Law and Interdisciplinarity

Edited By
PHILLIP HELLWEGE
and MARTA SONIEWICKA

Mohr Siebeck

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Preface

On 15 and 16 October 2021, colleagues from the Faculty of Law and Administration of the Jagiellonian University in Kraków and from the Faculty of Law of the University of Augsburg came together in Kraków for the tenth Kraków-Augsburg Symposium. The tradition of the Kraków-Augsburg Symposia was established in 2002 by Prof. Dr. Dr. h.c. Dr. h.c. *Jerzy Stelmach* of Kraków and Prof. Dr. Dr. h.c. *Reiner Schmidt* of Augsburg, and these symposia are the core of the academic cooperation and friendship between both faculties. Each symposium has a different general theme. That of the tenth symposium has been "Interdisciplinary approaches to law", and the present volume, even though it has a slightly different title, collects the presentations of that symposium complemented by further contributions. The conceptual design of the symposium as well as of the present volume will be fully unfolded in the introductory chapter. And though a preface is not the place to unfold the conceptual design of a publication, it is a place to give thanks: We would like to thank our respective faculties and universities for funding the present publication. Then, our thanks go to Mohr Siebeck for including the present volume in its publishing programme. Finally, we would like to thank *Michael Friedman* for his critical comments on an earlier draft of this volume and for correcting the English. With respect to the English, we have asked him to strive for the internal consistency of each contribution, so that some contributions appear in British English, others in American English. The volume has been peer reviewed.

Augsburg and Kraków, November 2023

Phillip Hellwege
Marta Soniewicka

Foreword

No single person has been more important for the cooperation between the law faculties of the Jagiellonian University of Kraków and the University of Augsburg – a cooperation that now exists for more than a quarter of a century – than Prof. Dr. Dr. h.c. Dr. h.c. *Jurek* (or *Jerzy*) *Stelmach*. His 70th birthday in February 2024 is reason enough for reflection on his contribution to the Polish-German legal dialogue in particular and to legal academia in general.

It is only one out of many yields from the fruitful cooperation between both faculties that a series of edited volumes has been established. These volumes collect the presentations of the Kraków-Augsburg Symposia held every two years – alternately in Kraków and in Augsburg – and they are thus a chronicle of the ongoing Polish-German legal dialogue between both faculties. Originally, they were published under the series title "Kraków-Augsburg Studies in Law" ("Krakauer-Augsburger Rechtsstudien") with Wolters Kluwer.[1] The present volume is the second to appear with Mohr Siebeck.[2]

The opening contribution to the first volume is authored by Prof. *Stelmach*; it is entitled "Philosophy of Law in the Post-Modern Era", and the contribution is representative of his entire oeuvre.[3] He deliberately leaves unanswered the question whether legal philosophy belongs to the discipline of philosophy or law. Instead of focusing on such theoretical debates, he demands with practical rigour that we should "keep doing our job" ("weiter unser Ding machen") or otherwise change our profession. Ultimately, he explains, the philosophy of law is part of social philosophy or the general methodology of science, but he chooses to leave its classification in a state of uncertainty, observing that only the future will prove whether it will develop into a more technically understood theory of the doctrinal study of law. The essay is also for a second reason characteristic of Prof. *Stelmach*'s thinking and writing. In just under six pages, he

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[1] *J. Stelmach/R. Schmidt* (eds.), Probleme der Angleichung des europäischen Rechts (2004); Information als Gegenstand des Rechts (2006); Rechtliche Steuerung von Wirtschaftsprozessen (2008); Wettbewerb der Staaten – Wettbewerb der Rechtsordnungen (2010); Grenzen der rechtsdogmatischen Interpretation (2011); *H. Bauer/D. Czybulka/W. Kahl/J. Stelmach/A. Voßkuhle* (eds.), Öffentliches Wirtschaftsrecht im Zeitalter der Globalisierung (2012); *J. Stelmach/R. Schmidt* (eds.), Die Rolle des Rechts in der Zeit der wirtschaftlichen Krise (2013); *idem/idem/P. Hellwege/M. Soniewicka*, Normschaffung (2017).

[2] *P. Hellwege/M. Soniewicka* (eds.), Die Einheit der Rechtsordnung. Annäherungen – Bestandsaufnahmen – Reflexionen (2020).

[3] *J. Stelmach*, Rechtsphilosophie in der Nach-Neuzeit, in: Probleme der Angleichung (n. 1), 9–18.

is, while meeting the highest academic standards, able to outline the development of post-war legal philosophy, including the philosophies of *Arthur Kaufmann*, *Gustav Radbruch*, *Jürgen Habermas*, *Ronald Dworkin*, *Robert Alexy*, *Richard Posner*, and *Theodor W. Adorno*; thereafter, he moves on to address the articulation of new theories, an idea he rejects with disarming clarity. Instead of developing such new theories, he argues, the invitation should be accepted to complete existing legal philosophy in its topicality, an invitation that is implicit in existing legal philosophy.

