared them to the doctrinal assumptions and to the ways of putting them in practice. F. Ancewicz acquainted Polish readers with the organizational structure of the communist party as the only ruling party and, what is more, presented the relations between the party authorities and the authorities of the state. He explained the meaning of the party's centralism, which, in turn, cast a real light on Soviet federalism and the rule of the party's bureaucracy. He described in great detail the doctrine of the making of socialism in one state (created by J. Stalin, flourishing in the USSR since 1929, and leading to the laying down of the constitution of 1936). Next, F. Ancewicz analysed the content of this constitution. Most important, however, are the conclusions that he came to. He stated that Stalin's constitution abandoned the system of councils based on the bottom-up construction of power and replaced it with the idea of a "workers and peasants socialist state."<sup>27</sup> At that time the Soviet creators of the socialist state used the language of parliamentary democracy but the USSR never became a democratic state because the one-party system remained in force. The communist party monopoly comprised everything – politics, social and cultural life, and the economy. That is why the USSR was undeniably a totalitarian state. The greatest achievement of F. Ancewicz's monograph was the identification and differentiation of Stalinism from Lenin's bolshevism. In this view, Stalin's system was characterised by the unlimited accumulation of power in the hands of the bureaucratic apparatus of party and state.<sup>28</sup> What he also noticed was the fact that at the time of Stalin's state, the role of Marxist-Leninist ideology had to give way to the "leader principle" which might have been a reference to fascism.

In the Second Republic a legal study of the **Soviet theory of law** was launched by W. Sukiennicki. In his article entitled *Marksowsko-Leninowska teoria prawa*<sup>29</sup> he gives quite a cursory coverage of the theoretical and legal

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<sup>26</sup> See the reprint of the work with Czesław Miłosz's essay and F. Ancewicz' biography by R. Miknys and V. Sirutavičius – Ancewicz F., *Stalinowska koncepcja państwa na tle ewolucji ustrojowej Związku Socjalistycznych Republik Sowieckich*, Lublin 2001; Kor-nat M., *Polska szkoła...*, pp. 73–77.

<sup>27</sup> Ancewicz F., *Stalinowska koncepcja...*, pp. 19–21 (according to 2001 edition).

<sup>28</sup> *Ibid.*, pp. 206–218.

<sup>29</sup> Sukiennicki W., *Marksowsko-Leninowska teoria prawa*, Y. VI, vol. 51, 1935, pp. 145–153 and 196–202.

concepts of P. Stuczka and E. Paszukanis. He skipped the entire stormy period of the formation of Bolshevik “revolutionary” concepts until 1922, which, in my opinion, significantly reduces their content value.

It is worth mentioning here, as if by adding to Sukiennicki’s comments, that the Bolsheviks, after having taken power in 1917 in Petrograd, utterly rejected the Russian bourgeois law. They began to lay down a new Soviet one – virtually from scratch. Decree No. 1 on the organisation of common courts of December 1917 both repealed all pre-revolutionary laws and allowed the application of those which were not against revolutionary conscience and revolutionary legal awareness. Decree No. 3 of July 1918 absolutely precluded the application of pre-revolutionary law. Courts were solely to follow “the decrees of the worker-peasant government and socialist conscience.”<sup>30</sup>

During war-time communism (1917–1921), Soviet law evolved spontaneously, with no theoretic background,<sup>31</sup> mainly on the basis of the decrees of the revolutionary government and the revolutionary conscience of people’s judges. At first, the idea of codifying this law was rejected.<sup>32</sup>

It is obvious that the development of the Soviet doctrine was closely connected to the political and legal practice of revolutionary changes during the first years of the Soviet government. At first, the organisation that greatly influenced the new understanding of law was the Council of People’s Commissars, gathering lawyers professing dialectical materialism. The springing point of their work was the opinions of the father of the Russian Revolution, W. I. Lenin. In fact, they were actually Lenin’s interpretations of Marx and Engels’s standpoints on state and law. Lenin was quite open about his aversion to law. He claimed that every state was the dictatorship of the class – it was the absolute ruler, not restricted by rules or regulations. He consciously developed Marxists’ idea that state and law are the tools of class oppression. Law is the command of a sovereign; law should be the obedient servant, not the master. As a matter of fact, the lawmakers can live without law. If understood so, it comes as no surprise that the rules included in the first Soviet decrees entirely repeal the law of tsarist Russia. These decrees stressed the importance of “revolutionary conscience” as the

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<sup>30</sup> Bosiacki A., *Utopia. Władza. Prawo. Doktryna i koncepcje prawne “bolszewickiej” Rosji 1917–1921*, Warszawa 1999, p. 163 and the following.

