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The Middlemen: The Legal Profession, the Rule of Law, and Authoritarian Regimes

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Scholars are increasingly interested in exploring ways to strengthen the rule of law in authoritarian states—especially when deeper political reforms are not attainable. The article contributes to this discussion by revisiting the story of the emergence of the so-called socialist legality in the communist states of Eastern Europe. Using the historical record from Poland, the author demonstrates a previously unnoticed, yet pivotal, role of legal professionals in facilitating socialist legality's rise to prominence. Using the lenses of Pierre Bourdieu's theory of fields, the article chronicles the evolving dynamic between the legal profession, the authoritarian regime, and society. These observations challenge conventional explanations of the emergence of the rule of law in nondemocratic conditions.

INTRODUCTION

The popularity of the rule-of-law-without-democracy idea has been growing among legal and political commentators (see, e.g., Chua 2000; Carothers 2009; Inglehart and Welzel 2009), partly because of the meager success of more ambitious attempts at political liberalization. Yet as Francis Fukuyama wrote in a recent piece aimed at setting the "research agenda [for the] next twenty years" of studies of democratization, that popularity has not yet translated into a solid understanding of how the rule of law "evolves in relation to other institutions, and where the rule of law came from in the first place" (Fukuyama 2010, 33).

Those studies that do try to understand how the rule of law evolves "in the first place" need to first deal with the fact that the rule of law is a concept whose precise meaning is highly contested. For our purposes, the most suitable definition will be the "thin" one: a system of governance under which "government in all its actions is bound by rules fixed and announced beforehand" (Hayek 1944, 54, quoted in Raz 1979, 210).[1] According to one influential view, this narrowly defined rule by law (Ginsburg and Moustafa 2008) may be attractive to authoritarian rulers primarily as a tool to control their societies. This narrative, associated particularly with writings of Shapiro (1981) and—in the context of the socialist countries—Markovits (1982), sounds intuitively

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1. As will become apparent in my later discussion, this definitional choice is purely instrumental. In general, I agree with Przeworski et al. (2000, 14), who, in the analogous discussion about thin and thick definitions of *democracy*, pointedly observe that "from an analytical point of view . . . lumping all good things together is of little use."

plausible. After the dust of a revolution settles, an authoritarian ruler promotes obedience to the law among citizens; after all, it is the ruler himself who has the monopoly on determining what the law is. A related strand of research, famously inspired by Radbruch (1957), extends this argument by contending that an overly formalist approach to the rule of law allows lawyers to evade responsibility for enforcing radically unjust laws introduced by nondemocratic regimes. Scholars in the Radbruchian tradition offered a nuanced picture of how German lawyers "convince[d] themselves in 1933 that they could remain true to their formal commitment to liberty even while they acquiesced in injustice" (Ledford 1996, 299). By providing the "legal decorum" to the administration of regime's policies, lawyers not only help "implement" but also "ultimately legitimize" these policies (Bancaud 2002, 185).

The ability of lawyers to legitimize use and abuse of state power has also been a frequent theme in the literature dealing with the history and sociology of the legal profession. These accounts often portray lawyers as being torn between the abovementioned "learned clerk" function of a legitimizer of state actions and the role of a protector of "legal virtues," aimed at moderating excesses of the state (see, e.g., Kantorowicz 1957; Berman 1983). Particularly relevant to my article are the works of Dezalay and Garth (1996, 2002, 2010), as they approach the topic from the vantage of Bourdieu's theory of fields. The theory is attractive as it attempts to strike a middle ground between materialistic explanations of cultural phenomena and the subjectivism of postmodern sociology. In Bourdieu's view, a professional field would, on the one hand, produce patterns of thinking that naturally migrate toward supporting what is beneficial—for the field in general and its highest echelons in particular; on the other hand, the power of these patterns stems precisely from the fact that the vast majority of the field's members see them as objectively right and obvious ways of thinking.[2] Bourdieu's perspective is particularly useful in that it allows us to make sense of the seeming tension between lawyers as market actors and lawyers as state agents (see, e.g., Abel 2003).

This article adds to the emerging body of Bourdieuian studies of the legal profession[3] by focusing on the case of Poland under communist rule. The result is interesting, since the historical record shows a dynamic of lawyer-state interactions that is very different from what has been reported in other studies. Much more than an opportunistic execution of an ever more effective means of controlling society, the legal profession emerges as a somewhat independent player trying to "sell" the rule of law to the regime as a panacea for recurring social discontent. Convinced of the inevitability of their country's nondemocratic future, members of the Polish legal elite found the rule of law to be an attractive second best for society—and a strategy that would also be acceptable to the Communist Party.

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2. In words of Bourdieu, "[i]f the system is to work, the agents must not be *entirely* unaware of the truth of their exchanges, while at the same time they must refuse to know and above all to recognize it" (1977, 6, emphasis added).

3. While the earlier-mentioned contributions of Dezalay and Garth (1996, 2002, 2010) have unquestionably been the most influential works in this field, other examples have begun to emerge, including Dinovitzer (2006, 2011), Sommerlad (2007), Jewel (2008), and contributions to the "Law, Lawyers, and Transnational Politics in the Production of Europe" symposium, published in Vol. 32 (1) of *Law & Social Inquiry*.

The banner for these efforts was provided by the concept of *Praworządność Socjalistyczna*—the Polish version of the socialist legality (Russian: *sotsialisticheskaya zakonnost'*) that was popularized throughout the Socialist bloc during the de-Stalinization of the late 1950s and early 1960s (for contemporary Western analysis, see, e.g., Stone 1962). Interestingly, the Polish translation of the concept was unique in the socialist countries in that it actually included the reference to "rule," in addition to "law"—*praworządność* literally translates to "law-ruleness." While I have found no evidence that this semantic nuance stems from anything else than a linguistic idiosyncrasy,[4] translating the Polish concept literally as "the socialist rule of law" is helpful as it forces us to take communist lawyers a little more seriously.

It is no coincidence that the case most resembling my Polish narrative is that of the emergence of the ultra-positivistic *Rechtsstaat* doctrine in late nineteenth-century Germany. There, after quashing the 1848 democratic movements, the Kaiser's regime agreed to bind its actions by laws in order to make the defeated (but by no means destroyed) bourgeoisie accept the unchanged locus of political power. In the words of Rueschemeyer, "the conception of *Rechtsstaat*, government under the rule of law, was [considered] a suitable substitute for the democratic idea of popular control of political decision-making" (1973, 152). For that middle ground between arbitrary authoritarianism and liberal democracy to work, the *Rechtsstaat* had to be emptied of all political, functional elements. It was defined merely as "the kind of state whose power was articulated in legal modes of action—that is, in measures that conformed to general rules" (Krieger 1957, 352). The postulates of the Polish lawyers under communism were strikingly similar. While the Party was to keep the monopoly of its political power, it would constrain itself by executing this power only through general, uniform, and thus more predictable and less arbitrary, legal rules. This strategy thus diverged from a dichotomy between "collaboration with strong rulers" (Dezalay and Garth 2010, 249) and "march[ing] at the vanguard . . . of political liberalism" (Halliday, Karpik, and Feeley 2007, 1).

