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COMMON PHILOSOPHICAL AND CIVILISATIONAL INSPIRATIONS OF POLISH AND UKRAINIAN LAW

Summary. Law is a product of human culture rooted in history, language and philosophical assumptions, which is why one speaks of legal culture, legal language and philosophy of law. Polish law and Ukrainian law are separate legal cultures, but they share common inspirations stemming from the history and civilisational affiliation of both countries and similar philosophical influences. Both legal systems belong to European civilisation and are reflections of its achievements and problems. This article **aims** to identify common philosophical and civilisational inspirations in Polish and Ukrainian legal culture, visible in fundamental legal institutions despite obvious differences resulting from different historical experiences. **Methodology.** The research methods used in preparing this article include literature review, analysis and synthesis, as well as deductive and inductive reasoning. The discussion draws on the achievements of legal science, history and sociology. **Scientific novelty.** The article offers an innovative perspective on the similarities between two neighboring legal cultures that have taken shape over the course of more than a millennium. Despite shifting priorities of positive law and politics, shared values remain central to cooperation in the face of global challenges. The study highlights the role of Western European philosophy as a counterbalance to the Russian

*civilizational project and examines the particularities of its reception. Special emphasis is placed on the contributions of Leon Petrażycki and Bohdan Kistiakowski, whose intellectual legacy represents a common foundation for the development of the philosophy of law in Central and Eastern Europe. **Conclusions.** The legal cultures of Poland and Ukraine have followed a similar path to most European nations. Christianisation was the decisive factor in their emergence, but the Enlightenment introduced subjective ethics. Postmodernism poses a serious challenge, threatening the axiological stability and identity of societies.*

Keywords: philosophy of law, civilization, history, postmodernism, history of law, comparative law.

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СПІЛЬНІ ФІЛОСОФСЬКІ ТА ЦИВІЛІЗАЦІЙНІ ІНСПРАЦІЇ ПОЛЬСЬКОГО ТА УКРАЇНСЬКОГО ПРАВА

Анотація. *Право є продуктом людської культури, вкоріненним в історії, мові та філософських засадах, тому йдеться про правову культуру, правову мову та філософію права. Польське та українське право становлять окремі правові культури, однак вони мають спільні інспірації, що походять з історії та цивілізаційної належності обох країн, а також зі схожих філософських впливів. Обидві правові системи належать до європейської цивілізації та відображають її здобутки і проблеми. **Мета статті** полягає у виявленні спільних філософських і цивілізаційних інспірацій у польській та українській правовій культурі, що простежуються у фундаментальних правових інститутах, попри очевидні відмінності, зумовлені різним*

історичним досвідом. **Методологія.** У дослідженні використано методи аналізу й синтезу, огляд літератури, дедуктивне та індуктивне мислення. У дискусії враховано досягнення юридичної науки, історії та соціології. **Наукова новизна.** Стаття пропонує інноваційний погляд на подібності між двома сусідніми правовими культурами, що сформувалися упродовж більш ніж тисячолітнього історичного процесу. Незалежно від зміни пріоритетів позитивного права й політики, спільні цінності залишаються ключовими для співпраці у протистоянні глобальним загрозам. Проаналізовано роль західноєвропейської філософії як контрбалансу російському цивілізаційному проекту та особливості її рецепції. Окремо підкреслено внесок Леона Петражицького й Богдана Кістяковського як мислителів, які репрезентують спільне інтелектуальне підґрунтя формування філософії права у Центральній-Східній Європі. **Висновки.** Правові культури Польщі та України пройшли шлях, подібний до більшості європейських народів. Вирішальним чинником їх становлення стала християнізація, тоді як доба Просвітництва принесла ідею суб'єктивної етики. Постмодернізм є серйозним викликом, що загрожує аксіологічній стабільності та ідентичності суспільств.

Ключові слова: філософія права, цивілізація, історія, постмодернізм, історія права, порівняльне правознавство.

Identification of the problem and its relevance to important scientific and practical tasks. «The comprehensive absolute for the concept of activity is society, culture, action, objectivity, that is, social cultural-historical action sets the «upper limit» for human capabilities. Recognition of activity as the initial and generative basis of man inevitably leads to the sociologisation of man, and cultural-historical action is understood utilitarianly» (Limonchenko, 2015, p. 27). At the basis of every organised human activity there are specific values resulting from civilisational conditions and the adopted philosophy, but these orders of social life are not always compatible with each other. In particular, actions to build and develop the legal system (Latin: *legis latio* – carrying law) constitute a general social, cultural, historical and utilitarian activity, and «the values underlying the law become its principles» (Pieniżek, Stefaniuk, 2005, p. 249).

