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II. REVIEW ARTICLES

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VALUE PLURALISM AND LEGAL HOLISM*

I. INTRODUCTION

It might be the case that a researcher happens to strike gold during her investigations. Not only does her discovery provide answers to the questions vexing her, but it also promises further discoveries which, over time, will become the foundation of her later achievements. Yet once the latter have been realized, the structure that has been raised seems as if it were demanding completion. The researcher feels that the purely theoretical undertaking she once set out on offers barely a starting block for further research, and that its continuation should take place. In particular, she realizes that the deliberations she went through should be carried over into ideas that would translate directly into practice. And thus a further revelation is brought about. The researcher comes across a work which, in its essence, constitutes just such completion. To her astonishment, it turns out that years earlier somebody thought along similar wavelengths, but their path ran in the opposite direction – because their starting point was the practice of a legal counsel and mediator, and not purely theoretical investigations within the area of moral philosophy. While constructing his own conception, he was unaware that the philosophical foundations of his ideas and proposals already existed, offering sturdy support for his stance and the recommendations flowing from it. If somebody were to have the opportunity to familiarize themselves with the accomplishments of the two researchers, their attention would most probably be drawn to the astonishing correspondence between their perspectives – which at first glance appear totally incompatible.

I had precisely such a unique experience when I came across Adam Zienkiewicz's work *Holizm prawniczy z perspektywy Comprehensive Law Movement [lit.: Legal holism from the perspective of the Comprehensive Law Movement]*. This book, one I firmly believe to be extremely important, proposes an innovative approach to law and to legal practice, one breaking radically from the traditional understanding of the system of justice and how it is dispensed, but also from the stereotypical vision of the practitioner of law as a warrior.

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Legal holism opens up an entirely new and simultaneously extensive prospect both in the area of general reflection regarding the law, and in regard to its application as well as – to a certain extent – how the law is made. However, before I proceed to lay out a more detailed account of the ideas contained in Zienkiewicz's work, I shall pause at the conception in the field of moral philosophy which, in my conviction, constitutes an excellent foundation for legal holism. What I have in mind here is an innovative movement known as value pluralism, which took shape in the mid nineteen-nineties in Oxford. The late Isaiah Berlin (1909–1997), an outstanding philosopher, the joint founder of the Oxford school of ordinary language analysis, historian of ideas, and ardent defender of individual freedom is widely considered the movement's father. Certain aspects of pluralism were already present in the thought of the movement's precursors, starting with the ancient sceptics, and via Machiavelli, Vico and Herder to two American authors of the first half of the twentieth century, Sterling P. Lamprecht and Albert P. Brogan.[1] Nevertheless, prior to Berlin nobody had recognized the fact that acceptance of the fundamental theses comprising the pluralistic view was tantamount to a breakthrough in moral philosophy. An outline of value pluralism appeared in this philosopher's famous essay *Two Concepts of Liberty* back in 1958, which underwent further clarification in subsequent papers and in particular in a lecture that he delivered 30 years later entitled *The Pursuit of the Ideal*.[2] However, the impulse that brought about the ultimate crystallization of pluralism was the monograph *Isaiah Berlin* by John Gray, published in 1995. Debate over the issue then took on a global scale, with a tsunami of articles followed also by books, discussing Berlin's views and their interpretation in the work in question. In effect, pluralism had grown into an extensive doctrine, within which numerous trends and schools of thought had taken shape. Discussion regarding the matter is by no means abating, all the more so since a parallel version of value pluralism has been developed by the legal philosopher Joseph Raz. This alternative variant of pluralism was presented in 1986 in the monograph *The Morality of Freedom*.[3] Raz claims to have developed his own version of this stance independently of Berlin's deliberations, which did not constitute inspiration for him.[4]

It just so happened that in spring 1995, shortly after the publication of Gray's book, I was visiting Oxford. During previous fellowships I had made contact with all three of the thinkers mentioned above. Gray's newly-released work naturally emerged as a topic of my conversations with Isaiah Berlin, when we discussed Gray's reconstructions and the controversial implications that he drew from them. Our talks continued in correspondence between us right up until Isaiah Berlin passed away in 1997. Over the years 1995–1997 I received four important letters from him, epistles which were later to be included in the

[1] Polanowska-Sygulska (2008): 79–89.

