

# The Role of Legal Scholarship in Eastern Europe

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## I. Introduction

Categorization is a difficult endeavor. The descriptive term “Eastern Europe” at once evokes Cold War imagery and stereotypes: in recent history, the lands beyond the Iron Curtain, mostly Slavic and mostly under Soviet domination. Reality is a bit different. Eastern Europe is an incredibly ethnically diverse region. While Slavs are the majority, there are significant non-Slavic groups, including Hungarians, Romanians, Albanians, Lithuanians, Latvians, and Estonians. Within the Slavic ethnic group, there are often more differences than feelings of solidarity. Geographically, there is even some debate as to which countries this region actually encompasses, with Czechs and Poles arguing that their lands lie in Central, rather than Eastern, Europe.<sup>1</sup>

However it is defined, Eastern Europe has a rich intellectual and legal tradition predating the Soviet Era. Charles University in Prague, the Jagiellonian University in Krakow, and the University of Vilnius, including their respective law faculties, all predate many Western European universities and law schools.<sup>2</sup> For example, readers of the Polish-Lithuanian Nobel Laureate Czeslaw Milosz’s compilation of autobiographical essays, *To Begin Where I Am*, will be struck by the depth and power of the intellectual currents he described in interwar Vilnius.<sup>3</sup>

Nevertheless, either or both the Soviet or communist rule and domination of Eastern Europe from 1945–1991 provides a common denominator for the region, one that still has a strong influence on the role of legal scholarship in the countries that lie within it. Rather than conduct a country-by-country study, this paper will focus on three represen-

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1. Kerry Kubilius, *Countries of Eastern Europe*, ABOUT.COM, <http://goeasteurope.about.com/od/easterneuropedestinations/ss/Countries-Of-Eastern-Europe.htm> (last visited June 5, 2012).

2. See *History of CU*, CHARLES U. IN PRAGUE, <http://www.cuni.cz/UKENG-181.html> (last updated May 5, 2012); *History*, JAGIELLONIAN U. IN KRAKOW, [http://www.uj.edu.pl/en\\_GB/universytet/historia](http://www.uj.edu.pl/en_GB/universytet/historia) (last visited June 5, 2012); *History*, VILNIUS U., <http://www.vu.lt/en/about-us/history> (last visited June 5, 2012).

3. See CZESLAW MILOSZ, *TO BEGIN WHERE I AM* (Bogdana Carpenter & Madeline G. Levine eds., 2001).

tative Eastern European countries: Poland, Lithuania, and Ukraine. Taken together, they reflect (1) EU membership (Lithuania and Poland) and non-EU membership (Ukraine); (2) countries that were annexed by the Soviet Union and composed a part of the U.S.S.R. (Lithuania and Ukraine); (3) countries that were independent during the interwar period (Lithuania and Poland); (4) Slavic (Ukraine and Poland) and non-Slavic (Lithuania); and (5) northern, Baltic (Poland and Lithuania) and southern, Black Sea (Ukraine).

## II. The Uses, Purposes, and Forms of Legal Scholarship in Lithuania, Poland, and Ukraine

### A. LEGAL SCHOLARSHIP AS A MEANS OF, OR REQUIREMENT FOR, ACADEMIC ADVANCEMENT

The catchphrase “publish or perish” also rings true in Eastern Europe. Academics have strict numerical publication requirements that they must satisfy to advance in (as well as to retain) their positions at university law faculties. Such requirements are one of the primary motives for legal academics to publish a given quantity of articles or books. The influence from the Soviet Era is still present here, in that there still tends to be a preference for quantity (as opposed) to the quality of legal scholarship produced. But as the Soviet past becomes more distant, the focus on quality has become more and more important.

