Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego
Uniwersytetu Lubelskiego t. XV, 17 (2) 2020, s. 97-115
https://doi.org/10.32084/sawp.2020.15.2-6

Dawid Kostecki

SUBJECT MATTER OF PHILOSOPHY OF LAW

Introduction

While talking about a science it is necessary to define its subject matter, method and function. The problem of a subject matter of a particular branch of science is also essential since a precise definition stands for autonomy of a given science and its distinctiveness [Szyszkowska 1976, 186].

De facto, this issue has not unambiguously been resolved in the context of philosophy of law. S. Arsenjew's position is worth reiterating at this point, namely "there is no decisive answer to the question what philosophy of law is and what it should deal with" [Arsenjew 1936, 318]. Although this ascertainment comes from the interwar period, it shall be deemed most adequate. Multitude of concepts attempting to define the subject matter of philosophy of law can *prima facie* cause difficulties of cognitive nature.

Philosophical and legal considerations go back to ancient times, however, philosophy of law as a science is a relatively young discipline, as the term itself was used at the end of the 18th century for the first time.[1] This does not influence the fact that the subject of interest of philosophy of law has been modified – by extending or reducing its scope – depending on domineering ideological views. At present a wide ranging methodological discourse is being held in order to define conceptual distinctions between philosophy of law

DAWID KOSTECKI, Ph.D., Department of Social and Economic Analysis of the Foundation of the Polish Academy of Sciences; Pl. Litewski 2, 20-080 Lublin, Poland; e-mail: kostecki.dawid@gmail.com; https://orcid.org/ 0000-0002-8132-997X

[1] For the first time this term was used by Gustav Hugo in 1798 in his work *Lehrbuch des Naturrechts, als einer Philosophie des positiven Rechts*. Increasing dissemination of the term "philosophy of law" shall be connected with the publication of Georg Wilhelm Friedrich Hegel *Grundlinien der Philosophie des Rechts* firstly published in 1821.

and theory of law, jurisprudence and sociology of law or history of political and legal doctrines.[2]

Some doctrine representatives seem to be questioning the legitimacy of this dispute and are in the position it is apparent and unresolvable [Stawecki 2006, 211-32]. Nevertheless, others state that from the perspective of philosophy of law one should not be limited to *prima facie* conclusions, but rather should continue the discourse regarding conceptual distinction [Zajadło 2015, 5-22]. This issue is integrally related to the reflection concerning the subject matter of philosophy of law. However, the objective of this article is not only to present existing doctrinal views on the extent of philosophy of law, but also to provide an answer to the question how the evolution of philosophy of law influences the development of philosophical and legal research directions.

1. Philosophy of law as a scientific discipline

At the beginning philosophy of law was identified with philosophy of natural law. Philosophy of law as a subject taught to law students has replaced the subject referred to as natural law. For instance, at the Jagiellonian University in Cracow the first lecturer to teach philosophy of law instead of natural law was Jan Kanty Hieronim Rzesiński (1803-1855), who was a deputy natural and criminal law professor since 1848 and became a full professor of law in 1850 [Potrzeszcz 2011a, 484-85].

In the interwar period philosophy of war along with theory of law were obligatory components of legal education [Grat 2001a, 9]. Whereas the times of the Second Polish Republic were prosperous for philosophy of law, after World War II philosophy of law became a threat to ideology existing at that time.

[2] There is a plethora of literature dealing with conceptual distinction between philosophy of law and theory of law, jurisprudence history of political and legal doctrines or sociology law [Ziembiński 1992, 85; Niemiec 1999, 67-78; Łuszczyńska 2011, 171-87; Opałek and Wróblewski 1991, 74-76; Oniszczuk 2012, 1-30; Izdebski 2017, 16; Idem 2013; Chojnicka and Olszewski 2004; Olszewski 2010, 3-14; Dubel 2012; Idem 2005, 9-24; Filipowicz 2007].

Questioning the necessity of philosophy of law was typical of proponents of Marxist theory of state and law and even of some philosophers. For the purposes of marginalisation of a distinctive scientific discipline not only the subject matter itself was questioned, but also a method, which was allegedly in conflict with the method of dialectical and historical materialism[3] [Tokarczyk 2009, 22]. In the times of Stalinism and domination of the one ideology developed by Karl Marx, philosophy of law allowing for pluralism and equality of views was a serious threat in the monopolisation of higher education. Due to an arbitral political decision taken in the 50's of the 20th century philosophy of law was deprived of the status of a separate branch of science and eliminated from syllabus at state universities.

There were two stages of the discussion regarding philosophy of law observed in Poland after 1945. The first one being associated with the 50's and 60's, the second one with late 70's and early 80's [Smoczyński 1985, 2]. The aforementioned does not encompass the third crucial stage beginning in late 80's and early 90's when under new social and political circumstances the question concerning philosophy of law was addressed again [Jabłoński 2014, 50].

Political transformation of 1989 which significantly extended the sphere of worldview pluralism and freedom of speech created conducive environment for bringing philosophy of law back to Polish science. A general reflection concerning law was based on a Marxist teaching model for almost half a century. The only legitimate subject was theory of state and law which touched upon introduction to law.