<sup>31</sup> Although K. Marx and W. I. Lenin were lawyers by education, they did not deal with the theory of law in their works devoted to economic and political issues.

<sup>32</sup> Lityński A., ‘Historia prawa radzieckiego 1917–1991. Krótki kurs’, *Miscellanea historico-iuridica*, vol. III, Białystok 2005, pp. 139–175; Sójka-Zielińska K., *Historia prawa*, Warszawa 2005, pp. 361–372; Filar M., *W służbie utopii. 73 lata radzieckiego prawa karnego*, Toruń 1992.

key feature of the judiciary and the fight for the socialist rule of law. One of Lenin's close comrades and fathers of the Soviet theory of law, P. I. Stuczka, described the binding law as the result of the revolution connected with the institutional superstructure of the society in a way that reflects the people's will. While talking about the socialist rule of law, he claimed that it should be a weapon to fight the nihilist attitudes in the law abided by the working class.

The negation of European theoretical and practical achievements by Soviet revolutionaries in the law led to the need for laying down a new theory of law, which would encompass the opinions of Engels, Lenin, and Marx in this field. It was also advisable to criticize the main bourgeois concepts of law using Marxist-Leninist dialectics as well as to recommend further ways of developing the Soviet study of the state and law. In 1919 Stuczka wrote that Soviet law would evolve in two stages: during the transitional period i.e. the state of the proletariat dictatorship, and during the state of the socialist society.<sup>33</sup> During the former a "special law" is in force as "the system itself does not transform in one moment because the previous order is ingrained in people's beliefs as the tradition of the past." Stuczka also proffered the drafting of a **Proletarian Law Code** consisting of the following parts: the Soviet constitution, civic rights and duties, social rights (family and labour law, property rights), the law of contract, and international law. It is clear that, contrary to Lenin's predictions, law was becoming an indispensable element of the Soviet state. Although this law's form and substance were distorted, at least it existed; it was at the government's service, reduced to the revolutionary conscience and people's courts, but, nevertheless, it existed. Soviet lawyers debated over it, came up with theoretical concepts, looked for its essence.

Yet, in the aforementioned article, Sukiennicki wrote that at the end of war-time communism (in 1922) and with the introduction of the New Economic Policy<sup>34</sup> a revival of economic life came into being and the publication of numerous codices took place; Soviet lawyers begun a serious debate on theoretical legal constructs adjusted to and stemming from the Soviet socio-political system. By doing this, the objective need of the existence of

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<sup>33</sup> Sylwestrzak A., 'P. I. Stuczka i jego miejsce w radzieckiej nauce prawa', *Zeszyty Naukowe Wydziału Prawa i Administracji Uniwersytetu Gdańskiego* No. 7, Gdańsk 1978, pp. 5–19.

<sup>34</sup> Translator's comment: "A policy allowing small ventures reopen for private profit, while keeping large industries, foreign trade and banks under control of state." Ellis E. G., Esler A., *"Revolution and Civil War in Russia"*. *World History. The Modern Era*, Boston 2007, pp. 483.

