„Krytyka Prawa", tom 13, nr 3/2021, s. 47–63, ISSN 2080-1084, e-ISSN 2450-7938, © 2021 Author.

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The Concept of Negative Integrity: A Call for Philosophical Re-emergence of the Impeccable Judiciary[2]

Submitted: 8.04.2021. Accepted: 16.08.2021

Abstract

The main purpose of the presented research project is to prepare an initiating answer to the present state of judicial integrity recognised as the top of legal professions and the legal system as such. The method comes mainly from the Oxford analytical jurisprudence, nevertheless, the historical and interdisciplinary approaches, as well as a legal practice, were taken seriously into consideration. The main theses and their scientific standpoints are: (i) at present, we are facing the disintegration of integrity; (ii) one of the sources of it lies in the very grounds of major jurisprudential terms, understood as parts of the Hartian internal point of view and that there are fundamental analytical paradoxes of integrity, generating practical dysfunctionalities; (iii) it is possible to solve main problems through a completely new approach: an ontological turn in the philosophy of law causing the idea of law as a concept and a new concept of integrity, namely 'negative integrity'. It could be easily and effectively treated as practical support for firstly improving judicial integrity and secondly legal practice in general.

Keywords: philosophy of law, jurisprudence, ontological turn in the philosophy of law, the law as the concept, disintegration of integrity, analytical paradoxes of integrity, the concept of negative integrity.

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[2] The research has not been supported financially by any institution.

 DOI: 10.7206/kp.2080-1084.471

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Pojęcie negatywnej integralności: wezwanie do filozoficznego odrodzenia nieskazitelnego sądownictwa[3]

Streszczenie

Głównym celem prezentowanego projektu badawczego jest przygotowanie inicjującej odpowiedzi na pytanie o obecny stan integralności sędziowskiej, pojmowanej jako szczyt zawodów prawniczych i samego systemu prawnego. Zastosowana w projekcie metoda wywodzi się głównie z filozofii analitycznej Oxfordu, niemniej jednak poważnie potraktowano podejście historyczne i interdyscyplinarne, a także praktykę prawniczą. Główne tezy i ich naukowe stanowiska są następujące: (i) obecnie stoimy w obliczu dezintegracji integralności; (ii) jedno z jej źródeł leży w samych podstawach głównych terminów prawoznawczych, rozumianych jako elementy wewnętrznego punktu widzenia Harta, i że istnieją fundamentalne analityczne paradoksy integralności, generujące praktyczne dysfunkcje; (iii) możliwe jest rozwiązanie głównych problemów poprzez zupełnie nowe podejście: zwrot ontologiczny w filozofii prawa, powołujący do życia ideę prawa jako koncepcji oraz nowe pojęcie integralności: „integralność negatywna". Pojęcie to łatwo i skutecznie można potraktować jako praktyczne wsparcie po pierwsze w poprawie integralności sędziowskiej, a po drugie w ogólnej praktyce prawniczej.

Słowa kluczowe: filozofia prawa, prawoznawstwo, zwrot ontologiczny w filozofii prawa, prawo jako pojęcie, dezintegracja integralności, analityczne paradoksy integralności, pojęcie negatywnej integralności.

[3] Badania nie są finansowane przez żadną instytucję.

The Fresh Start[4] Revisited

R.M. Bloom[5], to whom I am referring to in the title and idea of this article, 'reviews current Supreme Court cases and finds that judicial integrity is no longer the bulwark it once was… The author argues that in the United States, the pendulum has swung too far toward neglecting concerns inherent in the principles of judicial integrity and that judicial integrity needs to be restored'.[6]

By these words, there are two dimensions in relevance to the presented topic. The first one is the strict interrelation between the concept of judicial integrity and adjudication[7], and the second one is the necessity for reinforcing judicial integrity not only in the United States but also on a global scale, which nowadays is even more important and urgent. The second dimension is focused on the re-emergence of philosophy as an indispensable tool for potential success. Both of them lead to an ontological turn in the philosophy of law, bearing a turning point in understanding the law through the idea of 'the law as the concept', and finally the requisition of the fresh idea of lawyers' integrity leading to the formulation of the concept of 'negative integrity'.

Epistemological Focal point and the Method

It is impossible to show even a small part of the feedback of this research. This is only an outline. The presented concept of negative integrity comes from many years of studies based on relatively broad epistemological assumptions and approaches consistently with methodological conclusions. One of the most important factors is that my long involvement in NGO's pre-legal activity, connected with

4 H.L.A. Hart, *The Concept of Law*, 2nd edition, Oxford 1994, pp. 79–91.

5 R.M. Bloom, *Judicial Integrity: A Call for its Re-Emergence in the Adjudication of Criminal Cases*, "Journal of Criminal Law and Criminology" 1993 , 84, pp. 462–501.