[2] Isaiah Berlin delivered it during the ceremony for handing him the Giovanni Agnelli International Prize for the Ethical Dimension in Advanced Societies in Turin in 1988. Cf. Berlin (2004): 1–16. (1990): 1–19.

[3] Raz (1986).

[4] See the remark given by Joseph Raz in the interview: Polanowska-Sygulska (2011): 255–256.

book *Unfinished Dialogue,*[5] while excerpts of the most resounding of them were also incorporated into the final volume of the philosopher's correspondence published after his death.[6] At the same time I was in academic contact with John Gray and Joseph Raz. The theme of value pluralism played a key role in our conversations, in the interviews I conducted, and in the email messages that passed mainly between myself and John Gray. I also became acquainted with other researchers fascinated with this movement, and above all with Roger Hausheer, Kei Hiruta, Claude Galipeau and Berlin's biographer, Michael Ignatieff. I had countless discussions with probably the greatest expert on pluralism, Isaiah Berlin's closest collaborator, and the editor of his works – Henry Hardy. Academic visits to other continents also allowed me to exchange thoughts with Steven Lukes, George Crowder and Shinichiro Hama. I was thus given the opportunity to participate in the customarily understood 'birth' of one of the most vividly discussed intellectual movements, which became the inspiration for an entire plethora of writers, and which has been exerting an undeniable impact on discourse within the humanities and the social sciences. This enormous privilege that I became a part of led to value pluralism taking a permanent place in my own, personal intellectual 'equipment'. It is, for me, part gift and part duty. And that is because I have the feeling that I should share the knowledge I have gained, the valuable sources to which I have had access. Hence, despite having already written on the subject in a number of publications,[7] I present here in the most general of outlines the main theses of value pluralism in Berlin's canonical version, leaving aside for the purposes of this article discussion over this and other variants of this perspective in ethics.

II. VALUE PLURALISM

The starting point for Berlin's construction of the framework for the new view in moral philosophy was reflection over two opposing and predominant stances within its confines: monism and relativism. Monistic concepts assume the existence of a single acceptable system of values; the different variants of ethical subjectivism or relativism assume that all values are an expression of personal preferences or social conventions. Neither of the stances just given represents an approach that would prove satisfactory to ethically sensitive people, since either of them could lead to consequences difficult to accept. In addition, neither of them does justice to the experience of ethical conflict. The above charges do not apply to value pluralism. The latter constitutes a kind of intermediate position on the map of ethical theories, holding both monism and relativism at a distance, while simultaneously proposing a unique description of ethical life, different to either of the above points of view. According to pluralism, human values are objective and knowable, but there are many of them. They are qualitatively heterogeneous, and as such cannot be fully put in

[5] Berlin, Polanowska-Sygulska (2006): 84–93, 99–104.
[6] Berlin (2015): 561–563.
[7] Polanowska-Sygulska (1998): 47–80, 137–167; (2006); (2011); (2012): 107–141; (2017): 93–259.

order. There is no common measure that could apply to them all, or any kind of *summum bonum* whatsoever that would be the greatest good for all people. Nevertheless, there does exist a certain array of objective goals to which – as Berlin observes – at various times diverse societies, diverse groups within the same society, or even specific individuals, have aspired to. Apart from that common minimum, comprising an undefinable and, to a certain extent, fluctuating and hard-to-describe range of universal human values, there exists a broad scope of legitimate diversity. This is embodied in the diversity of cultures, the manifold collective purposes, and the entire profusion of individual concepts of good life. Yet despite this diversity, there is undoubtedly a core of commonly shared values; otherwise interpersonal understanding would be impossible. The ethical minimum mentioned above, almost like a common yet barely-definable trait that can be identified in the faces of ancestors comprising a gallery of family portraits,[8] means that the concept of man appears as an ethical and not purely biological category. In other words, the acknowledgement of certain values is a part of the typical definition of a human being of sound mind.