At the very minimum, the Polish data show that the palette of lawyers' responses to authoritarianism is broader than the cases hitherto discussed in the literature suggest. At most, it could encourage scholars to revisit other cases. In this context it is important to note that my analysis differs, both in tone and in some underlying assumptions, from other studies that apply Bourdieu's methodology. As Bertilsson (2006) observed in a perceptive critique, these studies often adopt a rather antagonistic attitude toward lawyers. This attitude has led Bourdieuian scholars to fail to appreciate the significance of the deep methodological differences that exist within jurisprudence. Bourdieu himself aptly characterized the most fundamental of these distinctions: the one "between *formalism*, which asserts the absolute autonomy of the juridical form in relation to the social world, and *instrumentalism*, which conceives of law as a reflection, or a tool in the service of dominant groups" (1986, 814). Bourdieu categorically

4. Like other Slavic languages, Polish does not distinguish between "law" and "right" (in all senses of the word). However, unlike other Slavic languages, Polish also lacks separate words for *recht* and *gesetz*. Thus an exact translation of the Russian *zakonnost'* would overlap with the word that is already used as "righteousness." Polish authors do not seem to make much of the difference. One public-law textbook acknowledges it in a footnote but does not elaborate on it (Kmieciak 2000, 47). A recent treatise on the Soviet legal system uses the Polish "law-ruleness" even in translations of actual Soviet laws (Lityński 2012).

declares, however, that any "rigorous science of law" must "immediately free itself" from the confines of that positivist-functional divide.[5] At first glance, this might seem to be simply a logical consequence of Bourdieu's broader idea of "reflexive sociology" (or "double rupture")—the research attitude that mandates "a critical reflection on the pre-constructions that dominate a[n] area" under study (Madsen 2006, 35).

But critical reflection does not need to be equated with a blanket dismissal. Freeing oneself from a belief that there exists a transcendentally correct solution to the Hart-Fuller debate does not mean that the positivist-functionalist divide should not be regarded as potentially relevant for understanding lawyers' strategies for social domination. The very ability to *choose* between these rather different ways of being a lawyer constitutes a strategic opportunity. As we will see later, in the reality of an authoritarian state, the fact that the legal community chooses to "stay formalist" (focusing, e.g., on whether an administrative agency properly cited a legal provision in its decision)—rather than "turning functionalist" (and talking, e.g., about human rights)—has tremendous implications for both the state and the profession.

The remainder of this article proceeds as follows. In the next section, I analyze how Polish lawyers explicitly promoted the socialist rule of law as a way to increase the legitimacy of the authoritarian regime. Then, I argue that the socialist rule of law meaningfully constrained the regime in its exercise of political power but was not intended as a way to challenge that power. Third, I demonstrate that the socialist rule of law proved highly beneficial to the legal profession itself, providing lawyers with ample opportunities to elevate their social status. And finally, I discuss the resources that lawyers employed in their push for the socialist rule of law.

LAWYERS, THE RULE OF LAW, AND LEGITIMACY

Let me begin by analyzing the relation between the rule of law and the legitimacy challenges that the communist regime faced. The key evidence here comes from the chronology of events. A good way to understand this chronology is to appreciate one notable feature of a communist state: periodical purges at the top of the ruling party. Polish communism was marked by regular instances of ruling coteries being abruptly replaced by ambitious newcomers who tended to declare the practices of the predecessors as deeply erroneous interpretations of Marxism. This ritual repeated itself approximately every decade, with the first "coup" coming in 1956. That year, the plenum of the Polish Communist Party appointed a devoted communist, but also a former Stalinist prisoner, as the new first secretary. A period of liberalization followed. It did not take long, however, before the new team started taking back freedoms it had allowed society early in its rule. The final straw came in December 1970, when the authorities used the military to suppress a strike. The resulting public outrage allowed a younger group within the Politburo to depose the discredited leadership. Like their predecessors, the new team tried to win legitimacy by loosening controls over society. Again, though, the thaw did not last long. The 1980 strikes in the Gdansk shipyard triggered the emergence

5. Both "positivism" and "functionalism" are obviously used in the jurisprudential and not sociological sense.

of Solidarity and yet another purge in the top ranks of the Party. Eighteen months later, the communists struck back by declaring martial law, banning Solidarity, and jailing thousands of opposition activists. The need to resort to martial law was viewed, however, as a sign of the weakness of the Party. The martial law was repealed in 1983 and, for the remainder of the 1980s, the regime tried in vain to win back a measure of public support—while maintaining its political dominance.

If the argument about the rule of law being used to *control* society was true, one would expect the importance of legal rules to rise alongside other measures aimed at tightening such control. In Poland, by contrast, the public conversation about the socialist rule of law took place predominantly in times of thaw, coinciding with periods when the expression of more "suspicious" ideas was generally freer. Consider, for instance, the account of the Supreme Bar Association, which in the interwar period was the self-governing organization of attorneys. The Association was banned under Stalinism and reinstated in 1956. One year later, *The Bar* magazine published by the Association was reactivated after a hiatus that had lasted since 1939. Instantly, the journal joined the campaign for strengthening the rule of law. "We are against summary courts and show trials" an editorial stated boldly in one of the first issues of the magazine (Janczewski 1957, 20). "After the [1956] transition," wrote an attorney two years later, "it should be obvious for everybody that ensuring civil rights [is] in the interest of the entire socialist society" (Żywicki 1959, 25).

As early as the late 1950s, the regime began to limit the autonomy of the restored Bar Association. Some decisions of the Association's board became subject to review by the Justice Minister. The authorities also aggressively supported procommunist candidates in elections to the Association's governing bodies. It was only in 1981, amid the emergence of Solidarity, that the authorities allowed the National Assembly of the Association to convene. But with all that being said, it is still notable that after its restitution in 1956, the Bar Association survived all ensuing political crises with at least *some* degree of autonomy. This autonomy, however limited, allowed attorneys to develop a coherent set of ideas about how the rule of law can and should be strengthened in the communist state. The resolution of the 1981 National Assembly emphasized that "legal order, binding equally all citizens and the state apparatus . . . constitutes a barrier against the emergence of political crises; abiding by it is indispensable for maintaining social stability" (Palestra 1981, 196–97). "In view of the troublesome experience," the resolution continued, "the nation demands real guarantees of the rule of law—it will not be satisfied by declarations" (197).