6 R.M. Bloom, Abstract 29 July 2005, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=771587 (access: 8.03.2021).

7 Recently on that subject: S. Beswick, Retroactive Adjudication, *The Yale Law Journal*, 130/2020–2021. In a sense that is well established in common law jurisprudence, but not so often recognised in civil law countries. It is a fascinating and very crucial issue with a potentially huge after-effect, nevertheless, it is not possible to analyse it in this article just for volumetric reasons.

 DOI: 10.7206/kp.2080-1084.471

everyday professional contacts with many lawyers and judges increasingly exposed the far-reaching inadequacy of the discovered terminology and arguments.

What is even more important, the epistemology plays a crucial role in it, notwithstanding that the main theses are hopefully rather self-explanatory when they are presented as a system, which is offered below in a short version. We will see to what extent and how it applies to others.

The main methodological aim is to present the vital previously unsettled matters in the most clarified way. The method comes mainly from the Oxford analytical jurisprudence – a tribute to H.L.A. Hart and J. Raz – the Analytical Lvov–Warsaw School and its followers[8], L. Chwistek, H. Kelsen, G. Ryle, Q. Cassam, A. Marmor, J. Woleński and R. Dworkin, nevertheless, the historical and interdisciplinary approaches, as well as newest currents, was taken seriously into consideration.[9] Last but not least, it should be emphasised that the historical, sociological, and linguistic analysis of legal practice was also used. In general, I am taking the endeavour, and simultaneously a risk, when it comes to revisited analytical classical thinking linguistically and intellectually. It is possibly a considerable dangerous way to walk between Hart and Dworkin and between common law and civil law cultures, not to mention the ages of legal culture, but I am aware of dangers and open to criticism of such a solution.

The first most important epistemological point is based on the compliance of the cognitive method with the studied object. In Polish literature, it was expressed substantially by J. Staniszkis in her deep studies on so-called real socialism as a completely new realm of socio-political existence[10]. This remark is important in regard to the hypothesis that at present we are confronted with such a new reality on a global scale.

The second epistemological point is that it is not the history of the philosophy of law ('philosophy of law in books'), but the philosophy of the up-to-date history of legal practice in general ('philosophy of law in action'): the history of legislation, adjudication, legal decisions in relevance to the evolution of legal terms, institutions and legal arguments. One can even say, concerning Fuller's famous phrase, that it is a search for the inner integrity of law – to see the inner integrity in its historical conceptualisation of law. The historical conceptualisation of law, in turn, drawing up many sources, such as the internal point of view by L. Petrażycki and

8 T. Kozłowski, *Racjonalizm humanistyczny jako polskość zapoznana*, [in:] *Dokonania kulturowe w Polsce Niepodległej*, K. Karaskiewicz (ed.), Białystok 2020.

9 R.C. Roberts, W.J. Wood, *Intellectual Virtues – An Essay in Regulative Epistemology*, Oxford 2009; see: recently outstanding B. Brożek, *Umysł prawniczy*, Kraków 2019.

10 J. Staniszkis, *Ontology of Socialism*, Oxford 1992.

H. Hart, memetics by W. Lutosławski and R. Dawkins with an extension to dual inheritance theory and semantic memory up to the epistemology of theoretical neurocybernetics. To put it simply, we are dealing with legal consciousness rooted in legal concepts rooted in experience. One of the sources of inspiration for it is the currently underestimated work *The Legal Conscience* by F.S. Cohen[11] or G. Ryle and his *The Concept of Mind*[12], as an inspiration for Hart, but as well as a general attitude for the internal coherence of human mind.

Among contemporary conceptions of ontology, the theoretical neurocybernetics research approach, which is important for this project, is hereby treated exceedingly. According to A. Przelaskowski, K. and Sklind, B. Ciszek: 'Ontology is a formal specification of a common conceptual layer of a selected field, e.g. neurodiagnostic. In other words, it is an unambiguous definition of important concepts describing an abstract model of phenomena of a given fragment of reality and their mutual relations. Concepts are defined in a computer-readable form to enable the sharing of objectified knowledge that is the result of the consensus of specialists in a given field'[13]. Let me stress: 'formal specification' means artificial (conceptualised) products of the human mind, based on up-to-date and on-going knowledge as well as on rationalisation processes; 'objectified knowledge', obviously in a strict philosophical sense, means what 'the consensus of specialists in a given field' means, which is, as in K. Ajdukiewicz works, intersubjectively verified knowledge. Let me transcribe it into a form that is decisive for the future understanding of negative integrity: concepts are defined in the judge-readable form to enable the sharing of objectified knowledge that is the result of the consensus of lawyers in a given field and the philosophy and theory of law. My little addendum to it is that the concepts that constitutionalised the law as such have been produced by law-given interpretative and adjudicated practice as well as by the theory and philosophy of law.

The epistemological map is completed by radical opposition to the refutation of philosophy as collective social wisdom of the Western culture. I am aware that this is the state of affairs as much as I am convinced, and my conviction is now scientifically grounded, that it is one of our biggest mistakes.

