

Foreword

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Angaben zur Veröffentlichung / Publication details:

Schmidt, Reiner. 2024. "Foreword." In *Law and interdisciplinarity*, edited by Phillip Hellwege and Marta Soniewicka, VII–X. Tübingen: Mohr Siebeck.
<https://doi.org/10.1628/978-3-16-163882-4>.

Law and Interdisciplinarity

Edited By
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and MARTA SONIEWICKA

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The publication has been supported by a grant from the Faculty of Law and Administration under the Strategic Programme Excellence Initiative at Jagiellonian University.

ISBN 978-3-16-163881-7 / eISBN 978-3-16-163882-4
DOI 10.1628/978-3-16-163882-4

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available at <https://dnb.dnb.de>.

Published by Mohr Siebeck Tübingen, Germany, 2024. www.mohrsiebeck.com

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The book was printed by Laupp & Göbel in Gomaringen on non-aging paper and bound by Buchbinderei Nädele in Nehren.

Printed in Germany.

Foreword

No single person has been more important for the cooperation between the law faculties of the Jagiellonian University of Kraków and the University of Augsburg – a cooperation that now exists for more than a quarter of a century – than Prof. Dr. Dr. h.c. Dr. h.c. *Jurek* (or *Jerzy*) *Stelmach*. His 70th birthday in February 2024 is reason enough for reflection on his contribution to the Polish-German legal dialogue in particular and to legal academia in general.

It is only one out of many yields from the fruitful cooperation between both faculties that a series of edited volumes has been established. These volumes collect the presentations of the Kraków-Augsburg Symposia held every two years – alternately in Kraków and in Augsburg – and they are thus a chronicle of the ongoing Polish-German legal dialogue between both faculties. Originally, they were published under the series title “Kraków-Augsburg Studies in Law” (“Krakauer-Augsburger Rechtsstudien”) with Wolters Kluwer.¹ The present volume is the second to appear with Mohr Siebeck.²

The opening contribution to the first volume is authored by Prof. *Stelmach*; it is entitled “Philosophy of Law in the Post-Modern Era”, and the contribution is representative of his entire oeuvre.³ He deliberately leaves unanswered the question whether legal philosophy belongs to the discipline of philosophy or law. Instead of focusing on such theoretical debates, he demands with practical rigour that we should “keep doing our job” (“weiter unser Ding machen”) or otherwise change our profession. Ultimately, he explains, the philosophy of law is part of social philosophy or the general methodology of science, but he chooses to leave its classification in a state of uncertainty, observing that only the future will prove whether it will develop into a more technically understood theory of the doctrinal study of law. The essay is also for a second reason characteristic of Prof. *Stelmach*’s thinking and writing. In just under six pages, he

¹ *J. Stelmach/R. Schmidt* (eds.), *Probleme der Angleichung des europäischen Rechts* (2004); *Information als Gegenstand des Rechts* (2006); *Rechtliche Steuerung von Wirtschaftsprozessen* (2008); *Wettbewerb der Staaten – Wettbewerb der Rechtsordnungen* (2010); *Grenzen der rechtsdogmatischen Interpretation* (2011); *H. Bauer/D. Czybulka/W. Kahl/J. Stelmach/A. Voßkuhle* (eds.), *Öffentliches Wirtschaftsrecht im Zeitalter der Globalisierung* (2012); *J. Stelmach/R. Schmidt* (eds.), *Die Rolle des Rechts in der Zeit der wirtschaftlichen Krise* (2013); *idem/idem/P. Hellwege/M. Soniewicka*, *Normscheidung* (2017).

² *P. Hellwege/M. Soniewicka* (eds.), *Die Einheit der Rechtsordnung. Annäherungen – Bestandsaufnahmen – Reflexionen* (2020).

³ *J. Stelmach*, *Rechtsphilosophie in der Nach-Neuzeit*, in: *Probleme der Angleichung* (n. 1), 9–18.

is, while meeting the highest academic standards, able to outline the development of post-war legal philosophy, including the philosophies of *Arthur Kaufmann*, *Gustav Radbruch*, *Jürgen Habermas*, *Ronald Dworkin*, *Robert Alexy*, *Richard Posner*, and *Theodor W. Adorno*; thereafter, he moves on to address the articulation of new theories, an idea he rejects with disarming clarity. Instead of developing such new theories, he argues, the invitation should be accepted to complete existing legal philosophy in its topicality, an invitation that is implicit in existing legal philosophy.

