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From refuge to trap: formalist misadventures of Poland's postsocialist legal profession

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ABSTRACT

Since 2015 the populist government of the Law and Justice Party in Poland has spearheaded a highly effective campaign against the country's lawyers, encountering relatively muted social opposition. Using Bourdieuan lenses, the article traces the roots of that remarkable institutional weakness of the Polish legal profession to the highly formalist approach to law and legal thinking that Poland's lawyers espoused. Prior to the fall of communism, and in democratic Poland, the role of lawyers in society was to act as guardians of "neatness" of the legal system – or that system's internal clarity, cohesion, and completeness. Such a sterile approach to legal practice was initially attractive, among other reasons, because it protected the legal profession from difficult legitimacy challenges stemming from that profession's pre-1989 coexistence with the communist regime. With time, however, the refuge that formalism offered became a trap that undermined lawyers' political and economic power.

Introduction

Polish legal profession is in turmoil. Its political influence is facing the most serious challenge since the fall of communism. The 2015 twin victory of the right-wing Law and Justice Party (pol. *Prawo i Sprawiedliwość* or PiS) in the parliamentary election and of Andrzej Duda, a PiS ally, in the presidential ballot led to an almost immediate attack on the basic tenets of the post-1989 legal order. In a little more than two years, the new government completed a blatantly unconstitutional takeover of the Constitutional Tribunal (Kisilowski 2015b), dismissed (again, in open defiance of the Constitution) all nonpolitical members of the Supreme Council of Judiciary and filled the body with political nominees, administratively replaced chief judges, or deputy chief judges in about a quarter of district and regional court in the country (Woźnicki 2018), and abolished the independence of the state prosecution service. Its attempts to lay off the Chief Justice of the Supreme Court and retire more than 40 percent of other Supreme Court judges have only been stopped by the Court of Justice of the European Union. In perhaps the most profound rebuke of the established

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legal culture, PiS set up a new chamber of the Supreme Court, staffed not only with a new cadre of judges but also with politically appointed lay jurors, with the power to review almost every final judicial decision issued since 1997. When lawyers tried to defend the established constitutional order, PiS government refused to respect, or even publish, unfavorable court rulings (Kisilowski 2015c).

This de facto constitutional revolution evoked only tepid social outrage. While urban intelligentsia engaged in occasional street protests, PiS enjoyed stable, and even increasing, levels of social support.

While many of these political developments have been widely reported by international press, a parallel, economic turbulence faced by the Polish legal profession is less known. In the mid-2000s social pressure forced Polish attorneys and legal counsels (the latter provide legal services in every case except for defense in criminal and tax-penal proceedings) to widely broaden access to their respective professions. Between 2005 and 2010 the combined number of law graduates admitted to the first year of attorney and legal-counsel apprenticeships rose more than fivefold. While in late 1990s there were more than 1,900 people for one qualified legal professional, the figure dropped to 882 in 2015.

The citizens-per-lawyer measure does not tell the whole story, however. After all, while the population of Poland remained flat over the last three decades, the economy has experienced historical levels of growth. By 2015 Poland's gross domestic product (GDP) was 258 percent higher than at the beginning of the transition. Given that context, Figure 1, which shows the ratio of inflation-adjusted GDP to the total number of practicing attorneys and legal counsels, seems to capture more accurately the remarkable rise of lawyers' post-1989 economic fortunes – and the swift reversal of these fortunes in the mid-2000s.

This paper analyzes cultural context of the above-mentioned rise and fall of Poland's lawyers, and especially of the country's legal elite. After 1989, that elite supported a continuation of a highly formalist approach to law and legal thinking that had developed under communism. A good legal argument continued to mean an argument by and large divorced from either consequentialist policy considerations or democratic (or any other) axiology. The role of lawyers in society was understood primarily as guardians of "neatness" of the legal system – or that system's internal clarity, cohesion, and completeness.

Such a sterile approach to legal practice was initially attractive for numerous reasons, which I elaborate on below. With time, however, the refuge that formalism offered became a trap that contributed to the current undermining of lawyers' political and economic power.

