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## PROPERTY RIGHTS AND SOCIAL JUSTICE

*There is already a rich literature on property transformations in Poland. However, in this literature, works considering them from the point of view of respecting principles of social justice if we leave out of consideration the calming statement that privatisation by its very nature could not be fair. These are rarely considered from the point of view that would seem obvious — of observing the principles of social justice. An exception here would be the appeasing statement, frequently expressed especially during the first years of transformation, that privatisation by its very nature could not have been fair. Indeed, perhaps it could not have been fully fair. But did it have to be so blatantly unfair? Taking up this theme, it is worth departing from a bipolar view (just or unjust) in favour of the concept of graded justice. Let's try to look at some of the most promising (even programmatic) threads of privatisation in Poland (even if only provided by the programme) through the prism of the principles of social justice which are after all part of the Constitution. Analysing the problem of the relation between ownership transformation and the idea of social justice, the author examines in turn: ignoring of the idea of "democratic ownership" by the economic and political elites which had a direct impact on the processes of privatisation, the problem of employee-owned companies, the idea of mass privatisation programme implemented in the National Investment Fund Programme, the Pact on State-owned Enterprise (as interpreted by Jacek Kuroń). Finally, the author proposes a thesis that Polish privatisation is of an elitist character and large groups of society are excluded from participating in it.*

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The literature on property transformations in Poland is already abundant. However, this literature very seldom considers the transformations from the point of view of what might seem obvious, i.e. respecting the principles of social justice;<sup>1</sup> this is if we leave out of consideration the

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<sup>1</sup> In part I tried to discuss it in: Kowalik Tadeusz, *Dystrybucyjna sprawiedliwość w transformacji polskiej* [Distributive Justice in Polish Transformation], [in:] Kowalik Tadeusz

calming statement, which was often repeated during the first years of transformation, that by its very nature privatisation could not have been just.

Perhaps it couldn't be *fully* just. But did it have to be so howlingly unjust? Taking up this subject, it is worth departing from a bipolar view (just or not) for the sake of the concept of gradable justice, although these grades are difficult to measure. Let us try to look at certain most promising (simply programmatic) elements of privatisation in Poland through the prism of an after all constitutional principle of social justice. The aim of this text is to encourage (among others, researchers) to conduct in-depth analyses of the constitutionality of this aspect of system transformations.

### THE SIN OF OVERSIGHT

Many times have I pointed out the provincial isolationism of our economic environment, and perhaps also of social sciences in general in reference to the problems of social justice. These are treated as a purely ideological, subjective phenomenon. Even the former President of the Constitutional Tribunal Marek Safjan<sup>2</sup> has reduced this concept to intuition. He presented such a view just as an evaluation of provisions in the Constitution of the Republic of Poland, in which can be found not only the principle of social justice ensured not only by the political system but also many, exceptionally many detailed guarantees of which this justice consists! Leszek Balcerowicz (and many of his acolytes) accustomed journalists to constant putting this concept within inverted commas. On the other hand, their slogan became "over-socialisation" of the economy and excessive fiscalism. And if anybody dares to take up the problem of the policy of easing excessive inequalities, he will be named and shamed as a dinosaur from the epoch of the Polish People's Republic, reacting out of "envy and contempt of knowledge, initiative and enterprise."

Meanwhile, in the West we can observe an outright explosion of literature, studies and debates on this subject. Fast careers are made by

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(Ed.), *Nierówni i równiejsi. Sprawiedliwość dystrybucyjna czasu transformacji w Polsce* [„Nierówni i równiejsi”. Distributive Justice of the Time of Transformation in Poland], Fundacja Innowacja, Warszawa 2002.

<sup>2</sup> Here the following article is referred to: Safjan Marek, *Sprawiedliwość społeczna — intuicja czy teoria?* [Social Justice — Intuition or Theory], *Rzeczpospolita*, 19 April 1999, pp. 15–16.

economists who specialise in the problems of economic justice. A well-known publisher Edward Elgar brought out two thick volumes of selections of texts that include studies by several Nobel Prize winners under the title *Economic Justice*.<sup>3</sup> Editors and authors clearly enclose within the adjective "economic" also social and social welfare content matter. Such a name would be considered by many of our economists, and perhaps also by the incumbent premier (Donald Tusk) as an obvious error since justice or social issues should be beyond the sphere of economy and economics.

British scientists drew attention to these problems. In the decisive period of changes in the political and economic system, A.B. Atkinson and John Micklewright<sup>4</sup> accused economists of the post-communist countries of indifference to the problems of division of national income. In Poland this question is of particular importance since indifference is present not only in the sphere of theory and theorists but it also encompasses actual phenomena and processes.

The reaction to even the most important world events and debates is either silence or rejection where empty, meaningless words are used. Even sociologists discuss this subject in such a way as if also in the debates of the Western world only the first steps were being made. Economists who deal with these problems are treated as eccentrics. The most glaring example here may be the reaction to the awarding in 1998 of the Nobel Prize to Amartya K. Sen for his research on inequalities, poverty and famine. This was considered in Poland as a scandal. Such was the word used by Ryszard Legutko in *Gazeta Bankowa*. To Henryka Bochniarz, it was evidence that "politics has an impact on the Nobel Prize Committee," and for the journalist of *Gazeta Wyborcza*, it was another argument for doing away with this prize altogether. And there was no response among economists to a short work by Sen on inequalities, which was published a little later.<sup>5</sup>

The matter of theory and practice concerning property is only a little bit better. The task of privatisation has been a priority for Polish authorities and it imposed the need to deal with the problem of property in general. The one-sidedness of Polish public opinion, that is of the environment of economists and of the related social sciences and politicians

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<sup>3</sup> Brosio Giorgio, Hochman Harold M. (Eds), *Economic Justice*, Vol. 1 & 2, Edward Elgar, Cheltenham (U.K.) — Northampton (USA) 1998.

<sup>4</sup> Atkinson Anthony Barnes, Micklewright John, *Economic Transformation in Eastern Europe and the Distribution of Income*, Cambridge University Press, Cambridge 1992.

<sup>5</sup> Sen Amartya, *Inequality Reexamined*, Oxford University Press, Oxford 1992.

consisted of severe condemnation of public property and apology of (transferable and exclusive) private property. The American neo-liberal theory of property rights triumphed. "Armed" in this way, the authorities carried out the process of privatisation of the public sector.<sup>6</sup>

But not only. An enormous role was also played by the egalitarian hypocrisy of the main current of endeavours towards fast privatisation with simultaneous marginalisation, into publication niches, of group and participatory forms of privatisation, in which both effectiveness and recognition of workers would count. For more details see below.

### PROPERTY-OWNING DEMOCRACY AS AN ALTERNATIVE

The elites of the new authorities were convinced that Poland must go through the process of the primary accumulation of capital, the British road to the birth of capitalism, even though this road was so severely criticised by one of the leading founders of West European liberalism. John S. Mill wrote in his main work on economics:

The social arrangements of modern Europe commenced from a distribution of property which was the result, not of just partition, or acquisition by industry, but of conquest and violence (...). The system still retains many and large traces of its origin. The laws of property have never yet conformed to the principles on which the justification of private property rests. They have made property of things which never ought to be property, and absolute property where only a qualified property ought to exist. They have not held the balance fairly between human beings, but have heaped impediments upon some, to give advantage to others; they have purposely fostered inequalities, and prevented all from starting fair in the race.<sup>7</sup>

Further on, Mill proved that socialists would appear to be redundant "if the tendency of legislation had been to favour the diffusion, instead of the concentration of wealth."<sup>8</sup>

Perhaps John Gray, a contemporary political philosopher, is right when he says that a "precondition" of British capitalism was the "use of state power." Thus, an indispensable premise of the rise of the British free market [a synonym of capitalism for Gray — TK] was transformation of "common lands into private property" thanks to the power of the

<sup>6</sup> I have in my memory, but not in my collection, a published letter from cooperative activists. In it they asked the authorities to treat this form of property as private.

<sup>7</sup> Mill John Stuart, *Principles of Political Economy and Some of Its Applications to Social Philosophy*, Hackett Publishing Company, Indianapolis-Cambridge, p. 92.

<sup>8</sup> *ibidem*.

state.<sup>9</sup> He even ponders whether capitalism would rise there at that time if there were efficient democratic institutions.<sup>10</sup>

At the turn of 1980s and 1990s Poland was in a totally different situation than England of that time. It was already a quite well industrialised country, the political elites of which should have known that in many European countries (especially in Scandinavian countries and in Austria), capitalism was formed without taking the British path. Poland returned to the capitalist road under conditions of existence of (at least formal) political democracy. Under these conditions, taking the Anglo-Saxon road was an unfortunate choice and a skilful taking advantage of the mandate received from... the *Niezależny Samorządny Związek Zawodowy "Solidarność"* [Independent Self-Governing Trade Union "Solidarity"].