What were these "real guarantees" that the legal community viewed as crucial for the regime to maintain any legitimacy? One important example was the judicial review of administrative actions. Tellingly, the introduction of administrative courts was also a key component of the *Rechtsstaat* in nineteenth-century Germany. The fact that the Polish legal community put so much emphasis on this same issue further highlights the similarities between the processes of constructing rule-of-law protections in these two seemingly distinct nondemocratic regimes.

German-style administrative courts had functioned in interwar Poland and as such had been a target of Stalinist legal commentators, who (in the early 1950s) dismissed them as a "hobby of bourgeois legal science" (Państwo i Prawo 1950, 117). In the post-1956 thaw, lawyers begun to draw a direct connection between this blanket

dismissal and "an increasingly ruthless domination of administrative apparatus over a citizen" (Dawidowicz 1956, 1044). The calls for reviving the judicial review continued, becoming especially pronounced in every subsequent thaw period. "When after the tragic December days, we have been faced with an inevitable task of . . . regaining the public trust," read an op-ed in *State and Law*—the country's most prestigious law journal—referring to the above-mentioned bloody suppression of 1970 strikes, "the issue of judicial review of administrative decisions has had to be placed at the top of our priority list" (Bar 1973, 3). Note again the direct link between the proposed institutional reform and the predicted legitimacy boost for the communist regime.

These quotes do not merely illustrate the opinion of a group of legal commentators. To begin with, communist Poland was similar to many states in the Continental tradition in that even its most academic law journals featured authors who, by US standards, would be considered "part-time professors" (Dezalay and Garth 2002, 4). Even if they were on the faculty of a university, their primary job would most often be that of an attorney, a judge, a counsel in a state enterprise, or—not infrequently—an expert of a ministry or even the Politburo. Their opinions influenced the profession not only through the written word of an article, but also through their everyday practice.

Even more importantly, it is necessary to keep in mind that in communist Poland every publication had to be cleared through censorship. The timing of these publications thus speaks volumes about the underlying political motivations of the communist apparatus. The socialist rule of law was treated as a concession to society. Judicial review was introduced in 1980—the year when the regime yielded on many other fronts, most importantly by recognizing Solidarity as an independent labor union. "Strengthening of social trust in the authorities depends to a large extent on cementing the rule of law in the administrative apparatus," explained the report from a conference of senior lawyers held shortly before the introduction of the review (Łęczycki 1979, 163). Once again, the report underlined lawyers' belief that the rule of law can diffuse a growing social tension. "The relation of the micro- and macro-scale problems was especially highlighted," the report stated, "with a particular emphasis on the interdependency between the rule of law and activities aimed at solving socio-economic challenges to the country's development" (163). "Every breach of law is acutely sensed by an individual," concurred Sylwester Zawadzki (1979, 11), *State and Law*'s influential chief editor, who will soon reappear in our story. In his view, examples of administrative abuse "resonate much more powerfully than more numerous instances of [administrative action conducted] in accordance to law. Breaches of the rule of law . . . lead to the diminishment of the achievements of the administration in the eyes of public opinion" (3).

The Bar conveyed a very similar message, directly outlining the temporal regularity that I have discussed in this section. "Efforts aimed at introducing the judicial review," wrote an attorney,

> mark a curve on the screen of our social lives (or life). . . . The upturn of this curve was always connected with periods of intensive activity in our political life and with efforts aimed at strengthening the rule of law and deepening the trust between a citizen and the authorities. (Świątkiewicz 1980, 1)

THE RULE OF LAW, INDIVIDUAL RIGHTS, AND POLITICS

In a 1969 treatise, Adam Łopatka—another influential law professor who would later become the last communist-appointed Chief Justice of the Supreme Court—argued that

> the rule of law, like every important phenomenon of social life, has a distinctly class character. That is why it is necessary to distinguish sharply between socialist rule of law—our rule of law—and bourgeois law. Socialist rule of law represents a higher, more perfect level of the development of the rule of law. (Łopatka 1969, 16)

In a *Law & Social Inquiry* article written not long after the fall of communism, Martin Krygier (1990, 638) offered Łopatka's statement as evidence that the socialist legality was a distinct phenomenon having little in common with the "real" rule of law, presumably even in its thinnest incarnation. Yet, if we follow Bourdeiu's dictum about practice having a logic that is "not that of the logician" (1990, 86), we can look at this very same comment somewhat differently. Łopatka may be putting so much energy into distinguishing the socialist rule of law from its bourgeois counterpart precisely because the two ideas *are so similar* in their essence. One representative definition of the socialist rule of law states that it is "the method of realizing state functions [in which] the state . . . regulates all important social relations through law and ensures strict adherence to law by state organs and citizens" (Wiszniewski 1962, 48). This statement is very similar to the thin definition of Raz-Hayek mentioned at the beginning of this article. A late-1970s treatise on legal theory flatly admits that "the modern concept of the rule of law . . . is undoubtedly a major achievement of bourgeois revolutions" (Lang, Wróblewski, and Zawadzki 1979, 479). Taken together, these comments may be read as reflections of the legal profession's attempt to argue for the legal order meaningfully constraining the excesses of the regime, without creating any appearance of challenging that regime politically.

To be sure, I am not suggesting here that we should take communist legal commentators at face value. But consider the actual reform proposals that were repeatedly raised as part of the socialist rule-of-law discussion. The judicial review and the independence of the Bar Association have already been mentioned, but the complete list of lawyers' reform proposals is much longer: codifications of administrative, civil, and criminal procedures, the introduction of tort liability for illegal state actions, and the establishment of the office of the Ombudsman and of the Constitutional Tribunal tasked with reviewing the constitutionality of laws passed by the Party-controlled legislature. If one looks at that list, it does not seem farfetched to conclude that these reforms hold some promise of containing the regime's excesses and protecting the rights of individuals.

That angle was explicitly emphasized in the legal press. "Protecting the rights of a citizen, defending citizens against abuse or disrespect by bureaucrats, establishing a proper administrative procedure are all issues that have emerged as the highest priorities," argued a commentator during the 1956 thaw (Jodłowski 1956, 7). "The first and basic role of the socialist rule of law . . . is to ensure the protection and realization of the

subjective rights of citizens [and], in particular, of the basic constitutional civil rights," echoed another commentary in the same paper in early 1971 (Lang 1971, 1). In the early 1970s, the editors of the *Judicial and Penitentiary Gazette* prepared a series of articles titled "Citizens' Rights and the Courts' Obligations" (Gazeta Sądowa i Penitencjarna 1971). The series emphasized how newly enacted codes should be taken seriously by the administration of justice. It was presented at meetings with appellate court judges and public prosecutors. Legal periodicals also revealed specific instances where the lack of legal protections resulted in real harm to citizens. One article in the *Gazette* describes the case of the Ministry of Municipal Management, which, after eleven years, repealed its own decision approving the swap of apartments; the case was used to underline the need for the judicial review (Podemski 1971).