Betting on formalism

A professional consensus about the degree to which legal analysis "can be carried out without reference to other disciplines or other sources of values" (Calabresi 2002, 2115) affects almost all aspects of how a legal culture is reproduced,

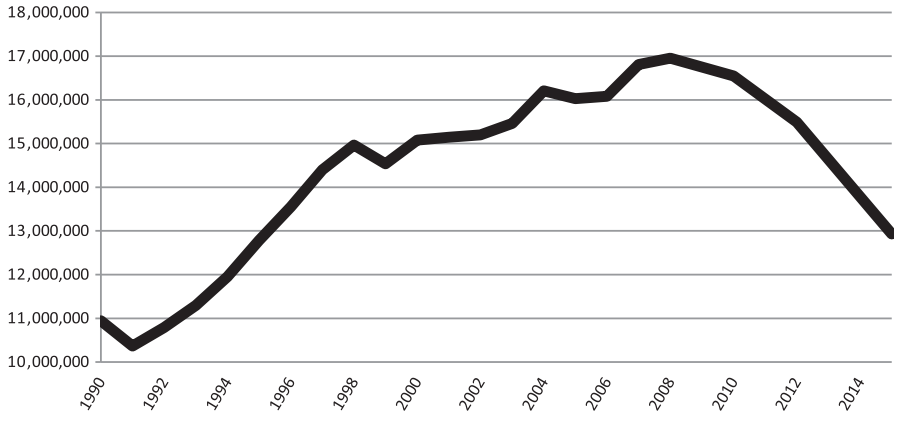

Figure 1. GDP Per Lawyer (constant US$). Source: Own calculations based on data from Poland's National Bar Association and the Statistical Yearbooks of the Republic of Poland (available at stat.gov.pl/obszary-tematyczne/roczniki-statystyczne).

including the curricula in legal education, the focus of key debates in legal press, conferences and even informal gatherings, the selection of arguments deemed "strong" and "convincing" in a courtroom, and the desired and actual image of a lawyer in society.

Two broad camps have coexisted in this debate. The traditionalists, commonly known as "positivists"[1] or "formalists," view law as by and large an autonomous field of thinking and reasoning, based on a systematic process of discerning meaning from legal texts and filling interpretative gaps and inconsistencies through deductive and analogical reasoning. Functionalists, by contrast, argue that law must be understood, interpreted, and refined mostly through reference to the functions a given legal norm plays or should play in a society. Since legal studies themselves do not offer a toolkit to analyze functions or consequences of legal provisions, functionalists routinely borrow from other academic disciplines. In a functionalist vision, a lawyer is mostly an applied "translator" of diverse bodies of human knowledge pertaining to the application and creation of laws.

One would think that the functionalist vision of the legal profession would have grown particularly strong in countries like Poland, with its recent, nearly half-century-long experience with revolutionary Marxism. After all, the Communist Manifesto characterized "bourgeois [positivist] jurisprudence" as "but the will of [the ruling] class," and this view was seconded by Lenin who famously stated that "law is a political measure, it is politics."

Since Markovits (1982), Western scholars started to recognize the seemingly paradoxical fact that while a functional bent of communist jurisprudence would make sense in theory, the reality of the socialist legal system was almost entirely opposite. Markovits argued that, by the 1970s and 1980s, communist regimes did not really care much about the principles of the revolutionary Marxist ideology. Countries like Poland resembled a rather conventional, authoritarian,

bureaucratic state. In such conditions, the regime needed well-ordered laws to enforce their absolute political domination.

To see how Markovits reached her conclusion, we can quote a passage from an influential 1982 monograph on "Problems of Rational Lawmaking" authored by Slawomira Wronkowska, then a young scholar who, three decades later, would be a liberal-party appointee to the Constitutional Tribunal of democratic Poland. "In my work, I do not engage in substantive characterization of objectives that the law should achieve," writes Wronkowska in the book published amid the brutal martial law imposed by the communist regime. "I assume that in the system of the socialist law, these objectives are set by Marxist moral doctrine as well as an accepted political doctrine" (Wronkowska 1982, 31).