Due to the attributes of the pluralistic view outlined above, it is obvious that the stance in question differs significantly both from ethical relativism and from monism. The idea of a common ethical minimum and the ascribing of an objective character to values testify to a deep gulf between pluralism and relativism. Identification of a multitude of values in turn precludes the reduction of pluralism to any form whatsoever of ethical monism assuming the existence of a single self-purposive value, or one solely-acceptable ethical system. What is more, the inevitable consequence of a multitude of values on the one hand, and the absence of a common measure allowing them to be ordered on the other, is conflict. It is an unavoidable component of ethical life. The phenomenon of value incommensurability, which in a way is a part of the pluralistic nature of values, is responsible for conflict's endemic character. Ethical conflicts may break out on three levels: between entire value constellations represented by different cultural forms; between values within particular moralities, as for example between irreconcilable duties; and finally, and of particular significance for lawyers, within values themselves, which feature a complex, pluralistic structure. One could say that conflict of this kind concerns values 'from within', because the incommensurable elements jointly creating them may clash with one another. Thus particular values are also sometimes the stage for tensions and collisions that cannot be rationally resolved. Attention was drawn to this phenomenon by Isaiah Berlin in an innocent-looking footnote to his famous essay of 1958, *Two Concepts of Liberty*: 'It may well be that there are many incommensurable degrees of freedom and that they cannot be drawn up on a single scale of magnitude, however conceived'.[9] The same applies to justice and rights. The question that arises concerns the consequences of such a diagnosis of the nature of ethical

[8] I. Berlin referred to the metaphor of family resemblance, drawn from L. Wittgenstein, in a letter to me from 24 February 1986. Cf. Polanowska-Sygulska (1998): 172–174. Berlin, Polanowska-Sygulska (2006): 39–44.

[9] Berlin (1994): 191. (2002): 177.

experience, and in particular the ways in which we can brave them. One of the answers to this is as follows: 'we must not dramatize the incompatibility of values – there is a great deal of broad agreement among people [...] about what is right and wrong, good and evil'.[10] Secondly, if the so-called ultimate value that people aspire to for this value's sake happens to clash with a lower good that is instrumental in character, then reaching a rational resolution is not difficult. The value in itself then has the unquestioned priority, at the cost of that which is but a means to an end. Thirdly, the situational context sometimes provides an argument in favour of choosing one of a number of clashing values, which – when considered in isolation from specific circumstances – appear incomparable. Nevertheless, sometimes a conflict of incommensurable and simultaneously ultimate values does occur, as one that does not succumb to any rational resolution. Then reason encounters a barrier demarcating its unbreakable limits. Situations of this kind frequently characterize the occurrence of tragedy, which constitutes an inseparable trait of human existence. We are then faced with making a radical choice, where every option available entails harm.

The vision that emerges from the pluralistic view is that of a world constituting an arena of unavoidable clashes, moral dilemmas and losses, which by its very nature accompanies the choices between colliding ultimate values. This is a reality in which in principle one cannot have everything; where neither achieving harmony nor finding some kind of 'final solution' to human problems is an option. Ultimately, it is a world constantly marked with deficiency, suffering, and the indelible possibility of experiencing tragedy. Avoiding conflicts of values is therefore not possible; but their consequences can be mellowed. Taking a specific situation as the starting point, one can aim for achieving compromises by applying certain 'trade-offs'. Isaiah Berlin wrote about them as follows: 'Claims can be balanced, compromises can be reached: in concrete situations not every claim is of equal force – so much liberty and so much equality; so much for sharp moral condemnation, and so much for understanding a given human situation; so much for the full force of the law, and so much for the prerogative of mercy; for feeding the hungry, clothing the naked, healing the sick, sheltering the homeless'.[11] The effect of these measures will by no means be ultimate harmony, which is essentially impossible to achieve, but a precarious and fragile, purely pragmatic equilibrium. This is permanently susceptible to imbalance; as such, it needs to be constantly regenerated. It needs to be made clear here that the strategy of compromise recommended by Berlin, based on the application of 'trade-offs', was devised as a practical procedure, a common-sense one as it were, and in no way does it weaken his cardinal thesis of the incommensurability of values.

The question arises regarding how the stance in ethics presented above translates to general reflection on law. There is no doubt that transplanting the idea of the incommensurability of values, together with the conception of limits to reason embedded in it, into the realm of jurisprudence has above all

[10] Berlin (2004): 16. (1990): 18.
[11] Berlin (2004): 15. (1990): 17.

iconoclastic consequences. Such a thesis is best illustrated by the confrontation between value pluralism and Ronald Dworkin's theory of law as integrity, which continues to be inordinately influential in the Anglo-Saxon world, and in particular in the USA. Ethical monism, assuming the existence of an ordered hierarchy of objective values, constitutes its philosophical foundation. Dworkin openly spoke out in favour of such a stance in moral philosophy. The first sentence of his momentous work of 2011 reads: 'This book defends a large and old philosophical thesis: the unity of value'.[12] Dworkin's well-known assertion of the existence – in a well-developed system of law – of 'one right answer' fully corresponds to the above declaration. The job of identifying this *one right answer* rests with Dworkin's hypothetical *prince of law*, which is to say the judge bearing the telling name of Hercules.