In Lithuania, to become an associate professor (called a “docent”), five post-PhD articles are required.<sup>4</sup> To become a full professor, fifteen post-PhD articles are required.<sup>5</sup> Monographs count as seven articles if published by an international publishing house, and as five articles if published by a domestic publisher. Manuals—texts designed primarily for use as a teaching or study tool—count somewhat less than a book.<sup>6</sup>

There is no absolute restriction on the type of journal in which the article is published. The university, in deciding professorship or docent status, determines whether the given article was published in a journal of sufficient academic caliber.

Professors must likewise continue producing legal scholarship after they have attained their title. It is a component of the traditional triad of scholarship, teaching, and service.

In Poland, the system is somewhat in flux today. Traditionally, there has been a “three-book” requirement: one for the title of PhD, one for habilitation, and one for the title of professor.<sup>7</sup> Thus, a PhD in law is the entry-level degree required to teach in Polish law faculties. This degree is later “habilitated” though the publication of a second book. Fi-

4. *Professional Careers in Lithuania*, EUR. CONFEDERATION OF POL. SCI. ASS'NS, [http://www.google.com/url?sa=t&rct=j&q=Publications%20required%20to%20become%20docent%20in%20lithuania&source=web&cd=14&ved=0CFAQFjADOAo&url=http%3A%2F%2Fwww.ecpsa.org%2Ffileadmin%2FCareers%2FLithuania.doc&ei=q7K5T8yFKaXa2QWOiOSE.Dw&usg=AFQjCNGN4NQ\\_lvuYTYDXI638QpyIJWBRw&sig2=ZGkL4EcaC2lwp5OGSmCfA&cad=rja](http://www.google.com/url?sa=t&rct=j&q=Publications%20required%20to%20become%20docent%20in%20lithuania&source=web&cd=14&ved=0CFAQFjADOAo&url=http%3A%2F%2Fwww.ecpsa.org%2Ffileadmin%2FCareers%2FLithuania.doc&ei=q7K5T8yFKaXa2QWOiOSE.Dw&usg=AFQjCNGN4NQ_lvuYTYDXI638QpyIJWBRw&sig2=ZGkL4EcaC2lwp5OGSmCfA&cad=rja) (last visited July 2, 2012).

5. *Id.*

6. See generally Mokslo ir studiju istatymas, Number XI-242, Date of issue 2009-04-30, published in Valstybes žinios, 2009-05-12, Nr. 54-2140, available at <http://www.smm.lt/ti/docs/istatymai/MSI.pdf> (Lith.) (noting that more specific requirements are set by the respective senates of Lithuanian universities).

7. *Poland, Academic Career Structure*, EUR. U. INST., <http://www.eui.eu/ProgrammesAndFellowships/AcademicCareersObservatory/AcademicCareersbyCountry/Poland.aspx#PostdoctoralInformation> (last updated July 30, 2009).

nally, the title of professor is conferred with the publication of a third book, along with the candidate's satisfaction of various other requirements.

Moreover, law faculties also have their own publishing requirements for academics, based on a point system. Legal academics have traditionally been awarded a certain number of points for each article and book published, based on a published scale. Articles in internationally renowned journals, as specified by the Ministry of Science and Education (originally described as "the Philadelphia list"), are given a value range of thirteen to forty points.<sup>8</sup> This point range roughly corresponds to the perceived quality of the respective journal, as judged by the Polish Ministry: the higher the point total, the higher the quality. For example, the Harvard Law Review is assigned thirty-two points, the University of Pittsburgh Law Review twenty points, the Catholic University Law Review twenty points; the University of California, Hastings Law Journal twenty-seven points, and the ABA Journal twenty points.<sup>9</sup>

While such point valuation judgments are by their nature very subjective, in a general sense they do roughly correspond to quality perceptions found elsewhere (i.e., a ranking, in order of quality, of Harvard Law School, the University of California–Hastings, and the University of Pittsburgh School of Law, in that order, would not shock most American legal observers). Nevertheless, the Polish Ministry's rankings do include some oddities. Thus, while an author of an article published in the ABA Journal will be entitled to twenty points, that journal only accepts articles from professional journalists, and is not open submissions from legal academics.<sup>10</sup>

Outside of named journals, points may also be assigned to articles published in other journals, in accordance with their type and form. In general, English-language articles published in international journals or forums are assigned a higher weight than Polish-language articles in domestic ones.<sup>11</sup> Thus, English-language articles published through international conferences receive more points than articles published in other English-language journals receive. In contrast, articles published in other Polish, peer-reviewed journals receive even less points, as do articles published in other foreign language journals (in a language besides English).