In my earlier work (Kisilowski 2015a) I offer an alternative to Markovits's interpretation for the emergence of the formalist bent of socialist jurisprudence. I show how formalist legal thinking was not so much a tool of the communist party to impose order (brute force was, after all, a readily available, simpler alternative), but an effort of the Polish legal profession to contain the worst excesses of the communist regime. Under this interpretation, in the above-mentioned passage, Wronkowska simply acknowledges the undisputed political power of the party and pleads with that party to use that power only through predictable, equally applicable, and well-ordered legal means.

Under both Markovits's and Kisilowski's narratives, Polish lawyers miscalculated. The communism fell. And, yet, the legal culture persisted. For nearly three decades after 1989, Polish lawyers viewed their formalist program as almost entirely orthogonal to the country's political system. Their thinking was well-ordered laws were needed as much under democracy as they had been under socialist authoritarianism.

The refuge and its guardians

According to Bourdieu, a habitus of a professional field is arbitrary, but not randomly so (Bourdieu 1977, 164). It must be intellectually believable, but also objectively beneficial – to the profession in general and its top echelons. In post-socialist Poland, formalist legal culture proved to be both. It got an instant legitimacy boost from Western experts and technical advisers who descended upon Warsaw after 1989. Since the change of the political regime was completed quickly, the conversation turned to creating strong "rule of law" (see e.g. Brzezinski 1991; Böckenförde 2000). Already in late December 1989, the Polish Parliament sweepingly amended the communist constitution, declaring – in a new Article 1 – Poland to be "a democratic *Rechtsstaat*."[2]

The choice of *Rechtsstaat* as the founding principle of the new democratic system was both understandable (given the long-lasting influence of German legal culture in Poland) and highly convenient for lawyers who wanted continuity in their established, positivistic legal culture. In 1992, commenting on a series

of lectures of Western experts speaking about *Rechtsstaat* in the Polish parliament, a Polish Constitutional Court judge remarked that "it is difficult not to notice that Polish scholars have long expressed exactly the same views" about the desired direction of the Polish legal system (Zakrzewska 1992, 87).

The pressure for cultural continuity was strengthened by extraordinary influence of legal academics in the post-1989 legal practice. Law professors dominated the country's most prestigious judicial post, constituting (before the first populist PiS government in the mid-2000s) nearly 70 percent of all Constitutional Tribunal judges, all Chief Judges of the Supreme Administrative Court, and each of the successive Ombudsmen. Academics also became pivotal on the private side, either founding local law firms, which quickly grew to prominence or taking partnerships in newly established branches of prestigious multinational law firms.[3] Professors' influence extended to lawmaking, as they played key roles in expert panels advising on new pieces of legislation, including the 1997 Constitution.

This impressive position was largely a consequence of the intellectual and social capital academics amassed under communism. Scholars had been allowed to regularly travel abroad, to participate in international conferences. Many spoke foreign languages. Under Polish law, a professorial title allowed one to bypass all exams, apprenticeships, and requirements needed to practice as an attorney or to be appointed as a high court judge.

In addition to their prominent role in legal practice, academics naturally maintained the control of the highly structured process of cultural reproduction. Throughout the 1990s and 2000s, university legal education remained almost entirely focused on memorizing positive laws. By the mid-2000s, state minimums required merely sixty hours, or about 2.5% percent of the five-year-long training program in law, of combined training in economics, sociology, psychology, philosophy, and legal ethics. The authors of a thorough survey of law students at Warsaw University, conducted in 1996 and repeated in 2007, found that students' interest in having classes that go beyond the black letter, while high early in their studies, drops precipitously during the five-year program. The authors conclude that "this [positivization] of legal education puts serious constraints on the future professional life of thus educated students" (Padło 2011). A 2002 survey of judges found that practitioners are acutely aware of those constraints. About 65 percent of respondents indicated they lack competences in psychology, sociology, economics, or finance and banking; while only 14.5 percent pointed to traditional black-letter disciplines such as administrative, penal, or constitutional law (Łojko 2005, 67).