All articles that Prof. *Stelmach* contributed to the "Kraków-Augsburg Studies in Law" are characterised by such a combination of high theoretical awareness and pragmatism. For instance, he calls for putting an end to the interminable discussions on the ontological nature of law. Instead, he argues, we should turn to a much-needed analysis of the problems associated with the economic effectiveness of law.[4] Thereby, he proves to clearly grasp the limitations of theoretical discourse on law: Without knowing the preconditions for an effective law, without knowing why law works in some situations whereas it does not work in other situations, any legal discourse on a meta-theoretical level will remain stuck in a vacuum. Furthermore, he is critical of the creation of legal myths and of oversimplification. According to him, it is moreover possible to accept two mutually contradictory statements at the same time as long as they can be justified by similar or identical means.[5] In yet another contribution, he claims that all correctly formulated and applied methods of interpretation are equally legitimate. Theories of interpretation are incapable of capturing the specificities and particularities of all thinkable cases, and if they try, they become overly complicated and incapable of being applied. Even the idea of objectivity in legal interpretation proves to be "completely useless" for legal practice.[6] Finally, it is characteristic of Prof. *Stelmach*'s original thinking when, in an essay co-authored with his student *Bartosz Brożek*, he discusses the phenomenon of the dysfunctionality of law.[7] According to them, law is dysfunctional when it does not accomplish to a sufficient degree its fundamental purposes – justice, security, and economic efficiency. The provisional nature of "crisis economy" measures that are implemented as a reaction to the many destabilising factors which an economy witnesses during a period of instability is based on the simple fact that nobody knows anything about the true causes and consequences of anything. This makes, *Stelmach* and *Brożek* observe, the

[4] *J. Stelmach*, Acht Voraussetzungen für ein effektives Recht, in: Rechtliche Steuerung (n. 1), 9–21.

[5] *J. Stelmach*, Die Scheinbarkeit des Problems des Wettbewerbs von Rechtsordnungen, in: Wettbewerb der Staaten (n. 1), 9–15.

[6] *J. Stelmach*, Die unbegrenzte Interpretation, in: Grenzen der rechtsdogmatischen Interpretation (n. 1), 9–18.

[7] *J. Stelmach/B. Brożek*, Ökonomische Ursachen für Dysfunktionen des Rechts, in: Die Rolle des Rechts (n. 1), 203–213.

thesis of the dysfunctionality of law in times of economic turmoil seem almost trivial.

Next to the monographs, edited volumes, and other publications, his essays in the "Kraków-Augsburg Studies in Law", which I was able to cover here only by way of example, seem more like small add-ons. Mention should be made of "Methods of Legal Reasoning" (together with *Brożek*, 2006), "Philosophy in Science" (together with *Brożek*, *Janusz Maczka* and *Wojciech P. Grygiel*, 2011), the co-editorship of the monumental "The Many Faces of Normativity" in 2013, bringing together fourteen renowned authors and including an essay by Prof. *Stelmach* on "Naturalistic and Antinaturalistic Fallacies in Normative Discourse", the "The Art of Legal Negotiations" (together with *Brożek*, 2013), and the "Theorie der juristischen Verhandlungen" ("Theory of Legal Negotiations", together with *Brożek*, 2014). There are further important books, among others those co-authored with *Michael Heller*. These volumes are not listed here as they are not accessible to readers not familiar with the Polish language.

Prof. *Stelmach*'s impressive productivity, his ingenuity, his kindness, and his humour were and are formative for the development of the relationship between the two faculties in Kraków and Augsburg. The award of an honorary doctorate in 2011 by the Faculty of Law of the University of Augsburg – the University of Heidelberg had previously honoured him with the same distinction – was an expression of the high esteem in which Prof. *Stelmach* is held not only for his person and his academic work, but also for his contribution to mediating between Polish and German law.

In his work, Prof. *Stelmach* focuses especially on hermeneutics. According to him, law and the discovery of law do not end in relativism. The act of understanding is always a form of "being-in-the-world". This may be taken quite literally. Prof. *Stelmach* is a committed collector of art, especially of Polish contemporary art. His house is more a gallery than a residence. If one teasingly asked him whether he is rather a gallery owner or an academic, one would fall short as he is also a successful entrepreneur. As long-standing dean of the Faculty of Law and Administration, he was successful in acquiring the site for the University's new campus on the Vistula, and he was responsible for the restoration of the run-down Palais Larisch, now one of the architectural pearls of the Kraków Faculty of Law and Administration. Academic, gallery owner, or entrepreneur? Prof. *Stelmach* is all of these. Thus, his personal life mirrors his theoretical thinking: he impersonates several prima facie contradictory functions or standpoints simultaneously – and even with synergistic effects.