A fertile ground for the development of philosophy of law was a growing disappointment, especially in the 90's, in the assumptions and statements within legal positivism and therefore a need to look for some other directions of social inspiration and cognitive ideals [Stawecki 2006, 211]. A milestone in the change of perceiving philosophy of law was a Polish Scientific Conference in Katowice entitled *Philosophy of law in the context of creating and implementing law* organised in 1991, where philosophy of law as a scientific discipline was redefined. Fierce disputes of conference participants no longer revolved around the necessity of philosophy of law, but rationality of main-

[3] This issue is also discussed by other doctrine representatives [Raburski 2012, 320-21].

taining theory of state and law in a previously existing form [Tokarczyk 2009, 23].

The aforementioned tendency was reflected in the changes of syllabus at universities as well as in the practice of modifying the names of institutes and departments, where "theory of law" was replaced by philosophy of law, or completing the names of institutes of theory of law with an appropriate clause.

2. Research methods within philosophy of law

A fundamental question reoccurring within the science of philosophy of law of 20th and 21st century is whether there is one, distinctive research method which is common for all legal sciences (methodological monism) or whether there are more such methods (postpositivist methodological pluralism) or there is no specific research method for examining law and all methods known have randomly been adopted from other disciplines (postmodern methodological anarchism) [Barankiewicz 2010, 116-17]. Methodological monism, which is characteristic of legal positivism, is definitely closer to theory, not philosophy of law. According to the representatives of methodological anarchism "it is assumed that there is no catalogue of methods to scrutinise law. Methods being used have randomly been adopted and are utilised for immediate goals."[4] Remaining this stance in the categories of philosophy of law as a science would disable an orderly development of this branch. Thus, due to interdisciplinary nature connecting philosophy and law, methodological pluralism seems to comply with the assumptions of philosophy of law.[5]

The aforementioned ascertainment allows for the definition of an open catalogue of methods observed in philosophy of law: 1) logical-linguistic in form of a "hard" analysis (formal-logical) and "soft" (linguistic), which are

[4] Representatives of methodological anarchism are: P. Feyerabend, J.H. von Kirchmann, J.C. Hutcheson [Fayerband 1978].

[5] Alternative way of juxtaposition of the methods is: 1) autonomy of methods, when a method or methods of law research are deemed as independent (peculiarity) in relation to methods used in other scientific disciplines; 2) heteronomy of methods, when legal methods are only loaned and adjusted for the purpose of legal research; 3) rejection of the method [Stelmach and Brożek 2006, 32-33].

currently vividly developed within the scope of analytical philosophy of law; 2) empirical methods of such sciences as sociology, psychology and economy or cultural anthropology (ethnology); 3) argumentative and hermeneutic methods; 4) axiological methods; 5) historical; 6) comparative and other philosophical methods related to a particular philosophy of law (analytical, phenomenological, transcendental, methods from classic philosophy, philosophical methods related to natural sciences) [ibid., 118].

As a method within philosophy of law only a method coming from empirical sciences cannot be categorised, however, human being as a social phenomenon must not be ignored and legal order be treated only as a categorical imperative [Kość 2011, 246]. Philosophy of law as a speculative science is a bridge connecting *sein* (reality) and *sollen* (expectation), namely, things as they are and as they should be. The transposition from *sein* into *sollen* depends only on the human being – *animal rationale*.

A characteristic feature of philosophical and legal considerations is enduringly the fact that it is always about "philosophising," i.e. a way of handling problems and methods for their solution which is appropriate for the whole philosophical tradition and its history [Dutkiewicz 1996, 22]. Thus, an inseparable element of philosophy of law is to ask questions about the essence and goals of the law. These shall be treated as open issues as well as are being commented and interpreted.

3. Research within philosophy of law

One of the methods aiming at defining the subject matter of philosophy of law can be a synthesis of subject matters of two separate scientific disciplines – philosophy and law. The first one aims at "encompassing all that exists." Its extent is therefore "the most general from all sciences and concepts are the most general. […] philosophy chooses a part from its massive extent and deals with it individually; this happens due to special importance and value of this part" [Tatarkiewicz 1988, 13]. Referring these statements to considerations regarding philosophy of law, it can be stated that it is a kind of "partial philosophy" concerning a particular phenomenon or being particularly important for humanity, for instance law [Łustacz 1992, 153]. Nevertheless, reflection upon law can be multidimensional, which makes it ne-

cessary to search for more precise definitions of philosophy of law not based on the principle of generality.

Already at the beginning of the development of philosophy of law as a science it was crucial to define thematic framework enabling its dynamic development. A lot of law and philosophy professors have been thinking how to classify the thematical spectrum of a relatively young scientific discipline. The essence of philosophy of law was accurately captured by A. Kość who stated that "philosophy of law deals with a systematic consideration of the grounds of law and its essence. Philosophy of law is a kind of philosophy which deals with law or, in other words, philosophy of law sees law through the eyes of a philosopher" [Kość 2005, 11].