Once the Party introduced the postulated reforms, lawyers continued to emphasize the social benefits these reforms produced. "The jurisprudence of the Supreme Administrative Court proves that care about the rule of law and concern about respecting the rights of citizens are inextricably linked," read a comment from 1986. "It should be expected," the author continued, "that the role of the [soon-to-be inaugurated] Constitutional Tribunal will be equally significant" (Kędzia 1986, 498). When, in June 1986, the Tribunal delivered its first verdict (discussed later in this section), the legal press made sure to emphasize the historic nature of the event. "We have waited for this development for decades," exclaimed a commentator on the front page of the *Judicial Gazette* (Pilczyński 1986, 4). Soon after, the discussion about the introduction of the Ombudsman was in full swing. In late 1986, *Law and Life*—a popular magazine about law published since 1956—featured at least one opinion piece on the topic each week, with titles such as "The Protector of Rights" (Biernacki and Dzialuk 1986), "The Last Hope" (Murzynowski 1986), and "Green Light for the Ombudsman" (Lewandowska 1986).

With all that being said, the push for constraining the state apparatus with a stable framework of predictable legal rules was emphatically *not* about the legal profession challenging the political dominance of the Party. That ultimate political loyalty is precisely the message of the earlier-mentioned quote from Adam Łopatka emphasizing the superiority of the *socialist* rule of law. No period demonstrated this loyalty better than the tumultuous 1980s. Although initially as many as 25 percent of (mostly municipal) judges joined Solidarity (which was still lower than the one-third average in the rest of the working population), only eleven judges nationwide resigned when martial law was declared (Stanowska and Strzembosz 2005, 224). Among public prosecutors, no more than 1 percent joined the free union. Even attorneys—the most ideologically suspicious subgroup within the profession—rejected Solidarity's campaign for dismissing the procommunist board of the Supreme Bar Association at the above-mentioned inaugural congress of the Association's National Assembly in January 1981 (see Palestra 1981). "The judicial apparatus has generally fulfilled the tasks set for [it] during martial law," concluded an internal report of the Politburo. An influential minority of lawyers actively participated in quashing the opposition. The Supreme Court increased the sentences for political prisoners in the majority of cases referred to them. Zawadzki, the above-mentioned chief editor of *State and Law* and an influential law professor, took on the position of Justice Minister. Łopatka, before taking the earlier-mentioned judicial appointment on the Supreme Court, became the Minister for

Religious Affairs. Chief judges of virtually every appellate court carried out a campaign of harassment against suspicious judges and administrative personnel (Stanowska and Strzembosz 2005, 42–66).

Throughout the 1980s, lawyers by and large continued to accept the inevitability of communism. Telling evidence of their view was the nationwide research project aimed at drafting a new constitution for the People's Republic. In a panel organized by *Law and Life* in 1986—when the legitimacy of the regime was hitting new lows—prominent contributors to the project discussed topics such as the legal understanding of the concept of "dictatorship of the proletariat" or the proper institutional role of the puppet "Patriotic Movement for National Revival." "There is no doubt that the [Party] program does not provide for the institutionalization of political opposition" one of the discussants concluded unequivocally in a passage pulled out by the magazine (Prawo i Życie 1986).

The faith in the autocracy-cum-rule-of-law solution was also apparent in the case law of the newly established judicial institutions. In its very first opinion of May 1986 (Decision of May 28 1986, 2), the Constitutional Tribunal struck down a governmental regulation claiming that it exceeded a statutory delegation. But the court-designed nondelegation doctrine was far more restrictive than anything known in established democracies.[6] Reading the opinion, one cannot escape the impression that its main thrust was about vindicating the theoretical superiority of abundantly cited local legal commentators, fixated on the objective of defending "the hierarchical structure of the system of the sources of law—the basic assumption of the legal system of the People's Republic of Poland" (Decision of May 28 1986, n48). In pursuit of its vision of legal purity, the Court remained blind to a glaring paradox behind its doctrine: After all, since Parliament was under the unchallengeable control of the Communist Party, nondelegation changed nothing in the overall (mal)distribution of political power. In a rather Orwellian moment, the Court portrayed its decision as a "statement of support for . . . law-making by a representative organ, through a democratic procedure . . . and with MPs accountability to voters" (Decision of May 28 1986, 4), turning a blind eye to the fact that, in 1986, the last genuine parliamentary election had taken place more than a half-century earlier.

A particularly telling example of how deeply the hesitancy to become politically involved was engrained in the mentality of the Polish lawyers comes from a *State and Law* article published a year after the fall of communism. Authored by Adam Zieliński, Chief Judge of the Supreme Administrative Court (and a law professor), the essay commemorated the tenth anniversary of the Court's establishment. The author began by distinguishing the following three periods in the Court's brief history:

> The first stage was a period of a preparatory work—dealing with major organizational and staffing issues . . . and gaining a proper position in the system of the organs of legal protection. The second stage [was] about relatively normal and stable work. . . . The third stage has been focused on the undertaking of new tasks

6. This is particularly the case in the United States; see Posner and Vermeule (2003). For Western European analyses, see Rose-Ackerman (1995) and Shapiro (2002, 173–99).

> [based on an amendment passed in 1990]. . . . Crystallizing major judicial trends representing a certain *image* of the Court . . . lasted at least until the end of 1983. (Zieliński 1990, 3)

To reemphasize: this reflection on the work of the Supreme Administrative Court in the 1980s came a year *after* communism ended—and thus cannot be attributed to censorship (abolished in 1989) or to fear of political retribution. Given this context, it is quite astonishing that the country's top administrative judge did not consider the emergence of a democratic political system in the spring and summer of 1989 a noteworthy turning point for his Court. It seems equally incomprehensible that the judge would not even mention martial law, which was in effect from 1981 to 1983. One would think that stories of the agonizing struggles of the newly established Court in trying to protect human rights during this time would be at least as important as "solving staffing problems" or establishing the "*image*" of the "organ of legal protection."

THE RULE OF LAW AND THE STATUS OF THE LEGAL PROFESSION

To this point, my account has focused mostly on the effort of socialist lawyers to contribute to the stability of what they considered the only attainable political system. Now let me turn to the other part of my argument: I argue that the conclusion about the honesty of this effort can perfectly coexist with the realization that the socialist rule of law produced significant benefits to the legal profession and especially to its top echelons.

What were these tangible benefits? The most basic ones were power, prestige, and employment opportunities stemming from the need to interpret newly enacted codes and service newly established judicial institutions. Indeed, the very process of drafting the new codes was already a sign of the increased influence of lawyers. "We should . . . note a certain increase in the prestige of the legal sciences," boasted a *State and Law* editorial in response to the establishment of the codification commissions by the post-1956 regime (Zawadzki 1962, 386). In 1972, the government required all ministries to establish separate legal units that, apart from providing in-house advice on issues related to the new Code of Administrative Procedure, became major players in a law-making process. A year later, the Legislative Council was created in the Prime Minister's office, becoming another fixture of the system.

