Law, Politics and the Economy in Poland's Post- Socialist Transformation: Preliminary Notes Towards an Investigation

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Abstract: The paper aims at analysing the role of law in systemic transformation on the example of Poland's move from Actually Existing Socialism (1944–1989) to capitalism. For this purpose four case studies are analysed: the *lex Wilczek* liberalizing economic activity, the privatization laws of 1987 and 1990, the Round Table agreements of April 1989 and, finally, the establishment of the Constitutional Court (1986). On the basis of each case study, a certain order of causation is established. Drawing on similarities identified between the four case studies, the paper advances the conclusion that in the first phase of transformation, the law was instrumentalised by political decision-makers, motivated by economic factors, in order to bring about changes in the social reality. However, once the law was put into motion, a new dynamic emerged in which the law started to play an independent role. Referring to recent research by Bruno Schönfelder, the paper concludes that this growing autonomy of the law can be seen as the essence of post-socialist transformation as such.

> …legal changes have, in essence, a secondary character with regard to all other changes. They do not commence principal social processes, but rather confirm within the legal system what has already taken place in the economy, politics and other areas of social life.
>
> Jan Wawrzyniak (2011, 12)[1]

Introduction

It can be said that the political and socio-economic transition from Actually Existing Socialism[2] towards capitalism and democracy took the Polish legal

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* The present paper represents the Author's personal views and should not be attributed to any specific institution or organisation

1 All quotations from Polish texts have been translated by the Author.

2 The element of 'actually existing' in the term serves to emphasise the gap between 'socialism' in the strict sense of the word (as envisaged, e.g. by Marx and Engels or by non-Soviet Marxists) and the actual economic, political and social practice in the Soviet bloc (Sowa 2012). Being aware of a long-standing debate as to the nature of that system, in particular whether it should be described even as 'state capitalism' (e.g. Cliff 1948), I do not wish to enter it here, sticking to a purely descriptive understanding

elites by surprise. Indeed, despite the participation of certain lawyers in the anti-communist opposition movement (especially among advocates), the legal community *en masse* participated in the everyday workings of the system as judges, prosecutors, legal advisors or university professors. The transformation came from outside the sphere of law, originating rather in the spheres of politics and the economy.

The main enquiry of the paper will be whether, in the socio-economic transformation of 1989, the law was merely a 'form' which recorded (more or less faithfully) the changes in the socio-economic and political 'substance' (or, as Marxists would say, was the law merely a 'superstructure' which reflected changes in the 'base')? In other words, can it be said that law was not 'autonomous' in the transformation, being merely 'an expression of the will of the sovereign with nearly no limitation' (Czarnota 2016, 316)? Or, perhaps, was it the other way around, i.e. that the transforming impulses originated in the law itself? Or, perhaps, a middle way answer is correct, namely that the transformation did not originate in the legal sphere, but that sphere contributed to the dynamics of transformation?

In order to answer this theoretical question, the paper intends to give a preliminary empirical look at the interstices of law and transformation in Poland at the turn of the 1980s and 1990s. Four case studies will be analysed: the *lex Wilczek* liberalising economic activty; early privatisation laws; the Round Table agreement of 1989; and the emergence of the rule of law in the case-law of the Constitutional Court.

It must, however, be underlined that the present enquiry has but a preliminary character, and rather aims at framing questions (something which is often more important than giving answers), making notes towards further investigation, as well as putting forward some working hypotheses. What must be underscored is

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of the notion of 'actually existing socialism'. According to the late Polish economist Tadeusz Kowalik (1926–2012): 'The most important attribute of really [actually] existing socialism was the combination of closely centralized and hierarchical political authority with state ownership of means of production. This gave the political authority nearly absolute control over the economy. The all-encompassing planning, often called command-distributive planning, was bureaucratic in nature' (Kowalik 2011, 26). Furthermore, I concur with critical theorist Jan Sowa that 'there are strong theoretical and historical reasons to question the communist nature of regimes developed within the Soviet Bloc in the 20th century (…) if we accept the conceptual framework developed by Marx and Engels as a point of reference' (Sowa 2012, 26). Therefore, despite the practice of many other authors, I do not use the term 'communism' to describe the social, economic and political system of actually existing socialism.

that giving a fully fledged answer – even limited to the four case studies – would certainly require an in-depth interdisciplinary (legal, economic, sociological) research, the outcome of which would require (at least) the volume of a research monograph in its own right.