Notably, the contemporary social thought and practice had at its disposal more just conceptions. This concerned not only the Western social democracy, but also liberalism, whose ideologists created theoretical foundations of social justice. The work which inspired an avalanche of philosophical, sociological, legal and economic literature around the world was John Rawls's book *Theory of Justice* (1971).<sup>11</sup> Polish readers were treated in a privileged way by this American liberal thinker. Namely, in the preface to the Polish edition of his work he included the quintessence of his theory by emphasising the significance of the just division of property.

After having admitted that if he were to write his book again he would have differentiated more precisely between the conception of property-owning democracy from the conception of the welfare state, Rawls adds:

Note here two different conceptions of the aim of political institutions over time. In a welfare state the aim is that none should fall below a decent standard of life, and that all should receive certain protections against accident and misfortune — for example, unemployment compensation and medical care (...). Such a system may allow large and inheritable inequities of wealth incompatible with the fair value of the political liberties [...] as well as large disparities of income that violate the difference

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<sup>9</sup> Gray John, *False Dawn: The Delusions of Global Capitalism*, The New Press, New York–London 1998, p. 8.

<sup>10</sup> *ibidem*, p. 8–9.

<sup>11</sup> Today it is obvious that this work concerns all social sciences, including economy. In Poland, with two exceptions, to which I referred in other publications, it has remained outside of the interest of economists, see: Kowalik Tadeusz, *Czy sprawiedliwość społeczna kosztuje?* [Does Social Justice Cost?] *Ekonomista*, No 3/1997; *Sprawiedliwość społeczna a porządek światowy* [Social Justice and the World Order], Polski Instytut Spraw Międzynarodowych, Warszawa 2004.

principle. While some effort is made to secure fair equality of opportunity, it is either insufficient or else ineffective given the disparities of wealth and the political influence they permit.

*In contradistinction to this in the property-owning democracy the aim is the realisation during the whole time of the idea of the society as a just system of cooperation of citizens, as free and equal persons. So the background institutions must from the beginning act in such a way as to make productive assets reach the hands of wide masses of citizens — so that they can fully participate in social cooperation and not only in the hands of a few [emphasis — TK].<sup>12</sup>*

Two main conclusions can be drawn from this standpoint.

1. For Rawls, equality is a principle and he means principle of *all* the primary goods, not only a stream of profits, as it is presented by some, but also the distribution of income and wealth. On the level of the general rule, Rawls focuses his attention not on the secondary distribution of income, but on the primary wealth. He emphasises “steady dispersal over time of the ownership of capital and resources by the laws of inheritance and bequest, on fair equality of opportunity, secured by provisions for education and training, and the like (...).”<sup>13</sup> Let us stress once again: according to Rawls the postulate of the equal distribution of income goes hand in hand with the postulate of distribution of material means. This is a very important feature since income is a stream while wealth is that which has been accumulated or is still being accumulated.

2. Each deviation from the principle of equality — let me emphasise, both income and wealth as well as of political freedom and equality of chances — is to be considered from the point of view of *benefit* to the poorest. Unfortunately, it appears that the phrase *to the advantage of the most disfavored* is understood in different ways. Sometimes it is interpreted as a correction of inequalities of the production-motivation character, thus inequalities of income and wealth in order to give better results of production. The most “free” and, in my opinion, daring interpretation is offered by Edmund Phelps.<sup>14</sup> He even questions the conviction that in his work Rawls writes about relative income and shares, which is in obvious

<sup>12</sup> Rawls John, *Teoria sprawiedliwości* [A Theory of Justice], PWN, Warszawa 2004, p. XVII.

This and the following quotations from Rawls's opus are part of the *Preface to the Polish Edition*, written by Rawls and translated from Polish into English by Małgorzata Pietrzak [as of today the Editors do not know of the existence of the English version of this text].

<sup>13</sup> *ibidem*, pp. XVII–XVIII.

<sup>14</sup> Phelps Edmund S., *Vilifying Remarks Misrepresent Rawls's Ideas*, Wall Street Journal, 7<sup>th</sup> August 2007; Phelps Edmund S., [Z Edmundem Phelpsem rozmawiają H.R. Vane i C. Mulhearn] [H.R. Vane and C. Mulhearn talk with Edmund Phelps], *Gospodarka Narodowa* [National Economy] No 1–2/2010.

contradiction to many of Rawls's statements, also to the *Preface* quoted above in which he decisively negatively evaluates "large and inheritable inequities of wealth," and he wants the difference principle to be interpreted in the context of property-owning democracy or liberal socialism. Does not the need of constant "dispersal of property" concern "relative income and shares"?

Let us also remember that, when starting the definition of his conception, Rawls makes a reservation that "social and economic inequalities are to be arranged so that they are (...) to the greatest benefit of the least advantaged."<sup>15</sup> Thus not to the benefit in general, but to the "greatest benefit."

I think that what is meant here is that more should be given to those who through no fault of their own suffer privation or are in the danger of encountering barriers which make it impossible for them to take advantage of *equality of opportunity* (Rawls's favourite phrase). This concerns both social groups and individuals. For instance, more (means) should be *given* for the education of inner city children (children from the slums) since otherwise they will inherit the slums status. Similarly, parents can arrange private lessons for their less gifted child, because talented ones will manage by themselves.<sup>16</sup> It is only then when they have achieved for the life on their own a more or less the same standard of education (will complete secondary or university education) as adults will they be able to be responsible for themselves and can be treated as equal.

In opposition to the frequent claim that Rawls stopped at very general statements of his theory, in his work there is a quite distinctly outlined picture of organisation of the state, which would ensure social justice. He proposed four or even five "branches" which would serve the desirable social and economic conditions of which a welfare state consists. Apart from the allocation, stabilisation, transfers and substitution branches, he postulated a distribution branch "gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity."<sup>17</sup> An incessant attempt at wide dispersal of property was to ensure "the fair value of the equal liberties."<sup>18</sup> All these branches together are to create such a system in which land and capital are in the

<sup>15</sup> Rawls John, *Teoria sprawiedliwości*, pp. XVII–XVIII.

<sup>16</sup> Roemer John E., *Equality and Responsibility*, Boston Review, No 2/1995.

<sup>17</sup> Rawls John, *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge (Mass.) — London 1971, p. 277.

<sup>18</sup> *ibidem*.

hands, not necessarily equally, but still of wide masses of people and not of a small group who control most of the resources. Only such a system of distributive justice would, according to Rawls, shake most of the arguments of socialists aimed against market economy.

This trend in thinking needs reminding since in Poland today an arrogant demand of the newly rich of the right to unlimited riches dominates. Legislation is also proceeding in this direction. Rawls' work is attacked by some and elaborated by others, which contributed to the enlivening not only of the liberal thought, but of the social-democratic and socialist as well. Among others, Rawls' theory gave rise to Norberto Bobbio's<sup>19</sup> conception of the so called liberal socialism. In the spirit of John Stuart Mill's liberal thought, Rawls does not vilify socialism, does not shrug it off as a realisation of the Soviet dream, but writes about it placidly as an alternative, and he does not put either social justice or exploitation in inverted commas.

Continuation of J.S. Mill's and J. Rawls' thoughts about the place of property on the road to social justice has been best expressed in the works of the above mentioned Joseph Stiglitz. In the Wicksell lectures of 1990,<sup>20</sup> then in a book published in 1994,<sup>21</sup> he formulated a number of postulates, which today sound like a bitter critique of Polish transformation. As an example, let me quote one that after the great jump onto the market in May of 1990, remained a not delayed allusion. This postulate concerned the then only planned large scale privatisation of the public sector. Starting from the previously proved assumption on the inaccuracy of separation of social justice from effectiveness and social and economic advantages flowing from a more egalitarian distribution of wealth, he addressed a message to the post-socialist countries which was similar to the ideas of two of his great predecessors, and in particular to Rawls' conception of property-owning democracy, which is mentioned above. In the Wicksell lectures he proved that property transformations in the post-communist countries should serve "the extension of the scope of equality." As it is,

The former socialist economies are in the perhaps unique position of being able to obtain a degree of equality of ownership of wealth unattained, and perhaps unattainable, in other market economies.

<sup>19</sup> Bobbio Norberto, *Left and Right: The Significance of a Political Distinction*, University of Chicago Press, Chicago 1997; Bobbio Norberto, *Liberalism and Democracy*, Verso, London–New York 2006.