R. Tokarczyk put it differently by emphasising that the term "philosophy of law" indicated philosophy as a way of perceiving problems within the scope of law [Tokarczyk 2009, 17]. The subject matter of philosophy of law is mostly dealt with by lawyers and philosophers who look at issues of their interest through the perspective of their science [Łuszczyńska 2008, 27]. Thus, a postulate emerged in scientific discourse to differentiate between philosophy of law of lawyers and philosophy of law of philosophers [Kalinowski 1985, 109; Kaufmann 1989, 1].[6] An apparently dichotomic distinction seems to be correct, however, in practice leads only to the necessity to raise competences of people dealing with philosophy of law who should be philosophers and lawyers simultaneously. It results from the following conclusion: "Philosopher of law is neither a lawyer, since they want to philosophise, nor a philosopher, since they cannot be one" [Kalinowski 1985, 109]. The abovementioned allegation of ignorance of law was raised, e.g. against Kant or Hegel.

Considering the paradigm of dichotomic division into philosophy of law of lawyers and philosophy of law of philosophers it shall be stressed that "in the first case we deal with auxiliary implementation of a philosophical method (*more philosophico*) for the purpose of researching a particular legal phenomenon (*materia iuridica*), in the second one however – with a critical connection with general philosophical considerations (*materia philosophica*)

[6] "In philosophy of law questions are asked by a lawyer, but answers are provided by a philosopher."

of a specific legal subject matter (*more iuridico*)" [Zajadło 2015, 13]. It is a fundamental difference, since in the philosophy of law of lawyers the idea of law is superior, completed with particular legal dogmatics, whereas in the philosophy of law of philosophers law is a means to present philosophical (ontological, epistemological, logical, ethical or esthetical) considerations [ibid.].

On the other hand, H. Waśkiewicz indicated that "similarly to philosophy which is a science scrutinising existence through its primary grounds, philosophy of law is a science which scrutinises law through its primary grounds [...] philosophy of law can only be acknowledged if in the course of law research at least some of the aforementioned issues are dealt with and if these problems are formulated and solved exclusively at intellectual level" [Waśkiewicz 1960, 5]. The author classifies the following issues as the subject matter of philosophy of law: the problem of the definition of law, binding force of law, problem of different kinds of law and relations between them as well as the question of the relation of law to nonlegal norms of conduct [ibid.]. In the case of H. Waśkiewicz an indication of an exemplary catalogue of problems encompassed by philosophy of law can be observed, which shall be deemed as a valuable observation directing methodological discourse.

Yet another concept comes from M. Szyszkowska who has intensively and consequently been emphasising the necessity to make philosophy of law and acknowledge it as a separate scientific discipline with a wide ranging subject of research and having its roots more in philosophy rather than in law [Jabłoński 2014, 70]. The author has defined the tasks of the advocated discipline in the following way: "Philosophy of law aims at finding an answer to the question what law is and what kind of role it plays in our lives. It mainly deals with relationships between human and law, including natural law as well as natural law itself […] The subject matter of philosophy of law is law in general, including natural law. It is scrutinised from various perspectives, including multidimensional attitude, thanks to the nature of philosophy of law – science from the borderline of many disciplines" [Szyszkowska 1993, 3]. In her considerations Maria Szyszkowska discusses not only the distinctiveness of philosophy of law as a scientific discipline, but also stresses the relation of philosophy of law and human philosophy. Generally, views regarding humans are formulated by philosophers of law on the margin of completely different issues [Idem 1989, 74]. Generally speaking, it is the result of

a reconstruction constituting a synthesis of some views adopted in case of other problems [ibid.].

One of the apologists advocating the restitution of an orderly position of philosophy of law was G.L. Seidler, who generally came from the Marxist milieu. This researcher opted for the extension of law research with knowledge about ideas inspiring a particular legal system. "We do not know what position is held by law in the binding system of values, we also do not know the relations between law and culture. As far as I am concerned, these issues constitute a subject matter of a separate discipline of philosophy of law" [Seidler 1978, 5]. According to G.L. Seidler, the subjects covered by philosophy of law refer to dual perception of the legal system: from the perspective of philosophical principles and from the perspective of superior ideas, whose change leads to a change of the concept of a fair order [Idem 1985, 6]. A domineering field of interest for philosophy of law was defined in the sphere of values – "leading ideas indicating goals which are to be fulfilled by legal systems [Idem 1978, 11]. Thus, the greatest focus is laid on axiological aspects in philosophy of law.

A contrasting differentiation has been made by J. Stelmach, who emphasised that philosophy of law in a narrower sense comes from general philosophy and is clearly axiologically oriented, since it focuses on the issues from natural law and justice. As a result of the development of the school of history and legal positivism, it started to be recognised as a science of a *par excellence* legal nature [Lande 1959, 119ff]. J. Stelmach also draws an inspiration from the works of K. Opałek, who recognised the need to develop philosophy of law *sensu stricto* as a discipline which is different from theory of law and complementary to it. The scope of philosophy of law encompasses apparently considerations regarding axiology of law, i.e. what law should be. Theory of law, on the other hand, deals with reflection upon "law as it is" referring to linguistic expressions (analytical theory) and law as a social, psychological or psychosocial fact (empirical theory) [Opałek 1997, 14]. In practice the aforementioned considerations constitute a return to the vision of Kant of *sein* (reality) and *sollen* (expectation.)