a new type of legal system in the state was acknowledged.<sup>35</sup> According to W. Sukiennicki “the majority of authors writing in the USSR at that time was inclined to follow the most modern legal theories of Petrażycki (Rejsner, Engel, Iliński) or Duguit (Gojbarch, Woltson and others) in their works.” However, these theories were denounced by theorists of the state and the law at the First All-Union Congress of Marxists in Moscow in 1931. It was agreed that L. Petrażycki’s psychological theory would lead to subjective idealism, and L. Duguit’s theory based on social solidarity ran contrary to the Marxist idea of class struggle. Only the works of two Soviet lawyers, P. Stuczka and E. Paszukanis, were in the mainstream of the general guidelines of Marxism-Leninism’s philosophical view i.e. historical materialism, as the participants of the Congress concluded. Therefore, according to P. Stuczka, law is “the form of social relations i.e. the mode of production and of exchange that is in line with the benefit of the ruling class and that is protected by its organised authority.”<sup>36</sup> According to E. Paszukanis, in turn, not all general social relations, the entire system or the organisation of social relations, constitute law, only selected, specified social relations existing in capitalist society between certain owners of commodities for exchange.<sup>37</sup> The aforementioned social relations lose their economic grounds and take on an ideologically concealed legal form. The owners of commodities appear here as “authorised entities”, their contractors as “liable parties”, and the relation of the exchange of commodities is a “legal relation”. In a socialist society, without a free market, competition, or opposing legal interest, the entire legal ideology will vanish, all abstract constructs of legal norms and relations will disappear. Ideally, in the new classless socialist society, the validity of all legal norms will expire and the ones that will remain in force will be the purposive and technical rules and norms resulting from the conscious planning of the future. Irrespective of the content evaluation of Sukiennicki’s work, it could be stated that he was right while claiming that in P. Stuczka’s and E. Paszukanis’ perspectives the domain of law was reduced to private law, or to put it more precisely, civil law. ‘Stuczka, just like Paszukanis,’ as

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<sup>35</sup> Sukiennicki W., ‘Marksowsko-leninowska teoria prawa’ in *Polska szkoła sowietologiczna (1930–1939)* ed. by Kornat M., Kraków 2003. pp. 289–290.

<sup>36</sup> *Ibid.*, pp. 296–297; Sylwestrzak, ‘P. I. Stuczka i jego miejsce...’, pp. 5–19.

<sup>37</sup> Sukiennicki W., ‘Marksowsko-leninowska...’, pp. 298–302. See also Paszukanis J. B., *Ogólna teoria prawa a marksizm*, Warszawa 1985 with the introduction of Kowalski J.; Walicki A., *Marksizm i skok do królestwa wolności*, Warszawa 1996, pp. 335–341; Staśkiewicz W., ‘Koncepcja prawa J. B. Paszukanisa – dylematy teorii i praktyki’, *Państwo i Prawo*, vol. 8, Warszawa 1982, pp. 41–53; Kozak A., ‘Poglądy Jewgienija B. Paszukanisa na istotę prawa’ in *Acta Universitatis Wratislaviensis* No. 983, *Przegląd Prawa i Administracji*, XXIV, Wrocław 1988, pp. 4–17.

Sukiennicki put it ‘stress the special meaning of private law, as law that is so well-developed that it could give directions to all other branches of legal sciences.’<sup>38</sup>

One man who greatly helped to understand Soviet **law theory** was a lawyer, an expert on and negotiator of international treaties, a participant in the unification work in the League of Nations and in the Hague Academy of International Law, a judge of the Permanent Court of Arbitration in Hague, Szymon Rundstein. He published many works, among which the dissertations *Zasady teorii prawa* (1924) and *W poszukiwaniu prawa cywilnego* (1939)<sup>39</sup> were probably the most famous ones.

Particularly interesting and inspiring are the thoughts of Rundstein in the work *W poszukiwaniu...* on the theory of law in fascist countries such as Germany, Italy, and Soviet Russia. This is where he presents some similarities and differences between them, although the historical background is different. As the title of the dissertation suggests, the issue was not finally concluded. He commenced his work by recalling the theoretical and legal ideas of Carl Schmitt (*O pojęciu polityczności*) in which politics and law were granted equal rights, where the total state has no apolitical sphere of social interaction. Rundstein criticised these ideas and stated that the concept of law is constant and unchangeable, irrespective of the equilibrium or fluctuation of the social arrangement.<sup>40</sup> The tendency of isolation and independence of the concept of law are particularly visible during the former state, which in turn leads to the notion that this arrangement, due to its existence and stability, embodies this abstract concept in the best possible way. The loss of balance in this arrangement, according to Rundstein, in fact does not affect the concept of law, even though it can be replaced by approaches adopting the idea of power and the scheme of technical purpose. “Revolutionary risings are times of contempt for law,” as Rundstein puts it, “warning comes because the concept of law has the feature of influencing the social psyche as it aims to stabilize the new arrangement (it is hard to get by in the heat of the upheaval).” Ironically, it was the “glorious revo-

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<sup>38</sup> W. Sukiennicki, *Marksowsko-leninowska...*, p. 303.