<sup>20</sup> Stiglitz Joseph, *Whither Socialism [Wicksell Lectures]*, [typescript], Stockholm 1990.

<sup>21</sup> Stiglitz Joseph, *Whither Socialism?*, The MIT Press, Cambridge–London 1994.

The often-noted goal of "people's capitalism" may indeed be within their reach of a hand in a manner which is difficult to conceive in other countries due in a way that most other countries cannot even remotely approach, given their concentration of wealth property. They should not lose the opportunity (...).<sup>22</sup>

In a later and much expanded version of his lectures, Stiglitz not only repeats this recommendation of the egalitarian division of property, but adds important commentaries, which express disappointment with the chosen road of transformation in the post-communist countries.<sup>23</sup> He observes that from the purely political point of view the success of conducting "a more egalitarian wealth distribution" would give governments a long-term legitimisation of authority. According to him, a simple return to pre-communist times is difficult to defend both from the point of view of justice and effectiveness. "One cannot get rid of the shortages of communism by turning history."

### THE QUEST FOR A THIRD WAY

Let's return to the already mentioned motive of marginalisation of participatory endeavours and to hypocrisy of fast privatisers. In spite of the ever more persistently popularised view that there was no alternative to the Balcerowicz Plan, in the turbulent years of the end of 1980s and beginning of 1990s many alternative options were proposed and their history still waits for description. Obviously, there was no alternative of an operational character, which would be ready to implement at once. But Balcerowicz, when he entered the ranks of authorities, even more so did not have such a programme. What he had at his disposal was the general privatisation and free market premise.

First of all, there existed, and even enjoyed a period of enlivening, a rich world literature, which had hardly any reception in Poland.<sup>24</sup> And if it arrived here, it was either much delayed or beyond the main current of social debate. The problems of free market with allocation pushed aside interest in the questions of property, even though these are the most conflict-generating and, one would want to say, class-generating ones.

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<sup>22</sup> Stiglitz Joseph, *Whither Socialism [Wicksell Lectures]*, p. 62.

<sup>23</sup> Stiglitz Joseph, *Whither Socialism?*, pp. 265–266.

<sup>24</sup> I analyse this problem in more detail in: Tadeusz Kowalik, *Systemy gospodarcze, Efekty i defekty reform i zmian ustrojowych* [Economic Systems. Effects and Defects of Reforms] Fundacja Innowacja, Warszawa 2005; Kowalik Tadeusz, *www.polskatransformacja.pl*, Wydawnictwo Muza S.A., Warszawa 2009.

Indeed as I have already mentioned, in the 1980s the theory of the property rights "came" to us, but with rather popular and biased interpretation and later it was practically not returned to. No studies were taken up on the distribution of property rights (no matter whether independent of or parallel to problems of the legal titles of property).

No wonder that Polish economists were surprised again when the Nobel Prize was awarded to Elinor Ostrom, since the theoretical and empirical studies on common-pool resources of herself and of her school had been completely unknown in Poland.<sup>25</sup> The case is similar with the extensive literature on the advantages and disadvantages of a co-operative enterprise. Within this wide trend more sophisticated theories were developed. For instance, since the publication of a well-known article of Benjamin Ward on "The Firm in Illyria"<sup>26</sup> several dozen authors argued about the advantages and disadvantages of self-managing, co-operative or similar enterprises.<sup>27</sup> In Europe there was perhaps a more lively discussion, especially in the 1980s and the beginning of the 1990s, on various forms of employees' self-management or participation of workers in the process of decision making. Here attention should be paid to numerous studies of the British Nobel Prize winner from Cambridge, James Meade.<sup>28</sup> Published by two theorists of the research trend, D.C. Jones and J. Svejnar, two volumes of studies and essays under the characteristic title *Advances in the Economic Analysis of Participatory and Labor-Managed Firms*,<sup>29</sup> they give a good idea of the ambitions and extent of interests of this trend. In the United States a rich literature was produced on workers' joint ventures, which are called *Employee Stock Ownership Plans* (ESOP) there.

In the first years of the rapid transformation of the political and economic system the reception of American literature which concerned the just mentioned ESOPs was a little bit better, thanks mainly to two

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<sup>25</sup> Elinor Ostrom, Gardner Roy, Walker James (et al.), *Rules, Games, and Common-Pool Resources*, The University of Michigan Press, Ann Arbor 1994.

<sup>26</sup> Ward Benjamin, *The Firm in Illyria: Market Syndicalism*, *American Economic Review*, Sept./1958.

<sup>27</sup> Among others the following persons took part in it: Benjamin Ward himself and Evsey Domar, Joan Robinson, Jaroslav Vanek, Branko Horvat, James Meade, Mario Nuti, Laura d'Andrea Tyson, David Levine, Milica Uvalic.

<sup>28</sup> Meade James E., *Different Forms of Share Economy*, Public Policy Centre, London 1986; Meade James E., *Liberty, Equality and Efficiency*, New York University Press, New York 1993.

<sup>29</sup> Jones Derek C., Svejnar Jan, *Advances in the Economic Analysis of Participatory and Labor-Managed Firms*, Vol. 1/2, JAI Press, Greenwich-London 1995/1997.

enthusiasts of this form of property: the re-emigrant from the USA Krzysztof Ludwiniak,<sup>30</sup> and the author of many brochures, lectures, initiatives, Jan Koziar of Wrocław. However, most worthy of mention is the work of the Zespół ds. Własności Pracowniczej [Committee for Employee Ownership] at the Instytut Badawczy Samorządu Załogi [Institute of the Self-Management of Employees]. This team presented a final report: *Zasady tworzenia własności pracowniczej w gospodarce polskiej* [Principles of Formation of Employee Ownership in Polish Economy].<sup>31</sup> Probably thanks to this study, a group of deputies (called "a co-operative") could competently win the possibility of creating them under the bill on privatisation of 13 July 1990.

However, now even this interest is a matter of the past, although — as we shall see later — Polish workers' enterprises or managerial-employee ones brought quite a surprise: they were more efficient than it could be supposed from the prevailing theoretical views.<sup>32</sup> All the conceptions of property mentioned here, most of which are difficult to label as simply private or state-owned, create a foundation for the normative (postulative) considerations on the ideal or desired system. The most developed conception of the "Self-Governing Republic", which is that in the programme of NSZZ "Solidarność", fits within it very well.

Changes in the real property relations in the world seemed to be conducive to pluralism of property relations and forms in Poland. Although there was a prevailing reversal from public property in favour of private ownership, still at the same time other directions of changes appeared which can perhaps be a harbinger of the twilight, or at least of the limits of this trend of private property as a transferable and exclusive one.

One of the most interesting practical experiences is that of the world famous (and present as an investor even in Poland), innovative and

<sup>30</sup> Ludwiniak Krzysztof, *Pracownik właścicielem* [An Employee as Owner], Wydawnictwo Towarzystwa Naukowego Katolickiego Uniwersytetu Lubelskiego, Editions Spotkania, Paris 1989.

<sup>31</sup> Instytut Badawczy Samorządu Załogi [Research Institute for the Self-Management of Employees], *Zasady tworzenia własności pracowniczej w gospodarce polskiej — zarys propozycji. Raport końcowy* [Principles of Formation of Employees' Ownership in Polish Economy — A Draft Proposal. Final Report], photocopied typescript, Warszawa 1989. The team preparing the report consisted of more than ten persons among whom the main authors were: economists Barbara Błaszczyk, Mieczysław Groszek and sociologist Paweł Ruskowski.

<sup>32</sup> Uvalic Milica, Vaughan-Whitehead Daniel (Eds), *Privatisation Surprises in Transition Economies. Employee-ownership in Central and Eastern Europe*, Edward Elgar Publishing Ltd., Cheltenham 1996; Vaughan-Whitehead Daniel, *Employee Ownership on the Policy Agenda: Lessons from Central and Eastern Europe*, Economic Analysis, Vol. 2, No. 1/1999.

efficient co-operative holding "Mondragon" from the country of the Basques.<sup>33</sup> This holding also evoked much theoretical interest of sociologists and economists since it reformed the conception of a traditional co-operative in favour of personal accounts and limited inheritance.

On a global scale, of greater importance are two other tendencies. The first one is a rather fast and permanent expansion of the so called third sector, i.e. non-governmental organisations, which operate in social welfare and are *not for profit*. In different Western countries they employ from several to a dozen or so per cent of workforce.<sup>34</sup> Obviously, they have property to dispose of although surely on a smaller scale than their share in the workforce. It is not easy to classify this property, but one thing is certain: it is neither "pure" private nor state property.