Put it most shortly: this is a text on a philosophy where the subject of study is a legal practice. Within such a practice judicial adjudication is treated as the focal point of the law, and where the other types of legal professions are secondary – from

11 F.S. Cohen, *Legal Consciousness*, Yale 1960.

12 G. Ryle, *The Concept of Mind*, 60th Anniversary Edition with J. Tanney's *Critical Commentary*, London––New York 2009.

13 A. Przelaskowski, K. Sklind, B. Ciszek, *Modelowanie subtelnych zmian chorobowych mózgowia wspomagające neurodiagnostykę*, [in:] R. Tadeusiewicz (ed.), *Neurocybernetyka teoretyczna*, Warszawa 2009, p. 191.

 DOI: 10.7206/kp.2080-1084.471

analytical and practical points of view. As in Hart's works, this is irrespective of the type of a given legal system.

Disintegration of Integrity – A Short Outcome

'Nothing will be the same again, and maybe that's a good thing. … Political philosophers have a term for it: we are being propelled towards the "state of nature"'[14]. The above-quoted V. Buffachi's words and his entire article clearly show the phenomena accompanying COVID-19 from the perspective of political philosophy and is so potentially fruitful for jurisprudence.

COVID-19 is an important but 'only' one element of the world's disintegration arising from the Western culture and civilisation. The so-called Western way of life, globally spread, went from the 'Lexus and the olive tree'[15] up to the 'economics in the age of COVID-19'.[16] The famous attempt to build a roof on the building of jurisprudence and the law as such, so crucial from the integrity point of view, namely Dworkin's 'one right answer thesis', supported by the thesis of the end of history, is no longer the same. Moreover, it is falling apart before our eyes. In a way, on the opposite side to Dworkin, there is S. Sołtysiński with the thesis: 'Twilight of the principle of equal treatment of business entities'.[17] Sołtysiński states the collapse of the fundamental principles of the Western legal integrity, caused by global corporate law – if the term 'law' is still in force because of the scale of changes. Reading Sołtysiński, one has to say that it is even not a matter of hard cases, but potentially at present, in each case, there is no one right answer. Quite the opposite – as it was observed above by V. Buffachi – there is a state of nature, structuralised by pure force, and even if this force is put in white collars, it does not change the form of things.

Looking through the strictly jurisprudential perspective, which is, however, heavily grounded in economic and social modern literature[18], the following legal scene should be shown: dogmatic post-modernism that is increasingly hand-to-hand with dogmatic American realism generating legal separateness of interest

14 V. Bufacchi, Coronavirus: it feels like we are sliding into a period of unrest, but political philosophy offers hope, *The Conversation*, 29 April 2020.

15 T.L. Friedman, *Lexus i drzewo oliwne – zrozumieć globalizację*, Poznań 2001.

16 J. Gans, *Economics in the Age of COVID-19*, Cambridge MA 2020.

17 S. Sołtysiński, *Zmierzch zasady równego traktowania podmiotów gospodarczych*, „Państwo i Prawo" 2015, 1.

18 Recently: J. Cruddas, F.H. Pitts, *The Politics of Postcapitalism: Labour and our Digital Futures*, "The Political Quarterly" 2020, 91(2), April–June.

groups, strengthened by digital grouping, connected with the beginning of AI, consequently leading to post-humanism in neo-behavioural alteration, shaping the disintegration of nearly every social nerve and certainly the disintegration of legal and integrity and that of lawyers. Digital Global Society is going in post-legal directions. We have got an anti-integrated social situation: rising chaos on one side, rising attempts to regulate everything out of the legal orders through external algorithms on the other side, and because of this duality there are rising fundamentalist political currents, serving not integrity, but integralism. The post-Dworkinian and post-Habermasian state of legal integrity affairs change almost everything in relation to the integrity of lawyers and especially judicial integrity. Notwithstanding in social sciences, the conclusions are always a matter of taste and even a matter of choice. Nevertheless, this picture is impossible to ignore. Otherwise, debaters may find themselves debating about nothing.

Analytical Paradoxes as One of the Major Sources of the Disintegration of Integrity

The main unsolved dilemma, or even more, the main vicious explanation circle in relation to the disintegration of integrity is that the concept of integrity was by definition deprived of – let us call it – the one integral sense of integrity.

On the contrary, we have got common sense and common agreement, which is even ideal in the Habermasian sense, that there is a great need in the legal world for integrity in general and in every possible sense. However, the problem is that there is no such concept. It means, among other questions marks, that the concept of jurisprudential integrity could be dysfunctional and can become a basis for a stable ground of practical instability, unpredictability or even the above-mentioned chaos.

It is impossible to even touch integrity clarifications with a broader elaborate meaning in such a short text. Here we have common sense, which, in relation to this issue, is quite trustworthy. When we bear in mind an open texture problem, it is quite clear that we are between words such as compactness, systematic, entirety, consistency up to uniformity and homogeneity, with the last words treated rather as borderlines.[19]

[19] Fortunately, there is an extensive literature on the very subject, and in Poland it is particularly the Legal Ethics Institute Library.