<sup>39</sup> Sz. Rundstein was the author, among others, *Szkód wojennych a międzynarodowego prawo narodów* (1916); *Wykładni prawa i orzecznictwa* (1916); *Rejestracji traktatów* (1923); *Cwiczeń praktycznych z prawa międzynarodowego* (1929). His most well known works in German are *Das Recht der Kartelle* (1904); *Die Tarifverträge im französischen Privatrecht* (1905) as part I and *Die Tarifverträge und die Moderne Rechtswissenschaften* (1906) as part II; and the most popular in French are *Arbitrage international en matière privée* (1928); *La justice internationale* (1929) *La cour permanente comme instance de recours* (1933). See more on Sz. Rundstein in Mohyluk M., ‘Szymon Rundstein o prawie radzieckim’, in *Miscellanea historico-iuridica*, vol. VI, Białystok 2008, pp. 67–77.

<sup>40</sup> *W poszukiwaniu...*, p. 28 and the following.

lutions that went back on this idea and voiced their demand to return to the independence of the concept of law,”<sup>41</sup> as if forgetting about the exclusive importance of the political function of law. Such a U-turn was visible particularly in Soviet Russia, as Rundstein noted. E. Paszukanis’ doctrine, P. Stuczka’s idea of the “independence of law sectors”, and the theory of economic law, which were to replace the outdated study of civil law to fulfil preplanned and technical goals, at the end of the 1930s were treated as sabotage, anachronism, and a misunderstanding of Marx and Lenin’s doctrines. Rundstein makes the point that current Soviet “official” theory of law states that the denial of the existence of independent functions of private law aiming at the protection of individual interests is just counter-revolutionary heresy. As a result, at the end of the 1930s, Soviet doctrine acknowledged the independence of the concept of law from politics, and, what is the most striking point of Rundstein’s thoughts, “the Soviet formula is reflected in the national-socialist doctrine.” The only exceptions are that instead of “the ruling class” there are “German people” and that what is beneficial for the nation is the law. Instead of the axiom of law as a function of politics, there is a comeback to the statement that it is politics that is the function of law because only the concept of law can give rise to a true revolution (with the belief that the concept of law excludes violence).<sup>42</sup>

Rundstein claims that the Soviet experience is a comeback to the pre-revolutionary civil law. Civil law ideas, although suppressed, distorted, and transformed, have come to power and this is the rule of reality. In the light of revolutionary theories, the essence of law is identical with the social substance – life itself, which either instinctively or on purpose arranges the relation in terms of duty to sanction. Society cannot be fully understood without the legal aspect. In the Soviet state, the independence of this idea was restored. The general concept of law was formulated by Lenin and was as follows: law is the application of even judgment to things which are not identical in reality. If justice is to be the ultimate test, it needs to eliminate inequalities. The Soviet theory claimed that social civil law was (contrary to bourgeois law) the embodiment of legal justice. Socialist law was to be a tool to eliminate the greatest social injustice – the exploitation of man by man.<sup>43</sup>

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<sup>41</sup> *Ibid.*, pp. 30–31.

<sup>42</sup> *Ibid.*, p. 32.

<sup>43</sup> *Ibid.*, pp. 45–47.

All in all, the Warsaw lawyer deprived totalitarian states of any values. “Historical experience teaches,” as he wrote, “that each totalitarianism making an individual a very small cog in a machine leads to atomization. And from there [...] there is only one small step to the deep corruption of state life. Where “silence reverberates” – justice just shuns away there.”<sup>44</sup>

Rundstein’s deliberations concerning Soviet law are interesting mainly due to their comparative nature. They are rooted in and based on the deep philosophical and legal knowledge of the author. Sz. Rundstein draws controversial conclusions on the basis of his broad knowledge of legal doctrine of fascist Italy, Germany, and Soviet legal thinking. His view is scientific and objective. Rundstein’s logical explanations represent a valuable contribution to the ongoing debate on totalitarianisms. His opinion of the fixed concept of law, its existence irrespective of the fluctuations of the “arrangements”, and attempts to wither its essence, is one definitely worth noting. The fixed notion of law contrasted with totalitarian reality endures appalling ordeals. You can be absolutely sure that in these systems law is at politics’ service, that law is politics’ function. Rundstein, however, undermined this idea. And although it is difficult to accept Rundstein’s idea of the revival of a pre-revolutionary understanding of civil law in the USSR in terms of the independent existence of fixed civil law concepts, it should be stated that, having observed the further course of Soviet law, its evolution (including penal and constitutional law) was, and probably still is, going this way.