Theoretical and methodological considerations

The paper adopts a tripartite division of social reality into the spheres of law, the economy and politics. The division of human activity into distinct phenomena, including *inter alia* law, politics and the economy, is a commonly held view among social theorists of very different inspirations (e.g. Bourdieu 1986; Berger and Luckmann 1991; Kojève 2007; Luhmann 2013). These spheres are conceptualised differently, as 'fields' (Bourdieu 1986), 'institutional worlds' (Berger and Luckmann 1991), 'phenomena' (Kojève 2007) or 'systems' (Luhmann 2013). Admittedly, the way in which the distinct facets of social life are conceptualised has an impact on an analysis of their mutual relationships, not only through a different terminology, but also through a different understanding of how these spheres interact. This division is not intended to be exhaustive: such spheres as religion, administration (bureaucracy), education or culture are left out from my analysis, although they could also play a role in the transformation processes. The method for differentiating the three spheres rests upon the binary code upon which they are founded, for law it is 'legal/illegal', for the economy it is 'profitable/not profitable' and for politics it is 'friend/enemy' (Paździora and Stambulski 2014, 57), as well as the main principle underlying each sphere, for law it is legality (normativity), for the economy – value, and for politics – it is (political) power. Finally, each sphere has its typical core of social practices which allow to identify it – for law these are predominantly legislation and adjudication (Mańko 2009, 113), for the economy – production, services and commerce, for politics – struggle for power (democratic or not). Finally, decisions taken in the logic of each sphere have a different legitimacy – a decision in the sphere of law is based on *legality*, a decision in the sphere of the economy is based on *profitability*, and a decision in the sphere of politics is based on *effectiveness* (instrumental logic, based on pursuing political goals). Characteristically for our context of post-socialist transformation, the official Marxist-Leninist ideology explicitly rejected the division of social reality into autonomous spheres of law, politics and economy and one of the aims of communists was to bring them under the hegemony of the political sphere (Schönfelder 2016, 299).

Applying this abstract typology to the historical period from which the four case studies originate, it can be said that the 'legal' sphere refers to the enactment

of legal texts by the Parliament (statutes and constitutional amendments), as well as the judicial activity of the courts (case-law of the Constitutional Court); the 'economic' refers to the economic activity both of individuals (privately-owned) and public (state-owned) enterprises; whilst the 'political' sphere refers to political decisions taken by the Polish United Workers' Party (PZPR), by the opposition, as well as by voters (e.g. 4 June 1989 elections). At least with regard to this concrete historical period, the differentiation of social reality into law, politics and the economy does not seem to cause any practical doubts.

Having thus identified the three spheres both *in abstracto*, as well as *in concreto* for the period under scrutiny, it should be underlined that the object of the enquiry is to answer the question, which of these spheres *influences* the other ones, i.e. which of them exerts *causal effects*. I will resort to graphical representations of such influence, assuming that it will help to conceptualise the research problem and help to identify common elements in all case studies. For this purpose, I will use *L* to denote the legal sphere, *E* to denote the economic sphere and *P* to denote the political sphere. An arrow (→) will denote the direction of influence (causality) in a concrete historical situation.

As regards methodology, the present paper presupposes, firstly, the existence of the phenomenon of *causation*, and secondly, the possibility of its *identification*. Since the paper intends to provide an *interpretation* of historical events in terms of relations between the three spheres under scrutiny (law, politics and the economy), it will rely, as to the *facts* (including causation) on existing literature, focusing on an interpretation of those facts (established by historians) from the standoint of the research question, i.e. the role of *law* in the socio-economic transformation.

Case study I: *lex Wilczek*

In the second half of the 1980s General Jaruzelski – who held political power as 1st Secretary of PZPR – 'gradually adopted the view that in order to get out of the economic crisis, Poland needs deep social reforms, a change in the method of managing the economy, including a certain degree of marketization' (A.L. Sowa 2011, 597). During the period between 1981 and 1986, the number of private enterprises grew from 357.000 to 500.000, and they employed over 1 million people (Kieżun 2012, 113), which reflected a change of the regime's attitude towards the private sector (Poznański 1996, 215). It must be kept in mind that in communist Poland small private enterprises were never fully prohibited, and their activity was even encouraged at times, e.g. after 1956 (Kieżun 2012, 114–115).