The formalist system was at least partially holding up due to cultural inertia reinforced by traditional education. But it also responded to many genuine needs of the early transition period. After all, Poland had to swiftly build a new framework of market institutions, usually under the guidance of Western experts. This legislative copycat process did not subside after a few frantic early years. In the

mid-1990s, Poland began a laborious process of incorporating the *acquis communautaire* into its legal system; literally tens of thousands of pages of new laws (see Figure 2). Studying the objectives of the *acquis* was pointless – its in toto adoption was a condition of entry to the European Union (EU). One could argue that Poland truly did not *need* erudite functionalists, but a large number of diligent technicians able to coherently translate the EU laws into Polish and solve inevitable conceptual problems.

Finally, we should also acknowledge the political benefits of being viewed as an apolitical legal technician. These advantages were as relevant to low-level bureaucrats, prosecutors or judges as they were to higher echelons of legal practice. In 2015 Jerzy Hausner, an economist and former leftist deputy prime minister, concluded just that in his comprehensive study on the challenges of Poland's state institutions. Calling "formalist legality" one of the state's "eight deadly sins," he argued that "[i]n the Polish state, legalism systematically dominates over purposefulness. The legal system works as a procedural machine, blocking accountability. Legal provisions act as shields that protect the bureaucratic apparatus from responsibility" (Hausner and Mazur 2015, 15).

This shielding effect is visible even in the jurisprudence of the Constitutional Tribunal. Although Polish constitutional judges have undoubtedly been influenced by purposive practices of Western constitutional courts with which they interact, the significance of formal reasoning remains visible, especially in politically important decisions. Tribunal's very first verdict on lustration, or vetting of former collaborators of communist secret police, stroke down a 1992 parliamentary resolution on the topic on its "lack of specificity" (Judgement of June 19, K. U 6/02 1992). A similar approach was taken in the Tribunal's landmark 2006 case striking down a law aimed at liberalizing access to legal professions. The law attempted to give law graduates a right to offer limited legal

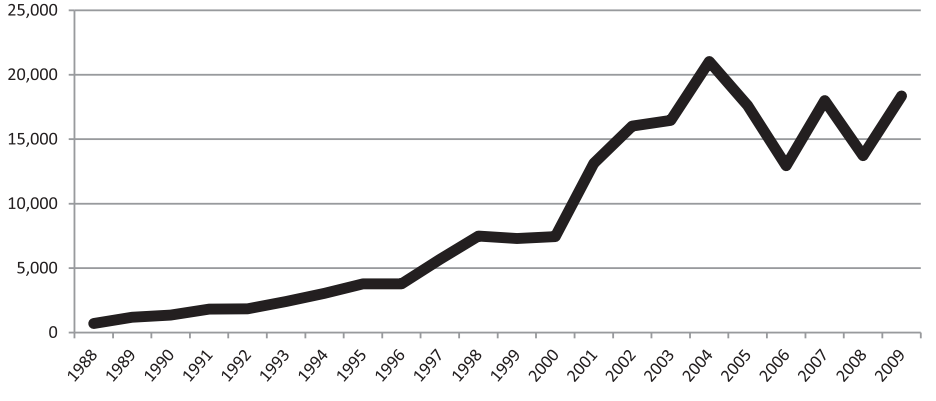

Figure 2. Number of Pages in the Official *Journal of Laws* (1988–2009). Source: Own calculation. The black line represents the total number of pages in all issues of the official *Journal of Laws* of the Republic of Poland in a given year. The journal publishes all statutes, regulations that enter into force as well as decisions of the Constitutional Tribunal.

services without applying for bar membership. In the eyes of the Tribunal, the law's main problems were editorial. "The reasons for placing the provision on providing legal services by persons without an attorney's status in a segment of the amended statute dealing with attorneys are absolutely incomprehensible," argued the court (Judgement of Apr. 19, K. 6/06 2006). Further arguments made in relation to the provision in question were a criticism of an incorrect cross-reference and a disapproval of "the usage of conflicting expressions: [persons with tertiary legal education] and [completed legal studies in the Republic of Poland and obtained the master's degree] in one statute" (*Id.*). "For all these reasons," the Tribunal concluded, "[the provision in question] does not satisfy the requirements of the sufficient specificity of law, derived from Article 2 of the Constitution [i.e. democratic *Rechtsstaat*]" (*Id.*).