Prof. *Stelmach* is an exemplary and successful university teacher. He has supervised and promoted twenty PhD students. The success of his students, among others *Bartosz Brożek*, *Marta Soniewicka*, and *Wojciech Załuski,* prove his fruitful manner and stimulating aura. He and his wife *Ela* are generous, exemplary, and amiable hosts. Their open house is one of the intellectual centres of Kraków. Joint forays through the narrow streets and hidden corners of

Kraków are part of the invigorating and friendly exchange with Prof. *Stelmach*: In a small forgotten antique shop, an interesting graphic may be found in some dusty chest of drawers. The fact that life has secrets to offer is one of the lessons to learn from *Jurek Stelmach*.

Augsburg, November 2023 Reiner Schmidt

Table of Contents

Preface V

Reiner Schmidt
Foreword VII

Part 1
Introduction

Phillip Hellwege and *Marta Soniewicka*
Law and Interdisciplinarity 3

Jerzy Stelmach
Interdisciplinarity and the Dimensions of Legal Discourse 49

Matthias Rossi
Legislation as an Interdisciplinary Challenge 55

Part 2
Law and Theology

Franciszek Longchamps de Bérier
The Use of Law and Legal Studies for the Methodological Renewal of Dogmatic Theology 75

Thomas Marschler
Legal and Theological Dogmatics 95

Part 3
Law and Extra-Legal Value Systems

Thilo Rensmann
Inalienable Human Rights 113

Monika Florczak-Wątor
Human Dignity, Inalienable Human Rights, and Interdisciplinarity 151

Part 4
Law and Politics

Aqilah Sandhu
The Judicial Dialogue in the EU between Law and Politics 169

Monika Kawczyńska
The Relation between "the Courts of the Last Word":
Judicial Dialogue or Diverging Monologues? 187

Part 5
Law and Economics

Peter Kasiske
Criminal Law and Behavioral Law and Economics 209

Michał Derek
The Limits of the Application of Behavioral Economics to Criminal Law . 229

Wolfgang Wurmnest
The Interplay of Law and Economics in Competition Law 241

Tomasz Długosz
The Interplay of Law and Economics from the Perspective of
Polish Competition Law 271

Grzegorz Blicharz
Law and the Study of the Commons:
The In Personam and In Rem Rights Paradigms 283

Constantin Willems
Reflections on D. 19.2.35.1 from a (Roman) Law and
Economics Perspective 309

Part 6
Law and Psychology

Marta Soniewicka and *Julia Wesołowska*
The Role of Emotions in Law: The Impact of Empathy
on the Interpretation of Non-Pecuniary Harm 319

Phillip Hellwege
Emotions in German Law 353

Wojciech Załuski
The Personalist Objection against the Volitional Component of the Insanity Defense 397

Johannes Kaspar
Free Will for (almost) Everyone? Problems of a Restrictive Normative Approach to the Insanity Defense 411

Łukasz Kurek
Rationalization in Legal Theory 425

Svenja Behrendt
Being (Un-)Reasonable: Rationalization and Rationality in Law and Legal Theory 443

Part 7
Law and Aesthetics

Ewa Laskowska-Litak
Aesthetic but Artefactual? – In Search of the Lost Object of Protection in Copyright Law 463

Daria Kim
A Context-Based Assessment of Copyrightability: In Search of the Justification 487

Part 8
Law and Mathematics

Wojciech Dajczak
Law and Mathematics: Old Problems in the Digital Era 499

Herbert Zech
Law and Mathematics: A Comment 517

List of Contributors 525

Part 1

Introduction

Law and Interdisciplinarity

Phillip Hellwege and *Marta Soniewicka*

I. Towards more interdisciplinarity in legal scholarship 3
A. The doctrinal study of law in continental European legal scholarship 3
B. Law and interdisciplinarity in US legal scholarship 4
C. Towards more interdisciplinarity in continental European legal scholarship 7
D. The reasons for the trend towards more interdisciplinarity in legal scholarship 11
E. Reflecting on interdisciplinary research in law 13
II. Defining interdisciplinarity: a fruitless endeavour? 15
III. A different starting point: the doctrinal study of law 17
IV. Going beyond the doctrinal study of law 24
A. Research in the foundations of law 25
B. Extra-legal concepts and value systems 28
C. Law and politics 31
V. Integrating extra-legal findings into law 31
A. Lawyers engaging in legislative debates 34
B. Lawyers developing arguments de lege ferenda 34
C. Lawyers interpreting and analysing positive law 35
VI. Different types and grades of interdisciplinarity in law 36
A. Disciplinary boundaries 36
B. Inbound and outbound interdisciplinarity 38
C. Different grades of inbound interdisciplinarity 38
D. Different grades of integrative interdisciplinarity 40
VII. The design and structure of the present volume 43
VIII. Common themes and problems 43