In October 1988 a new government was established under the premiership of M.F. Rakowski (A.L. Sowa 2011, 616). The new government aimed at "economic

stability and a deep economic reform' (A.L. Sowa 2011, 616), and instrumental to this aim was an entire economic package, creating 'a new economic order, based on the principles of liberty, equality and competition' (A.L. Sowa 2011, 616–617). Among them was the so-called *lex Wilczek* (Act of 23 December 1988) nicknamed after the Minister who proposed its enactment. In contrast to the whole communist period, *lex Wilczek* abolished most restrictions on private economic activity, making it essentially legal and free to pursue a business for the first time since World War II. It seems plausible to argue that *lex Wilczek* itself was the effect of a *political* decision of the Communist Party. This follows from the well-known and undisputed fact that the legal sphere in general, and Parliamentary legislation in particular, was not autonomous under Actually Existing Socialism, but simply depended on the political will of the Communist Party. Once it entered into force, the *lex Wilczek* caused an unprecedented explosion of social energy, chanelled into economic activity. A symbol of this 'heroic' period of Poland's new capitalism was the so-called 'jaws' (*szczęki*), simple, easy to open and close one-person shops made from metal, which populated Polish market places and even representative areas, such as the monumental surroundings of the Palace of Culture and Science – the Soviet-style skyscraper in the very centre of Warsaw. Also statistical data clearly indicate a robust expansion of the private sector following *lex Wilczek* (Poznański 1996, 241).

What *lex Wilczek* represents, therefore, is an example of the impact of the the economic sphere (crisis) upon the sphere of politics (decision of the Communist Party), which in turn re-impacts upon the sphere of the economy (explosion of economic activity once the limitations were removed), *via* the legal sphere (the *lex Wilczek* itself). Undoubtedly, it was the *lex Wilczek* (and its enforcement) which allowed for an explosion of economic activity and release of enterpreneurial energy of the Polish society (cf. Schönfelder 2016, 306). This is because the economic history of the period of Actually Existing Socialism reveals that the state repressive apparatus had to invest a lot of effort in supressing the economic energy of citizens (Madej 2010) – 'the communist economic order depended on the coercive powers of government' (Schönfelder 2016, 296). Once this repression was done away with – by abolishing its legal framework on the basis of a political decision – the economic potential of Polish society became unleashed. As Schönfelder (2016, 305) writes, '[w]hen profit-maximizing behavior was no longer ostracized, the economy spurted. After the removal of administrative obstacles, it quickly reintegrated into the world economy (…).'

In a schematic way, the interaction between law, politics and the economy in the case of *lex Wilczek* can be presented as follows: $\boldsymbol{E_1 \rightarrow P \rightarrow L \rightarrow E_2}$, where: E_1 = economic crisis; P = political decision to liberalise the economy; L = *lex Wilczek*,

i.e. the legal instrument liberalising the economy, E_2 = mass explosion of private economic activivty.

Case study II: Nomenklatura Privatisation and the Privatization Act of 1990

The second example is the Privatisation Act of 1990, enacted as a step directly following the so-called 'shock therapy' or 'Balcerowicz Plan'.[3] The more or less informal privatisation of state property, by way of the so-called '*nomenklatura* privatisation' started already in the second half of the 1980s and elements of the central planning began to be dismantled. In the 1980s the ruling elite of PZPR functionaries came to the conclusion that the country's economy not only is no longer able to deliver rising standards of living for workers but the deep crisis has threatened the privileged position of the elite itself (Hardy 2009, 23). This led them to the idea that only a reform towards a market economy ('market socialism') could improve the economic situation of the country. Central planning was relaxed and state enterprises were given a large degree of independence, in order to make them self-financing (Hardy 2009, 23). As a result, Poland's economy 'ceased to be a classical planned economy, but decision-making (…) descended into chaos and uncertainty' (Hardy 2009, 24).

These circumstances were in turn used by the *nomenklatura* members to initiate the so-called '*nomenklatura* privatisation', i.e. the appropriation of state assets by private individuals holding managerial positions in the state-owned enterprises. Privatisation processes of this kind began in the second half of the 1980s; Poland officially remained a socialist country, and the legal system was still a socialist one, but the underlying economic system has began to change.