These decisions are not outliers. Zalasiński (2008) reports "a *dynamic growth* in the significance of [formal] principles of proper legislation … in the jurisprudence of the Tribunal" (my emphasis). The Tribunal's own treatise on its approach to formal standards of legislation and a lawmaking process has been published in fourteen editions. Its latest release (Chojnacka 2015) cites more than 500 decisions, both from the post-1989 period and the socialist times.[4]

The early cracks

The first cracks in lawyers' formalist system emerged at the time of lawyers' greatest triumph: the passage of the 1997 Constitution. The document enshrined some of the flagship proposals of the profession. Chief among them was the so-called closed catalogue of the sources of law, or an unusually restrictive nondelegation doctrine, long advocated by lawyers under communism (Winczorek 2006, 78). The Constitution also provided for a significantly expended position of the Constitutional Tribunal and cemented a far-reaching autonomy of the Supreme Council of Judiciary (responsible for judicial appointments and promotions). The style of the document – dry and legalistic – was a symbolic victory for the profession.

But behind this veneer of success, problems were evident. The parliament that voted on the Constitution, merely five months before the end of its term, was elected in a highly unusual way. Only the second fully free election in more than seven decades, the ballot, held in 1993, left as much as 34.5 percent of votes "lost" on parties that did not clear a newly introduced electoral threshold. In effect, a coalition of two postcommunist parties with just 35.8 percent of the combined support gained absolute majority (Osiatyński 1997). It was these parties, along with two smaller liberal and leftist fractions, that worked out the design of the new basic law.

Fixated about formalist principles of constitutional design, legal elites in no way attempted to catalyze what a stable Polish constitution required – a "grand bargain" between leftist and liberal parties represented in the 1993–97

Parliament and the right-wing, religiously conservative forces, which had no formal place at the table (Jaskiernia 2008). On the contrary, by pushing the technocratic, "juridical" constitution, they actively undermined any effort for such a compromise. If not for the last-minute changes in the preamble,[5] made in response to growing street protests, Poland – one of the most devotedly religious countries in Europe – would have had a constitution with no reference to a god. When added, the preamble was too little too late. A mass campaign of the religious right preceded the referendum to approve the basic law. The Constitution passed with a flimsy 53.5 percent of support and a dismally low turnout of less than 43 percent. The document was legally enacted but wounded from the start.

Eight years later, the very same coalition of ignored Polish conservatives brought the PiS party to power for the first time. During its brief rein between 2005 and 2007, PiS went on a clear collision course with the legal establishment. Led by a firebrand justice minister, the government instituted numerous populist reforms in the penal law and the administration of justice. Perhaps the most consequential was the above-mentioned battle to broaden access to the attorney and legal-counsel professions. Until then, the bar associations kept admissions to the apprenticeships nearly constant, even though the market for legal services expanded rapidly. Stories of corruption and nepotism in the admission were widespread (Morawski 2007).

PiS pushed through a law opening access to the professions, which – as was mentioned above – was struck down by the Constitutional Tribunal on purely technical grounds. However, while the legal profession won the battle, the war was lost. The social pressure for opening the professions was so huge, and the arguments for supporting the status quo so flimsy, that the associations had little choice but to sharply increase the number of admissions.