On the other hand, however, K. Opałek is aware of complexity and internal variety of philosophy of law in a broad sense. That is the reason he writes about a plethora of trends in the German philosophy of law, emphasises nu-

merous changes the disciplines such as philosophy of law, jurisprudence and theory of law were submitted to in the 19th and 20th century [Stawecki 2006, 218-19]. It can be stated that the way the concept of philosophy of law is defined by K. Opałek becomes a foundation for J. Stelmach to introduce a division in philosophy *sensu stricto* and philosophy *sensu largo*.

In their turn, M. Zirk-Sadowski accentuates historical development of a general reflection upon law, simultaneously treating the development of philosophy of law as a piece of broader philosophical considerations, simultaneously being the heir of conceptual and methodological apparatus of the "queen of the sciences" [Zirk-Sadowski 2000, 19-20]. The author stresses that law is the only normative system with its own professional service by claiming that the community of lawyers has created philosophy of law built from law or legal problems towards philosophy. Especially in Anglo-Saxon countries the distinctiveness of such a philosophy of law is clearly visible [ibid., 8.] According to M. Zirk-Sadowski, philosophy of law built by lawyers is an example of a different development of the reflection "from law towards philosophy." This author claims that as a result of *common law* development as well as a different education path for lawyers, a specific discipline referred to as jurisprudence has been developed, which *de facto* constitutes general knowledge about law oriented at solving practical problems. It is a kind of philosophy of law "from law towards philosophy" [Stawecki 2006, 217]. The researcher from Łódź goes a step further and states that modern attempts to reduce philosophy of law to any specific disciplines of a general reflection upon law cannot be recognised and philosophy of law itself shall be taught both "from philosophy towards law" and *vice versa* [Zirk-Sadowski 2000, 19-20]. The aforementioned concept simultaneously defends the distinctiveness of philosophy of law as a scientific discipline indicating its pluralistic nature.

4. Subject matter of philosophy of law from Thomistic perspective

One of the first Neo-Thomists who classified philosophy of law was Cz. Martyniak. This researcher distinguished between philosophy of natural law, science about natural law as well as deontology of law. Philosophy of law scrutinises ideological foundations of law in force – philosophy of positive law defines the core of law and a relation of law with human nature – science

of natural law, the result of these is the evaluation of ideological foundations of legislation and critical analysis of goals set by the legislator – this is the subject matter with deontology of law [Grat 2001b, 83]. Philosophy of law according to Cz. Martyniak is referred to as wisdom of law with its primary objective being ordering and evaluating of law [Martyniak 1949, 73].

On the other hand, J. Kalinowski claimed that philosophy of law aims at exploring positive law by indicating its final cause, i.e. by explaining final grounds for the binding effect of law in force. The final cause of the binding effect of positive law is its conformity with natural law being an expression of will of the Creator of the world and human beings, final cause of all things. The problem of binding effect of law in force is the most crucial aspect of philosophy of law, which all other issues related to it revolve around [Kalinowski 1958, 39].

According to M.A. Krąpiec, philosophy of law asks the same questions about law as metaphysics asks about general being (existing being), so it scrutinises what law is, what its grounds are, what its range is, how it develops [Krąpiec 1975, 22]. At present, the subject matter of philosophy of law is also thomistically defined by P. Skrzydlewski, who claims that "philosophy of law allows – especially jurists – to see the truth that not all law interpretations are correct. There are some mistaken law interpretations; moreover, law itself tends to be pseudo-law due to lacking foundation in human nature. Not only must it be not implemented, but also sometimes must be combated by protecting oneself from its threats" [Skrzydlewski 2013, 213].

The analysis of the aforementioned Thomistic views on the subject matter of philosophy of law points at the departure from identifying the subject matter of philosophy of law exclusively with natural law. It is obvious that philosophy of law profits from the legacy of general philosophy, however, its practice within the scope of jurisprudence seems to indicate solid philosophical aspects: the problem of the essence of law, its ideals, place in the system of values, functions in terms of legitimising law in force [Tokarczyk 1996, 18].

5. Systematisation of philosophy of law

Philosophy of law is an interdisciplinary science dealing with axiological, epistemological, ontological or theoretical reflections. The inability to pre-

cisely define the subject matter of philosophy of law does not meet basic methodological requirements [Łuszczyńska 2011, 173]. This raises the question of no unanimous stance on the research method as well as complex relationship with related scientific disciplines – theory of law or jurisprudence. An original systematisation of philosophy of law according to A. Kość shall not be overlooked; the researcher divided the subject matter of philosophy of law in three parts: history of legal thought, analysis of law and synthesis of law [Kość 2005, 20]. Analysis of law encompasses the exploration of elements which make law a law [ibid.]. The subject of this research are the following features of law: positivity, normativeness, historicity, relation to constraint, state, justice, morality and ideology [Idem 2011, 85-144]. Synthesis of law, on the other hand, referred to as philosophy of law *sensu stricto*, deals with relationships observed between elements of knowledge gained thanks to law analysis. These relationships seem to be taken into account, either as individual ideas (e.g. fairness, rightness) or in general philosophical and legal concepts (e.g. theories of legal positivism, theories of natural law) [Jabłoński 2014, 75]. The trichotomic division is completed by the history of legal thought presenting the way of perceiving philosophical and legal issues from historical perspective.