The legal framework for early privatisation processes was created by the Act of 31.7.1987 'adapting the provisions of certain acts regulating the functioning of the economy to the conditions and needs of further socio-economic development of the country', enabling to transform state enterprises into commercial companies, thus allowing the sale of state enterprises' assets, as well as mergers, divisions of such enterprises and their lease (Zalewa 2008, 67). A further easement in that regard was created by the Act of 24.2.1989 regarding certain conditions of the

3 In considering this example, I am dealing with the role of law *vis-a-vis* politics and the economy (in line with the research question), and therefoe I leave outside my interest the question whether the 'nomenklatura privatisation' hindered or favoured Poland's economic integration with the capitalist world. Whilst this is an interesting research question, answering it would not shed any light on the *role of law* in the transformation.

consolidation of the national economy which simply allowed transferring the assets of a state enterprise to natural or legal persons (Zalewa 2008, 67). According to English political economist Jane Hardy (2009, 24–25):

> these so-called *nomenklatura* privatisations involved the selling of non-core operations such as a computer centre, repair facilities or a sales centre to a group of insiders that included managers and party members. State-Owned Enterprises were often stripped of their most profitable operations (…) The *nomenklatura* used their position to become wealthy owners of what used to be state enterprises through two important legal forms: the leasing of state owned companies and joint stock companies (…).

Polish economist Piotr Zalewa pointed out that *nomenklatura* privatisation, despite being formally legal, was in fact an 'ordinary embezzlement' and that the *nomenklatura* companies 'did not create any added value' but 'served ordinary looting' (Zalewa 2008, 68). He drew attention to the fact that in order to remove any obstacles to a mass appropriation of state property, in 1989 the administrative instruments of control of economic crime were disabled (Zalewa 2008, 68). As Jan Sowa (2012, 175) has observed:

> Party members, even high ranking officials, were becoming private entrepreneurs, mainly by taking control over restructured state enterprises. Jadwiga Staniszkis showed that 80% of the Party elite from the 1980s became private entrepreneurs in the 1990s.

The mass privatisation of state enterprises, in 'direct clash with Solidarity's economic program of worker ownership' (Klein 2007, 177), was based on Act of 13.7.1990 on the privatisation of state enterprises, drafted in very broad terms, without any indications as to the aims, direction and speed of the process, nor the methodology of evaluating the value of the privatised entities (Zalewa 2007, 79). The legal provisions granted special powers to the Government, thus insulating the privatisation process from other stakeholders (employees, society at large represented by Parliament etc.) (Zalewa 2007, 80). Contrary to the convictions of society at large that privatisation should lead to an equitable distribution of wealth (Dunn 2004, 36–37), the process took the form of a bargain sale of the majority of Polish enterprises to international capital.[4]

Looking from the perspective of interaction between law, politics and the economy, the process could be described by the following scheme: $\boldsymbol{E_1 \rightarrow P \rightarrow L \rightarrow E_2}$,

4 I omit from my discussion the so-called 'universal privatization programme' (*program powszechnej prywatyzacji*) which, despite a complicated mechanism and the purported aim of giving ownership powers to all citizens, ended up as a complete failure (Zalewa 2007, 85–86). The value of a 'participation certificate' in the programme was equal to a pair of discount shoes (Zalewa 2007, 86).

where E_1 represents the economic crisis of the 1980s, *P* represents the political decision to start the *nomenklatura* privatisation, L_1 represents the 1987 act and E_2 represents the situation of actual change in the economy (the nomenklatura privatisation itself).

It could also be argued by reference to the discussion below (case study III), that the changed economic situation (E_2) actually led to further political changes, namely the decision to share power with Solidarity (once the first phase of *nomenklatura* privatization, guaranteeing a good economic standing to PZPR elites, was accomplished). Once the former opposition took over, an era of mass privatisation began (Privatisation Act of 1990). This would allow the expansion of the above scheme to the following: $\boldsymbol{E_1 \rightarrow P_1 \rightarrow L_1 \rightarrow E_2 \rightarrow P_2 \rightarrow L_2 \rightarrow E_3}$, where E_1 = economic crisis of the 1980s, P_1 = political decision to start the *nomenklatura* privatisation, L_1 = Act of 1987, E_2 = *nomenklatura* privatisation, *P2* = Round Table Talks, L_2 = Privatisation Act 1990 and E_3 = mass privatisation. Of course, the passage from E_2 to L_2 is simplified here (for a more detailed account, see the next section).