The paper deals with the topic of the common philosophical and civilisational inspirations of Polish and Ukrainian law. The issues discussed next obtain in specially the concept of civilisational affiliation from a historical perspective, medieval monuments of Polish and Ukrainian law showing common values shared by the rulers and elites of both countries (apart from controversies regarding their practical implementation), philosophical inspirations of Polish and Ukrainian legal thought in the modern era and selected problems in both legal systems after World War II.

Analysis of basic research and publications. The objective basis of humanity is the presence of humanity (genus) in man, the real concretisation of the universal in the individual, which, in turn, constitutes, or rather gives rise to, his particularity. The subjective basis of humanity is the measure of my feeling, experiencing and realising it. (Vozniak, 2014, p. 11). Common human nature does not deny the existence of civilisational and cultural differences, but demands their existence as an element of human identity stemming from different experiences and conditions of life. For man does not develop only individually, but also as a community – family, society, nation, international community – familia humana. Just as the development of individual people is not uniform and equal, so the development of societies and entire areas of civilisation shows differences and disproportions, as was written in the 20th century by Felix Koneczny, Arnold Toynbee and Samuel Huntington. «The spiritual climate, primarily the type of ethical and aesthetic orientations, the nature of religiosity, traditions, culture, emotional state, mental energy, quality of life – all this plays the role of the main core of the mechanisms of national unity, personal identification, everything that distinguishes one civilization from another» (Skotna, 2014, p. 8).

In this context, the civilisational affiliation of the Polish and Ukrainian societies is difficult to define unambiguously because of their location at the interface of great civilisations. In 1935, Koneczny expressed the view that there were four civilisations: Latin, Byzantine, Turanian, Jewish in the Polish lands, which then included the western lands of modern Ukraine (Koneczny, 1935, p. 142). The development and self-determination of both nations were correlated in various ways, including difficult historical experiences – both with each other and with third countries. In particular, we should pay

attention to Western influences resulting from the Polish and Ukrainian lands belonging to the Polish Republic, Turkish influences related to the expansion of the Ottoman Empire and Russian influences resulting from the incorporation of the eastern and later western lands of Ukraine into the Russian Empire. It seems that the consequences of the last of these processes still remain particularly noticeable in the first decades of the 21st century. For Koneczny, it should be emphasised that «Moscow adopted state concepts from the Mongols, from the Tatars administration, from the Kazan customs of the upper classes (tierem etc.). Orthodox church construction originates from the Asian Orient. However, Byzantine influence on the Russian Church was weak, and on statehood and spiritual life it was even weaker» (Koneczny, 1935, p. 198).

The Christianisation of Polish and Ukrainian lands, defining the civilisational and cultural affiliation of the societies living in them, should also be mentioned. The symbolic date of the Christianisation of Poland is the baptism of the Prince of Gniezno, Mieszko I, in 966 in Poznań, while the Christianisation of Kievan Rus' (then the name of Ukraine) dates from the baptism of the Grand Prince of Kiev, Vladimir I the Great, in 988 in Chersonesos Taurica. In both cases, the aforementioned political events came at the end of long processes. The fact that the Poles adopted the Latin rite and the Rus' adopted the Byzantine rite, which, after the fall of Constantinople in 1453, was dominated by the metropolis of Moscow, established five years later, was also important for the further fate of both countries. At the same time, the union between the Catholic Church and Orthodox bishops from the territories of the Polish-Lithuanian Commonwealth, concluded in 1596 in Brest-Litovsk, helped to gradually shape the national identity of Ukrainians and strengthen the sense of their belonging to the Latin civilisational circle.

Presentation of the main material and justification of the scientific results obtained

A. Monuments of Polish and Ukrainian law

A monument of the law is a historiography concept, the application of which is not associated with any formal procedure or scientific consensus. On the one hand, the formula of this concept allows a certain degree of freedom, but on the other hand it requires caution to prevent it from being devalued. Chronologically, we should