More broadly, even though the PiS rule ended quickly with a liberal government winning a 2007 snap election, that first period of antiestablishment populist government was a harbinger of the things to come. Tellingly, the frontal attack on the legal community by PiS coincided with the first significant *improvement* of the public support of courts after 1989 (see Figure 3). Detailed surveys from that period make it clear that the more than twofold increase of favorability between 2005 and 2007 came mostly from the improved opinions of the *supporters* of the populist parties (CBOS 2007). The public prosecution service, used most aggressively by PiS, encountered an even higher increase of public approval than the courts.[6]

In a more granular survey of social attitudes toward courts, conducted before PiS came to power in 2005, only 9 percent of respondents indicated that the performance of the judiciary improved since the 1997 enactment of the new Constitution; the most negative reactions were among uneducated and older voters who are the core of PIS electorate (Borucka-Arctowa and Pałecki 2003, 15–16).

The survey lays bare the legitimacy costs of legal formalism. Less than 30 percent of respondents felt courts' decisions are mostly fair, with again "PiS

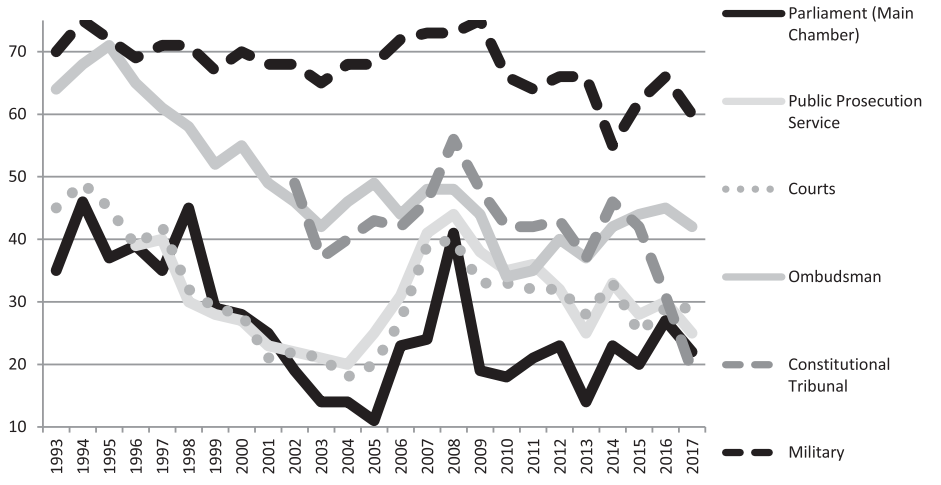

Figure 3. Opinions about Institutions. Source: Own calculations based on data from Poland's Public Opinion Research Center (available at www.cbos.pl/PL/publikacje/raporty.php).

demographics" being the most critical (Borucka-Arctowa and Pałecki 2003, 38, 41). Only 30 percent of respondents thought judges communicate in a way understandable for lay persons and less than 28 percent thought judges display social sensitivity in all or the majority of the cases (Borucka-Arctowa and Pałecki 2003, 80, 108).

It is telling to compare these popular views with opinions of lawyers and law students. Surveys conducted in 2002 and 2007–8, found only 27.4 percent of judges and a minority of law students concur with the rest of the citizenry about the unfairness of the Polish law. The professional focus was instead invariably on formal qualities of the legal system, which lawyers considered deficient despite decades of relentless efforts to improve them, both before 1989 and in democratic Poland. In particular, 85.6 percent of judges and 69 percent of law students complained about the law's incoherency (Łojko 2005, 175; Ożarowska-Roberts 2011, 136, 138). The views on legal stability are equally far apart: While the general population overwhelmingly (77%) supported a model of law that "quickly adjusts to new situations," only 36.3 percent of judges expressed a similar sentiment (Łojko 2005, 169–170).

The coming storm

When the first PiS government disintegrated in 2007, a sense of normalcy returned to the profession. Poland was experiencing prosperous years underwritten by newly acquired EU membership. Significant investments in the legal system were made. In 2000 an average district court judge earned about twice an average wage – just about 1,000 euro a month. By 2015 the same judge would make nearly three times of the (significantly higher) average wage – about 2,700 euro (Bandyra 2017). By 2016 Poland was spending the

second highest percentage of GDP in the EU on its court system (European Commission 2017).