I. Towards more interdisciplinarity in legal scholarship

A. The doctrinal study of law in continental European legal scholarship

The doctrinal study of law has a long tradition both in Poland and Germany, and the same is – with gradual differences – true for the entirety of continental Europe.[1] Continental European legal systems are largely codified, and the doc-

[1] On the situation in Poland, see *J. Wróblewski*, Pisma wybrane (2015); *idem*, Paradygmat dogmatyki prawa a prawoznawstwo, in: S. Wronkowska/M. Zieliński (eds.), Szkice z teorii prawa i szczegółowych nauk prawnych (1990), 38–42; *S. Wronkowska* (ed.), Z teorii i filozofii prawa Zygmunta Ziębińskiego (2007); *A. Peczenik*, Theory of Legal Science (1984); *idem*, Scientia Iuris. Legal Doctrine as Knowledge of Law and as a Source of Law (2005). In

trinal study of the respective codes is at the heart of continental European legal scholarship. Continental European scholars often contrast their approach to the study of law with that of their US colleagues, who traditionally have a stronger interest in interdisciplinary legal scholarship – at the expense of, as continental European legal academics often claim, the doctrinal study of law.[2]

B. Law and interdisciplinarity in US legal scholarship

The emphasis of US legal scholarship on interdisciplinarity is signalled by the combination of the word "law" with extra-legal concepts and disciplines in

addition, see *A. Aarnio*, On Paradigm of Legal Dogmatics – Problems of Scientific Progress in Legal Research, in: P. Trappe (ed.), Contemporary Conceptions of Law (1982), 135–136. For comparative reflections, see *H. Kötz*, Rechtsvergleichung und Rechtsdogmatik, in: idem, Undogmatisches. Rechtsvergleichende und rechtsökonomische Studien aus dreißig Jahren (2005), 64–79, 68; *P. Sahm*, Elemente der Dogmatik (2019), 24 ff.; *A. Stark*, Interdisziplinarität der Rechtsdogmatik (2020), 156 ff. In addition, see *C. Bumke*, Rechtsdogmatik. Eine Disziplin und ihre Arbeitsweise. Zugleich eine Studie über das rechtsdogmatische Arbeiten Friedrich Carl von Savignys (2017), 16. With a different view, *N. Jansen*, Rechtsdogmatik im Zivilrecht, in: T. Gutmann et al. (eds.), Enzyklopädie zur Rechtsphilosophie (2011), http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/98-rechtsdogmatik-im-zivilrecht (last accessed 21 August 2023); *O. Lepsius*, Kritik der Dogmatik, in: G. Kirchhof et al. (eds.), Was weiß Dogmatik? Was leistet und wie steuert die Dogmatik des Öffentlichen Rechts? (2012), 39–62, 46 ff.; *M. Jestaedt*, Wissenschaftliches Recht. Rechtsdogmatik als gemeinsames Kommunikationsformat von Rechtswissenschaft and Rechtspraxis, in: Kirchof et al. (eds.), op.cit., 117–137, 117 f.; Jansen, Lepsius and Jestaedt claim that the doctrinal study of law is unique to Germany. More nuanced, *M. Flohr*, Rechtsdogmatik in England (2017), passim; *G. Kirchhof/S. Magen*, Dogmatik: Rechtliche Notwendigkeit und Grundlage fächerübergreifenden Dialogs – eine systematisierende Übersicht, in: Kirchhof et al. (eds.), op.cit., 151–172, 151 f., 158; *R. Stürner*, Das Zivilrecht der Moderne und die Bedeutung der Rechtsdogmatik, JuristenZeitung 2012, 10–24, 13; *P.-C. Müller-Graff*, Zur Integrationskraft zivilrechtlicher Dogmatik im Querschnitt von Referenzgebieten. Zugleich ein Blick in das Unionsrecht, in: T. Lobinger et al. (eds.), Zur Integrationskraft zivilrechtlicher Dogmatik (2014), 121–137, 122.