 DOI: 10.7206/kp.2080-1084.471

According to the famous *Oxford Dictionary of Philosophy* by S. Blackburn[20], integrity is something with very strict limits, but without material content. Although the work denotes 'integrity' in addition to 'honesty', which is certainly controversial, but it also importantly underlines that integrity is generally very positively valued, and that is crucial from my analytical point of view. Blackburn also combines integrity with utilitarianism. Utilitarianism in relation to the Western type of integrity is pivotal, or at least was pivotal, but again, from the analytical perspective, what is meaningful is the strong valuation as a part of the very term 'understanding'.

Integrity notions depicted by S. Blackburn, but naturally not only by him, are of great value. On one hand, there is the wholeness out of material content. On the other hand, there is very strong value content, but it is not declared, and only political, religious, cultural or sexual preferences could be decisive, and that is the very problem. Integrity leads to the fundamentalism of different colours or even to integralism, integrity leads to wilfulness or lawlessness. Moreover, the more integrated a person is, the more potential disintegration they can serve in front of another fully integrated person and the closer they are to external arguments. Also, every above-mentioned item is extremely far from the law. From this point of analysis, disintegration depicted above is just a logical consequence.

Within civil law countries, the strong value content of legal integrity is amplified by the serious role of legitimacy, which means outside value and evaluative arguments for the existence of legal compulsion. Within common law countries, the strong value content of legal integrity is underlined in the USA, especially in relation to judicial integrity up to Supreme Court Justices hearings. Nevertheless, within common law jurisprudence, a great effort was made to clarify the terminological problems with the notion of integrity, mainly through the Dworkinian concept of rights and J. Raz's concept of authority and reasoning, without which the presentation of these theses would also be impossible. However, Dworkin openly connects law with morality and politics towards rights, and J. Raz, conversely, escapes from value estimation, looking for a pure logic formula. Nevertheless, none of these proposed concepts resolve the dilemmas described. Value content is always open to the paradoxes described above and pure theory of authority was indispensable, not apart from its elegances, but precisely this purity does not match integrity.

[20] S. Blackburn, *Oxford Dictionary of Philosophy*, Oxford 2008.

What Is the Way to Solve the Problem? The Law as the Concept and the Concept of Negative Integrity

The Law as the Concept

The concept of law is still not fully recognised, in my words, it is not fully conceptualised[21]. Besides, the situation is even more stressed because this long, but not properly defined legal journey can be interrupted by modern global conditions. The disintegration of integrity and integrity paradoxes are in the very centre of a global question mark over the law. In order to solve it, one has to go to the basics.

The disintegration of integrity has the already mentioned additional extremely positive dimension – it is much easier to have in mind such an experience to understand the sense of the origination of our culture and civilisation. It reminds us the conceptual wisdom of the Roman Empire, where integrity was so close to 'virtue' and virtue to integrity: we are as strong as our understanding of what this system was for at all.[22] Moreover, with the present sense of ecology and interspecies protection of life as well as the concepts of sustainability and preserving as much as possible for the next generation, we are on the verge of philosophy[23], wherein my opinion, terms such as *nomos*, *economos*, *ius et lex*, *auctoritas* and the social necessity of law and many others are more possible to grasp.

I am defending the thesis that the human law is, from a value point of view, a conceptual and negative (not neutral) reaction to pro-destructive laws of nature (laws of objectification – from the very beginning of history up to the present post-capitalism).

We invented law as humanity not as a result of one or two books, but as a result of a practical conceptualisation that continues uninterruptedly, but not linearly, from the beginning of philosophy as the beginning of the intersubjective rationalisation of reality. This invention is a process of conceptualisation that I call the constitutionalisation of law, or otherwise, my theory may be called the constitution of law. Obviously, within the meaning resulting from the adopted epistemology,

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21 T. Kozlowski, *Legalness – Philosophical Truth as a Concept of Law*, [in:] M. Piechowiak (ed.), *Nomos and Truth*,), Poznań 2008; T. Kozłowski, *Globalne prawo a partykularne państwo według Andrzeja Stelmachowskiego*, [in:] T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011; T. Kozłowski, *Lobbing jako społeczne administrowanie informacją*, [in:] *Refleksje o prawie, państwie i społeczeństwie*, [in:] A. Turska (ed.), Warszawa 2005; T. Kozłowski, *Spór o obecne pojęcie prawa*, [in:] L. Leszczyński (ed.), *Teoretycznoprawne problemy integracji europejskiej*, , Lublin 2004.

22 Recently: A. Everitt, *Chwała Rzymu*, Poznań 2020.

23 J. Sallis, *The Verge of Philosophy*, Chicago–London 2008; J. Mullarkey, *Post-Continental Philosophy*, London 2006.

 DOI: 10.7206/kp.2080-1084.471

which means artificial construction that is gradual by the convolution of rational--factual reactions. The already established meaning of the term 'constitution' and my proposed supplement can also be additional jurisprudential help.