Second, the time has ended when the private and public sectors were easily distinguishable and their borders distinctly marked. A new phenomenon is a wide range of intertwining of various forms of property in the same company. State companies may give up a considerable part of their operations, giving them over into private hands by tenancy, leasing, franchising and the like. Even the state or community hospital may reduce its full time staff and use services of private or co-operative doctors, clinics, dentists and even nurses. Many a time there is a partial privatisation carried out in the form of sale of part of the shares. The state can leave for itself only the controlling stake.

## EMPLOYEE COMPANIES

I have no possibility to describe or assess here the whole of the privatisation process during the two decades with which I have dealt in a longer work.<sup>35</sup> Here I only select the two most characteristic elements of the Polish experience: employees' companies and Narodowe Fundusze Inwestycyjne [National Investment Funds]. Many theorists reject employees' companies which by their own character are supposed to be less

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<sup>33</sup> Morrison Roy, *We Build the Road As We Travel*, New Society Publishers, Philadelphia-Santa Cruz 1991.

<sup>34</sup> Wygnański Jan Jakub, *Ekonomizacja organizacji pozarządowych: możliwość czy konieczność?* [Economisation of non-governmental organisations: a possibility or a necessity?]. Stowarzyszenie Klon/Jawor, Warszawa 2008, p. 45. The report is also available at: <http://civicpedia.ngo.pl/files/civicpedia.pl/public/raporty/ekonomizacja5.pdf> (date of access: 12.08.2010).

<sup>35</sup> Kowalik Tadeusz, *www.polskatransformacja.pl*.

inclined to invest than is the case of the purely private firms. All kinds of reasons are quoted here: a specific character of incentives in a firm which is owned by a group, shortsightedness of the workers who are most interested in obtaining fast income for those already employed, and especially in co-operatives with indivisible capital — the weaknesses of their property rights.

Although this accusation is often repeated, so far it has not been confirmed in empirical studies. One of the first studies on the subject was published by Saul Estrin and Derek Jones.<sup>36</sup> In their study, 270 French manufacturing cooperatives during the period of 10 years were included. They have not found any relationship between the magnitude of an investment and the form of property. The firms they studied showed neither better nor worse efficiency than in the case of the fully private ones. On the other hand, what was distinct was the dependence of the rate of investment on the access to financial market. So the authors concluded that future studies should move the point of gravity from the hitherto hypothesis of slight inclination of these firms to invest to the mutual relations between firms with group property and the financial market. In Poland another factor which requires research would be the dominant role of foreign capital in the bank sector, which may be particularly distrustful to this form of property and to small enterprises, which these companies as a rule were.

The GUS [Central Statistical Office] reports of the end of the 1990s actually showed a lower profitability (both before and after taxes) of the employees' companies than the average profitability for the whole group of companies which were privatised.<sup>37</sup> However, they had retained a high, actually the highest, with the exception of foreign firms, financial liquidity (of the first degree) as well as the first place as far as the number of profit earning companies is concerned. Only one fourth of these firms brought losses. The economic problem of these firms was a relatively low investment rate. Unfortunately, no studies were conducted to show whether, after leasing instalments had been paid and full property rights had been gained, providing easier access to bank credits, at least most of

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<sup>36</sup> Estrin Saul, Jones Derek C., *The Determinants of Investment in Employee-owned Firms: Evidence from France*, Economic Analysis, No 1/1998.

<sup>37</sup> Krajewska Anna, Krajewski Stefan, *Ekonomiczno-finansowa kondycja przedsiębiorstw sprywatyzowanych* [Economic-financial condition of privatised companies], [in:] Bałtowski Maciej (Ed.), *Przedsiębiorstwa sprywatyzowane w gospodarce polskiej* [Privatised companies in Polish economy], PWN, Warszawa 2002.

them appeared to be not worse in development capability than the rest of the private sector.

However, employees' companies were a part of our economy and it is worth pondering over what should be their place in the new social order. And, from this point of view, the most important matter are the problems of their social content, their property-participatory character. This concerns mainly the internal transformations of the companies which were carried out in an unfavourable environment. As has already been pointed out, the authorities gave in to pressure from below and tolerated the establishing of employees' companies, which were usually based on leasing. However, in practice the decisive role in establishing them and in formulating their charters were the managements of these firms, who acted to protect their own interests. And in addition high state officials, not only of the Ministerstwo Przekształceń Własnościowych [Ministry of Ownership Transformations], claimed publicly many times (and acted accordingly) that this was only a temporary form on the path to "actual privatisation." Numerous gestures and signals both from the "old" Ministry and from its follower — Ministerstwo Skarbu [Ministry of Treasury] showed a deeply rooted reluctance of the authorities to employees' companies.<sup>38</sup>

As early as the beginning of the privatisation process (17 January 1991) the Minister of Ownership Transformations sent a list to the founding organs responsible for the so called direct privatisation in which he recommended those who initiated employees' companies to invite foreign investors to take part in them.<sup>39</sup> This letter was clearly motivated by the wish to accelerate processes of concentration of property in these companies.

One of the most active directors of this ministry simply launched a campaign against the influence of the American ESOPs. According to him "the ideological approach to privatisation had been rejected five years ago by the Sejm [Parliament], which was not inclined to adopt the

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<sup>38</sup>In the study on property transformation by three authors from Poznań the term "employees' companies" was consistently omitted and the "direct privatisation" or the "leasing companies" was used. This way the authors avoided touching upon the above mentioned subject. See: Mazurkiewicz Joanna, Lis Piotr, Zwierzchlewski Sławomir, *Przekształcenia własnościowe przedsiębiorstw państwowych w Polsce (1990–2008)* [Property Transformation of State Companies in Poland], [in:] Tomidajewicz Janusz Jerzy (Ed.) *Privatyzacja w Polsce a kształtowanie europejskiego modelu społecznego* [Privatisation in Poland and Formation of the European Social Model], Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauk, Poznań 2009.

<sup>39</sup>Baehr Jerry, *Companies with Employee Participation*, Friedrich Ebert Foundation, Warsaw 1993, p. 95.

doctrinaire, collectivist conception of ESOP as apparently the only proper panacea."<sup>40</sup> Ronald Reagan's strong support of the idea of ESOPs,<sup>41</sup> did not increase acceptance of such enterprises, not to mention the American Congress which passed the bills which helped their development. The isolation of Polish employees' companies from those experiences as seemingly ideological-doctrinaire-collectivist was a strong barrier in giving these ventures an employee participatory character. The same official was trying to prove that the companies called «employees'» are either «managerial» from the start or they are shortly transformed into entities dominated by the managerial staff as far as property is concerned.<sup>42</sup> In this statement there was something of a self-fulfilling prophecy. These ministries, and even the whole governing *establishment* wished it and was doing a lot to this end in order to deprive employees' companies of the participatory character.

It was curious that in the first years of transformation only neo-liberal politicians could be afraid that this form of transformations would dominate Polish economy, or at least the hitherto state-owned sector. However, for a long time it has been obvious that — in spite of their great number — the share of these companies in the economy, especially as far as employment is concerned, is more than modest. They employ relatively fewer people than even the American ESOPs. Their share in the ownership of tangible assets is even smaller. And because for the first several years they showed a relatively high, and at times even the highest profitability, and later managed quite well, the nervous waiting for when they would finally cease to be "employees'" firms can only be explained by ideological prejudices or group interests.

Employees' companies should have the possibility to transform into "normal companies," but before that they should be familiarised with

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<sup>40</sup> Bukowski Jacek, *Rola Ministerstwa Przekształceń Własnościowych w rozwoju udziału pracowników w prywatyzacji* [The Role of Ministry of Ownership Transformations in the Development of Employees' Participation in the Process of Privatisation], [in:] Gilejko Leszek (Ed.), *Partycypacja i akcjonariat pracowniczy w Polsce*. [Employees' Participation and Shareholding in Poland], Wydawnictwo SGH i SSP PAN, Warszawa 1995, p. 148.

<sup>41</sup> In the USA, ESOPs [Employee Stock Ownership Plans] employed at the beginning of the 1990s more than ten million employees.

<sup>42</sup> Baehr Jerry, *Companies...*, p. 146; the conception of using employee stock ownership as a way leading to normal companies was first presented by Rafał Krawczyk. He treated them from the very beginning as an instrument of transition to the shareholding system without any conflict and not a goal in itself, see: Krawczyk Rafał, *Wielka przemiana. Upadek i odrodzenie polskiej gospodarki* [The Great Change. The Decline and Rebirth of Polish Economy], Oficyna Wydawnicza, Warszawa 1990, p. 152.

the gamut of different options, which would protect this form of economic democracy. The strict holding on to one form as imposed by the authorities — of employees' leasing companies, and especially treating them as managerial in the target goal, which was considered as the only "normal" kind, was nothing but ideological doctrinarism.<sup>43</sup> Some companies would take advantage of this option under any conditions. But they should also be aware that they were not a temporary anomaly. Meanwhile they found themselves under the scourge of the nonsensical accusation of collectivism.