This investment paid off in terms of basic efficiency of the judicial system. Waiting time in courts fell in line with the European average. But these improvements would hardly be noticed when PiS returned to power in 2015. Instead, technocratic detachment and smugness of the legal elite would take center stage in the populist narrative. One senior judge was widely ridiculed for exclaiming, on camera, that judges form the society's "superior caste." The term was repeated hundreds of times by PiS politicians. Małgorzata Gersdorf, a law professor appointed as Chief Justice of the Supreme Court by the liberal government, was likewise criticized when she remarked that for a monthly judicial salary of 10,000 zloties (about 2,500 euro) "you can live well only in the province." An in-depth report by a journalist of *Gazeta Wyborcza,* a liberal daily, demonstrated that in the countryside the "10,000 zloties" remark of Gersdorf – who defended her PhD in 1981 and went on to amass substantial wealth as a labor law attorney in free Poland – was one of the most vividly recalled aspects of the 2015–17 conflict between PiS and the judiciary (Józefiak 2016).

The continued prominence of affluent professorial "old guard" only fueled PiS's appetite for an aggressive crackdown on judicial institutions. The focus on that elite was, in no small part, related to personal sentiments of PiS's leader, Jaroslaw Kaczynski. Born in 1949, Kaczynski grew up in a family of Warsaw intelligentsia; indeed, he and his twin brother Lech were childhood friends of Gersdorf (Karpiński 2017). Both brothers earned undergraduate and doctoral degrees in law. For Jaroslaw, this period proved particularly formative. Curiously given Kaczynski's anticommunist views, his PhD supervisor – Stanislaw Ehrlich – had been an influential scholar of the Stalinist period. In wake of the Khrushchev-era destalinization, Ehrlich was sidetracked and, by the mid-1960s, emerged as a major critic of the socialist legal profession. "Legal dogmatism is neither a theoretical nor a practical science," wrote Ehrlich in a widely commented 1964 paper. "It is not a science at all. It is a certain ability in using legal texts[,] available to any intelligent practitioner" (Ehrlich 1964, 645, 653). Years later Kaczynski would recall his supervisor fondly, characterizing mainstream hostility to his views as motivated by a desire to protect the formalist "toolkit of lawyers, and thereby the meaningfulness of their job and professional position." "This discussion," Kaczynski argued, "was a harbinger of a certain way of thinking that reigns today and often harms the Polish transition" (Kaczyński et al. 2006, 68).

Toward the future

The uncritical reliance on the continuation of the formalist approach to law developed under communism helped Polish lawyers reap early rewards of the rapid political-economic transition. Ultimately, however, the formalist vision entrapped the lawyers more than it empowered them; it was insufficient either

as the foundation of the profession's social legitimacy or as the value proposition in the rapidly globalizing Polish economy.

Indeed, even as elderly professors played first fiddle during the 2015–18 fight over the judiciary, a different generation of lawyers began to emerge. On the left, a conspicuous figure here is Adam Bodnar, elected ombudsman during the last months of the liberal parliament in 2015. Born in 1977 and combining Polish education with an American LLM degree, he gained popularity as activist attorney at the Helsinki Foundation. He never hid his progressive views on gender equality or gay rights. As ombudsman, he focused on emphasizing how rule of law should "work" for ordinary people, including for members of vulnerable groups.

On the conservative side, an equally illustrative example is Aleksander Stepkowski. A faculty colleague of Bodnar at Warsaw University and three years his senior, Stepkowski also combined academic work with high-impact social activism. He founded and led an ultraconservative *Ordo Iuris* institute, which gained notoriety in 2016, when it managed to gather more than 100,000 of signatures supporting the bill to completely ban abortion (Kisilowski 2016b). The bill prompted massive protests and was voted down only after an extraordinary parliamentary showdown and personal pressure of Jaroslaw Kaczynski on PiS's most conservative MPs.