Case study III: The Round Table Agreement

According to Naomi Klein, 'authoritarian regimes have a habit of embracing democracy at the precise moment when their economic projects are about to implode. Poland was no exception' (Klein 2007, 175). Indeed, in the 1980s an ideological consensus between the neoliberal/neoconservative wing of the opposition and the liberal wing of the Polish United Workers' Party (PZPR) enabled a peaceful transformation from actually existing socialism to democracy and a market economy (J. Sowa 2012, 172), and by mid-1988 PZPR leaders had conceded to share their political power and responsibility for the country with the hitherto illegal opposition movement. This unprecedented peaceful transfer of power was first negotiated within the framework of the famous Round Table talks between representatives of the PZPR and opposition leaders, which lasted between February and April 1989 (A.L. Sowa 2011, 624–628). The deal struck by PZPR and Solidarity provided for significant political reforms, including partly pluralist parliamentary elections to be held on 4 June 1989 and the legalisation of the Solidarity trade union (A.L. Sowa 2011, 627). It involved an amendment of the 1952 constitution (Act of 7.4.1989 amending the Constitution of the Polish People's Republic). There is no doubt that the constitutional amendment – adopted hastily just two days after the end of the Round Table talks, was a simple 'execution of the political agreement that had been reached' (Szmyt 2010, 123) or its 'implementation' (Stelmachowski 2011, 116). Following the 1989 elections, in which Solidarity won 260 of the 261 seats subject to free voting (Klein 2007,

174–175), a coalition government of PZPR members and Solidarity members was formed in September 1989.

On 31.12.1989 the Parliament of the Polish People's Republic adopted an amendment to the Constitution (Act of 29.12.1989 amending the Constitution of the Polish People's Republic), symbolically changing the name of the country to 'Republic of Poland' (which had also been used until 1952) and reintroducing the crown on the head of the eagle on the national emblem (which had been used in the 2nd Republic). As Szmyt (2010, 136) points out, whilst the April amendment of the constitution 'opened the first stage of systemic transformation', the December amendment 'stabilised that stage still as a temporary form, albeit on democratic foundations'.

The further two steps of the Polish transformation were the pluralist presidential elections (1990) and the first fully pluralist parliamentary elections (1991), followed by the enactment of a 'Small Constitution' the next year (Constitutional Act of 17.10.1992 regarding the mutual relationships between the legislative and executive power of the Republic of Poland and local self-government). Finally, in 1997 a new Polish constitution was enacted, replacing the 1952 constitution (alongside the 'Small Constitution') and creating a system of parliamentary democracy with a president elected in general elections. From the point of view of constitutional law, this moment marked the completion of the process of transformation commenced eight years later.

Examining the role of law (*vis-à-vis* politics) in the process of constitutional transformation, one cannot but emphasise the role of the Round Table agreement, reached between February and April 1989, and immediately enacted by the obedient Parliament (9th term) of the Polish People's Republic. The constitutional amendment of April 1989 was clearly a direct enactment of the political deal struck at the Round Table. Nonetheless, it opened up a new dynamic – through the elections of 4 June 1989 – which later on changed the political sphere itself (new coalition between Solidarity, PSL and SD which replaced the original PZPR-led coalition). Furthermore, if we accept the account, expressed inter alia by Klein (2007, 175) that the decision to sit down to talks with the Solidarity opposition were actually caused by an imminent economic implosion, we arrive at an interesting scheme of causality: $E \rightarrow P \rightarrow L$. Nonetheless, the legal changes (amendments to constitution and electoral laws) themselves caused political changes ($L \rightarrow P$), due to the unexpected (for PZPR) result of the 4 June 1989 elections. These political changes led to further legal changes ($L_1 \rightarrow P \rightarrow L_2$), namely the December 1989 amendment to the constitution which went much farther than the April amendment. The full order of influence could then be expressed by the following

scheme: $\boldsymbol{E \rightarrow P_1 \rightarrow L_1 \rightarrow P_2 \rightarrow L_2}$, where: E = economic crisis, P_1 = Round Table Agreement, L_1 = constitutional amendment of April 1989; P_2 = the 4 June 1989 elections and their aftermath (Mazowiecki government); L_2 = December 1989 amendment to the constitution. If the above representation is correct, it would suggest that economic factors caused the entire change, but later on law and politics interacted with each other accelerating the transformation.