[2] On interdisciplinarity in US legal scholarship, especially on the exchange between law and the social sciences, see *O. Lepsius*, Sozialwissenschaften im Verfassungsrecht – Amerika als Vorbild?, JuristenZeitung 2005, 1–13, 4 ff.; *M. Reimann*, Die Propria der Rechtswissenschaft, in: *C. Engel/W. Schön* (eds.), Das Proprium der Rechtswissenschaft (2007), 87–99, 96 f.; *N. Petersen*, Braucht die Rechtswissenschaft eine empirische Wende?, Der Staat 49 (2010), 435–455, 435 f. However, Anglo-American scholarship, too, is familiar with something equivalent to the doctrinal study of law, see *Sahm* (n. 1), 26 ff. For an introduction to disputes in the US on interdisciplinarity in law, see *S. Kirste*, Voraussetzungen von Interdisziplinarität der Rechtswissenschaften, in: idem (ed.), Interdisziplinarität in den Rechtswissenschaften. Ein interdisziplinärer und internationaler Dialog (2016), 35–85, 35 f. Nevertheless, the doctrinal study of law is traditionally not as strong in the US as in Germany, see *M. Reimann*, Die Fremdheit des amerikanischen Rechts – Versuch einer historischen Erklärung, in: K. Krakau/F. Streng (eds.), Konflikt der Rechtskulturen? Die USA und Deutschland im Vergleich (2003), 23–36, 35.

order to define numerous interdisciplinary fields of study, the most prominent example up to now being law and economics.[3] Other examples include law and neurosciences (neurolaw), law and emotions, and law and literature. However, these fields of study do not simply combine two disciplines. Law and economics is, for example, dominated by *behavioural* law and economics, which stresses the limits of rationality and incorporates cognitive studies on biases and heuristics into both law and economics. Thus, behavioural law and economics combines law, economics, psychology, and cognitive sciences.

Neurolaw, to take another example, combines research from neuroscience and cognitive science with law.[4] Like behavioural law and economics, neurolaw is concerned with exploring the limits of rationality and the irrational dimensions of cognition. The study of the neural basis of cognitive processes, taking into account the important role of emotions, is used in the analysis of the conceptual and procedural assumptions of criminal law, including the question of assigning responsibility or determining insanity. Representatives of this field of study question the concept of free will, which can have a significant impact on the premises of criminal responsibility. They study the ability to consciously discern one's own actions in minors or mentally ill people, and they discuss issues surrounding the application of modern technologies, such as functional magnetic resonance imaging (fMRI), in evidentiary proceedings.

Law and emotions results from the affective turn in science in the 1990s. It partially overlaps with behavioural law and economics as well as with law and neurosciences. However, there are several important differences between these fields that are worth highlighting. Behavioural law and economics as well as law and neurosciences are primarily concerned with the study of cognition and decision-making, although they also emphasize the role of emotions in the context of cognition. Law and emotions, on the other hand, focuses primarily on the study of emotions and their relationship to law. All three question the narrow understanding of rationality and pay attention to the cognitive functions of emotions. However, behavioural law and economics and neurolaw remain

[3] *S. Henry*, Interdisciplinarity in the Fields of Law, Justice, and Criminology, in: R. Frodeman et al. (eds.) The Oxford Handbook of Interdisciplinarity (2017), 397–411, 397.

[4] *M. Pardo/D. Patterson*, Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience (2013); *A. D'Aloia/M.C. Errigo* (eds.), Neuroscience and Law. Complicated Crossing and New Perspectives (2020); *S. Fuselli*, Neurocorrection. On the use of neuroevidence for criminals, Teoria e Critica della Regolazione Sociale 22/1 (2021), 209–229; *idem*, Mental integrity protection in the neuro-era. Legal challenges and philosophical background, BioLaw 2020, 413–429; *M. Ienca/R. Andorno*, Towards new human rights in the age of neuroscience and neurotechnology, Life Sciences, Society and Policy 13/5 (2017), 1–27; *J.K. Bublitz/R. Merkel*, Crimes Against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination in Criminal Law, Philosophy 8 (2014), 51–77; *B. Brożek/J. Hage/N.A. Vincent* (eds.), Law and Mind. A Survey of Law and the Cognitive Science (2021); *J. Stelmach/B. Brożek/Ł. Kurek*, Philosophy in Neuroscience (2013).

within the paradigm of rationality as the privileged form of cognition, and their goal is to correct irrational aspects of the cognitive process or to correct the law in order to reconcile legal concepts and procedures with the results of scientific research. Both fields of study enjoy considerable recognition in scientific circles, as they are methodologically uniform, have clear and specific practical goals, are epistemologically conventional, and strive – simultaneously – for both the greatest possible scientificity and certainty of research. Law and emotions research is much more eclectic in terms of both methods and goals, less epistemologically conventional, and thus less recognized. Law and emotions questions the opposition between reason and emotion and rejects reducing emotions to deviations from rationality; it draws on a number of disciplines, including cognitive science or neuroscience, but primarily on the humanities and social sciences, without claiming to follow the paradigm of the natural sciences.

Overall, US scholars go so far as stressing that the study of law is only feasible with interdisciplinary input. *Alan M. Dershowitz*, for example, points out:[5]

> "Law, by its very nature, must be interdisciplinary. It is impossible to understand a legal system without recourse to history, psychology, economics, philosophy, and other academic disciplines. Law provides the structure for decision-making, but the structure is dependent on substantive rules that reflect the deeper concerns of a society. […] The law has varied over time in its emphasis on particular disciplines. There was a time when psychology was at the forefront, then sociology and now economics. To every discipline there is apparently a season, but there is no season for law shorn of other disciplines. Law without interdisciplinary input is like a beautiful wine decanter without the wine."