In private practice, we can notice the emergence of a similar, more functionally oriented new legal elite. This elite is increasingly centered around multinational law firms. In 2017 multinationals employed more than two-thirds of lawyers working for Poland's top twenty law firms (Gajos-Kaniewska 2017) – 34 percent more than in 2003. These firms do not seem to care much about professorial titles. What is important, instead, is the person's ability to act as a proactive creator of client solutions and not merely a technician navigating legal texts. Professional apprenticeships are now widely available. The bar admission alone no longer guarantees stable income (Interview with Gajowniczek-Pruszyńska 2017). Instead, double majors with economics or finance, but also foreign graduate education, are increasingly becoming a prerequisite for employment in leading law firms. In the Warsaw office of Dentons, considered the leading law firm in Poland (Gajos-Kaniewska 2017), out of sixty-six junior lawyers (those who graduated with a law degree in 2010 or later), only about a third held a Polish law degree only. Twenty-four had certificates in foreign law or attended nondegree exchange programs abroad, eleven completed graduate degree studies at foreign universities, fourteen held degrees in other disciplines in addition to their law qualifications. Only two held doctorates.[7] These novel paths to corporate legal success are particularly meaningful. They indicate the insufficiency of Poland's traditional legal education, and the intellectual culture that shapes education in producing lawyers who can successfully operate in the global economy.

Whether these early trends augur a more fundamental shift in the Polish legal culture depends largely on what happens with the country's struggling democracy. Paradoxically, the formalist hue of the legal profession is most likely to

survive if PiS succeeds in its drive to transform Poland into an authoritarian state. Following the Turkish model (Saatçioğlu 2016), an authoritarian consolidation will most likely involve a formal enactment of a new basic law; when that happens, many positivistically-minded lawyers may see no further grounds to resist. A fresh authoritarian regime facing deep opposition of liberal segments of the society may also not be particularly interested in nurturing a cadre of lawyers who would debate the merits of PiS-enacted laws, even with Kaczynski personally disliking legal formalism. Since the authoritarian backsliding will also likely bring economic stagnation (Kisilowski 2016a), the need for more functional, problem-solving lawyers may also weaken in the corporate sector.

Notes

1. Legal philosophers routinely object to the definition of legal positivism presented here. They argue that positivism, as a trend in analytical legal philosophy, is focused solely on advocating a certain definition of the concept of law (Gardner 2001). Fortunately for us, Polish legal tradition has never subscribed to this narrow and disingenuous view. It has always rightly viewed positivist concept of law as an integral part of a broader approach to legal thinking and reasoning – in Poland, called "the formal-dogmatic method" (see Discussion on Formal-Dogmatic Method 1955; and Ehrlich 1964, for theoretical overview).
2. Staśkiewicz (2000, 114) reports that a key role in formulating this provision was played by Hanna Suchocka, an MP and future prime minister as well as a noted law professor.
3. In a rare English-language article presenting "a practitioner's perspective" on legal services surrounding privatizations of the early 1990s (Wierzbowski 1991), the author is referenced as "Professor of Law at Warsaw University School of Law and Partner of Uniekspert sp. z o.o." (*Id.*), with the latter being a homegrown law firm. A 1993 summary of corporate legal services lists a number of law professors as prominent representatives of the legal practice (Stewart 1991). Twenty-five years later a report by a leading daily mentioned "academic titles" as "*still* being valuable" for Polish lawyers (Suchodolska 2016, emphasis added), while stressing a growing importance of reputation and network of corporate contacts.
4. The Constitutional Tribunal was established by the socialist regime in 1985.
5. Even in retrospect lawyers could hardly disguise their contempt for the preamble. Leszek Garlicki, a constitutional law professor, and a judge of the Constitutional Tribunal who later sat on the European Court of Human Rights pointed out that "[i]n the Constitution, there is no shortage of provisions, whose normative content is – to put it mildly – questionable. I will not even mention the Preamble," he continued, "though we remember that it was added almost in the last minute" (Garlicki 2001, 18).
6. Figure 3 also shows a temporary bump in favorability encountered by the Constitutional Tribunal. It started, however, only in 2007 and peaked in 2008, which is after PiS government descended into disarray and ultimately collapsed.
7. See https://www.dentons.com/pl/our-professionals/ (accessed August 29, 2017).

Disclosure statement

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