Case study IV: Rule of Law – the Constitutional Court

Under actually existing socialism, the constitution played only a façade role. This is in line with the negation of a division into a legal and a political sphere under that system (Schönfelder 2016, 301). Hence, communist countries did not, as a matter of ideological principle, have constitutional courts (Sulikowski 2016, 16). The same applied to the public administration which was not subject to judicial review, but rather to manual political steering by the communist party. However, things started to change in Poland already in the 1980s. As Sulikowski (2016, 18–19) explains:

> 'Between 1976 and 1980 there were a significant number of massive strikes. Despite being effectively suppressed it resulted in a downturn in the legitimacy of the authorities. As a consequence, the authorities tried to base their legitimacy on experts and to strengthen law and order. This appeared to be the best ground to implement a constitutional court.'

The decision to create the Constitutional Court (*Trybunał Konstytucyjny*, thereafter: TK) was, therefore, clearly a *political* decision to boost the legitimacy of the regime (Mażewski 2011, 333; Dębska 2015, 130) which was, in turn, motivated by *economic* factors (crisis, strikes). Dębska (2015, 127–128) and Sulikowski (2016, 20) clearly indicate that the direct impulse for the creation of the Constitutional Court was a resolution adopted at the 9th Extraordinary Convention of the PZPR in July 1981. The TK was established formally in the Constitution already in 1982 (Szmyt 2010, 117; Dębska 2015, 132–134), but an appropriate statute giving effect to it was enacted only in 1985 (Dębska 2015, 135–136, 144–149) and the TK became operational in 1986. Until 1997, the TK's decisions were subject to a possible parliamentary veto, which considerably weakened its position in comparison to constitutional courts in capitalist countries (Sulikowski 2016, 20).

During the first years of its existence, i.e. until the transformation, the TK 'was rather reserved and passive, and undertook numerous but cautious decisions to strengthen the rule of law institutions in Poland' (Sulikowski 2016, 20; cf. Mańko 2014, 83). However, after the transformation, the Court, virtually overnight

> 'discovered' in the constitution many unwritten rules such as: the presumption of innocence, the right to justice, the right to life, the right to privacy, the principle of proportionality (the prohibition of excessive interference in the rights of individuals), the rule of law, the principle of social justice, the principle of loyalty to the state of the citizen, the non-retroactivity of law (*lex retro non agit*), the principle of *lex severior non agit*, the protection of acquired rights, the principle of legal clarity etc. (Sulikowski 2016, 21–22)

Hence, the Court built – in an exercise of unprecedented judicial activism – a complex set of rules laying down the foundations of the Rule of Law ('democratic state of law') in Poland.[5] Here, the political element was a clear determining factor – there can be no coincidence in the fact that a timid and passive court suddenly became activist and engaged in judicial law-making in the daylight. However, once the Rule of Law became established, the TK started gaining autonomy from the sphere of politics. A good example is its 1996 decision (Case K 26/96) overturning an Act of Parliament legalising abortion – it was based on an unwritten principle of right to life, 'discovered' by the Court in the constitution (Sulikowski 2016, 22; cf. Dębska and Warczok 2016, 117, 121–128). As Sulikowski (2016, 22) writes, the TK 'took up the role of chief engineer of transformation and made numerous and controversial political decisions'. Whilst the abortion case represents and example of interaction between the spheres of law (TK decision) and politics (parliament's democratic decision), there are also numerous examples of the TK interfering with the sphere of the economy, as in the judgment on maximum rents in housing (TK judgment of 12.1.2000, Case P 11/98).

Hence, in schematic terms, the situations can be described as follows: $\boldsymbol{E \rightarrow P_a \rightarrow L_1 + P_b \rightarrow L_2 \rightarrow L_3}$, where E = economic crisis; P_a = political decision to create CC; L_1 = CC Act; P_b = changed political situation after 1989 (not a consequence of P_a), L_2 = CC's rule of law case-law of the 1990s; L_3 = codification of the TK's rule of law case-law in the 1997 Constitution.

Conclusions

A formal presentation of the order of causation identified in each of the four case studies can be summarised as follows:

Case study I: $\boldsymbol{E_1 \rightarrow P \rightarrow L \rightarrow E_2}$
Case study II: $\boldsymbol{E_1 \rightarrow P_1 \rightarrow L_1 \rightarrow E_2 \rightarrow P_2 \text{ -> } L_2 \rightarrow E_3}$,

5 Cf., however, the critique of Czarnota (2016), who argues that the 'the rule of law in post-communist states plays a façade role for masking the structural corruption of the state', adding that this concept 'has been understood in a formal, positivistic way and reduced to the concept of legality and the rule of the legal text' (Czarnota 2016, 318).