Pondering over the evolution of employees' companies, on their great number at the beginning, and the subsequent decline in their popularity with employees, it is not possible not to mention some facts from the past. A social base of employees' companies in Poland was the workers' self-management movement, which at the beginning of the political and economic transformation had its own association, journal, Institute, and even used the services of foreign experts. In the years 1989–91 activists of this movement were quickly adapting themselves to the new circumstances. When the transition to private market economy was publicly declared, they were able to propose a number of initiatives, conceptions which would fit within this framework, at the same time preserving certain values of the self-management movement in economy. It should be added that they were acting in a particularly unfavourable atmosphere. For example, in a country with a rich theoretical and practical tradition of cooperativism, instead of efforts to make it independent of state control, cooperatives were administratively liquidated.

#### FROM THE PROGRAMME OF MASS PRIVATISATION TO NATIONAL INVESTMENT FUNDS

The Mass Privatisation Programme was initiated by two inhabitants of Gdańsk from the Kongres Liberalno-Demokratyczny [the

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<sup>43</sup> Marek Dąbrowski, one of the main figures of Polish "transitology," shortly before the great transformation presented a rich list which was long and far from exhaustion of group, participatory, and not strictly private forms of property, treating them as fully authorized. The creation of a permanent research and information forum for employees' companies would encourage expansion of the range of "freedom of choice" on which market economy is based, see: Dąbrowski Marek, *Podmiot przedsiębiorczości w różnych wariantach gospodarczych* [The Object of Enterprise in Different Economic Variants], paper read at the 5th Congress of PTE [Polish Economic Society], Cracow, 1987.

Liberal-Democratic Congress], Janusz Lewandowski and Jan Szomburg. They started writing about it as early as in 1988. They proclaimed mass participation of citizens in property, which gave the impression of a new form of socialisation that would be more just and more effective than state ownership.

The programme dealt with "turning over property" into the hands of all adult citizens, "democratisation of property ownership," creation of the "people's" or "democratic" capitalism. The most recent models were offered by the Prime Minister of Great Britain, Margaret Thatcher, who used this watchword for the privatisation of the companies and flats, which were nationalised after World War II. At the same time a similar conception was proclaimed and, to some extent realised, by the Chilean government, still during the rule of General Pinochet.

Actually, at the very beginning the main idea of both consisted of quite clear goals of socio-technical privatisation, which would create a new group of owners. In Poland this was an idea of mass privatisation that would indirectly lead to a fast concentration of property in private hands. Only some representatives of the new power elite admitted this openly.

A significant role in the promotion of the idea of mass privatisation or perhaps rather in raising unrealistic expectations was played by Lech Wałęsa. During the 1990 presidential campaign and later he promised Polish citizens a large share of national wealth (e.g. "One hundred million zloty to everyone" or a ten thousand dollars loan on preferable terms). It is difficult to say what his real goals were, apart from the ones connected with the presidential elections. Initially, the conception of the inhabitants of Gdańsk was similar to coupon privatisation. This conception was widely advertised and became popular also in other post-communist countries. In a dozen or so of them, especially in Czechoslovakia and Russia, similar conceptions were implemented.

However, in Poland its scope was restricted and it was changed so much that actually a new programme was developed under the name of Narodowe Fundusze Inwestycyjne (NFI) [National Investment Funds]. For some time this programme was still presented as a continuation of the initial PPP, and its continuity was to be confirmed by Janusz Lewandowski himself as minister of Ministry of Ownership Transformations. This change, which was "imported" from abroad was made in the middle of 1991 and its circumstances say a lot about the character of the whole process of privatisation in Poland.

Here I shall refer to Jacek Tittenbrun's analyses. He devoted almost the whole Volume Four of his great work to the NFI programme.<sup>44</sup> He informs that in the first half of 1991 work was begun on the mass privatisation by a group of experts nominated by the MPW, the head of which was a re-emigrant, Dr Jerzy Thieme. Among its members were A. Cordet of the World Bank and J. Ledóchowski of the S.G. Warburg & Co. Ltd. Bank. Experts of this bank worked for this group until the end of 1993 as part of a contract between the MPW and S.G. Warburg as the main adviser to this ministry for the introduction of the NFI programme.<sup>45</sup> They were financed by the British *Know-How* Fund. And as "a result of strong pressure of the advisers of S.G. Warburg an important modification of the original conception was made." After several years Lewandowski rationalised this change as follows: "The art of management of funds was not known in Poland when the project of mass privatisation was being created. That is why I insisted that this should be an opportunity to import foreign abilities, which were to be used to work for the sake of Polish participants of mass privatisation."<sup>46</sup>

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<sup>44</sup> It is a pity that this work was not carefully edited, which to some extent makes its reception more difficult. However, there is no doubt that it is due to its content, which is shocking and difficult to reject that it was passed by in silence.

<sup>45</sup> Tittenbrun Jacek, *Z deszczu pod rynną. Meandry polskiej prywatyzacji* [Out of the Frying Pan and into the Fire. The Meanders of Polish Privatisation], vol. 4, Wydawnictwo Zysk i S-ka, Poznań 2007, p. 9.

<sup>46</sup> Gazeta Bankowa, No 32/1997, quoted after: Tittenbrun Jacek, *Z deszczu pod rynną* [Out of the Frying Pan and into the Fire], vol. 4, p. 10. I think that this opinion sounds more probable than this opinion of Tittenbrun: "It is maintained that as a result of strong pressure of Warburg advisers an important modification of the original conception was introduced (...) The western partner took care to guarantee that this import be actually realised. The World Bank and the European Bank of Reconstruction and Development made a condition that loans at preferential rates would be given to the investment funds which were to be set up if the funds would make contracts for the management of the funds with Western firms", see: Tittenbrun Jacek, *Z deszczu pod rynną* [From the Frying Pan and into the Fire], vol. 1, pp. 9-10. When we remember how willingly Balcerowicz's team adopted the stabilisation programme which was the harshest of the variants presented by the Ministry of Ownership Transformations and taking into consideration the uncritical attitude of the subsequent governments to the flow of foreign capital, we can assume that these agreements were made in an atmosphere of mutual goodwill. The very formation of the above mentioned team which was to work on mass privatisation and in which the number of foreigners and Poles living abroad (Polish emigrants) was dominant, was evidence of the strong pro-Western and to be more exact – pro-Anglo-Saxon attitude of the Ministry of Ownership Transformations and the minister. Earlier, Waldemar Kuczyński, the minister who preceded Lewandowski, wrote with some pride that in his ministry English, especially with an American accent, can be heard as often as Polish.

There was one more strong argument — in Lewandowski's liberal perspective — for the conception of investment funds. Let us remember that it was just the time when the Warsaw Stock Exchange started and when it was obvious that the Anglo-Saxon conception of privatisation of state companies, promoted by Krzysztof Lis, in the form of stockholding companies was more cost- and time-consuming than it was initially assumed. Thus, the advocates of the Anglo-Saxon capitalism wanted to take advantage of the mass privatisation and strengthen the stock exchange. This way they also wanted to weaken efforts, already strong at that time among the staff — both managers and workers — to transform workplaces into employees' companies. All this does not disprove Tittenbrun's "suspicion"<sup>47</sup> that "the shape of the whole programme was fundamentally influenced by the interests of a clique represented by British advisers."<sup>48</sup> Or perhaps it was *one* of the main motives.

The NFI programme came into being slowly and with difficulties. They were partly the result of its complex character. But Tittenbrun aptly captured its main reason in the logic of interests. He wrote:

One of its features, which distinguished Poland from other countries of the former socialist bloc was a significantly higher level of articulation of classes, who were not only aware of their own interests, but who were also capable of effectively fulfilling them.