start with the achievements of Ukrainian jurists, pointing out as a monument of Ukrainian law the Russian Truth, first published in 1016 by the Grand Duke of Kievan Rus', Yaroslav the Wise (Short Truth), and later developed by his successors. This was a collection of the laws of Kievan Rus', which replaced some customary regulations with institutions of Roman law, known mainly through Byzantium. The reason for the creation of the Russian Truth was Christianisation and the need to fight pagan cults, as well as the socio-economic development of the Rus' (especially trade and crafts), in the face of which customary law had thus far proved insufficient. In this context, it is worth emphasising the location of Kiev on the silk route, which was associated with the need to ensure physical and legal security for merchants. State regulation required primarily private law (property, inheritance and family law), but also some criminal law solutions related to ensuring the security of legal transactions (Boiko, 2022, p. 10). Historians and lawyers agree that Russian Truth is not inferior in terms of the level of development of legal thought to the contemporary feudal states of Western Europe (Marzec, 2015, p. 41), which allowed this source of law to remain in force and develop for several hundred years. The norms contained therein consolidated the model of state society by differentiating legal protection according to state affiliation. The Russian Truth influenced the legal systems of neighbouring countries, including the Polish-Lithuanian federal state and the Grand Duchy of Moscow (Russia).

In Polish history, public law developed first through the granting of privileges, which were granted by monarchs to the nobility (knighthood) from 1228 onwards. The reason for the concessions was the political and financial weakness of the monarchy, which forced them to seek social support. The withdrawal of the state from subsequent prerogatives primarily affected the peasants, who often fled to the lands of modern Ukraine by joining Cossack forces (Wójcik, 1968, p. 14–16) and ultimately led to the disintegration of state structures and the annexation of the remnants of the lands of the Polish-Lithuanian Commonwealth by neighbouring powers in 1795. In the axiological layer, the content of these privileges is based at least in part on an awareness of natural law and knowledge of Roman law, which makes them milestones on the path civilising tribal law (unfortunately, only for a small social group, which

comprised a maximum of 10% of the society at that time). In this context, it is worth mentioning in particular the privilege granted by the Polish King and Grand Duke of Lithuania Władysław II Jagiełło in Jedlnia in 1430, and confirmed in Kraków in 1433. It established the principle of «*neminem captivabimus nisi iure dictum*», according to which members of the nobility were guaranteed personal inviolability from the king and state officials if the person in question had not been convicted by a court. It is worth noting that in English law a similar guarantee appeared only in 1679 in the Habeas Corpus Act, and it was based on egalitarian assumptions. Nowadays, norms of this type can be found in legal acts of constitutional importance.

Among the medieval jurists of international renown operating in the 15th century we should mention Paweł Włodkowic, who was one of the forefathers of international law. He is particularly credited with his opposition to the brutal expansionism of the Teutonic Order, which was aimed primarily at the Baltic peoples. Officially, the purpose of these activities was to convert pagans to Christianity, but in reality they served to build political power, and thus perverted the missionary activity of the Catholic Church. Paweł Włodkowic is the author of the treatise *De potestate papae et imperatoris respectu infidelium* from 1414, which contains the oldest philosophical justification of human rights and the right of nations to self-determination (Wilemska, 1988, p. 61-73). His work is an expression of the primacy of natural law over positive law and opposition to imperialism, in which the welfare of the people does not count. It is possible that if the Sejm of the Polish-Lithuanian Commonwealth had taken the teachings of Paweł Włodkowic more seriously at the beginning of the 17th-century Cossack uprisings, it would have resulted in a completely different course of history in Polish-Ukrainian-Russian relations.

The first common inspiration of Polish and Ukrainian law came from Roman law, whose vision of justice proved to be consistent with Christian ethics and Socratic epistemology. As a result, Roman law, discovered and adapted by glossators and commentators, became part of the structure of the Catholic Church and a cultural element of the Christianisation of new lands. This process is particularly important from the point of view of the civilisational affiliation of both countries, which, due to their geographical location, have often experienced confrontation with the model of organisation

of a society based on military strength.

A. Philosophical Inspirations in the Modern Age

Periodisation in the humanities and social sciences is a difficult and risky procedure, because changes occur in a gradual and eclectic way, and the significance of events and processes can only be assessed from a temporal perspective. Consequently, the implementation of periodisation, and even its very purpose, remain debatable (Noras, 2012, p. 13). In the context of the current considerations, the definition of the duration of the modern era has only an organising significance, which in turn allows for a certain freedom in classification. By slightly modifying Józef Bocheński's periodisation, a time frame of the modern era can be proposed for the period from the great geographical discoveries in 1492 to the end of World War II in 1945 (Bocheński, 1993, p. 153). Of course, this is a very diverse time interval in the area of technological development, political events, economic processes and dominant trends in literature and philosophy.