This statement is rooted in the legal realism that gained much more recognition in Anglo-American legal systems than in their continental European counterparts, which are rather dominated by the positivist formal approach and the idea of the independence of legal studies. The representatives of legal realism claimed that instead of dealing with abstract considerations about the nature of law, one should concentrate on the study of "real law" (living law), i.e. what judges do.[6] They referred to "real" law as "law in action", this contrasted with "law in books" – the latter being law understood as a system of rules, judgments, concepts, and legal categories. The representatives of legal realism argued for incorporating such disciplines as economics, psychology, sociology, and politics into legal theory and practice, as well as into legal education. This attitude resulted in the development of the law and economics movement as

[5] *A.M. Dershowitz*, The Interdisciplinary Study of Law: A Dedicatory Note on the Founding of the NILR, Northwestern Interdisciplinary Law Review 1 (2008), 3–6, 3–5.

[6] *O.W. Holmes Jr.*, The Path of the Law, Harvard Law Review 10(8) (1897), 457–478, 460 f.; *J. Frank*, What Courts Do in Fact – Part One, Illinois Law Review 26(6) (1931–1932), 645–666; *idem*, What Courts Do in Fact – Part Two, Illinois Law Review 26(7) (1931–1932), 761–784.

well as psychological and sociological jurisprudence. In the second half of the twentieth century, new trends emerged: critical legal studies (CLS) and feminist jurisprudence. Representatives of CLS claim that law is political in nature and is related to the socially created identity of legal entities. Accordingly, they argue that law cannot refer to abstract categories and entities, but should consider social and political conditions as well as real, rather than ideal, assumptions about human qualities, abilities, and behaviour. From this, further trends emerged, such as feminist legal theory or critical race theory. These trends question the mainstream legal concepts from the perspective of gender or race, claiming that such concepts are based on categories that do not consider the experience of different genders or ethnic minorities; law, therefore, is used as a tool of social oppression.

C. Towards more interdisciplinarity in continental European legal scholarship

In the past decades, legal academia has, however, seen dynamic developments on both sides of the Atlantic. On the one hand, the doctrinal study of law seems to have gained importance in US law schools. Most prominently, there is the project on the "foundations of private law", also labelled as "new private law". It has a stronger focus on the doctrinal study of law than traditional US legal scholarship.[7] On the other hand, interdisciplinary approaches to the study of law have (again) gained importance in continental European legal academia.[8]

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[7] *E.G. Hosemann*, "The New Private Law": Die neue amerikanische Privatrechtswissenschaft in historischer und vergleichender Perspektive, Rabels Zeitschrift für ausländisches und internationales Privatrecht 78 (2014), 37–70. With respect to England, *Flohr* (n. 1), passim, speaks not of a convergence of English and German legal scholarship, but of a transformation in difference ("Transformation in Differenz"), in order to signal the many differences between the emerging doctrinal study of law in England and the traditional doctrinal study of law in Germany.

[8] In 2012, *Lepsius* (n. 1), 46 f., observed that German legal academia has more or less limited itself to the doctrinal study of law only in the past 30 years. However, it seems that since 2012 the pendulum has swung in another direction. Lepsius's observation goes hand in hand with *Stark* (n. 1), 10, who points to the fact that in the nineteenth and early twentieth centuries, German legal scholars did work interdisciplinarily. In the text following this footnote, however, it will become clear that Lepsius simplifies the developments in Germany, thus only describing a general trend. Furthermore, see *J. Croon-Gestefeld*, Interdisziplinäres Arbeiten der Zivilgerichte, in: G. Christandl et al. (eds.), Intra- und Interdisziplinarität im Zivilrecht (2018), 51–69, 53; *Kirste* (n. 2), 36. From a Dutch perspective, see *B. van Klink/S. Taekema*, in: Kirste (n. 2), 87–102, 88. By contrast, in Polish legal academia, there is a clear understanding that interdisciplinary approaches to law date back to the beginning of the twentieth century and that they have continued to thrive since that time: *L. Petrażycki*, Zarys filozofii prawa (1900); *idem*, Wstęp do nauki prawa i moralności (1905, 1959); *idem*, Teoria prawa i państwa w związku z nauką o moralności (1907, 1959–1960) – these works were originally published in Russian and translated into Polish many years later. These