The self-reliance of companies, the great role of trade unions, the working classes' feeling of power, which was maintained by the rich tradition of class struggle — these factors did not occur in such an intensity and in such a combination in the neighbouring countries which explains why these countries outdistanced us in the race of implementing mass privatisation.<sup>49</sup>

This programme was sent to the Sejm [Parliament] only at the end of Hanna Suchocka's tenure. After being rejected by the Sejm on 18 March

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<sup>47</sup> One more remark on Tittenbrun's work. I value this work very highly and use it very often. However, I think that he unnecessarily makes the task easier for his critics. I like the title: *Z deszczu pod rynnę* [From the Frying Pan and into the Fire]. The subtitle informs well about the content of the book: *Meandry polskiej prywatyzacji* [The Meanders of Polish Privatisation]. Still he or his publisher should not have inserted the following sentence between the title and the subtitle: "Privatisation of Polish economy is one great swindle..." The book itself reveals many examples of the fight of teams of workers against "accelerators" or plain swindlers, which very often made privatisation sensible. This was lacking during the preparation and implementation of the Balcerowicz Plan.

<sup>48</sup> Tittenbrun Jacek, *Z deszczu pod rynnę* [From the Frying Pan and into the Fire], vol. 4, p. 11.

<sup>49</sup> *ibidem*.

1993, its new version was passed on 30 April of that year as *Ustawa o narodowych funduszach inwestycyjnych i ich prywatyzacji* [The Act on National Investment Funds and Their Privatisation].

Ultimately, 15 Funds were established between which 512 basic companies were selected through drawing. The selection of firms managing them and of the members of the boards of these Funds was made by a selection committee nominated by the MPW and headed by Professor Cezary Józefiak, and this took almost nine months. The process of selection evoked a lot of emotions and doubts. The behind-the-scenes events as well as all other documents of this commission were made secret on the orders of the prime minister.<sup>50</sup> The establishing of the list of basic companies lasted even longer. As it was, a lot of workers and directors, whose companies were doing very well, took advantage of the right to oppose. Waldemar Pawlak, the then prime minister, was obviously in favour of restricting the NFI programme. Ultimately, the programme was implemented only at the end of 1995.

The most important provisions of the Act were as follows: The employees of the firms that entered the programme and under certain conditions their pensioners and in cases of close cooperation also farmers and fishermen, received 15% of the shares free of charge. The State Treasury took 25% of the shares. 60% of the shares of companies which entered the programme went to the Funds, which were to manage them. Each Fund obtained the so called leading shares which equalled 33% of shares of the ascribed firms (commonly called basic companies). It also obtained 1.95% of shares which belonged to the other Funds. The Funds were obliged to conduct restructuring of the companies which belonged to them in preparation for privatisation.

Formally, the civic (mass) character of the programme appeared to be a success. As many as 26 million people took part in it. Almost every citizen, 18 years old or older, after having paid the administrative fee of 20 zloty received an "equity certificate" with the right to sell it immediately and which later was exchanged for one share in each of the 15 Funds. As a result of the ruling of the Constitutional Tribunal this right was also obtained by persons whose place of residence was not registered (e.g. those who were homeless). How to explain such a wide participation? The ease with which one could get rid of those certificates for a lower and lower price seems to confirm J. Mojkowski's opinion: "Most people collected certificates according to the rule: if they give them, take them.

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<sup>50</sup> *ibidem*, p. 24.

Only a stupid person will not make business by exchanging 20 zloty into 100 zloty."<sup>51</sup>

However, I would not underestimate either the above mentioned belief that "the companies are ours," which the name "share certificates" seems to have as it turned out later in a rather perfidious form.

The confrontation of the initial stage of dissemination of property among citizens, promotion of the proprietary attitude among citizens and democratisation of the capitalism that was in the making in Poland along with the actual magnitude of the NFI programme (ca. 5% of the assets administered by the State Treasury) is a good illustration of the well known saying that "a mountain brought forth a mouse." Let's add, a mouse which drew the attention of millions of people. A lot of legislation and organisation was involved in it and it cost a lot of money during a number of years but quite soon this programme was marginalised.

This marginalisation was caused by the widespread, long lasting slump on the stock exchange market. However, the NFIs were strongest hit by this slump. In 1998 alone the price index of their shares fell by 47%!

The initial price of coupons, grandiloquently called share certificates, fluctuated even more. If, however, these denoted share then they resembled participation in a game like sweepstakes rather than real enfranchisement shares. First, there were attempts to redeem them at a price a little higher than the administrative fee. It is astonishing that the record was probably broken by the state bank — PKO BP the head office of which set the maximum price at 32 zloty and its branches tried to buy them even at 25 zloty (Cracow and Olsztyn) and 28 zloty (Wrocław). Later the prices grew to 100 zloty and much more rarely even to 200 zloty. But at the final stage of their redemption, the retail market price (i.e., for owners of one or a couple of certificates) was only double the initial fee of 20 zloty.

If we take into consideration the still high inflation, a citizen who did not sell his "share" in the early stage when prices were still high, received as a gift from the state several dollars' worth of money. This was less than one thousandth of what Wałęsa had promised.

The actual founder of this programme, J. Lewandowski, minister of property transformation, repeated many a time that the aim of the PPP

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<sup>51</sup> Polityka, No 48/1996, quoted after: Tittenbrun Jacek, *Z deszczu pod rynnę* [From the Frying Pan and into the Fire], vol. 4, p. 37.

(for socio-technical reasons the NFI programme was still called in this way) is "widespreading of property"<sup>52</sup> (quoted after A.K.K. 1992). But what happened was obviously quite the opposite. It is impossible not to agree with the critics who maintain that the people had been misled by a popular slogan, which only led to greater distrust of other reform efforts of the government.

Interesting studies of CASE — Centrum Analiz Społeczno-Ekonomicznych [Centre for Social and Economic Research],<sup>53</sup> which were devoted to the so called secondary privatisation of NFI, threw a sharp light on the illusive character of "enfranchisement of citizens" and on who the real beneficiaries were. Although formally it leaves the problems of mass "enfranchisement" outside of interest of researchers, it still gives an excellent insight into the evolution of the ownership structure in the NFIs themselves and in the basic companies, showing whose interests were secured through this enfranchisement.

Not only did this programme include a small part of national assets, this small portion shrank because of uneconomical management. Błaszczyk writes:

In 1995 [the year in which the Funds were started — TK] earning capacity suddenly fell and the whole group brought a deficit. Later on it was worse and worse (with the exception of 1997). In 1999 the results of the NFI group were the worst amongst all the analysed groups. The net profitability began to decrease (...) in 1995 and it deteriorated in the years to come. Much better results were those of the other groups of privatised companies and even those of the State Treasury."<sup>54</sup>

The announcement in the programme that still before privatisation the Funds will restructure the firms administered by them so as to improve their effectiveness has found its reverse fulfilment: they broke records in mismanagement instead. It is not difficult to give the reason for this. The managements of the basic companies justifiably (according to the programme) expected assistance from the Funds and felt excused

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<sup>52</sup> A.K.K., *Rozdanie świadectw w 1994 r.* [Distribution of Certificates in 1994], Rzeczpospolita, 20 August 1992.

<sup>53</sup> Błaszczyk Barbara et al., *Secondary privatisation in Poland (Part II): Evolution of Ownership Structure and Performance in National Investment Funds and their Basic Companies*, CASE, Warszawa 2001; Błaszczyk Barbara, *Zjawisko wtórnej prywatyzacji — zmiany struktury własnościowej przedsiębiorstw sprywatyzowanych* [The Phenomenon of Secondary Privatisation in Poland — Changes of Property Structure of the Privatised Companies], [in:] Bałtowski Maciej (Ed.), *Przedsiębiorstwa sprywatyzowane w gospodarce polskiej* [Privatised Companies in Polish Economy], PWN, Warszawa 2002.

<sup>54</sup> Błaszczyk Barbara, *Zjawisko wtórnej prywatyzacji...*, p. 214.

from showing their own initiatives or they were uncertain as to what was going on and waited for decisions of their sale which were made beyond their capacity.

Changes as far as ownership is concerned were not better from the point of view of citizens-shareholders. After the share certificates were changed into stock, the State Treasury retained only those which were equivalent to the unredeemed share certificates (and there were few of them) and which were allotted for compensation of the firms which managed the Funds.

During a few years the participation of small individual investors fell from 85 to 41% of stock for the sake of institutional shareholders and large investors. Foreign investors' participation became more significant as it reached 26%, which is twice as much as that of the domestic ones. What deserves special attention is the system of remuneration and the sums paid to the firms which managed the Funds, which is probably evidence of the social character of the NFIs. According to the Act, the remuneration of the managing firms was to consist of two parts. One part was to be an annual lump sum and the other an annual remuneration expressed in percent and dependent on the financial results (altogether 1.5% of the value of the NFI stock). These lump sum rates were set from the very beginning in millions of zloty. But also efforts to obtain the best possible financial results were to lead to a considerable increase of the changing part of remuneration. For the authorities an the accumulation of management of several or even more Funds by one firm became a problem for the authorities. There is a well known case of one managerial group which administered as many as six such Funds, and it lost only two of them when the Ministry of State Treasury intervened.<sup>55</sup>

The final result is shocking and probably it has no equivalent not only in the history of Poland. As Błaszczuk et al. write:

At the end of 2000 the costs of management exceeded the enormous sum of 756 million zloty, which was equal to 44.4 percent of the total capitalisation of the funds (...) the cost of one of them amounted to 91.3 percent. In contrast to this, the only Fund the costs of which were kept below 15 percent was the one which did not use the services of an external firm.<sup>56</sup>

<sup>55</sup> *ibidem*, p. 203.