In the context of the processes affecting the legal system that took place in Polish and Ukrainian lands, attention should be paid to the experience common to both nations of not having their own nation state. The crisis of the statehood of Kievan Rus' was caused by the Mongol invasions, which began with a lost battle with Mongol-Tatar armies at the River Kalka in 1223. In 1240, Kiev was captured, which meant the fall of the Grand Duchy of Kiev and the beginning of feudal fragmentation. Later, the lands of modern Ukraine were under the rule of the Grand Duchy of Lithuania, the Polish-Lithuanian Commonwealth, and finally gradually came under the control of the increasingly powerful Russian state. Ukraine became an independent state as a result of the dissolution of the Union of Soviet Socialist Republics in 1991, although selected attributes of independence were still given to the Ukrainian Soviet Socialist Republic. In turn, the fall of the Polish-Lithuanian Commonwealth, in which the dominant political entity was the Crown (the name of Poland within the Polish-Lithuanian federation), occurred as a result of a growing systemic crisis and the annexation of lands by neighbouring powers (Prussia, Austria and Russia) in the years 1772-1795. Poland as a separate state was restored as a result of World War I in 1918. Thus, Poles and Ukrainians experienced

the formation of the modern model of the political system under foreign domination, with the capital cities of Warsaw and Kiev located within the borders of the Russian Empire. As a result, the development of political and legal thought was influenced by aspirations for independence and the defence of national identity, which otherwise determine the possession of one's own legal system.

It can be said that the Polish and Ukrainian elites, in principle, uncritically adopted modern philosophy (especially German), which undermined many epistemological and axiological positions constituting medieval Latin civilisation. Regardless of other factors, Western thought was a natural counterbalance to the Russian civilisation project. It is also not easy to develop an original national school for scholars functioning in an environment that is characterised by its own axiology, self-identification and exclusiveness. Nevertheless, each scholar imprints on his own, and his students', work their original personality traits, among which national identity certainly stands out (Ivanova, 2022, p. 73–80). As an example, two pioneers of the philosophy of law in Central and Eastern Europe can be identified: Leon Petrażycki, the founder of the Polish psychological school of law, and Bohdan Kistiakowski, a Ukrainian theoretician of the state system. These scholars were peers born in 1867 and friends, educated in Kiev and then they worked at Russian universities, where there were strong influences of German idealism (Jędrysiak, 2019, p. 89-116). Their work, however, was characterised by legal realism in the neo-Kantian trend and attachment to the idea of a sovereign nation-state. It is worth mentioning that original themes of the philosophy of law also appear in the works of Ivan Franko (Predchenko, 2006, p. 74).

The second common inspiration of Polish law and Ukrainian law is therefore connected with the influence of idealistic European philosophy, which resulted, among others, in the spread of ethical subjectivism, egalitarianism (differently propounded by liberals and socialists) and legal positivism. The above-mentioned philosophical and legal concepts are reflected in the provisions of the Constitution of the Republic of Poland of May 3, 1791, which was an unsuccessful attempt to save the failing state in alliance with the German countries against Russia. In the 19th century, these philosophical currents became influential in connection with the activities of socialist

groups that adopted an independence program, propounding among others, the postulates of abolishing the remnants of the state system and improving the fate of workers and peasants. «The “master” ceases to be a master even for the lackey when the latter’s rights are at stake and when he has a healthy legal awareness», – wrote Petrażycki (Petrażycki, 2002, p. 102). In turn, in the 20th century, these philosophical currents proved to be consistent with internationalist assumptions of dialectical materialism imposed programmatically by communist authorities dependent on the Union of Soviet Socialist Republics, which actively opposed the Polish and Ukrainian independence movement.

B. Polish and Ukrainian law after World War II

The consequences of the Second World War still determine the shape of international relations on a global and regional scale. The conferences in Tehran, Yalta and Potsdam sealed the fate of Ukraine, which remained a federal member of the Union of Soviet Socialist Republics, and Poland, which became a buffer state lying in the zone of Soviet influence. Polish and Ukrainian political and legal circles have assimilated many paradigms of dialectical materialism over the decades of functioning in the communist system. An example is family law, which is a Soviet invention, the solutions of which in Polish law were largely constructed on the model of substantive law (Stadniczeńko, 2022, p. 218–219). The fall of the centrally planned economies and the disintegration of the Soviet Union resulted in Poland and Ukraine moving into the sphere of influence of the United States and Western European countries, where postmodernism had been gaining popularity at least since the 1960s. Modern philosophical systems in the form of liberalism and socialism «are United by a materialistic vision of the world, and the main difference between them lies in the way in which wealth is shared» (Zamelski, 2022, p. 97). Consequently, both are able to transition into postmodernism, which expresses a loss of trust in the capacity of human reason and in practice the transfer of interest to the sphere of emotions. Uncertainty and changeability of previously inviolable social principles and institutions begin to dominate – Zygmunt Baumann defines this phenomenon as "liquid reality" and Jacques Derrida as the result of applying the «method of deconstruction of concepts» (Bauman, 2000; Bauman 2003; Bauman 2005; Derrida

2020). As a result, there is an unprecedented increase in the importance of positive law (and thus also of politics and lobbying). Leszek Kołakowski even writes about the obsessive tendency of the liberal state (which is also a postmodern state) «to regulate by law, down to the smallest detail, all kinds of interpersonal relations – between man and woman, between parents and children, between husband and wife, between an employer and his subordinates» (Kołakowski, 1993, p. 17).