Like new codifications, the establishment of the judicial review of administrative decisions—and of the constitutional review of parliamentary legislation—provided lawyers with attractive opportunities. Particularly interesting is the makeup of judges serving in the newly established high-level judicial institutions. In a truly Bourdieuian fashion, these appointments disproportionately benefited lawyers occupying the highest echelons of the internal professional pecking order. Even the transition to democracy did not alter this reality. Between the 1980s and the mid-2000s, all Chief Judges of the Supreme Administrative Court, all Chief Justices of the Constitutional Tribunal, and each of the successive Ombudsmen were selected from among highly regarded law

professors.[7] While in many countries the constitutional courts are under the influence of academics, in Poland, the significant professorial involvement has extended over *all* top-level judicial institutions.

Their work promoting the rule of law also allowed the Polish legal elite to earn some measure of international recognition and respect beyond the communist bloc. Scholars studying legal systems of authoritarian regimes often acknowledge "external legitimation" of the *regime* as a reason why rule-of-law rhetoric may be utilized (see, e.g., contributions to Ginsburg and Moustafa 2008). What is interesting in the Polish case is the practical usefulness of such legitimation for some key members of the *legal profession*. Take Stanisław Ehrlich—the Stalinist chief editor of *State and Law*. In the 1960s and 1970s, he took the role of the supplier of what Bourdieu calls "controlled transgressions" (Bourdieu 1984, 326). His arguments for a (limited) expansion of the formal definition of the socialist rule of law were subject to steady criticism by mainstream legal commentators, playing mostly the role of defining the outer borders of the acceptable practice.[8] But Ehrlich was also a perfect example of a person who "combine[d] the profits of transgression with the profits of membership" (Bourdieu 1984, 497). He was invited for, and permitted to accept, visiting posts at prestigious Western universities. He was elected deputy chairman of the International Political Science Association (Turska and Winczorek 1998). For anyone living under communism, such opportunities were extremely valuable, not the least because of the ability to travel beyond the Iron Curtain.[9]

To be sure, prestigious appointments or travel opportunities benefited mostly the upper echelons of the legal elite. Yet the advantages of the "legalization" of Polish communism did also trickle down. Already in the late 1950s, arguments were made for an increase in the number of attorneys in view of the "anxiously anticipated administrative courts" (Garlicki 1958, 7). When these courts were finally established, a commentator exclaimed that, for attorneys, "a new, fine area of activity has opened up" (Świątkiewicz 1980, 12).[10] Similarly, the above-mentioned introduction of legal offices in the ministries was promptly used to argue for similar arrangements in regional and local governments. In 1976, "broadening the representation of lawyers" in regional legislatures was the very first recommendation presented to the first secretary of the Party by the Chairman of the Supreme Bar Association (Palestra 1976, 3). "We do not want to fight for rank and place in the social hierarchy," asserted the head of the Warsaw

7. In total, of the fifty-three justices appointed to the Constitutional Tribunal between its establishment and 2010, thirty-seven have been law professors.

8. When, in one paper, Ehrlich criticized the dogmatic method of legal analysis prevalent in communist Poland, *State and Law* published a series of strong rebuttals from virtually every corner of the legal profession. "Sociology of law is undoubtedly a branch of sociology and not of law," wrote an eminent civil law professor (Szer 1965, 832), adding that "a lawyer should not dabble with economy or sociology." "We need to resist a wave of 'dejuridisation' of the study of law," concurred another influential commentator (Opałek 1967, 7).

9. In a recent memoir, one of Poland's leading legal thinkers recalls with some dry humor the few international conferences that he was allowed to attend in 1970s. Recollections include the awe over "buffets full of different oceanic fish" at a conference in Reykjavik or politically risqué exchanges with the Polish ambassador in Helsinki (Tokarczyk 2009).

10. For a similar reaction to the establishment of the Constitutional Tribunal, see Czeszejko-Sochacki (1986).

Bar in the late 1950s (Garlicki 1959, 13). "Polish attorneys have never desired any privileges for themselves," concurred a well-known attorney almost three decades later. "Because, in truth, the scope of our rights delineates the extent of the rights of the citizens" (Rymarz 1982, 14).

The next step was to extend lawyers' influence beyond governmental institutions and into the enormous universe of state-owned companies. The status of thousands of the so-called legal counsels in these companies was initially rather low, but it steadily improved along with the overall increase in the importance of law. In 1980, when the socialist rule of law was at its peak, a *Law and Life* op-ed argued boldly that "[t]he postulate of the broader participation of the legal milieu in managing state and social matters should be seriously considered" (Kozłowski 1980, 32). That the desired object of this new influence was largely the economic sphere becomes evident from how the author aims at two professional groups with which lawyers competed for status and influence in the centrally planned system. "There is a myth that managerial functions are best suited for people with technical education, or—ideally—for economists."[11] Two years later, these postulates were to a significant extent satisfied when the new law introduced a separate profession of the legal counsel. While legal counsels continued to be employed by state-owned enterprises, they received guarantees of independence, status, and self-government nearly on par with the attorneys (Lityński 2010, 103). By the end of the 1980s, the number of legal counsels had more than doubled from about 6,000 reported in 1970 (Palestra 1970, 113; Jaworski 1990, 5).

Finally, there is also a deeper sense in which the "legalization" of the sociopolitical life of communist Poland benefited lawyers. The more the focus on the formal aspect of the rule of law was accepted by the communist apparatus, the safer the job of a lawyer became. Consider the comment of a legal theorist, who—in 1971—declared that "the dominant role of . . . the Marxist theory allows us to avoid diffusing our efforts in controversies about philosophical foundations of legal theory, which is such a typical feature of the bourgeois science of law" (Ziembiński 1971, 259).

Reading such a statement could send chills down the spine of any scholar or judge who would be interested in a more normative, functional approach to law. For what it says is that any statement concerning the *objectives* of law can be constructed as an attack on "Marxist philosophical foundations." It did not help that Polish communism, like any authoritarian system, was full of contradictions and pathologies—making policy-oriented legal reasoning even more perilous.[12]

The focus on textual interpretation allowed lawyers, in the words of Zawadzki (1962, 387), "to stay aside . . . and avoid problems that include some risk of novelty."

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11. This kind of interprofessional competition has been thoroughly analyzed in works such as Dezalay and Garth (2002) and Abbott (1988).