In Germany, for example, it seems that law and economics first appeared in the 1980s.[9] Today it is especially the study of tort law which is influenced by economic insights and theories, but the importance of an economic analysis of law goes beyond the sphere of tort law. Nevertheless, there still are considerable differences in how far economic insights are made use of in different areas of law.[10] In an influential paper from 2012, the *Wissenschaftsrat* (Science and Humanities Council, an important advisory body in the fields of science and the humanities) demanded that German legal academia, among other things, intensify its interdisciplinary efforts and that it move away from a predominantly doctrinal approach to the study (and teaching) of law.[11] Yet, it would be an oversimplification to think that the *Wissenschaftsrat caused* legal scholars to intensify their interdisciplinary research. It seems rather that the *Wissenschaftsrat* picked up on an already existing trend towards more interdisciplinarity in legal academia and that its paper of 2012 functioned as a point of reference for a general debate on this trend,[12] thereby reinforcing it. And indeed, the assertion at the beginning of this paragraph that law and economics seems to have first appeared in the 1980s is itself an oversimplification: In his contribution to the present volume, *Wolfgang Wurmnest* points out that "Germany [has] a long tradition of applying economic insights to shape the body of competition law" that goes back to the nineteenth century.[13] It seems that the fruitful interactions between economics and competition law only again gained

approaches were revived in the 1960s, thanks to *Kazimierz Opałek*, Swoistość prawoznawstwa a problem integracji, Państwo i Prawo 4/5 (1966), 628–741; *idem*, Problemy "wewnętrznej" i "zewnętrznej" integracji nauk prawnych. Krakowskie, Studia Prawnicze 1/2 (1968), 7–30. The discussions have again gained attention in the 1990s, see *J. Łakomy*, Interdyscyplinarność i integracja zewnętrzna nauk prawnych w świetle postmodernistycznej krytyki, Archiwum Filozofii Prawa i Filozofii Społecznej 2011, 29–45.

[9] *G. Rühl*, Ökonomische Analyse des Rechts, in: J. Krüper (ed.), Grundlagen des Rechts (4th edn., 2021), 248–268, 248.

[10] *Rühl* (n. 9), 248 ff.; *Croon-Gestefeld* (n. 8), 57. See also the discussions by *Kasiske*, p. 209, below; *Derek*, p. 229, below.

[11] *Wissenschaftsrat*, Perspektiven der Rechtswissenschaft in Deutschland. Situation, Analysen, Empfehlungen (2012), 7 f., 29, 36 f., 43 f., 60.

[12] The debates initiated by the Wissenschaftsrat go beyond the claim for more interdisciplinarity in legal scholarship, see, e.g., *T. Gutmann*, Intra- und Interdisziplinarität: Chance oder Störfaktor?, in: E. Hilgendorf/H. Schulze-Fielitz (eds.), Selbstreflexion der Rechtswissenschaft (2nd edn., 2021), 93–118; *A. von Arnauld*, Öffnung der öffentlich-rechtlichen Methode durch Internationalität und Interdisziplinarität: Erscheinungsformen, Chancen, Grenzen, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtlehrer 74 (2015), 39–81; *R. Stürner*, Die Zivilrechtswissenschaft und ihre Methodik – zu rechtsanwendungsbezogen und zu wenig grundlagenorientiert?, Archiv für die civilistische Praxis 214 (2014), 7–54; see also the contributions by *S. Grundmann*, *T. Gutmann*, *C. Hillgruber*, *S. Lorenz*, *S. Rixen*, and *M. Stolleis*, in: JuristenZeitung 2013, 693–714.

[13] *Wurmnest*, p. 242, below.

momentum in the second half of the twentieth century.[14] An analogous observation is made by *Phillip Hellwege* in his contribution on law and emotions.[15] These observations go hand-in-hand with analysis made by *Alexander Stark*, who rightly recalls that developments have always been multifaceted and overlapping, but never clear cut:[16]

"In den letzten 150 Jahren wechselten sich Phasen der Offenheit und […] Geschlossenheit mit anderen Wissenschaften kontinuierlich ab. […] Es sind in aller Regel Phasen relativer Offenheit und relativer Geschlossenheit, die sich – teils überschneidend – abwechseln."

"In the past 150 years, phases of openness and […] closedness towards other disciplines have alternated continuously. […] Generally, these were phases of relative openness and relative closedness that alternated and that at times overlapped."

By contrast, in Poland there is much greater awareness than in Germany that interdisciplinary approaches to the study of law have a long tradition and that these approaches have gone through various stages of development. In Poland, such approaches to the study of law first occurred in the beginning of the twentieth century and developed from debates on law as a scientific discipline.[17] These debates were both ontological (concerning the question of the nature of law) and epistemological (concerning the question of methods applied to law). The integration of other disciplines – mainly psychology and sociology – into legal scholarship was part of the process of the naturalization of law and ethics.[18] Naturalistic jurisprudence, as it emerged, aimed at the application of scientific knowledge to legal theory and practice. The most prominent representative of Polish psychological jurisprudence was *Leon Petrażycki*, who understood law as a psychological phenomenon.[19] The second stage appeared in the second half of the twentieth century, and it was *Kazimierz Opałek* and *Jerzy Wróblewski* who revived discussions on the integration of extra-legal discipli-

[14] *Wurmnest*, pp. 251 ff., below.