Yet another form of systemising philosophical and legal problems is the following division: ontology of law – dealing with the problem of law existence or essence; epistemology of law – dealing with law exploration; axiology of law – dealing with law as a value [Dutkiewicz 1996, 23-24].

To these four traditional elements a fifth one has been lately added – law aesthetics.[7] According to K. Zeidler: "Traditional pillars of philosophy which are relevant in this context are: ontology, epistemology, logic, ethics and aesthetics. As a reminder, ontology is the theory of being, also referred to as metaphysics; epistemology is the theory of knowledge, in other words gnoseology; logic is the knowledge about language and research activities, reasoning, defining, classifying; ethics is the science of morality; aesthetics is just a general theory of beauty" [Zeidler 2018, 8]. Depending on the adopted concept of law and philosophy, the scope of issues dealt with may be adder-

[7] Aesthetics of law as a young direction within the scope of modern philosophical and legal discussion in Poland starts to play a more important role [Zeidler 2014, 61-67; Idem 2017, 645-60; Idem 2018, 7-16; Zajadło 2016, 17-30].

ssed with diverse intensity. The view of R. Alexy shall serve as an example: "philosophy of law, like philosophy in general, is related to ontology, epistemology and ethics as well as is a reflection upon law of a normative (critical), analytical (general) and holistic (systematic) nature – constitutes considerations about the nature of law" [Alexy 2004, 157-58]. Ontology, epistemology and ethics play a crucial role in the aforementioned definition, whereas logic and aesthetics have been a little overlooked.

6. Objectives of philosophy of law

Defining the subject matter of philosophy of law as a science scrutinising the foundations of law allows for a reflection upon objectives and meaning of this discipline. Functions of philosophy of law are given expression in social-cultural reality and depend i.a. on the sphere of human activity they are related to [Wójtowicz 2015, 161]. As basic functions of philosophy of law one can classify the cognitive function, meaning in particular the accumulation of knowledge about law in order to make it accessible to all the interested [Tokarczyk 2009, 36]. Thanks to this function, philosophy of law gains the status of an academic discipline and makes it possible to better understand development directions of legal thought and law in the world as well as on the basis of national law and thought it is based on [ibid.].

Everyone dealing with philosophy of law must be impressed by a huge number of ideas, concepts and trends. The fulfilment of the function of practical philosophy of law allows for the transition of emphasis from *law in the books* to *law in action.* The topicality and usefulness of philosophy of law in solving social-political-legal problems along with up-to-date intellectual content make it possible to set new directions for the development of philosophy of law as a science [Tokarczyk 1993, 86].

Philosophy of law also plays a legislative function [Idem 2009, 59-60] based on the process of making and putting law into action. The subject matter of philosophy of law makes it possible to have an impact on the behaviour of a "rational legislator." The issue of law construction is on the other hand connected with law interpretation based on philosophical and legal assumptions, which makes the interpretative function of philosophy of law real.

Involuntarily philosophy of law frequently fulfils an ideological function based on exerting impact on understanding human beings, culture and the world [Wójtowicz 2015, 162]. Ideological connections of various concepts of philosophy of law and legal systems related to them are quite complex. A little schematic view used to be popular that capitalistic law is soaked up with the spirit of individualism, whereas socialist law – with the spirit of collectivism [Tokarczyk 2009, 63]. Connecting philosophy of law with axiology and philosophy of politics and philosophy of culture inevitably leads to the fact that the ideological function will be taken into consideration within the scope of philosophical and legal reflection.

Finally, a form of organised cognitive function of philosophy of law is its didactic function being particularly of interest for academicians. The above mentioned is related to exploring the cause, the source of legal dogmatics. The role of philosophy of law in educating young generation of jurists has been widely addressed in literature.[8] The task of philosophy of law as a science is to educate future lawyers in a way enabling the development of their moral maturity and broadening of their knowledge of both formal and material aspects of law. Moreover, the theoretical-legal and philosophical-legal reflection shall give lawyers support in the decision-making processes both at the stage of making and implementing law [Potrzeszcz 2011b, 273].

On the one hand, it is inevitable that contents from the field of philosophy of law get mingled together with legal dogmatics, on the other, however, it is a known fact that philosophical contents are present in particular law branches. A consequence of the aforementioned is an even more popular assumption that "philosophy of law is not just an ornament of legal erudition […], but also one of necessary legal skills […] lawyers most often refer to the *more philosophico* reasoning – not always being aware of this […] each ruling constitutes an element of philosophy of law […] practical role of philosophy of law manifests itself especially in *hard cases* […] thus, it consists mainly in the exclusion or confirmation of a «hidden meaning» of a problem, while in the case of confirmation *prima facie* conclusions need to be drawn and included in the case" [Zajadło 2008a, 12-13; Idem 2008b, 7].