12. A telling example here is that of noted legal sociologist Adam Podgórecki—in the early 1970s, the head of a research center established to study issues of social pathology and resocialization. Authorities agreed on the center's activities, expecting it to focus on the problem of crime. Yet Podgórecki's team discovered that studying problems such as low respect for law or omnipresent corruption was hardly possible without analyzing their deep roots, that is, the pathological institutional foundations of the communist state. In an audacious 1971 report, Podgórecki's team called for replacement of a "Party monologue, consisting in an autonomous way of determining tactics of operation and of solving social problems" with a "mutual dialogue with the people" (Podgórecki 1986, 680). The research team was brutally dissolved and Podgórecki was forced to emigrate.

Through the new codes and institutions, this formalist thinking would allow lawyers to influence the sociopolitical life of the country without being accused of playing politics. "It should be hoped that with this verdict, the role of legal doctrine will increase," observed a commentator in response to the above-mentioned inaugural decision of the Constitutional Tribunal. "So far, [legal doctrines] have influenced practice only through the persuasion," the author continued. "Now our views will get a chance to be put into practice through the jurisprudence of the Constitutional Tribunal" (Pilczyński 1986, 4).

Again, no cynicism is asserted here—especially, since there were many "good arguments" with which lawyers could convince themselves to *really believe* that legality devoid of political or moral considerations is truly the best way to improve the sad fate of the Polish state and society. The logic here is precisely analogous to the conclusions of studies showing that one of the strongest factors determining the number of medical procedures in a given specialty is the number of available physicians trained in that specialty (see, e.g., Leonard, Stordeur, and Roberfroid 2009). When the only thing you are allowed to have is a formalist hammer, then every legal problem appears to resemble a nail.

WHY THE COMMUNISTS BOUGHT IT

Let me now turn to the final part of my analysis. It is clear that, in their push for reforms of the communist state, advocates of the socialist rule of law scored some important successes. Granted, my argument here is a typical "glass half-full" observation, but it is nonetheless remarkable that a regime with a total political monopoly, backed by a world superpower, ended up tying its hands in *any* way by buying into an idea of a group of lawyers. Yet, that is exactly what happened. Attorneys did get their association—the only professional group in the country. The Code of Administrative Procedure did provide citizens with meaningful procedural guarantees, while the Civil Code did cement individual property rights. With relatively minor modifications, both codes remain in force to this day. The Supreme Administrative Court and Constitutional Tribunal dared, from the outset, to invalidate the regime's decisions that did not meet high standards of legal neatness.

A key question in response to these developments is: Why did the regime consider the lawyers' ideas seriously? Internal documents of the Party's Central Committee and of the Ministry of Justice shed some light on this issue. The key here was the regime's deep desire, amplified at times of crisis, to maintain social stability. That stability was considered essential for the future of the Party's dominance. "The December events demonstrate," read an analysis prepared for the Politburo after the unrest of 1970, "that, in an instance of a serious conflict between the Party and the people[,] anti-socialist forces can activate, gain influence and the initiative" (Secretariat of the Central Committee 1971, 11). "Among the causes of the crisis [of 1980/1981]," argued a similar memo written in 1984, "and among the guarantees that [future] developmental tensions will not lead to dramatic social conflicts—matters of the state and its functioning are of central importance" (Secretariat of the Central Committee 1984, 1).

The Party had a well-developed view as to which social groups threatened that stability. "Ideologically uncrystalized forces of the petite bourgeoisie—with its wavering

political culture . . . and primitive fascination with capitalism—are always the carriers of the tendencies contrary to socialism," pointed out a 1971 analysis (Secretariat of the Central Committee 1971, 16). Fifteen years later, a directive of the Propaganda Department similarly identified petit bourgeoisie concentrated in large urban centers as focal points on the Party's "map of threats" (Propaganda Division of the Central Committee 1985, 24).

Lawyers possessed some important resources that could help communists keep these "dangerous" social groups at bay. Let us begin with the symbolic capital of the profession traditionally regarded as learned and prestigious. Two aspects deserve special attention here. First, the profession included some prominent members of the prewar elite. When Maurycy Jaroszyński—a senior governmental official of the 1930s—declared his sense of "a particularly grave indebtedness to the working class," stemming from the fact that "a great majority of the Polish intelligentsia was at the service of the oppressive class" (Committee on Law and Rule of Law of the Central Committee 1984, 3)—that statement could be seen both as a declaration of loyalty and as a reminder of the social capital that Jaroszyński was willing to employ in the service of the new order. Second, the most entrepreneurial lawyers turned out to be very effective in reinforcing their status by acquiring academic titles. Throughout this article, I have emphasized that so many members of the legal elite were also law professors. Bourdieu provides a classic insight into how convenient academic titles are to cement social hierarchies (Bourdieu 1988). In communist Poland, partly because of the absence of other role models, social reverence toward academia was particularly remarkable.[13]

To realize how effective the mobilization of this capital was, we can quote Politburo analysts, who characterized the approximately 60,000 people with legal education as "the milieu of people who are educated, embedded in different areas of our social, political, and economic life, with high social authority and opinion-making power" (Administrative Division of the Central Committee 1984, 1). Clearly, part of this power was a "bourgeois remnant"; the same document decries "the elitist character of the profession" and the "limit[ed] access of candidates with working-class or peasant pedigree" (18). Yet, another part was the outcome of the successive reforms introduced under the socialist rule of law banner. Lawyers benefited from a virtuous cycle—their political relevance made their reform proposals win, which further strengthened their political relevance.

Consider Zawadzki—the earlier-mentioned editor of *State and Law* and the martial law Justice Minister. With his entirely postwar university education, and no connections to any prewar legal dynasty, he took the People's Poland as given and was unimpeded by any troubling bourgeois episodes in his resume. Yet his entire career was tied to the rising tide of the socialist rule of law. In 1956, as a fresh PhD, he was offered the influential position of *State and Law*'s deputy chief editor. For the next two decades he worked hard to aggregate his professional capital. He became a full professor in 1973 and a member of the Academy of Science in 1976. One year later he was appointed as a top advisor to the Party's first secretary. In this position he lobbied intensively for the

13. See Domański and Sawiński (1991) for the conclusion that the university professors were *the* most respected profession throughout the communist period.

establishment of the Supreme Administrative Court—and was rewarded by becoming the Court's first Chief Judge in the 1980 (Jarosz 1999). Next year, he was called to take the nasty job of the martial law Justice Minister. He was complicit in the suppression of Solidarity but also pushed through the 1982 reform that granted the Bar Association much greater independence and created the self-governed profession of the legal counsel. He left the government and, with the Party's blessing, led the work on the new constitution of the People's Republic.