The preference for English-language legal scholarship also extends to books and book chapters. Books and academic textbooks, if written in English, are valued at twenty-four points.<sup>12</sup> A book chapter, if in English, receives a value of seven points.<sup>13</sup> Polish language books and book chapters are valued only half as much.<sup>14</sup> Books and textbooks in Polish, or in another foreign language besides English, net the author twelve points.<sup>15</sup> For a book

8. See *Wykaz Wybranych Czasopism Wraz z Liczba Punktów za Umieszczona w Nich Publikacje Naukowa* [List of Chosen Magazine Along with Number of Point Behind Placed in Them Publications Scientific], available at <http://dydaktyka.polsl.pl/roz6/aszromek/Inne%20dokumenty/Lista%20filadelfijska%202010.pdf> (last updated Nov. 6, 2010).

9. *Id.* at 1, 44, 92, 249.

10. *Tips and Pitches*, ABA JOURNAL.COM, <http://www.abajournal.com/submissions> (last visited June 5, 2012).

11. *Wykaz Wybranych*, *supra* note 8, at 256-318.

12. Janusz Mucha, *Commodifying the Academic System in Poland*, U. IN CRISIS, BLOG OF THE INT'L SOCIOLOGICAL ASS'N (ISA), <http://www.isa-sociology.org/universities-in-crisis/?p=219> (last updated Jan. 17, 2010).

13. *Id.*

14. *Id.*

15. *Id.*

chapter, if in Polish or another foreign language besides English, the author will receive three points.<sup>16</sup>

Editorial work is also valued higher if it is in English. For being the editor of an English-language book with multiple authors a scholar will receive five points.<sup>17</sup> The editor of a similar work with multiple authors, if in Polish or another foreign language besides English, is entitled to only three points.<sup>18</sup> Finally, co-authors are assigned points ranging from 25% to 100% of the total depending upon how much work they performed on the piece of scholarship in question.<sup>19</sup>

Currently in Poland, there are various proposals for changing the precise role of legal scholarship in an academic's professional advancement. There is a proposal to make habilitation completely point-driven; when the candidate has a certain number of points (based on articles or books), a state-appointed commission will determine if the title may be awarded.<sup>20</sup> Presently, it is decided by a university law faculty and is awarded primarily based on a book. One problem with the present method for granting habilitation and the title of professor is that it is theoretically easier to produce three related books to get to the title of professor, rather than challenge oneself with scholarship in different areas. There may be an emphasis on pleasing the members of the law faculty in trying to attain this title, which may have an impact on the type of work written by a young academic seeking these titles.

Ukraine also has specific numerical publication requirements for an individual to advance in the legal academic world. To defend a PhD, an academic needs three articles in specified law journals.<sup>21</sup> To become an associate professor (as in Lithuania, called a "docent"), five post-PhD articles are required.<sup>22</sup> Finally, to become a full professor, twenty post-PhD articles are required.<sup>23</sup> In sum, a driving force behind legal scholarship in Eastern Europe is academic advancement.

## B. OTHER PURPOSES OF LEGAL SCHOLARSHIP

The production of legal scholarship is not only accomplished with the goal of professional advancement within the university. While this is enormously important, most legal

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16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. See *Dnia 1 Września 2011 r. W Sprawie Kryteriów Oceny Osiągnięć Osoby Ubiegającej Się O Nadanie Stopnia Doktora Habilitowanego*, [From Day Regarding Criteria of Estimates of Achievements of Persons about Enforcement of Degree of Assistant Professor Superior (Upper; Highest) Educational System 1 September 2011 Forestalling (Contest)], ROZPORZĄDZENIE MINISTRA NAUKI I SZKOLNICTWA WYSZSZEGO [DISPOSITION OF MINISTER OF SCIENCE], Dz. U. Nr 65; poz. 595, ze. zm., available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111961165>.