<sup>56</sup> Błaszczuk Barbara et al., *Secondary privatisation in Poland...*, p. 44. "External" in this context means a foreign firm.

This was the 9<sup>th</sup> Eugeniusz Kwiatkowski NFI.<sup>57</sup> The NFI architects drew a logical conclusion that the cost of managing the Funds might soon consume the total value of the assets managed and, as a consequence, may force the authorities to finish the whole programme before its planned end (the year 2005). Unfortunately, we do not know to what an extent the practice of raising the remuneration was spread and how it influenced the appetite of managers of the NFI basic companies.

This result brought a lot of criticism and even indignation. In the authors of this study these unprecedented achievements did not evoke any anger. On the contrary, in a somewhat complicated way, they expressed their acceptance. The author who headed the team ended her considerations with a conclusion, which, in my opinion, deserves to be remembered:

When observing these results one should ponder whether the one-sidedly negative assessment of the operations of the funds is justified. A relatively fast privatisation of the basic companies (from the moment the obstacles resulting from the political and economic system were removed) and the new structure of property in these companies, which brings hope for improvement in the future, may be the evidence in favour of the funds.<sup>58</sup>

The above opinion seems to express the conviction that there is no price too high for the privatisation of state companies. There is little evidence to support the belief that there could not be any other possibility of a relatively fast privatisation of state firms, which would involve lesser costs and which would bring better economic results apart from the NFI programme. Unless employees' companies are not considered to be a legitimate alternative. Even in this employee (not civic) form there is more dissemination of property among citizens than in the share certificates.

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<sup>57</sup> This Fund was very successful, that is why in 1997 there were attempts at a hostile takeover. Clandestinely, its shares began to be bought so that at the general assembly of shareholders favourable resolutions could be passed. The president, however, did not allow himself to be deceived and managed to stifle these attempts, see: Tittenbrun Jacek, *Z deszczu pod rynnę* [From the Frying Pan and into the Fire], vol. 4, p. 63. However, ultimately this Fund was bought in 2006 by Grażyna and Roman Karkoszka "in order to transfer to it shares and stock of their companies," see: Tittenbrun Jacek, *Z deszczu pod rynnę* [From the Frying Pan and into the Fire], vol. 4, p. 181). The NFIs still had the privilege of income tax exemption from capital investment profits from NFI. In Tittenbrun's work quoted here readers will find descriptions of the further fate of other Funds (we do not deal with them here).

<sup>58</sup> Błaszczuk Barbara, *Zjawisko wtórnej prywatyzacji...* [The Phenomenon of Secondary Privatisation], p. 220.

As we can see, the two ways of ownership transformation, which were peculiar to Poland, brought basically different results: employees' companies turned out to be a success, even if only a partial one, while the NFI programme and especially its realisation borders on scandal. It contributed neither to the widespreading of ownership, nor to the increase of the state revenue.<sup>59</sup> Moreover, the specific goal of the foreign-managed Investment Funds, formulated by Janusz Lewandowski as a good experience for the young financial market in Poland, was perversely fulfilled. Today these words sound like an irony and a bitter lesson of how not to act.<sup>60</sup>

### THE PACT ON STATE-OWNED ENTERPRISE IN JACEK KUROŃ'S CONCEPTION

The Pact on State-owned Enterprise consists of too many elements and is not easy to categorize. However, the most important feature was the proposal of fast privatisation. It was the idea of the former Minister of Labour and Social Affairs, Jacek Kuroń, although in its operationalised form it was developed by his two vice-ministers, Michał Boni and Andrzej Bączkowski. It is said that it emerged at the time of Tadeusz Mazowiecki's government and something similar was under way during the government of J.K. Bielecki only to be ultimately crystallised when Hanna Suchocka became prime minister. It was to be only the first pact after which more such pacts would follow, among others, the one on reconstruction of agriculture and rural areas.<sup>61</sup>

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<sup>59</sup> Let's quote here an opinion of one of the later undersecretaries of the Ministry of State Treasury in which he pointed out the losses suffered by the State Treasury. Szałamacha writes: "The total value of revenue was ca. 1.68 billion zloty. The NFI total cost was 454 million zloty. The difference between revenue and the cost is ca. 1.2 billion zloty. On the average 2.3 billion zloty was earned for each of the firms which participated in the programme (...). [The proceeds for each firm might have been no less than 25 million zloty. The proceeds from privatisation which have not been earned are estimated at 11 billion zloty. (...)] This operation questioned the reliability of the process of building a competitive private economy (...). A fundamental question should be asked whether promoters of the NFI programme were so [utterly] naive or absolutely dishonest," see: Szałamacha Paweł, *Narodowe Fiasko Inwestycyjne* [National Investment Fiasco], Rzeczpospolita, 24 April 2006.

<sup>60</sup> Some time ago Jerzy Giedroyc accused Polish elites that after they have won election, they behave like invaders, who plunder a conquered country. In this case "the invaders" were representatives of foreign capital who were invited by provincials.

<sup>61</sup> Kuroń Jacek, *Spoko, czyli kwadratura koła* [Cool it!, or Squaring the Circle], Polska Oficyna Wydawnicza „BGW”, Warszawa 1992, pp. 224–225.

### According to the official declaration,

The essence of the Pact on the State-owned Enterprise is a proposal that workers and managers of the enterprises should take part in making decisions on their fate, on their transformation and on their reforming. That is why we propose a whole set of new legal acts and amendments of the old ones, with the aim of changing the conditions of operation of state enterprises. We would like in our talks with trade union centres to establish on which terms an enterprise should act and transform. The staff could make decisions on how to change their enterprises. During three months the staff could decide how to change their companies.<sup>62</sup>

This is how a kind of preamble to the developed proposals of the government read. The proposals included many changes, a list of the possible forms of transformation, making employees' leasing easier, an announcement that there would be changes in the rules on collective agreements and on labour safety and sanitation. Starting in the summer of 1992 until March of the following year negotiations were taking place leading to changes in individual bills. Political parties conducted a dispute and differences were revealed even within the coalition government of Hanna Suchocka.

However, when the authorities managed to sign agreements with the major trade unions, and the first bills of legal acts were sent to the Sejm, Suchocka's government fell. And the unexpectedly victorious new coalition (SLD, PSL) [The Alliance of Democratic Left, Polish Peasant Party] did not take up the main ideas of the Pact, with one exception — they formed the Trilateral Commission for Socio-Economic Issues, which has been acting until now even if in a poor and even diminished form.

As far as directions are concerned, two ideas in Kuroń's conception come to the fore as the most important ones. First, Kuroń (and thanks to his efforts also an otherwise rather conservative government) came to the conclusion that further reforms should not be made above the society but with its participation. And that reforms cannot be left in the hands of state officials and politicians. A few years later Kuroń wrote about this in a dramatic way:

The political parties of today resemble more a queue for "easy profits" ["konfitury"] than a group of people who are united around a vision of Poland (...) Thus the state was taken by the parties which means there is corruption of all kinds, and if people, who want to do something, are allowed to the top, it is done so

<sup>62</sup> [no author given], *Rząd proponuje związkom pakt o przedsiębiorstwie państwowym* [The Government Proposes the Pact on State Enterprise to Trade Unions], *Gazeta Wyborcza*, 10 September 1992.

only to deprive them (...). Unexpectedly, it appears that they received some very profitable positions — they become presidents of companies, members of boards of directors, plenipotentiaries or advisers while actually they do not have the required competences. That is why most of the people (...) are very sceptical as far as the reforms are concerned. These are not their reforms. These are the authorities' reforms and it is a feeling of a large part of the society that the reforms only serve the authorities. I realised all this very late. But when I noticed this mechanism (...) I pulled through the Pact on the enterprise (...) At last I want to do away with the officials' privatisation.<sup>63</sup>

The other main idea was much worse, if not simply an amazingly naive one. At the beginning, Kuroń (the government) imagined that these strategic decisions would be made within three months! Considering the fact that this operation was to involve — just a trifle! — from 6,000 to 6,500 enterprises, even after this period was extended through negotiations to six months the whole idea bordered on fantasy. And this way of thinking, bad officials, good workers and the managing staff contradicted the then common facts, which indicated that there was a universal demoralisation not only of the managing staff during the unprecedented deep economic decline. It assumed the necessity of state control of the privatisation process.