Having said that and looking through so-called ontological commitment, one should say that deconstructing the law in practice, we are obliged to use the ontological turn in the philosophy of law.

Why? Looking historically, the best phrasing of what is legal is the term 'common law' with an emphasis on the word 'common' – not imperial, religious, economic, political or moral, but common. Inside its history[24], building law step by step in practice, by practical real concrete needs, by precedents and equity, there was no need for building the official definition, the more the definition treated as a starting point of adjudication like it is in civil law countries. Again – why? Inasmuch as the need for the law was not in theoretical disputes, but occurred in the real factual situation, in which defence of oneself was possible only by something more powerful than somebody on the other side who was bigger, greater in quantity, richer, cruel, male, white or generally more forceful, and just by that one should invent something with final authority on a common scale. Historically, the main starting point was that not only all of the normative or decisive layouts were dysfunctional, ineffective and so on, but they were directly definitely counterproductive. One of the reasons was that all of them were situated in this very state of nature, in the Hobbesian sense of the state of war, in a modern analytical sense of a clash of the state of facts. The system working within each of them may still function somehow, but one system juxtaposed with the other, one religion with another, a feminist with a conservative, by definition, enters a state of actual confrontation. That is why one should artificially invent something completely new, different, independent, autonomous – namely the law.

This is the law, and because of its ontic difference, it was not subject to most of the variables suspected of in the tradition of jurisprudence, especially of the continental one. On the contrary, law develops not without confusion and turmoil, but the inner integrity of law, at least as a concept, was always up to the task. Reaching Greek, Roman, and even earlier times, and not only entering, but also flourishing from the beginning of the Middle Ages: the locations of villages and cities, the development of municipal law and commercial law, accounting, notaries, *stadium* v *sacrum* and v state/power, and even solutions such as a franchise, quite meaningful, were born there. *Franchise* derives from the Old French word *franche* – free, and

[24] Recently: M.D. Dubber, C. Tomlins, *The Oxford Handbook of Legal History*, Oxford 2018; L.M. Friedman, *A History of American Law*, Oxford 2019.

traces back to Middle English, where it denoted a grant of legal immunity[25] that is so interesting from the perspective of law as the concept and the concept of negative integrity.

One of the biggest mistakes of jurisprudence, especially the continental one, was to regard modernism as a completely new stage in the development of law, and its surprise, in turn, with the time that no longer fits this pseudo-model, i.e. the time of global society. It should be mentioned that 'legalism' was invented in China in the third century BC, they abandoned it relatively quickly, and nowadays they are joining the law, not in their legal or our modern/postmodern ideology, but in a proper sense. 'The legalist school was the most radical of all ancient Chinese schools. It rejected the moral standards, of the Confucianists and the religious sanction of the Maoists in favour of power. It accepted no authority except that of the ruler and looked for no precedent. Its aim was political control of the state and the population, control to be achieved through an intensive set of laws, backed up by generous rewards severe punishments.'[26] It sounds so familiar. At this very moment, let me emphasise the following: the law is not about power and external norms. On the contrary, the law is the only entity over the power and is the concept, not the norm. Normativity is the language of the law. Normativity is the sense of religion and morality. Normativity is not the sense of law. It is the internal concept of immunity from submissiveness, and this point of view is so delicate in China, but that is a different matter. What matters for most lawyers and for definitely every judge is that the internal concept of immunity from submissiveness is the focal point of judicial integrity.

A lawyer with a completely basic knowledge of commercial law, not to mention civil law, knows that global law from the very beginning was not only Dutch and British capitalism but also economic law in general, and it certainly was not post--modern.

Moreover, from this point of view, there is a clear internal need not to tell the integral history of legal institutions, from academic, cultural, and commercial entities through liberation movements and generally human rights movements up to the ecological and health/public life norms and the legal protection of animals.

From this perspective, natural law in a religious sense is a completely different story from an ontological perspective, and natural law in the Enlightenment sense is politics of law, but not the sense of law.

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25 https://franchiseguardian.com/facts/franchising-history/ (access: 8.03.2021).

26 W. Chan, *Chinese Philosophy*, Princeton, 1969, p. 251; also: B.I. Schwartz, *The World of Thought in Ancient China*, Cambridge MA 1985; B. Góralczyk, *Wielki renesans – chińska transformacja i jej konsekwencje*, Warszawa 2018.

 DOI: 10.7206/kp.2080-1084.471

The beginning of law is not a contract, since it is an explanation *idem per idem* – a contract is already the law; it is not dignity or the concept of human nature because these are parts of general social communications ideology and/or general philosophy; it is neither God nor Liberty because the first is transcendent and the second is chaos and war without the law. The beginning of law is not even litigation because litigation is an effect of the need for law, the effect of the causation of law in the philosophical sense, but not the need for law or causation itself. I am aware of the degree of novelty of the following statement as well, but I hope that the entirety of this text and more of my research, which is already in preparation, are at least a little probable: the beginning of law is not a norm of conduct because again, the norm is an effect, not the *causa*. What, in turn, is the *causa* of law, the need for the law?