One of the key assets of people like Zawadzki stemmed precisely from the ideological diversity of his profession. Lawyers could signal the level of their ideological zeal—by choosing between becoming an active or passive Party member, joining the officially allowed intelligentsia faction instead of the Party, or remaining unaffiliated. Perhaps the strongest of these signals was regularly to attend church services—something about which the Politburo was particularly concerned (Administrative Division of the Central Committee 1984, 7). Yet even the most faithful members of the profession, like Zawadzki, pursued a double game that involved some measure of loyalty to the profession. A 1981 memo prepared for the Politburo harshly criticized Zawadzki—then the Minister of Justice—for not being swift enough in eliminating judges who had joined Solidarity (Administrative Division of the Central Committee 1981). When in 1984, a hard-line Central Committee member urged for the "cleansing the judicial milieu from people who are ideologically foreign," Zdzisław Czeszejko-Sochacki—a son of a prewar attorney, a law professor, and the Supreme Bar Association president who "survived" the 1981 National Assembly—promptly struck back. "We cannot under any circumstances discredit members of our administration of justice," he retorted. "That is what our enemies have been doing," he added, in a typical jab used to discredit an opponent in a Party discussion (Committee on Law and Rule of Law of the Central Committee 1984, 3).

When analyzing this equilibrium between professional loyalty and ideological diversity, the integrative role played by the above-mentioned penchant for academic titles should not be underestimated. The fact that influential judges, attorneys, and legally trained Party officials had second jobs as law professors, meeting regularly in the cozy atmosphere of the Warsaw University Law Department or the legal section of the Polish Academy of Science, helped the profession keep a measure of cohesion.[14] Especially in the German-style academic system that Poland adopted, going through what essentially were two doctoral dissertations (PhD and the "habilitation") required navigating a complex network of quid-pro-quo relations between supervisors and reviewers.[15] It is no coincidence that Jarosław Kaczyński—a staunchly conservative politician of post-1989 Poland—has always spoken fondly of Stanisław Ehrlich—the earlier-mentioned Stalinist *State and Law* editor. Ehrlich agreed to supervise Kaczyński's PhD despite the latter's involvement in the democratic opposition (Kaczyński et al. 2006,

14. This integrative role survived the fall of communism. I remember when at a lecture at Warsaw University in late 1990s, a professor who at the same time was a partner in a newly established branch of a US law firm (and a former communist functionary) told us that the only reason he continues to waste time on the university job is that "this place offers an unparalleled networking opportunity."

15. In a neatly Bourdieuian fashion, there were lawyers whose strategy included criticism of this system. "There are cases where peer reviewers are not chosen according to competence, but based on reciprocity," decried Gebert (1973, 4).

68). If lawyers had more universally bought into the communist ideology, the regime could have taken them for granted. Their position around the ideological fence greatly enhanced their value. The well-positioned proregime lawyers could "deliver" the profession's acquiescence (or even support in some areas, such as the fight against petty crime that was endemic under communism).

One should also not underestimate the importance of personal qualities traditionally attributed to lawyers, such as the power of persuasion. In the one-party system, like at a royal court, these qualities become essential for those within the inner circle of power. In this context, it is important to point out that many reforms discussed in this article were introduced in the 1980s. One reason for that was surely the emergence of Solidarity and the public outrage over martial law. Simply put, the regime badly needed to shore up its legitimacy. But one should also not overlook the importance of the personal influence of people like Zawadzki. Politburo documents show that *all* rule-of-law-related reforms of the 1980s were internally championed by Party functionaries who were also prominent lawyers. Before the mid-1970s, one can find few if any such high-profile lawyers at the pinnacle of the Party hierarchy. The prewar lawyers were disqualified for obvious reasons, while the postwar lawyers like Zawadzki were still too early in their careers.

Another key resource at lawyers' disposal was their almost uniform predilection toward positivistic modes of legal thinking. One can imagine how the regime's interest in the socialist rule of law would have instantly vanished if the idea had been couched in a more normative policy language. The fact that lawyers almost universally rejected functionalist temptations cemented their position as technicians impartially declaring state actions to be legal (cf. Bourdieu 1986; Bancaud 2002). Especially for the urban intelligentsia stubbornly unconvinced by Marxism, legality was just about the only argument that the regime could use in the absence of brute force.[16] Lawyers were aware of this legitimizing power and often tried to test its limits. During times of thaw, for example, judges generally diverged from Party guidelines on sentencing. The sentences became harsher (and thus more in line with the Party's expectations) when the political climate turned icy (Ministry of Justice 1957; Administrative Division of the Central Committee 1984). Yet the fact that judges resisted at all is significant. There is also evidence that the regime appreciated the need to keep the profession socially credible. On the side of a 1960 memo, I found the following handwritten note by the Justice Minister: "Emphasize the specificity of the profession of a judge. . . . Without authority, they will not be able to work at all" (Ministry of Justice 1960).[17]

All in all, lawyers mobilized enough resources to make their flagship ideas increasingly visible in the public discourse. In the Politburo documents, top functionaries repeat lawyers' arguments about the connection between the rule of law and the regime's legitimacy. Numerous newspaper clippings emphasizing the benefits of the rule

16. In the 1980s, for instance, the demand for the opposition to accept the Party's political monopoly was routinely expressed in terms of "standing on the basis of the Constitution of the People's Republic of Poland" (Secretariat of the Central Committee 1984, 19).

17. Research on the legal profession frequently emphasizes the essential role of social authority in lawyers' ability to fulfill their social role; see, for example, Abel (2008).

of law were prepared for top functionaries. "When the Party abides by law," read a 1984 memo, "it . . . increases the stability of the political system, 'normalizing' the processes of socialist development" (Secretariat of the Central Committee 1984, 10). Once again, the regime's obsession with stability and "normalcy" is palpable and the rule of law is taken as an important tool to achieve these goals.

To the extent that the socialist rule of law had also a potential to bring real improvements to lives of the general public, the reforms could also produce some "performance legitimacy" (Huntington 1991, 13) for the regime. The hope for such improvements seems justified. After all, in communism—like in any nondemocratic system—the absence of democratic controls makes the state system inherently prone to abuses. From the Politburo's viewpoint, these "decentralized" abuses needlessly antagonized society, while—unlike the abuses approved by the Politburo—producing no political benefits. Nonpolitical, formalist rule of law was seen as a tool to curb these abuses—at little political cost for the Party's center. "We need to break with the arbitrariness of administration," asserted the Minister of Justice at a 1959 meeting with appellate judges. "Public opinion displays the hunger for justice and the rule of law, desiring guarantees of civil rights," he remarked (Ministry of Justice 1959, 3). "We pay special attention to signals of irregularities in the work of Party organizations, to breaking the rule of law, and to glaring examples of injustice," read an internal report of the Party unit reviewing letters and complaints (Office of Letters and Inspections of the Central Committee 1971, 9). The report asserted that "the high number of legal provisions, and their lack of precision [led to] highly arbitrary interpretations" by the state apparatus. "This style of work weakens the trust of a citizen in the administration," the report concluded (2). In the mid-1980s, members of the Central Committee explicitly tied the ensuing political crisis to the insufficient rule of law. "The experience of the past years," concluded one member, "demonstrates that . . . the justified protest of the working class was triggered by the arrogance of the government and by the breaking of law by state functionaries, state organs, enterprises and institutions" (Secretariat of the Central Committee 1984, 388 [statement of Zofia Wilczyńska]). "There are many doubts about the intentions of the Party," concurred another member (and a law professor). "I believe that three legislative initiatives will have a serious impact here," he added, listing the establishment of the Constitutional Tribunal and of the Ombudsman as two out of those three (317 [statement of Jerzy Jaskiernia]).