Having in mind Kuroń's acceptance of the "jump" proposed by Jeffrey Sachs, one is inclined to evaluate the idea of the Pact in the following way: there were no prospects for the privatisation jump made by the government and administration, let's try to do it with the "hands" of the workers. This meant that Kuroń did not yet give up the philosophy of a jump into a new system at "a stroke." He did not understand that the greater the accumulation of changes in a short time, the greater the corruption. I am sorry to write about this because at the end of 1993, Kuroń "took off the hook" his leftist views again and fundamentally criticised the hitherto implemented transformation and his role in it.<sup>64</sup>

### ELITIST PRIVATISATION

The ways of privatisation in Poland created a long-lasting hiatus between social feelings and the imagination of the *establishment* circles. It is

<sup>63</sup> Kuroń Jacek, Żakowski Jacek, *Siedmiolatka, czyli kto ukradł Polskę?* [The Seven Years' Period, or Who Stole Poland?], Wydawnictwo Dolnośląskie, Wrocław 1997, pp. 88–89.

<sup>64</sup> Kuroń Jacek, *Rzeczpospolita dla każdego* [The Republic of Poland for Everyone], *Życie Gospodarcze*, No 21/1994.

easy to illustrate this with the reasoning of one of the avid “privatisers” (“privatise to the very bottom”). Here is his perception of social reactions and an attempt to explain them.

Referring to the statistics of CBOS — Centrum Badania Opinii Społecznej [Public Opinion Research Center] in 2005, Piotr Kozarzewski observes:

only 25 percent of respondents thought that privatisation was profitable for Polish economy. This assumed the necessity of some control of the privatisation process by the state, and 16 percent of respondents that it was profitable for themselves. And 40 percent thought that it was unprofitable for the country and 46 percent that it was unprofitable for themselves. (...). At the same time the majority of respondents are in favour of a paternalistic role of the state in economy and in the life of citizens (...). What is particularly frightening is that the negative attitude to transformation, egalitarian attitudes are widespread also among those who receive good salaries and who most evidently managed to adapt to the new system and who could become a socio-political base of reforms, and among young people.<sup>65</sup>

The explanation of the reasons of this “frightening” situation is very interesting. It appears that:

Egalitarian attitudes and those which support state paternalism do not allow the society to redefine the fundamental values in accordance with the principles of the new system. The economy under construction, which is based on private property is “unjust” in its very foundation, if we use egalitarian criteria: one person will be the owner and another will not (...).<sup>66</sup>

But the author also found a deeper reason which also explains a lower than possible standard of living and the increase of differences in income. He wrote:

In Poland (...) the main reason for the decline in the support and increase of the disapproval for reforms and privatisation in particular was most probably the slowing down of the processes of ownership transformation (...). This slowing down led (...) to a protracted rise of living standards of the society and growing disproportions in incomes.<sup>67</sup>

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<sup>65</sup> Kozarzewski Piotr, *Prywatyzacja w Polsce w perspektywie porównawczej. Wyniki ilościowe i jakościowe* [Privatisation in Poland in Comparative Perspective. The Quantitative and Qualitative Results], [in:] Błaszczyk Barbara, Kozarzewski Piotr (Eds), *Zmiany w polskich przedsiębiorstwach: własność, restrukturyzacja, efektywność* [Changes in Polish Companies: Property, Restructurisation, Effectiveness] Wydawnictwo Cedetu — CASE, Warszawa 2007, pp. 62–63.

<sup>66</sup> *ibidem*, p. 63.

<sup>67</sup> *ibidem*, p. 62.

This simple (or maybe crude) explanation relieves the author from deeper thought on who actually are the new owners, how they became such and, what is most important, what reality and working conditions they have prepared for their employees. What prospects were opened for young people?

The problem of further evolution of the ownership structure in one form or another comes back again and again. Politicians, and especially politicians who are also professors, see the problem and respond to it depending on their political leaning or the current interest of their party.

Let me quote two completely different opinions which, however, are a proof of full understanding of the howling injustice of ownership transformations in Poland. The first one is that of a sociologist, Jacek Kurczewski, who was only temporarily involved in politics (as a senator of the Liberal Democratic Congress). He wrote that

Poland is in the initial primary state when title deeds must be distributed between participants of the social game [...]. In the struggles for power, property and wealth really all people take part although the chances were unequal at the very beginning and this inequality is evident every now and then in the sense of injustice on the one hand and of arrogance on the other.<sup>68</sup>

The author of the latter opinion was the late President Lech Kaczyński, who in an interview said:

Starting a revolution today, which would lead to the just distribution of the national wealth taken over after 1989 and to the dispossession of the present oligarchs is absolutely impossible, particularly when Poland belongs to the European Union. Why were these circles so much attracted by the European Union? Because the mechanisms operating in the Union allowed to strengthen their influences.<sup>69</sup>

The following remarks come to mind. Both statements have strictly connected the distribution of property with social justice although in a form that is either distorted or manipulative. When speaking as a politician, Kurczewski ignored the fact that even in 1989 Poland *no longer* was in the "initial primary state" although the new authorities consciously created the illusion of such an initial state. In Polish economy the private sector had already been in place. In private farming

<sup>68</sup> Kurczewski Jacek, *Taka młoda a taka brzydka* [So Young and so Ugly], *Gazeta Wyborcza*, 27–28 January 1995.

<sup>69</sup> Kaczyński Lech, *Możemy przegrać bitwę o Polskę* [We Can Lose the Battle for Poland], a conversation with Cezary Michalski and Piotr Semka, *Dziennik*, 22–23 July 2006.

more than one fourth of those employed were working. And the rest of the private sector was growing. There were very many conceptions of property transformations, which somewhat intuitively respected the sense of justice. These included conceptions of the employees' shareholding in companies which were to be privatised in the form of employee companies. However, above all in the Round Table Agreements the constitutional principle of pluralism of forms of property had been declared. Thus, Kurczewski rather summed up a certain stage of this war, which had already been won by the old and the new "nomenklatura."

In turn, Kaczyński's statement was purely instrumental. This is because it met halfway the feelings of the so called 'moherowe berety', a name used to define ultraconservative and religious people, who were convinced that the national wealth had been stolen away. Society was made to believe that the new people wielding power would be willing to carry out an enfranchisement revolution for the sake of social justice. But this would be impossible to do and the fault lay with the elites, the media and circles connected with oligarchs and "aliens," in this case the European Union.

The concerted activities of the Kaczyńskis went exactly in the opposite direction — they benefitted the rich. Soon after the election they wanted to hand all the ministries connected with the economy of the country to Platforma Obywatelska [Civic Platform].

When such a coalition appeared to be impossible, Zyta Gilowska, previously a Civic Platform activist and advocate of the low flat tax (3 times 15 percent: for PIT, CIT and VAT), was nominated Minister of Finance. One of the first bills of this government was lifting of the inheritance tax and private donation tax for a wide range of family members. This step could not have been judged differently than as a simply demonstrative acceptance of more material inequalities. During the great economic prosperity at that time in Europe and in Poland too there was a possibility of easing the fate of the disadvantaged groups. For example, it was possible to build lodgings for the numerous homeless people and/or to radically decrease the number of undernourished, and sometimes even starving children. However, the authorities preferred to lift the highest tax bracket resulting in almost 99 percent of taxpayers actually paying a flat tax as well as to lower the disability insurance premium. Kazimierz Marcinkiewicz's government and later that of Jarosław Kaczyński, while referring to the spirit of "Solidarity," treated the nurses receiving subsistence salaries as "proles." Thus in fact this government was favouring an

Egoistic Poland and on the arena of the European Union it acted for the sake of an Isolationist Poland.<sup>70</sup>

The truly exotic coalition with the populist [not in an old American sense — TK] Samoobrona [Self-Defence] and the ultra-nationalist Liga Polskich Rodzin [League of Polish Families] brought so many internal contradictions and political scandals that after less than two years of their government, power was taken over by Donald Tusk's neoliberal Civic Platform and the centrist Polish Peasants' Party. The new authorities want to privatise "to the very bottom," rejecting all ideas of group property of a participatory character.

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<sup>70</sup> Having forgotten everything, the chairman of the Trade Union "Solidarity" fully supported Jarosław Kaczyński as a candidate to the post of president in the 2010 election. It shows the moral decay of this Trade Union, which appropriated the old symbol.