This is the negation of subjectivity destruction. The law is not a positive value content norm. The law is the concept of the negative reaction to the destruction of subjectivity, which is a fact.

Summarising the law is the concept of social communication based on the maximised negation of subjectivity destruction leading to an exclusive[27] common final intersubjectively rational decision. It has the maximal negation of subjectivity destruction, but minimal interfering with other positive types of social communications. The negation of subjectivity is not only a part of penal law, but it is the ground of every type of law, notwithstanding that other types include organisational (administrative, corporate laws) and pro-peaceful (civil law, environmental law) elements. In a sense, I am proposing to change the famous G. Radbruch's triad into a new one: the negation of subjectivity, pro-organisable communication, and pro--peace communication, but with the serious remark that the last two elements do not exist (in this very legal notion) without the first one. Let me give just one but remarkable example: tax law. The principle of the taxing power of external force is worldly recognised – in this world, nothing can be said to be certain, except death and taxes. However, even there is *in dubio pro tributario* – not to mention in other fields *in dubio pro libertate* or *in dubio pro reo*.

The Concept of Negative Integrity

'Markets do not guarantee equity, responsibility or integrity. They can maximise short-term gain at the cost of long-term sustainability'[28] – not only do these words, presented of late by J. Sacks, reveal new content in relation to integrity.

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27 J. Raz, *The Authority of Law*, 2nd edition, Oxford 2009; *Between Authority and Interpretation*, Oxford 2009.

28 J. Sacks, *Morality – Restoring the Common Good in Divided Times*, London 2020, p. 101.

Dworkin used to say that 'rules are not enough', I am going to say that 'rights are not enough', but with a major annex: 'law is enough'. It is not necessary, and mostly even dysfunctional, to use outside help. This is also the case when it comes to using non-legal notions of integrity on judges and lawyers in general, located, for instance, in modernity or postmodernity, or in premodernity, or in pre- or post-conciliar Catholicism.

As I have proposed, in the case of law, integrity should be viewed through the prism of an ontological turn. Consequently, in relation to the law as a negative concept, I also refer to the concept of legal integrity as an ontological turn. Legal integrity becomes through the above-depicted practical and intellectual experience also a completely new, artificial, conceptualised part of the personality[29], which is finally completely professionalised.

Within this perspective in mind, the judge is at the beginning, and not at the end, of such a conceptualisation as a professional person fully integrated with the notion of what is legal. Furthermore, only by building the picture of the negative integrity of a judge it is possible to enter into the other types of legal professions, always narrower in the scope of the fulfilment of the law as such.

The above-mentioned results of my research lead to the conclusion that the integrity of lawyers should be viewed in a completely different way, not as a set of positive normative values or a set of formal attitudes leading to such values, but as a potentiality for willingness to oppose the violation of submissiveness. In this respect, the more integral each lawyer, and especially a judge, will be, the better for the law that is also for them.

We are dealing with a completely different situation from that in other professions – obviously, the greatest similarities concern medical professions, which has been noticed since the dawn of mankind, and in the wise Middle Ages functioned like a universal common realm – the self-creation one's own autonomy[30] from the normal, non-legal, integrity (also an educational or a corporate creation of this type is of great importance).

The primary determinant of this integrity is thinking and actions leading to a negative and effective reaction to the destruction of subjectivity (and not the positive defence of Dignity, Freedom, God or the State (!) – another story is about the truth). The judge must be an empty vessel into which the legal culture pours this

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29 One of the important points of reference to the presented theory is: P. Kaczmarek, *Dystans do roli w zawodzie prawnika*, Warszawa 2019; also numerous works by P. Skuczyński and others from the Legal Ethics Institute in Poland.

30 C.M. Korsgaard, *Self-Constitution – Agency, Identity and Integrity*, Oxford 2009; M. Thompson, *Life and Action – Elementary Structures of Practice and Practical Thought*, Cambridge MA 2008; C. Gill (ed.), *Virtue, Norms & Objectivity – Issues in Ancient and Modern Ethics*, Oxford 2005.

 DOI: 10.7206/kp.2080-1084.471

awareness. It must be a model-maximal action, which will effectively and at least universally stop this destruction for now, but which will ultimately redress, repair and stop it for as long as possible. This action must also concern the past and future generations, interspecies protection, and nature as a common space for every life.

Another aspect of this is the creation by the judge, precisely in each legal system, of a completely new separate social communication, only exclusive to ultimately authoritative decisions.