[8] The meaning and significance of philosophy of law has been addressed by many authors [Zajadło 2008b, 7-30; Redelbach, Wronkowska, and Ziembiński 1993, 43; Potrzeszcz 2011b, 268-73; Tokarczyk 2009, 64].

One of the crucial roles of philosophy of law is its critical role aiming at explication and verification of assumptions of a legal order. Thoughtless acceptance of law which can be declared illegitimate and incoherent leads to the establishment of contradictions and inconsistency [Pietrzykowski 2017, 119-20]. First of all, axiological and ideological assumptions of all kind being a basis of particular legal solutions can and shall be a subject of a critical conceptual analysis [ibid.]. *In aliis verbis*, philosophy of law is needed where ordinary positive law fails to succeed or where there are no legal regulations at all [Zeidler 2011, 16]. In this context the following comment of M. Zirk-Sadowski seems to be complementary: "It turns out that limiting legal thought only to considerations from particular dogmatics (e.g. science of civil, criminal, constitutional law etc.) is insufficient to understand law and implement it correctly" [Zirk-Sadowski 2000, 8].

The above presented analysis of functions of philosophy of law seems to confirm the conclusion that philosophers of law can in their research, voluntarily or involuntarily, fulfil particular functions thereof. Multitude of functions is related to interdisciplinary nature of the science. Within the scope of mature concepts of philosophy of law its functions and objectives are deemed its components [Tokarczyk 2009, 56].

Conclusions

As a separate scientific discipline philosophy of law is a general science with a complex descriptive-normative structure allowing for a perspective of an "external observer," however, is simultaneously useful in the perspective of an "internal participant" of the phenomenon of law [Zajadło 2013, 13]. This view seems to express the essence of the issue and to mirror a holistic attitude to law, not through the perspective of administrative or criminal law, but from an "umbrella" perspective. According to the author, this double research perspective constitutes an unquestionable value of philosophy of law as a science.

The reflection upon the subject matter of philosophy of law is almost such dynamic a phenomenon as law. In the times of postmodernism and overlapping of various issues it seems that the field of interest of philosophers of law will be getting extended. The development of new directions and branches of law – bio-law, legal hermeneutics, legal feminism, Law and Litera-

ture, Critical Legal Studies, theories of legal argumentation or non-positivist concepts of law provide an array of possibilities in terms of a deepened philosophical and legal reflection. Therefore, the subject matter of philosophy of law is naturally getting increasingly capacious.

It is beyond any doubt that according to a Roman maxim *ubi societas ibi ius* a general reflection upon law is changing together with our reality. *In allis verbis*, the question *quo vadis*, philosophy of law? remains still up-to-date.

REFERENCES

Alexy, Robert. 2004. "The nature of legal philosophy." *Ratio Legis* XVII, no. 2:156-67.

Arsenjew, Sergiusz. 1936. "Zagadnienie syntezy zasadniczych sprzeczności filozoficznoprawnych." In *Ogólna nauka o prawie*, ed. Bronisław Wróblewski, 317-74. Wilno: Wydawnictwo Uniwersytetu Stefana Batorego w Wilnie.

Barankiewicz, Tomasz. 2010. "Współczesne metody badania prawa." *Studia Prawnicze KUL* 1:115-31.

Chojnicka, Krystyna, and Hubert Olszewski. 2004. *Historia doktryn politycznych i prawnych*. Poznań: Ars Boni et Aequi.

Dubel, Lech. 2005. "Teoria prawa, filozofia prawa a doktryna polityczna i prawna w świetle podziału nauk prawnych." *Studia Iuridica Lublinensia* 6:9-24.

Dubel, Lech. 2012. *Historia doktryn politycznych i prawnych do schyłku XX wieku*. Warszawa: LexisNexis.

Dutkiewicz, Paweł. 1996. *Problem aksjologicznych podstaw prawa we współczesnej polskiej filozofii prawa i teorii prawa*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.

Fayerband, Paul. 1978. *Against Method*. London: Cambridge.

Filipowicz, Stanisław. 2007. *Historia myśli polityczno-prawnej*. Gdańsk: Arche.

Grat, Ireneusz S. 2001a. "Filozofia prawa a teoria państwa i prawa." In *Filozofia prawa*, ed. Maria Szyszkowska, Ireneusz S. Grat, Tomasz Kozłowiecki, et al., 9-24. Warszawa: PWN.

Grat, Ireneusz S. 2001b. "Filozofia prawa w ujęciu filozofów tomistycznych." In *Filozofia prawa*, ed. Maria Szyszkowska, Ireneusz S. Grat, Tomasz Kozłowiecki, et al., 79-98. Warszawa: PWN.

Izdebski, Hubert 2013. *Historia myśli politycznej i prawnej*. Warszawa: Wydawnictwo C.H. Beck.