Case study III: $\boldsymbol{E \rightarrow P_1 \rightarrow L_1 \rightarrow P_2 \rightarrow L_2}$
Case study IV: $\boldsymbol{E \rightarrow P_a \rightarrow L_1 + P_b \rightarrow L_2 \rightarrow L_3}$

The schematic presentation of the (hypothetical) order of causation allows analysing it in the abstract, in detachment from the specific circumstances of each case. This, in turn, allows for the formulation of more general conclusions, relating to the three respective spheres (*L*, *P*, *E*), and therefore permitting for a broader outlook of the research. The general conclusions are as follows. First of all, economic factors (*E*) are at the very beginning of each scheme. This is not a suprise, given the scale and profoundness of the economic crisis which directly preceded the transformation. Secondly, economic factors impacted political ones in the first link of the chain of causation ($E \rightarrow P$). Again, this is in line with the hypothesis that the elites of PZPR reacted to the economic crisis making various political decisions aimed either at preserving their rule through a boost of legitimacy (case study IV), or at transforming the economic and political system (case studies I, II and III respectively). The next link of the chain of causation is – in all case studies – the translation of the political decision into legal terms ($P \rightarrow L$). Hence, what all case studies have in common is the *indirect* impact of the economic sphere upon the legal sphere, *mediated* by the political sphere ($E \rightarrow P \rightarrow L$). Again, this is not a suprising result given the fact of the supremacy of the political over the legal and economic in communism, as described recently by Schönfelder (2016).

What happens next is different in the individual case studies. The legal sphere may either impact the economic one ($L \rightarrow E$) or the political one ($L \rightarrow P$) or generate a new legal reality intrinsically, via law's internal logic ($L_1 \rightarrow L_2$), or through the intervention of an additional, external political factor ($L_1 + P \rightarrow L_2$). In case study II, the second part of the chain of causation actually replicates the first one ($\ldots E_2 \rightarrow P_2 \rightarrow L_2 \rightarrow E_3$). In case study III, the second part of the chain symbolises a mutual interaction between law and politics ($L_1 \rightarrow P_2 \rightarrow L_2$).

The final, most abstract conclusion would therefore be as follows: in the case of the 1989 transformation, the four case studies analysed in a preliminary manner suggest that the initial phase of transformation always follows the ($E \rightarrow P \rightarrow L$) scheme. This means that the law is only a secondary factor, being influenced in the last instance by the economy, as mediated through politics. In other words, law is *instrumentalized* by the ruling elites to bring about desired changes in the socio-economic sphere (cf. Gromski 2000). However, once the new law is put into place, the situation enters a new dynamic, where law itself can become a decisive factor, impacting the economy, politics or changing itself ($L_1 \rightarrow L_2$). This would tend to confirm the hypothesis put forward by Schönfelder (2016) that the transformation lead to a change from the situation in which law and the economy

were subject to politics (no functional differentiation) to a situation where such a functional differentiation becomes more pronounced and which, in the case of law, means that the legal sphere gains autonomy and its own potential of influencing politics and the economy on its own account. Indeed, on a very rudimental level, this seems intuitively as a correct account of the role of law in the 1989 socio-economic transformation.

Therefore, one cannot but agree with the diagnosis put forward by Wawrzyniak (2011, 12, 14):

> …legal changes have, in essence, a secondary character with regard to all other changes. They do not commence principal social processes, but rather confirm within the legal system what has already taken place in the economy, politics and other areas of social life. (…) One must also keep in mind that the law does not reflect (and should not reflect) all changes actually taking place in various spheres of social and economic life. The law reflects (…) only the most important events of a transformative character.

Ultimately, therefore, law is a 'form' which merely cloaks the 'substance' of political and socio-economic relationships (Pashukanis 1983, 53–64; Balbus 1977), or – to put the same idea in the very different theoretical language of Carl Schmitt – the legal system is a 'special mirror of reality' (Croce and Salvatore 2013, 35), because law's *normativity* presupposes a certain social *normality* (Croce and Salvatore 2013, 36; cf. Schmitt 2004). When this social normality is in flux – as in a time of socio-economic transformation – law reflects the changes at a faster or slower period. Nonetheless, as the case studies seem to indicate, law can be not only a passive form or mirror of reality, but it can also be directly instrumentalised by the sphere of politics in the process of socio-economic transformation.

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