Added to this is the newest aspect of this communication in the form of digital functioning, which will surely grow immeasurably in the near future. Among other things, it will intensify the aspects of intersubjectivity and verifiability of this communication. The hard cases are the right illustration of this concept – from the adopted philosophical point of view, it follows that the more difficult they are, the more they must cover the 'normal' integrity of the judge and the more they must discover his or her professional integrity, that is, negative integrity. What is more, the more difficult they are, the more they must reach the meaning of the law as a concept of a negative reaction to negative facts, since the legal regulations themselves and all legal instruments fail. Lawyers, and judges in particular, must be independent/autonomous, but certainly not from the meaning of the law.

This is the complementary defence of the Kelsenian pure theory of law, the Dworkinian one right answer thesis, the Hartian point of view, the Habermasian and Razian very pro-legal social communications, even post-modernism with the discovery of different internal worlds *id est* different integrities within the general social realm (but from the point of view of the presented concept, not in strictly legal senses), and post-humanism as a fair and wise escape from anthropocentrism towards Nature and many other theses. It is a defence of integrity in every sense as an indispensable legal element and tool, while 'legal' always means 'lawyers'. However, this happens with the help from a completely new different grounding, and that makes a difference.

Among other things, I drew attention to the theses of J. Sacks and S. Sołtysiński – and in connection with them, I can say now: only negative integrity can judge everyone, including markets and fundamentalist states. Relying on any positive integrity must end in failure.

A Fresh End Opener

The idea of negative integrity emerges from the gap between jurisprudential answers and practical questions still in force. It should be underlined that the concept of negative integrity should be treated as a fresh end opener in this sense

that the law as a concept presumes law as a minimal ground for a maximal non-legal human potentiality. It means that research for judicial integrity as personal integrity should not only be continued but also expanded because the pure professional way of judicial conduct ensuing from the law as a concept is not the end of the judicial personality. Quite the opposite – the more integral it would be, the more integral it should be.

The end of history was announced so frequently, by the Roman Empire, religious states, secular empires, monarchs, dictators, totalitarian states, financial markets, and it is still announced. The end of law as a system and the end of lawyers' integrity, even judicial integrity, destroyed, for instance, just because of money, is treated seriously nowadays. On the other hand, the legal integrity and that of lawyers are still possible in their way to Bloom's impeccability. Nevertheless, it happens, probably quite optimistically, that in our Western culture, we still have much to do – even, or rather especially, within the framework that well established theoretically but fundamentally deprived in practice. However, the *Promised Land,* as formerly, is waiting for us and is a real possibility, like Kantian answers to his questions: 'What is possible?' and 'What I can do within this?'. Barack Obama notes in his book: 'I became a student of the suffragists and early labour organizers; of Gandhi, Lech Wałesa and the African National Congress. Most of all I was inspired by the young leaders of the civil rights movements … . I saw the possibility of practising the values of my mother had taught me: how you could build power not by putting others down but by lifting them up'.[31] The concept of negative integrity is exactly about this: 'not by putting others down but by lifting them up' – emphasising the separateness of a person as a lawyer following the separateness of the law. As lawyers, we should be put first of all by ourselves into the negative integrity to reinforce the positive integrity of humankind. As lawyers, we should minimise ourselves to maximise the others.

Bibliography

Beswick S., *Retroactive Adjudication*, "*The Yale Law Journal*" 2020–2021, 130.

Blackburn S., *Oxford Dictionary of Philosophy*, Oxford 2008.

Bloom R.M., *Judicial Integrity: A Call for Its Re-Emergence in the Adjudication of Criminal Cases*, "Journal of Criminal Law and Criminology" 1993, 84, 462–501.

Brożek B., *Umysł prawniczy*, Kraków 2019.

Brożek B., Heller M., Stelmach J., *Spór o rozumienie*, Kraków 2019.

[31] B. Obama, *Promised Land*, New York 2020, p. 11.