If ethical pluralism – together with its intrinsic thesis of the incommensurability of values – is real, then at times we experience collisions in regard to which no single, rational solution can be identified that would satisfy all reasonable people and totally defuse the conflict. Sometimes there simply is no such way out of the situation; and at other times there is more than one solution that can be rationally justified. A leading example of such clashes is the collision between freedom of speech and freedom from interference in one's private sphere. The conflict between freedom of thought, conscience or creed and freedom from obstacles to manifesting an attachment to specific symbols in public space, constitutes another exemplification. Yet another illustration is offered by the collision between the right to freely associate and to establish religious schools, and the right of homosexuals to be protected from homophobia if certain communities are not allowed by their religious beliefs to employ homosexual teachers. Dworkin's 'prince of law', gifted with his unique skills, must face up to *hard cases* of this type, which he is burdened with the requirement to resolve. He therefore 'channels' a particular conflict for use by the judicial system, 'filtering' it through legal categories and thereby bringing about its 'commensuration'.[13] In effect one of the parties wins while the other loses entirely, leading to a deepening of the conflict and potentially threatening social peace. Holding monism at a distance in ethics, in favour of a pluralistic perspective, is tantamount to shattering the foundations not only of Dworkin's theory of integrity in law, but also of the traditional vision of the judicial system.

III. LEGAL HOLISM

Let us return now to Adam Zienkiewicz's book, describing the assumptions of the *Comprehensive Law Movement;* barely known in Poland, this American-Australian movement is the author's main source of inspiration. The said movement's assumptions constitute a kind of core of the doctrine he proposes. Zienkiewicz has surrounded it with his own ideas, supported it with references

[12] Dworkin (2011): 1.

[13] I give a broader account of this in Polanowska-Sygulska (2008): 333–380.

to the personal experiences of a practising lawyer, while also enriching it with his own original and very valuable comparisons and juxtapositions.

It is worth taking a closer look at the content of the work in question. Each of the chapters comprising the book constitutes a kind of separate whole, on the one hand as an invaluable source of information and a mine of ideas, while on the other as ready-to-use material for classes or workshops with students or legal trainees. A concise outline of the contents is given in the perfectly compiled introduction, also comprising a discussion of the subject-matter and goal of the work, a presentation of the main assumptions and theses, a description of the conceptual apparatus and the research methods applied, and ultimately a few remarks regarding the wording of the title to this dissertation-treatise. Another important aspect of the introduction is its comprehensive description of the *Comprehensive Law Movement*. Influential in Anglo-Saxon countries, this movement strongly accentuates the need for attorneys-at-law, legal counsels and judges to take a position that is multifaceted on the one hand, and versatile on the other, in regard to their clients or the parties to the proceedings. In particular it advises lawyers to perceive the situation of their client (or party) comprehensively, while at the same time taking into account the point of view of the opposing party, simultaneously observing the common good. Therefore, in keeping with the guidelines of the *Comprehensive Law Movement*, a lawyer should heed not only the legal needs of the party or client, but also their human needs as broadly understood, situated within the communicational, psychological, social or ethical spheres, as well as their so-called *rights plus*, or in other words their (individually determined) emotions, feelings, desires, wishes, goals, resources, relations, values, morals, and mental and physical health, and even their spiritual condition. It would be impossible to go into the entire array of ideas embraced by the movement in question, or the way in which the author uses them to further the stance he proposes. The manifold topics he tackles come together in a coherent structure saturated with content.