Juliusz Makarewicz<sup>45</sup> and Rafał Lemkin<sup>46</sup> have familiarized us with Soviet **penal law**. These authors published the most extensive and most valuable in terms of content, in my opinion, works i.e. *Kodeks karny republik sowieckich*<sup>47</sup> and *Kodeks karny Rosji Sowieckiej 1927*.<sup>48</sup> It should be immediately stated that these publications concerned only the substantive law (legislation) of 1917–1927 of Soviet penal law, and their deliberations were limited by the specific period and the penal matter.

Having analysed Makarewicz and Lemkin’s opinions on Soviet penal law during the interwar period, one could sum up that they were highly criti-

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<sup>44</sup> Ibid., p. 83.

<sup>45</sup> The co-author of the Polish penal code of 1932 is known in Europe as the author of *Einführung in die Philosophie des Strafrechts auf Entwicklungsgeschichtliche Grundwag*, Stuttgart 1906.

<sup>46</sup> Known among world scientists as the man who coined the term *genocide* and the author of *The Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Washington 1944.

<sup>47</sup> Makarewicz J., *Kodeks karny republik sowieckich*, Warszawa 1926.

<sup>48</sup> Lemkin R., *Kodeks karny Rosji Sowieckiej 1927*, Warszawa 1928.

cal. The introduction to the Soviet penal code from 1922 and 1927 easily proves it. J. Makarewicz's views on penal law constitute a great contribution to legal science. He was a representative of the sociological approach.<sup>49</sup> This criminal law expert from Lviv was widely acclaimed as one of the best representatives of this school. "Penal code," he wrote "is the corpus of laws and regulations in force in a given social group which specifies the administration of punishment (or other types of social response) on the authors of the punishable acts."<sup>50</sup> The starting point for deliberations on penal law is always a certain social group and its interests. A legal act is a photographic negative of this group "clearly depicting for the historian or the sociologist the state of current civilisation, social architecture, the needs and ideals of a given society."<sup>51</sup> The penal law concept created by J. Makarewicz was based on a coherent scientific system, applying the legal-comparative method and referring to the "modern philosophy of law" aiming at finding the desired ideal in law. J. Makarewicz was remarkably consistent in expressing his point of view. He called the Soviet penal code of 1927 the code of measures protecting society against the criminal because punishment was replaced there by social protective measures.

J. Makarewicz and R. Lemkin's typically juristic works were the first elaborations of Soviet penal law in Polish legal science. They can be perceived as the forerunners of studies on Soviet penal substantive law. The introduction to the penal code of 1922 and of 1927 followed the principles of scientific presentation of the law's rules and each code provision.

The most extensive work on **civil law** in Soviet Russia was *Kodeks cywilny Rosji sowieckiej z 11 listopada 1922 r.* written by Kazimierz Przybyłowski – a civil law expert, a professor of the Jan Kazimierz University in Lviv.<sup>52</sup> It contained similar ideas to the ones presented in the lecture given in Polish Legal Society in Lviv on 24 June and 4 July 1924 and then published in "Przegląd Prawa i Administracji" (1925).

The author analyzed this code quite thoroughly, often referring to a German lawyer's work, Heinrich Freund, and his book *Das Zivilrecht Sowjetruslands* (1920, ex. 1924) as well as B. Nolde's article *Le Code civil de la Republiques de Soviets* (1923). While characterising the "pre-code" stage

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<sup>49</sup> Waśowicz M., *Nurt socjologiczny w polskiej myśli prawnokarnej*, Warszawa 1989, pp. 79–95.

<sup>50</sup> Makarewicz M., *Prawo karne. Wykład porównawczy*, Lwów–Warszawa 1924, p. 1.

<sup>51</sup> Ibid.