21. See *Dnia 1 Września 2011 r. W Sprawie Kryteriów Oceny Osiągnięć Osoby Ubiegającej się o Nadanie Stopnia Doktora Habilitowanego* [In the Matter Regarding the Criteria for Evaluating the Achievements of Applicants for the Title of Habilitated Doctor], ROZPORZĄDZENIE MINISTRA NAUKI I SZKOLNICTWA WYSZSZEGO [DISPOSITION OF MINISTER OF SCIENCE] z of Sept. 1, 2011, Dz. U. Nr 65, poz. 595, available at <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111961165>.

22. *Id.* at 10.

23. *Id.* at 9, 11; see also *Ukraine: Academic Career Structure*, EUR. U. INST., <http://www.eui.eu/ProgrammesAndFellowships/AcademicCareersObservatory/AcademicCareersbyCountry/Ukraine.aspx#PostdoctoralInformation> (last updated July 30, 2009).

academics in Eastern Europe also have an underlying passion for the law and do not write only for career reasons. In particular, those academics who have already attained the title of full professor, or have the equivalent of tenure in the American academic system, while subject to some pressure to continue to publish, possess a bit more flexibility in that regard. Consequently, they also produce legal scholarship for purely theoretical reasons: to explain the law and to develop doctrine in unclear, controversial, or new areas.

Of course, the publication of well-regarded and important legal scholarship also has the effect of increasing and developing one's academic reputation. This is a matter of personal prestige (and prestige for the university) outside the strict numerical publication requirements necessary to advance from docent to full professor, for example.

The quantity and quality of legal publications may also advance an academic's private legal practice. Often because of economic reasons, but also simply by choice, law professors in Lithuania and Poland maintain a legal practice in conjunction with their academic duties. An authoritative article or book on some aspect of the law can have the positive effect of enhancing their (and their law firm's) reputation, which in turn may result in more clients. For such law professor-lawyers, these works allow them to be viewed by potential and existing clients as an authority in one or more areas of the law. Assuming that the other academic prerequisites are satisfied, meeting academic publication requirements to attain a PhD or the title of habilitation may also provide a scholar with an entry into the practice of law. Attaining a PhD in law in Lithuania, or a PhD in law coupled with a certain period of legal practice or the title of habilitation in Poland, entitles one to practice law in those countries without the necessity of serving a lengthy apprenticeship or taking an exam.

In Poland and Lithuania, legal scholarship is not yet aimed at influencing the government or public opinion. In Lithuania, often such scholarship may be reactive—the government would like to do something and asks academics how it may be done. In response, a law professor produces a paper answering this particular inquiry. Of course, Polish and Lithuanian think tanks and NGOs exist, and do issue reports on legal matters, but this is only an emerging trend.<sup>24</sup> To the extent this trend continues, as it likely will, it is entirely probable that legal scholarship will be increasingly used and produced with the purpose of supporting various policy initiatives. Interestingly, this tendency is already more common in Ukraine, where academics are frequently enlisted by various interests to support a legal position.

Similarly, legal scholarship does not have a strong influence on judicial opinions in these countries. Citations to academic scholarship in judicial opinions are infrequent, particularly at the lower court levels. But the Supreme Courts and Constitutional Courts will occasionally cite legal scholarship in support of their respective holdings.<sup>25</sup> Of course, Supreme Court and Constitutional Court justices (as well as trial and appeal court judges)

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24. See Ray Vyšniauskas, *Think Tank Lithuania 2006-2007-2008 Will Promote a Wind of Positive Change*, LITHUANIA TODAY (Apr. 2006), available at [http://www.thinktank.lt/txt/reports/think\\_tank\\_launch.pdf](http://www.thinktank.lt/txt/reports/think_tank_launch.pdf); see also Lars Bryne, *Think Tank Thoughts: Radical Changes Needed*, LITHUANIA TODAY (Nov. 2006), available at <http://www.thinktank.lt/txt/reports/Kundroto%20straipsnis>.