Legal Holism... comprises the introduction outlined above plus eight chapters. In the first of them, the author reconstructs selected ideas of the *Comprehensive Law Movement* (CLM), taking particular account of the eight alignments jointly forming this movement. The broadly understood *CLM* is co-formed by the following trends: a holistic approach to law and to legal practice (*Holistic Justice*), placing its emphasis on the multifaceted perception of a specific legal problem; *Therapeutic Jurisprudence*, recommending that lawyers also take into account the psychological / emotional aspects of a specific case; a preventative approach to law (*Preventive Law*), suggesting that lawyers aim to prevent future disputes; *Creative Problem-Solving*, distancing itself from the traditional perception of the lawyer's role as a warrior and emphasizing their contribution to the real, lasting and amicable resolving of disputes and problems; *Procedural Justice*, putting forward practical recommendations aiming to ensure a high level of satisfaction with the proceedings among the parties, regardless of the ultimate outcome; the alternative to retributive justice of *Restorative Justice*, personalizing the crime by positioning it in the relational triad of the entities involved: the victim, the perpetrator, and the

community; *Transformative Mediation*, acknowledging the main goal of mediational discourse to be to restore a sense of one's own value to individuals, and to evoke within them an empathic recognition and understanding of the situation of the opposite party, potentially leading to the parties rising to a higher moral level; and finally the cooperative approach to law (*Collaborative Law*), recommending a multifaceted and – as far as possible – conciliatory resolving of disputes, the optimum culmination of which constitutes apology and forgiveness. Chapter II initiates a multi-stage presentation of the author's original conception of legal holism. In it, the author presents a description of the chief assumptions of his proposed stance. Initially he refers to the concepts seen in Polish theory of law of multi-levelled legal phenomena and external integration of the legal sciences, confronting these with his own approach and emphasizing its comprehensiveness and eclecticism. Following this he stresses the triadic relation between law, legal entity and lawyer as emphasized in legal holism, which highlights the relational and agential character of a person's encounter with the law. Chapter III comes with a description of such a lawyer's holistic approach to a case and to their client or party to the dispute. In particular he calls for the lawyer to conduct a holistic diagnosis of the case by using six main and interweaving viewpoints. These concern in turn the legal and non-legal aspects of a case, the causes behind the problem or legal dispute, the personal qualities of the client/ party to the dispute and their familial, occupational and social determinants, the potentially therapeutic and transformative influence of the law and legal practice, restoration of the client's inner harmony and personal development, and finally the relations between the lawyer and the client. In Chapter IV, Zienkiewicz presents three kinds of holistic attitude. To begin with he distinguishes elementary holism, based on the lawyer taking into consideration all legal norms and institutions of different branches of law relevant at the time in question. The stance of holism proper assumes that during the formulation of a diagnosis for a particular problem not only legally relevant issues are taken into account, but so too are others not within this group, but which may be of crucial importance for the case. Among other things, these embrace the diverse goals, interests and needs of the client or party to the dispute, including psychological and emotional, the character and possibility of eliminating the causes of the conflict, the short- or long-term character of future contact between parties to the conflict, as well as the possibility and legitimacy of bringing about apology, forgiveness and reconciliation between the conflicted parties. Finally, the stance of transformative holism assumes that the legal problem in question is also considered from the point of view of the client's inner life, such that the services rendered by the lawyer serve a positive conversion in the parties and the rebuilding of their relations. This type of holism attaches special attention to so-called *narrative mediation*, which presumes that the attitude with which both parties begin their narrative is a product of their life discourses. This entails the need to deconstruct the two perspectives along a path of conversation and discussion, followed by working together to compile an 'alternative story', creating a chance for understanding and future communication between the parties. Chapter V deals with the roles and

competences of the holistic lawyer, be it an attorney-at-law or legal counsel. To give a few selected examples, alongside the classic representative of parties in traditional court proceedings or in positional negotiation, he or she may appear as a lawyer preventing the emergence or escalation of disputes (*the preventive lawyer)*, or carrying out the holistic diagnosis of disputes and designing the best possible forms of settling them (*the lawyer as designer of systems and processes for managing disputes*), or as a professional who resolves them creatively, comprehensively, in real terms and lastingly, while at the same time aiming to eradicate their causes (*creative problem-solver*). In performing these and other roles of this kind, the holistic lawyer strives to make their client receptive to the point of view of the opposite party, of their social milieu, and also to their own. In order to fulfil these tasks, he or she has to possess the appropriate skills, above all in communication and psychology, while also having the desirable personality traits. Zienkiewicz enhances the chapter under discussion with a valuable proposition for a general outline of issues covered by an academic subject or training, the purpose of which would be to get attendees acquainted with the holistic approach to law and legal practice (pp. 243–245). The subsequent Chapter VI deals with the author's presented paradigm of the holistic settling of disputes. Zienkiewicz recommended that in English this be termed *Comprehensive Dispute Resolution*. The proposed model for settling disputes constitutes a kind of 'third way' between the traditional court-based resolving of disputes and out-of-court methods of settling them, such as mediation or arbitration (*Alternative Dispute Resolution*). Zienkiewicz provides an exhaustive presentation of the assumptions to legal holism in personal, interpersonal and social dimensions, enriching the description of his proposed paradigm with an analysis of the relations between it, the adjudicative mode, and *Alternative Dispute Resolution.* The author's perfectly compiled directories of criteria for holistic characterisation and comparisons of the basic forms for coping with legal disputes with the involvement of a third party (mediation, arbitrage, court) are a very valuable aspect of the chapter in question. The analyses culminate in an extensive table illustrating a model comparison of the attributes of the three models for settling disputes: court trial, out-of-court dispute resolution (*ADR*) and the holistic resolution of disputes (*CDR*). The above comparison, excellently prepared, offers a concise compendium of the most important aspects of the holistic approach to law, clearly highlighting its strengths.