Izdebski, Hubert. 2017. *Doktryny polityczno-prawne. Fundamenty współczesnych państw*. Warszawa: Wolters Kluwer Polska.

Jabłoński, Paweł. 2014. *Polskie spory o rolę filozofii w teorii prawa*. Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.

Kalinowski, Jerzy. 1958. "Zagadnienie aksjomatyzacji nauki prawa." *Roczniki Nauk Społecznych* 1:29-46.

Kalinowski, Jerzy. 1985. "Filozofia prawa a antropologia filozoficzna." In *Problemy teorii i filozofii prawa*, ed. Jan Malarczyk, 109-12. Lublin: Wydawnictwo UMCS.

Kaufmann, Arthur. 1989 "Rechtsphilosophie, Rechtstheorie, Rechtsdogmatik." In *Einführung in die Rechtsphilosophie und Rechtstheorie der Gegenwart*, ed. Arthur Kaufmann, Winfried Hassamer, and Ulfrid Neumann, 1-19. Heidelberg: C. E Müller Juristischer Verlag.

Kość, Antoni. 2005. *Podstawy filozofii prawa*. Lublin: petit s.c.

Kość, Antoni. 2011. "Filozofia prawa jako nauka." In *Czy koniec teorii prawa?*, ed. Paweł Jabłoński, 241-50. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.

Krąpiec, Mieczysław A. 1975. *Człowiek i prawo naturalne*. Lublin: Wydawnictwo KUL.

Lande, Jerzy. 1959. *Studia z filozofii prawa*. Warszawa: PWN.

Łustacz, Leon. 1992. "Filozofia prawa a inne dyscypliny prawnicze." In *Filozofia prawa a tworzenie i stosowanie prawa*, ed. Bronisław Czech, 153-58. Katowice: Ośrodek Terenowy przy Sądzie Wojewódzkim.

Łuszczyńska, Małgorzata. 2008. *Filozofia prawa Czesława Martyniaka*. Lublin: Wydawnictwo UMCS.

Łuszczyńska, Małgorzata. 2011. "Filozofia prawa. W poszukiwaniu tożsamości." *Studia Iuridica Lublinensia* 16:171-87.

Martyniak, Czesław. 1949. *Problem filozofii prawa. Filozofia prawa, jej przedmiot, metoda i podział*. Lublin: Towarzystwo Naukowe KUL.

Niemiec, Henryk. 1999. "Filozofia prawa a teoria prawa i jurysprudencja." *Roczniki Nauk Prawnych* IX, no. 1:67-78.

Olszewski, Henryk. 2010. "Uwagi o stanie nauk historycznoprawnych." *Państwo i Prawo* 4:3-14.

Oniszczuk, Jerzy. 2012. *Filozofia i teoria prawa*. Warszawa: Wydawnictwo C.H. Beck.

Opałek, Kazimierz, and Jerzy Wróblewski. 1991. *Prawo. Metodologia, filozofia, teoria prawa*. Warszawa: PWN.

Pietrzykowski, Tomasz. 2017. "Granice naturalizacji filozofii prawa." In *Naturalizm prawniczy. Granice*, ed. Jerzy Stelmach, Bartosz Brożek, and Łukasz Kurek, 110-25. Warszawa: Wolters Kluwer Polska.

Potrzeszcz, Jadwiga. 2011a. "Rzesiński Jan Kanty Hieronim." In *Encyklopedia filozofii polskiej*, vol. 2, ed. Andrzej Maryniarczyk, 484-85. Lublin: Polskie Towarzystwo Tomasza z Akwinu.

Potrzeszcz, Jadwiga. 2011b. "Zadania współczesnej teorii i filozofii prawa w warunkach akceptacji niepozytywistycznej koncepcji prawa." In *Czy koniec teorii prawa? Z zagadnień teorii i filozofii prawa*, ed. Paweł Jabłoński, 268-73. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.

Raburski, Tomasz. 2012. "W stronę społecznej teorii prawa" In *Filozofia a sfera publiczna*, ed. Piotr Orlik, and Krzysztof Przybyszewski, 313-25. Poznań: Wydawnictwo Naukowe Instytutu Filozofii Uniwersytetu im. Adama Mickiewicza w Poznaniu.

Redelbach, Andrzej, Sławomira Wronkowska, and Zbigniew Ziembiński. 1993. *Zarys teorii państwa i prawa*. Warszawa: Wydawnictwo Naukowe PWN.

Seidler, Grzegorz L. 1978. *Z zagadnień filozofii prawa*. Lublin: Wydawnictwo Lubelskie.

Siedler, Grzegorz L. 1985. "Przedmiot filozofii prawa." *Studia Filozoficzne* 2-3:5-15.

Skrzydlewski, Paweł. 2013. *Antropologiczne i społeczne determinanty prawa. Studium z filozofii prawa*. Lublin: Wydawnictwo KUL.

Smoczyński, Paweł. 1985. "Kilka uwag w sprawie filozofii prawa." *Nowa Książka* 6:1-4.

Stawecki, Tomasz. 2006. "Filozofia prawa a teoria prawa: spór nierozstrzygalny czy pozorny?" *Studia Iuridica* 45:211-32.