 DOI: 10.7206/kp.2080-1084.471

Bufacchi V., *Coronavirus: it feels like we are sliding into a period of unrest, but political philosophy offers hope*, "The Conversation", 29 April 2020.
Capps P., *Human Dignity and the Foundation of International Law*, Oxford–Portland 2009.
Chan W., *Chinese Philosophy*, Princeton, 1969.
Cohen F.S., *Legal Consciousness*, Yale 1960.
Cotterrell R., *The Politics of Jurisprudence*, London 2003.
Culver K.C., Giudice M., *Legality's Borders – an Essay in General Jurisprudence*, Oxford 2010.
Cruddas J., Pitts F.H., *The Politics of Postcapitalism: Labour and our Digital Futures*, "The Political Quarterly" 2020, 91(2), April–June 2020.
Dubber M.D., Tomlins C., *The Oxford Handbook of Legal History*, Oxford 2018.
Dyzenhaus D., *Legality and Legitimacy*, Oxford 2003.
Everitt A., *Chwała Rzymu*, Poznań 2020.
Forst R., *Contextes of Justice*, London 1994.
Friedman L.M., *A History of American Law*, Oxford 2019.
Friedman T.L., *Lexus i drzewo oliwne – zrozumieć globalizację*, Poznań 2001.
Gans J., *Economics in the Age of COVID-19*, Cambridge MA, 2020.
Gill C. (ed.), *Virtue, Norms & Objectivity – Issues in Ancient and Modern Ethics*, Oxford 2005.
Góralczyk B., *Wielki renesans – chińska transformacja i jej konsekwencje*, Warszawa 2018.
Finnis J.M., *Philosophy of law*, Oxford 2011.
Finnis J.M., *Reason in Action*, Oxford 2011.
Hart H.L.A., *The Concept of Law – Second Edition*, Oxford 1994, pp. 79–91.
Izdebski H., *Fundamenty współczesnych państw*, Warszawa 2007.
Kaczmarek P., *Dystans do roli w zawodzie prawnika*, Warszawa 2019.
Korsgaard C.M., *Self-Constitution – Agency, Identity and Integrity*, Oxford 2009.
Kozłowski T., *Racjonalizm humanistyczny jako polskość zapoznana*, [in:] K. Karaskiewicz (ed.), *Dokonania kulturowe w Polsce Niepodległej*, Białystok 2020.
Kozłowski T., *Globalne prawo a partykularne państwo według Andrzeja Stelmachowskiego*, [in:] T. Giaro (ed.), *Prawo w dobie globalizacji*, Warszawa 2011.
Kozłowski T., *Legalness – Philosophical Truth as a Concept of Law*, [in:] M. Piechowiak (ed.), *Nomos and Truth*, Poznań 2008.
Kozłowski T., *Lobbing jako społeczne administrowanie informacją*, [in:] A. Turska (ed.), *Refleksje o prawie, państwie i społeczeństwie*, Warszawa 2005.
Kozłowski T., *Spór o obecne pojęcie prawa*, [in:] L. Leszczyński (ed.), *Teoretycznoprawne problemy integracji europejskiej*, Lublin 2004.
Kramer M.H., *Where Law and Morality Meets*, Oxford 2004.
MacCormick N., *Institutions of Law*, Oxford 2007.
Markesinis B.S. (ed.), *The Clifford Chance Lectures*, Oxford 1996.
Mullarkey J., *Post-Continental Philosophy*, London 2006.
Musiała A., *Prawo pracy: czyje? Res publica! O stosunku pracy teoretycznoprawnie*, Poznań 2020.
Musiała A., *Polskie prawo pracy a społeczna nauka Kościoła. Studium prawno-społeczne*, Poznań 2019.

Obama B., *Promised Land*, New York, 2020, p. 11.
Ott W., *Causation & Laws of Nature in Early Modern Philosophy*, Oxford 2009.
Pavlakos G., *Our Knowledge of the Law*, Oxford–Portland 2007.
Ratnapala S., *Jurisprudence*, Cambridge 2009.
Raz J., *The Authority of Law*, 2nd edition, Oxford 2009; *Between Authority and Interpretation*, Oxford 2009.
Raz J., *Value, Respect, and Attachment*, Cambridge 2001.
Raz J., *Engaging Reason – On the Theory of Value and Action*, Oxford 1999.
Raz J., *Ethics in the Public Domain*, Oxford 1994.
Raz J., *Practical Reason and Norms*, Oxford 1975.
Raz J., Korsgaard C., Pippin R., Williams B., *The Practice of Value*, Oxford 2008.
Roberts R.C., Wood W.J., *Intellectual Virtues – An Essay in Regulative Epistemology*, Oxford 2009.
Ryle G., *The Concept of Mind*, 60th Anniversary Edition with J. Tanney's *Critical Commentary*, London–New York 2009.
Sacks J., *Morality – Restoring the Common Good in Divided Times*, London 2020, p. 101.
Sallis J., *The Verge of Philosophy*, Chicago–London 2008.
Schwartz B.I., *The World of Thought in Ancient China*, Cambridge MA, 1985.
Sen A., *The Idea of Justice*, London 2009.
Skuczyński P., *Status etyki prawniczej*, Warszawa 2010.
Skuczyński P. (ed.), *The Concept of Dilemma in Legal and Judicial Ethics*, Warsaw 2018.
Sołtysiński S., *Zmierzch zasady równego traktowania podmiotów gospodarczych*, „Państwo i Prawo" 2015, 1.
Staniszkis J., *Ontology of Socialism*, Oxford 1992.
Sykuna S. (ed.), *Legal Ethics in Poland. Foundations. Professions. Principles. Responsibility*, Warsaw 2021.
Tadeusiewicz R., *Neurocybernetyka teoretyczna*, Warszawa 2009.
Thompson M., *Life and Action – Elementary Structures of Practice and Practical Thought*, Cambridge MA, 2008.
Twinning W., *Globalisation & Legal Theory*, London 2000.
Zetterquist, O. (ed.), *Law and Modernity – Particular Problems*, Cracow 2004.

 DOI: 10.7206/kp.2080-1084.471