The lawyer's holistic approach to counselling activities is the subject tackled in Chapter VII. In it, the author highlights the specificity of the relations between a lawyer who is a proponent of holism and their client, discusses the goals and specific nature of holistic legal counselling, and also presents a model script for such. In addition he recommends that the lawyer take on at least the following roles: a counsellor preventing the arising of disputes, and a professional not only diagnosing a dispute holistically, but also helping in the designing or in the establishing and choosing of the optimum form of their multifaceted resolution. The chapter in question clearly signalizes how the author's own professional experience constituted important inspiration for him.

In the voluminous Chapter VIII, Zienkiewicz presents a holistic approach to the dispensing of justice. In it, he elaborates numerous themes, starting with a discussion of the broad understanding of system of justice characteristic of holism, aiming to keep disputes under control. Apart from the classic judiciary, this embraces supplementary forms of the judicial system, such as alternative dispute resolution (ADR) or holistic (comprehensive) dispute resolution (CDR), or phasic mechanisms. His discussion of the innovative institution represented by 'Problem-Solving Courts' comes across as extremely valuable. The first court of this type was the Drug Treatment Court established in Miami, Florida, in 1989. The purpose of this court's operations is not – as in the adjudicative mode – only to administer punishments, but above all to provide help in resolving problems, and in this case in the treatment of addictions, an end achieved among other things by agreements reached formally between the judge and the addict. Since this particular court was opened, such institutions have also been established in countries including Australia, Canada, New Zealand and Great Britain. The author describes an entire range of other types of *Problem-Solving Courts*, their tasks being to deal with domestic violence (*Domestic Violence Courts*), mental disorders of perpetrators of petty crimes (*Mental Health Courts*), difficulties former prisoners have in getting back into society (*Reentry Courts*), and local crime and its prevention (*Community Courts*). Zienkiewicz provides a comprehensive description of the model of therapeutic-transformative jurisprudence put into effect by such courts, aimed at working out behavioural and personal transformation among the participants of problem-solving programmes. Jurisprudence of this type requires judges to be in possession of broader skills, including those outside the realm of law, thanks to which they are capable of taking on the role of the person conducting a programme whether therapeutic (*a therapeutic agent*) or aiming to modify the behaviour of the programme participant (*a behavior change agent*), of a social worker, or of a motivator. Zienkiewicz provided the said chapter with a very valuable and extensive comparison of selected features of traditional court proceedings and the therapeutic-transformative proceedings characteristic of *Problem-Solving Courts*. Later in the text he also included a table illustrating the attributes of traditional mediation and transformative mediation. In the chapter's summary, the author also included a brief outline of the 'Multi-Door Courthouse Project' proposed by F. Sander, combining diverse forms of out-of-court resolution of disputes and traditional court proceedings within a single system and organizational structure. The work as a whole culminates in a concise compendium of the book's contents, coming together to form the original conception of legal holism.

The picture of the holistic approach to 'law in action' that emerges from Zienkiewicz's book differs significantly from the traditional vision of law and legal practice, because on the grounds of holism the law reveals the extensive therapeutic and transformative possibilities involved. In the meantime, lawyers stand before previously unseen and very ambitious interpersonal and social challenges, which open before them a chance for achieving a high level of professional satisfaction while also quite simply doing good in the world. Holistic lawyers can distance themselves from the traditional guideline telling

them to 'think like a lawyer', adopting instead a fundamentally different recommendation: 'think like a professional', like one who no longer has to aim for beating the opponent of the party they represent, but whose goal is to resolve human problems effectively. As such, law and legal practice perceived holistically gains significantly – when compared to the traditional image – both in its humanism and its effectiveness.