Stelmach, Jerzy, and Bartosz Brożek. 2006. *Metody prawnicze*. Kraków: Wolters Kluwer Polska.

Szyszkowska, Maria. 1976. "Problem przedmiotu filozofii prawa." *Ruch Filozoficzny* XXXIV, no. 3:183-88.

Szyszkowska, Maria. 1989. *Filozofia prawa i filozofia człowieka*. Warszawa: Instytut Wydawniczy Pax.

Szyszkowska, Maria. 1993. *Europejska filozofia prawa*. Warszawa: Wydawnictwo C.H. Beck/PWN.

Tatarkiewicz, Władysław. 1988. *Historia filozofii*. Vol. 1. Warszawa: PWN.

Tokarczyk, Roman. 1993. "Nauka o uprawnieniach naturalnych." *Nauka Polska* 5:83-89.

Tokarczyk, Roman. 2009. *Filozofia prawa*. Warszawa: LexisNexis.

Waśkiewicz, Hanna. 1960. *Historia filozofii prawa. Filozofia prawa starożytnego świata pogańskiego. Część I Grecja – okres najwcześniejszy i helleński*. Lublin: Ossolineum.

Wójtowicz, Ryszard. 2015. "Filozofia prawa – przedmiot, funkcje i znaczenie społeczno-kulturowe." *Człowiek i Społeczeństwo* 39:153-64.

Zajadło, Jerzy. 2008a. *Po co prawnikom filozofia prawa?* Warszawa: Wolters Kluwer Polska.

Zajadło, Jerzy. 2008b. "Wprowadzenie. Co to są hard cases?" In *Fascynujące ścieżki filozofii prawa*, ed. Jerzy Zajadło, 7-18. Warszawa: LexisNexis.

Zajadło, Jerzy. 2015. "Filozofia prawa – pyta filozof, odpowiada prawnik." *Państwo i Prawo* 7:5-22.

Zajadło, Jerzy. 2016. "Estetyka – zapomniany piąty człon filozofii prawa." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 4:17-30.

Zeidler, Kamil. 2011. *Restytucja dóbr kultury ze stanowiska filozofii prawa.* Warszawa: Wolters Kluwer Polska.

Zeidler, Kamil. 2014. "Estetyka prawa – ujęcie zewnętrzne i wewnętrzne." In *Integracja zewnętrzna i wewnętrzna nauk prawnych*, part. 2, ed. Małgorzata Król, and Adam Bartczak, 61-67. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.

Zeidler, Kamil. 2017. "Estetyka prawa: ekslibris prawniczy." *Gdańskie Studia Prawnicze* 2:645-60.

Zeidler, Kamil. 2018. *Estetyka prawa*. Gdańsk-Warszawa: Wolters Kluwer Polska.

Ziembiński, Zygmunt. 1992. "Teoria prawa a filozofia prawa i jurysprudencja ogólna." In *Filozofia prawa a tworzenie i stosowanie prawa*, ed. Bronisław Czech, 83-92. Katowice: Ośrodek Terenowy przy Sądzie Wojewódzkim.

Zirk-Sadowski, Marek. 2000. *Wprowadzenie do filozofii prawa*. Kraków: Kantor Wydawniczy Zakamycze.

Subject Matter of Philosophy of Law

Summary

The question about the subject matter of philosophy of law belongs to fundamental issues of this academic discipline. Although there are more and more new concepts, this dispute has not been unanimously resolved. The purpose of the article is not only the presentation of existing views of the doctrine regarding the question what is the subject matter of philosophy of law?, but an attempt to answer the question how does the evolution of the subject matter of philosophy of law influence the development directions of philosophical and legal problems? Taking into consideration the fact that each of the philosophical systems defined thematical scope of philosophy of law in a different way, systematisation is necessary.

Key words: philosophy of law, methodology, legal sciences, research methods

Przedmiot filozofii prawa

Streszczenie

Pytanie o przedmiot filozofii prawa należy do rudymentarnych zagadnień tej dyscypliny akademickiej. Pomimo pojawiania się coraz to nowych koncepcji, spór ten nie został ostatecznie rozstrzygnięty. Celem artykułu nie jest tylko prezentacja dotychczasowych stanowisk doktryny w zakresie, jaki jest przedmiot filozofii prawa, lecz próba odpowiedzi na pytanie, jak ewolucja przedmiotu filozofii prawa wpływa na rozwój kierunków problematyki filozoficznoprawnej? Biorąc pod uwagę fakt, że każdy z systemów filozoficznych nieco inaczej zakreślał obszar tematyczny filozofii prawa należy dokonać systematyzacji.

Słowa kluczowe: filozofia prawa, metodologia, teoria prawa, metody badawcze

Informacje o Autorze: Dr DAWID KOSTECKI, Zakład Analiz Społecznych i Ekonomicznych Fundacji PAN; Pl. Litewski 2, 20-080 Lublin, Polska; e-mail: kostecki.dawid@gmail.com; https://orcid.org/0000-0002-8132-997X