[15] *Hellwege*, p. 360 and p. 393, below.

[16] *Stark* (n. 1), 12. In addition, see *Croon-Gestefeld* (n. 8), 52 f.; *S. Kirste*, Einleitung, in: idem (n. 2), 9–17, 10; *idem* (n. 2), 36; *D. Grimm*, Notwendigkeit und Bedingungen interdisziplinärer Forschung in den Rechtswissenschaften, in: Kirste (n. 2), 21–34, 21.

[17] *J. Stelmach/B. Brożek*, Methods of Legal Reasoning (2006), passim.

[18] *H. Kelsen*, What is Justice? Justice, Law, and Politics in the Mirror of Science (1971), distinguished between analytical, normative, psychological, and sociological jurisprudence. Although he argued in favour of normative jurisprudence that was based on the strict separation of law from other disciplines, he claimed that psychological and sociological jurisprudence deal with the study of different aspects of law than analytical or normative jurisprudence, and thus they are not mutually exclusive, but rather complementary.

[19] *L. Petrażycki*, Teoria prawa (n. 8); *idem*, Über die Motive des Handelns und über das Wesen der Moral und des Rechts (1907); *idem*, Wstęp do nauki polityki prawa (1968); *idem*, O nauce, prawie i moralności. Pisma wybrane (1985); *idem*, Methodologie der Theorien des Rechts und der Moral. Zugleich eine neue logische Lehre von der Bildung der allgemeinen Begriffe und Theorien (1933).

nes into legal scholarship.[20] These discussions had mainly a methodological character. The two authors distinguished between external and internal integration, and they further distinguished three types of external integration: unification, coordination, and cooperation.[21] The third stage took place after the political transformation of Poland in 1989.[22] In the communist era, the official paradigm of social sciences was Marxist-Leninist doctrine. In response – to minimize ideological corruption of legal thought and to safeguard its autonomy – Polish legal scholars followed during the communist era a formal legal positivism known for its methodological conservatism, and special emphasis was put on conceptual and linguistic analysis as well as on logic. Poland's transformation into a liberal democracy resulted in emancipation from Marxist-Leninist doctrine and opened new perspectives – both methodological and theoretical – in law, and that is why, with respect to Poland, it is also possible to speak of a recent trend towards more interdisciplinary in legal scholarship. The most significant example of such new approaches to the study of law was inspired by the law and economics movement, which gained ground in connection with Poland's transformation into a free market economy.[23] The openness of legal scholarship to extra-legal disciplines resulted in a debate between modern and postmodern approaches to law.[24] In the last and current stage of interdisciplinary studies of law, the debate over the naturalization of law has regained special attention.[25] It was mainly caused by the rapid development of new technologies, chiefly in the fields of biotechnology[26] and computer

[20] *Opałek,* Problemy (n. 8); *idem*, Swoistość prawoznawstwa (n. 8). In addition, see *idem*, Interdyscyplinarne związki prawoznawstwa, Studia Filozoficzne 2/3 (1985), 17–29; *idem/J. Wróblewski*, Zagadnienia teorii prawa (1969); *idem/idem,* Prawo, metodologia, filozofia, teoria prawa (1991).

[21] *Opałek,* Problemy (n. 8), 7; *Łakomy* (n. 8).

[22] *Łakomy* (n. 8).

[23] *J. Stelmach/B. Brożek/W. Załuski*, Dziesięć wykładów o ekonomii prawa (2007); *J. Stelmach/M. Soniewicka* (eds.), Analiza ekonomiczna w zastosowaniach prawniczych (2007).

[24] See pp. 36 ff., below.

[25] *J. Stelmach/B. Brożek/M. Hohol*, The Many Faces of Normativity (2013); *J. Stelmach/B. Brożek/Ł. Kurek/K. Eliasz* (eds.), Naturalizm prawniczy: stanowiska (2015); *J. Stelmach/B. Brożek/Ł. Kurek/K. Eliasz* (eds.), Naturalizm prawniczy: interpretacje (2015); *J. Stelmach/B. Brożek/Ł. Kurek* (eds.), Naturalizm prawniczy: granice (2017).

[26] *J. Stelmach/B. Brożek/M. Soniewicka* (eds.), Studies in the Philosophy of Law, vol. 5: Law and Biology (2010); *J. Stelmach/M. Soniewicka/W. Załuski* (eds.), Studies in the Philosophy of Law, vol. 4: Legal Philosophy and the Challenges of Biosciences (2010).