<sup>52</sup> *Przegląd Prawa i Administracji*, vol. 50, 1925, pp. 1–31. See also Kornat M., *Bolszewizm. Totalitaryzm...*, vol. II, pp. 114–115.

K. Przybyłowski listed, just like H. Freund had, two periods in the era of Soviet law. The first, 1917–1921, when the destructive moment was the key factor, when the law order of the ‘ancien regime’ was destroyed, when numerous references to revolutionary conscience and to legal awareness were made, when people lived in a state of legal insecurity, and when individual freedom was only an illusion. At this time an individual with its rights ceased to exist for the state, K. Przybyłowski wrote. He aptly characterised this period by writing that “bolshevism with full brutal force implemented the rule that an individual is in the service of state” (and not the liberal state in the service of an individual), and that a citizen is allowed to do whatever is clearly specified.<sup>53</sup> The other period, after 1921, was called the realism period, when a partial return to a capitalist economy, as well as a tendency to formalise legal order is visible. He also called this period the period of “state capitalism.”<sup>54</sup> The Soviet civil code was then a compromise between the communist rules and the needs posed by life. According to Gojchbarg, quoted by K. Przybyłowski, they tried both to strike a balance between two types of ownership: the communist and the bourgeois, and to protect the public interest against the private one.

Leopold Caro, one of the best experts on bolshevism in the Polish Second Republic, in the article *Idee przewodnie ustawodawstwa sowieckiego*<sup>55</sup> devoted much attention to Soviet civil law. In his work he mainly focused on an analysis of the content of Article 1 of the civil code of November 1922.<sup>56</sup> He rejected the idea that this Article is based on the ideas of the famous French lawyer, L. Duguit, who professed that law plays a social role. According to L. Duguit, the law’s role is not to protect the individual’s rights but to make it possible for all citizens to fulfil their social duties in the service of the state. Property, in the light of his opinions, is closely and constantly connected with the duty of being kept for the benefit of the society. Public (social) interest, which was presented in this Article as the source of ultimate law, was, as L. Caro claimed, a vague concept because “what was the exact benefit of the society was hard to establish and the door to lawlessness was wide ajar.” He was right then when he noticed that the social targets in the Soviet state are in “such a state of fluctuation” that is nowhere else to be found. During war-time communism social targets

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<sup>53</sup> Przybyłowski K., *Kodeks cywilny...*, p. 1.

<sup>54</sup> Ibid.

<sup>55</sup> *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, year IX, 1929, pp. 205–223.

<sup>56</sup> “Private rights are legally protected with the exception of these situations when their realisation would be against their socioeconomic goal.”

were different from i.e. the ones during the NEP era. Unsurprisingly, legal security was hard to establish in such conditions because i.e. all contracts, licenses and rights granted to foreign entrepreneurs could be, according to this rule, annulled.

Having even cursorily analysed the achievements of Polish Second Republic commentators on the Soviet law (over 100 publications including monographs and articles), one can decidedly state that these works are remarkably diverse, profound and extremely valuable in terms of content-related matters.

A kind of evolution was visible here – from non-institutionalised publications, independent and cautious, to institution-driven studies (Vilnius Research Institute on Eastern Europe).

The scope of interest of these works was relatively wide, as it concerned law theory, constitutional law, penal law, and civil law. Their detailed study within the following categories would be beneficial:

- the lawyers dealing with Soviet law, by their schools, by their views (including political ones), by their achievements and objectivity,
- the depth of the survey, including the sources that were used, the independence and the innovativeness,
- the input into Sovietology or, if it is possible, to call the achievement a contribution to Sovietology.

Having said all this, it is stated that the analysis carried out in this field was done by distinguished Polish lawyers who, in great part, were widely recognised in the international arena. Sometimes their interpretations were irrelevant, skin-deep, but sometimes they were valuable, accurate and original. Probably these discrepancies stemmed from the fact that Soviet law was described *in statu nascendi*, at the moment of transformation, from a very special perspective. Unfortunately, due to the fact that these works have not been translated yet, they are unavailable to the wider circle of people interested in Soviet law and its interpretations. The achievements of Polish lawyers have made, in my opinion, a still underestimated yet immense contribution to the accomplishments of world Sovietology.

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