In the case of the former Eastern Bloc countries, the reception of postmodernism encounters resistance related to the still important role of Christianity in social life. After all, the «Iron Curtain» was a kind of barrier to the cultural processes that took place in the Western world. The impact of globalisation, which is a carrier of postmodern ideas, seems comparable in Polish and Ukrainian society, while due to historical conditions, the reception of these ideas seems to be faster among Poles. The turning point in the described process is the armed conflict caused by the attack of the Russian Federation on Ukraine on February 24, 2022. Since then, in the Ukrainian literature, criticism of postmodernism has increased, which is indicated as a cause of the weakness of the Western world. «Even the very form of the nation-state is one of the most key features of Europeaness. Studying the history of civilisations that once flourished, it is easy to see that the cause of their downfall was almost exclusively an internal crisis associated with the renunciation of the values and discipline that made them strong» (Lukasik, 2023, p. 37).

Regardless of disputes and criticisms of postmodernism conducted from axiological positions, legislative bodies in various ways implement into their legal systems solutions rooted in postmodernism. This is due to the mentality of legislators, judges and academics, who are also children of their time. Legal norms often reflect a lack of knowledge in the field of philosophy and other sciences capable of discovering the political and economic mechanisms of postmodernism (Ramaswamy, 2021) and the long-term effects of legal regulations. A manifestation of the postmodern mentality is the aforementioned overregulation of the legal system resulting from erroneous responses of the state to the growing complexity of social relations, ethical relativism and fluidity of language. Overregulation results in legal inflation, which in the conditions of globalisation is

visible especially in economic law (Krupchan, 2013, p. 7; Zamelski, Frantsuz, 2017, p. 20). In the case of Polish law, this phenomenon is connected with the process of harmonisation of law within the European Union – *the acquis communautaire* is, after all, also over-regulated (Nam, 2024, p. 3-4).

Postmodernism, or at least its elements, whose particular expression is the over-abundance of legal regulations, can be considered as the third common philosophical and civilisational inspiration of Polish and Ukrainian law in the 21st century. Paradoxically, however, the over-regulated law does not respond to the increasingly complex problems of social and economic life, but opens the legal system to further loopholes for which there are no alternative social norms, such as group ethics or customs. Postmodernism excludes the existence of objective axiology, and thus denies the existence of informal norms, logically leaving space only for state coercion, and this makes the future even more unpredictable in the face of the clash of civilisations (Huntington, 1996).

Conclusions and prospects for further research. The presented considerations confirm over a thousand years of civilisational affiliation of the nations of Poland and Ukraine, which, however, shows its own characteristic feature resulting from the difficult geographical location. On the one hand, the maintenance of one's own statehood is given very high priority, on the other hand, Western philosophical and legal concepts are uncritically adopted, which is intended to emphasize the inseparable ties with Western countries. Based on the considerations conducted, we can identify at least three common philosophical and civilisational inspirations of Polish and Ukrainian law with different historical roots:

1) at the beginning of Polish and Ukrainian statehood, strategic decisions were made to adopt Christianity, which entailed the internalisation of the foundations of the then emerging European civilisation: Christian ethics, Roman law and Greek philosophy;

2) during the enlightenment period, or more broadly speaking in the modern era, immanentism has gained popularity, with its inherent aversion to the Middle Ages, resulting in the spread of the ideas of ethical subjectivism, egalitarianism and legal positivism;

3) after the fall of the Leninist communist system, postmodernism gained popularity in the countries of the former Eastern Bloc,

which as an invention of the Western European elites (the Frankfurt School and French Theory) has been recognised as a natural component of the contemporary socio-political system; postmodernism is manifested in particular by the increased activity of legislative bodies, which results from the recognition of positive law as the only effective tool, ensuring at least the external attributes of social order.

Of course, the inspiration presented does not exhaust the subject. Moreover, in view of the complexity of social relations in general over the centuries, and of Polish-Ukrainian relations in particular, a complete exploration of the subject matter does not seem to be an achievable goal.

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