The socialist rule of law was, finally, appealing given the regular changes at the Party's top echelons. Dangers associated with those shifts were not only faced by lawyers. Other circles of the opinion-making intelligentsia—academics, journalists, and even the Party cadres—were also interested in having at least some rules of the game consistently enforced (no matter which coterie was in power). The post-1956 first secretary was, after all, a former Stalinist prisoner. That this experience stayed vivid for him can be seen in the letter he sent to the Central Committee after he was deposed in 1970. Among arguments in defense of his legacy, he mentioned the fact that he refrained from "repressing, persecuting, and imprisoning" his Party opponents (Politburo of the Communist Party 1971, 23). What was telling was also the response: The new Politburo expressed outrage that "the former first secretary even mentions such a possibility [of a] brutal breach of law" (24).

CONCLUSION

As I mentioned at the outset, given the meager success of various democratization efforts undertaken after (and largely inspired by) the "third wave" of rapid political liberalization that took place in Eastern Europe in 1989, the idea of combining moderate authoritarianism with the meaningful rule of law has gained traction among legal and political commentators. Perhaps, rather than pressing a potentially disruptive political change, the West should popularize efforts to strengthen the rule of law. The argument here is that the more robust rule of law (even in the very thin sense in which the term has been used throughout this article) will immediately improve the lives of citizens of an authoritarian state by making the execution of state powers more predictable and less arbitrary. At the same time, it can gradually lead to a more democratic political system. This thinking triggered a significant interest in analyzing the conditions that must be fulfilled for the meaningful rule of law to emerge and consolidate.

Yet in this discussion almost no attention is paid to the independent role of the legal profession in facilitating the conditions conducive to the emergence of the rule of law. A good example is a book edited by Przeworski and Maravall (2003). Among the twelve essays by noted political scientists tackling precisely the problem of the emergence of the rule of law in democratic and nondemocratic political systems, not one considered the beliefs and actions of the legal profession an important factor in facilitating the increase of legality. Another example is Ginsburg and Moustafa (2008). Contributors to this volume discuss numerous benefits that the rule of law brings to authoritarian rules, including social control, legitimation, and better control over the administrative apparatus. However, in all the accounts, it is the regime that singlehandedly decides whether to apply the rule of law or not. The legal profession is, again, not mentioned as a politically relevant stakeholder in these reforms.

Perhaps these results demonstrate that the Polish case represents an anomaly—in other cases lawyers genuinely did not matter much. But another explanation may point to the lack of sufficient connection between the literature on authoritarian rule of law on the one side and, on the other, the sociolegal scholarship on the legal profession. In their most recent book, Dezalay and Garth (2010) do not distinguish at all between the democratic and nondemocratic countries of East Asia. The root cause here might be the fact that Bourdieuian sociologists have rarely engaged in drawing normative distinctions between types of power exercised by dominant groups. This moral agnosticism is rightly criticized by Bertilsson (2006), who emphasizes the fundamental contrast between power that is legitimate and illegitimate. That, however, is not the only feature of power and its use that matters to the dominated. Stability and predictability, even if not accompanied by democratic legitimation, may often bring improvement to people's lives, especially when history is full of the horrors of arbitrary brutality.

In general, it makes sense to employ the theoretical framework so capable of producing a nuanced picture of social domination in the discussion on how to make domination more bearable—or even how to employ the existing structures of domination in the process of political reform. With such potential future work in mind, let me conclude by outlining three lessons from the Polish case that may be particularly relevant for scholars working on rule-of-law issues in a comparative perspective.

First, it is noteworthy that most countries where the contemporary discussion about the rule of law is particularly intensive are primarily influenced by the Anglo-American tradition of highly functional and morally charged legal thinking. As scholars such as Dezalay and Garth (2002, 2010) have demonstrated, local lawyers who come back with a US education to their authoritarian states in Latin America or Southeast Asia either retreat to the safety of a corporate practice or are doomed to collide with their local regimes (see also Osiel 1995; Jayasuriya 1999). Communist Poland, by contrast, was the bulwark of the staunchly formalist, traditionally Continental approach, which allowed Polish lawyers to begin their "dialogue with dictators" (to borrow the expression from Osiel [1995]) without instantly provoking political backlash. Perhaps, then, the thinner definition of the rule of law would set more realistic aspirations for lawyers interested in changing their authoritarian societies.

Second, its apolitical allure notwithstanding, the socialist rule of law would not have seriously influenced Poland's socialist institutions if not for the recurring legitimacy crises that the regime faced. Indeed, the particularly strong challenges that the Communist Party faced in Poland throughout its rule may explain why the country was the pioneer of many of the rule-of-law reforms in the socialist bloc. Yet, unlike the democratic dissidents of Solidarity, the legal community generally did not escalate its expectations beyond formal legalism, even in times of the greatest political turbulence. The message here is obviously mixed because, in the Polish case, communism fell and Solidarity won. To the extent, however, that the Eastern European model of full transition to democracy may not be easily replicable in other parts of the world, we can drop our hindsight bias and appreciate the meaningful improvement that the mix of opportunism and moderation of the Polish legal elite produced.

And finally, it is remarkable how the Polish story is an almost precise narrative opposite of the typical approach to institutional reform in less developed countries. In communist Poland, the emergence of the stronger rule of law did not follow a linear progression from problem through intervention to result. The West offered no expensive foreign aid inducements—the socialist rule of law was the product of a consistent pressure exerted by the local legal community. This pressure, in objective terms, was associated with the pragmatic benefits that the socialist rule of law offered to lawyers themselves. However, at the intersubjective level, it was also the outcome of an intensive reproduction of the specific set of ideas, narratives, and practices within the legal profession. This process took much longer than traditional institutional reforms advocated by international organizations or NGOs. But, perhaps, the local sense of ownership of the resulting institutional framework has been stronger than if the reforms had come as neatly packaged legal transplants. The Supreme Administrative Court, the Constitutional Tribunal, and the Ombudsman all survive to this day with full personal and jurisprudential continuity. A similar resilience has been shown by professional associations of attorneys and legal counsels as well as by most communist codifications. Again, what complicates the message here is that, for many Poles, the durability of legal institutions with clear communist roots—and the concomitant post-transition prominence of many proponents of the socialist rule of law—remains troubling. For comparative purposes, however, it is plainly significant that, decades since their construction and after massive political changes, the key monuments of the Polish socialist rule of law remain largely untouched.

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