IV. FROM VALUE PLURALISM TO LEGAL HOLISM

In a book published over a decade ago I proposed considering the implications of transplanting the pluralism of values onto the field of general reflection regarding the law.[14] The starting point for my investigations was Cass Sunstein's observation that '[t]he existence of [...] incommensurable goods, has not yet played a major role in legal theory. But these issues underlie a surprisingly wide range of legal disputes'.[15] The character of the conclusions that I reached was essentially negative. I recognized that the project attempted by this philosopher of law, to transplant the pluralist perspective in ethics into the discipline he practised, was suicidal – since the diagnosis of the phenomenon of incommensurability of values, as well as the concept of limits to reason within it, did not harmonize to the slightest degree with the conventional perception of law and legal practice. In other words, I deemed that the effect of the confrontation between pluralism of values and the domain of law would be the unavoidable deconstruction of the traditional legal paradigm. Slightly different conclusions in this matter were reached by Sylwia Wojtczak in her monograph *O niewspółmierności wartości i jej konsekwencjach dla stosowania prawa* [lit. On the incommensurability of values and its consequences for the application of law] (2010). Wojtczak considered the consequences arising from the phenomenon of incommensurability for the application of law in certain example areas that she had chosen: compensation for damage, the court system of criminal punishment and *argumentum a fortiori*. I have, in my time, reviewed Sylwia Wojtczak's work, and as such I shall only give the above brief reference to it.[16] The author's conclusions gave me much food for thought; I acknowledged that the extremely negative conclusion I myself had reached earlier on was too radical. And so it was the case that exactly ten years after I had published the monograph *Pluralizm wartości i jego konsekwencje w filozofii prawa* [Value pluralism and its implications for legal philosophy] a work was published which, having been read, led me to totally change my mind regarding the consequences of transplanting value pluralism into the realm of jurisprudence. Adam Zienkiewicz unveils a new perspective both before proponents of pluralism in ethics, and before lawyers. He presents a concept offering practical solutions in the application of law, solutions that can be reconciled with ethical pluralism –

[14] Polanowska-Sygulska (2008): 333–380.
[15] Sunstein (1997): 253.
[16] Polanowska-Sygulska (2013): 78–84.

because legal holism harmonizes with the identification of incommensurability of values. He does not push the thesis of the existence of one, single proper answer to the question as to whose claims win in a particular dispute. He puts the emphasis on resolving the issue, and not on properly adjudicating conflicting rights. He opts rather for a compromise between parties than their confrontation. As such, Berlin's recommendation of resorting to the strategy of so-called 'trade-offs', in situations where contradictory demands made by clashing values cannot be reconciled, is applied to the full. Legal holism also harmonizes with the idea of boundaries to human reason. After all this is where Dworkin's Hercules figure undergoes a kind of dematerialization. The judge is no longer a prince of law placed on a pedestal, who thanks to his superhuman skills passes just judgments. The erstwhile Hercules is metamorphosing into a quasi-therapist who is friendly to the parties, while also to some degree a social worker accompanying them in the resolving of difficult problems in life.

The fusion of perspectives – pluralistic in ethics, and holistic in the field of law – is a measure thanks to which both stances concerned somehow benefit, mutually complementing one another. The pluralism of values achieves its dreamed-of translation of its vision of ethical reality into *stricte* practical solutions, while legal holism receives a ready-made philosophical foundation rooted in global debate and rich in theory.

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VALUE PLURALISM AND LEGAL HOLISM

S u m m a r y

The aim of the article is to present a juxtaposition of two standpoints, belonging to different branches of broadly understood philosophical reflection: value pluralism, on which the author of the present article has been working for years, and legal holism, put forward by Adam Zienkiewicz in his most recent book. The point of departure for comparing the two positions is their characteristics. Special attention is given to the presuppositions embedded in both standpoints. It is concluded that they not only harmonize, but also complement each other. As a result, value pluralism can be translated to ideas which have purely practical implications, while legal holism gains a strong grounding in ethics.

Keywords: legal holism; Comprehensive Law Movement; value pluralism; value incommensurability