All articles that Prof. *Stelmach* contributed to the “Kraków-Augsburg Studies in Law” are characterised by such a combination of high theoretical awareness and pragmatism. For instance, he calls for putting an end to the interminable discussions on the ontological nature of law. Instead, he argues, we should turn to a much-needed analysis of the problems associated with the economic effectiveness of law.⁴ Thereby, he proves to clearly grasp the limitations of theoretical discourse on law: Without knowing the preconditions for an effective law, without knowing why law works in some situations whereas it does not work in other situations, any legal discourse on a meta-theoretical level will remain stuck in a vacuum. Furthermore, he is critical of the creation of legal myths and of oversimplification. According to him, it is moreover possible to accept two mutually contradictory statements at the same time as long as they can be justified by similar or identical means.⁵ In yet another contribution, he claims that all correctly formulated and applied methods of interpretation are equally legitimate. Theories of interpretation are incapable of capturing the specificities and particularities of all thinkable cases, and if they try, they become overly complicated and incapable of being applied. Even the idea of objectivity in legal interpretation proves to be “completely useless” for legal practice.⁶ Finally, it is characteristic of Prof. *Stelmach*’s original thinking when, in an essay co-authored with his student *Bartosz Brożek*, he discusses the phenomenon of the dysfunctionality of law.⁷ According to them, law is dysfunctional when it does not accomplish to a sufficient degree its fundamental purposes – justice, security, and economic efficiency. The provisional nature of “crisis economy” measures that are implemented as a reaction to the many destabilising factors which an economy witnesses during a period of instability is based on the simple fact that nobody knows anything about the true causes and consequences of anything. This makes, *Stelmach* and *Brożek* observe, the

⁴ *J. Stelmach*, Acht Voraussetzungen für ein effektives Recht, in: *Rechtliche Steuerung* (n. 1), 9–21.

⁵ *J. Stelmach*, Die Scheinbarkeit des Problems des Wettbewerbs von Rechtsordnungen, in: *Wettbewerb der Staaten* (n. 1), 9–15.

⁶ *J. Stelmach*, Die unbegrenzte Interpretation, in: *Grenzen der rechtsdogmatischen Interpretation* (n. 1), 9–18.

⁷ *J. Stelmach/B. Brożek*, Ökonomische Ursachen für Dysfunktionen des Rechts, in: *Die Rolle des Rechts* (n. 1), 203–213.

thesis of the dysfunctionality of law in times of economic turmoil seem almost trivial.

Next to the monographs, edited volumes, and other publications, his essays in the “Kraków-Augsburg Studies in Law”, which I was able to cover here only by way of example, seem more like small add-ons. Mention should be made of “Methods of Legal Reasoning” (together with *Brożek*, 2006), “Philosophy in Science” (together with *Brożek*, *Janusz Maczka* and *Wojciech P. Grygiel*, 2011), the co-editorship of the monumental “The Many Faces of Normativity” in 2013, bringing together fourteen renowned authors and including an essay by Prof. *Stelmach* on “Naturalistic and Antinaturalistic Fallacies in Normative Discourse”, the “The Art of Legal Negotiations” (together with *Brożek*, 2013), and the “Theorie der juristischen Verhandlungen” (“Theory of Legal Negotiations”, together with *Brożek*, 2014). There are further important books, among others those co-authored with *Michael Heller*. These volumes are not listed here as they are not accessible to readers not familiar with the Polish language.

Prof. *Stelmach*’s impressive productivity, his ingenuity, his kindness, and his humour were and are formative for the development of the relationship between the two faculties in Kraków and Augsburg. The award of an honorary doctorate in 2011 by the Faculty of Law of the University of Augsburg – the University of Heidelberg had previously honoured him with the same distinction – was an expression of the high esteem in which Prof. *Stelmach* is held not only for his person and his academic work, but also for his contribution to mediating between Polish and German law.

In his work, Prof. *Stelmach* focuses especially on hermeneutics. According to him, law and the discovery of law do not end in relativism. The act of understanding is always a form of “being-in-the-world”. This may be taken quite literally. Prof. *Stelmach* is a committed collector of art, especially of Polish contemporary art. His house is more a gallery than a residence. If one teasingly asked him whether he is rather a gallery owner or an academic, one would fall short as he is also a successful entrepreneur. As long-standing dean of the Faculty of Law and Administration, he was successful in acquiring the site for the University’s new campus on the Vistula, and he was responsible for the restoration of the run-down Palais Larisch, now one of the architectural pearls of the Kraków Faculty of Law and Administration. Academic, gallery owner, or entrepreneur? Prof. *Stelmach* is all of these. Thus, his personal life mirrors his theoretical thinking: he impersonates several *prima facie* contradictory functions or standpoints simultaneously – and even with synergistic effects.

Prof. *Stelmach* is an exemplary and successful university teacher. He has supervised and promoted twenty PhD students. The success of his students, among others *Bartosz Brożek*, *Marta Soniewicka*, and *Wojciech Zaluski*, prove his fruitful manner and stimulating aura. He and his wife *Ela* are generous, exemplary, and amiable hosts. Their open house is one of the intellectual centres of Kraków. Joint forays through the narrow streets and hidden corners of

Kraków are part of the invigorating and friendly exchange with Prof. *Stelmach*: In a small forgotten antique shop, an interesting graphic may be found in some dusty chest of drawers. The fact that life has secrets to offer is one of the lessons to learn from *Jurek Stelmach*.

Augsburg, November 2023

Reiner Schmidt