25. Interviews with Julija Kirsiene, Dean, Vytautas Magnus University, Faculty of Law, Kaunas, Lithuania; Volodymyr Yaremko, Associate, Arzinger, Lviv, Ukraine; Justice Katarzyna Goner, Supreme Court of Poland, Warsaw, Poland, in Dublin, Ireland (Oct. 2011).

do read relevant legal literature, and therefore, may be indirectly influenced by important examples of scholarship even though these are not expressly cited in their opinions.

Finally, and candidly, producing legal scholarship may also serve an economic purpose. Fees received for books and articles can be an extra source of income for academics. This takes on greater importance where the salary for a law professor is much lower than in Western Europe, as is the case in Ukraine.<sup>26</sup>

### C. THE CHARACTERISTICS AND FORM OF LEGAL SCHOLARSHIP

Perhaps unsurprisingly, given the quantitative publishing requirements for academics in Eastern Europe, they are quite prolific in the production of legal scholarship. In Poland, one recent study found that the average number of publications for academics in the humanities and social sciences (including law) amounted to 32.10 publications per scholar.<sup>27</sup> On an annual basis, their average productivity was measured at 3.19 publications per year.<sup>28</sup>

Unlike the case in the United States, legal scholarship is rarely published in student-edited journals, comparable to American “law reviews.” There are some exceptions, including the Vytautas Magnus University Law Review in Kaunas, Lithuania, and the University of Warsaw Law Review, in Poland.<sup>29</sup> Even in these cases, however, there is a powerful “scientific” advisory board composed of professors monitoring the students’ work. The common perception is that the publication of serious legal scholarship should not be primarily in the hands of student editors.

Instead, peer reviewed academic journals are the preferred forum for publishing academic legal articles. Bar journals (and other journals geared to an audience of practicing lawyers) are also the source of law-related articles, but their purpose is different from that of academic journals.<sup>30</sup> Bar journals seek to provide practitioners with practical advice relating to trying a case, researching an issue, or relating to current legal developments, including changes in the law.<sup>31</sup> Sometimes law firms put out their own journals or newsletters, with similar information, but this is basically done as a service for their clients. Academic legal journals, on the other hand, are designed for a scholarly audience. Thus, a real academic and practical divide does exist between different types of legal journals.

26. See *Ukraine: Academic Career Structure*, *supra* note 23; *Law Professor Salaries 2006-07*, GOLDMAN’S OBSERVATIONS (Apr. 7, 2007, 10:52 PM), [http://blog.ericgoldman.org/personal/archives/2007/04/law\\_professor\\_s.html](http://blog.ericgoldman.org/personal/archives/2007/04/law_professor_s.html).

27. See Karolina Klepek et al., *Qualitative Analysis of Post-Doctoral Careers of Polish Researchers with Habilitation Degree*, INST. FOR INFO. PROCESSING, at 9, <http://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&ccd=1&ved=0CDEQFjAA&url=http%3A%2F%2Flib.opi.org.pl%2Fdownload%2Fhabilitation.docx&ei=qdiyT6rdIaOU2gXshLDpCA&usg=AFQjCNEGXyDmz7-vF7NtAXSZqfxk0Akjlg> (last visited July 2, 2012).

28. *Id.* at 13.

29. See *Baltic Journal of Law & Politics*, VYTAUTAS MAGNUS U. FAC. L., [http://law.vdu.lt/index.php?option=com\\_content&view=article&id=88&Itemid=69](http://law.vdu.lt/index.php?option=com_content&view=article&id=88&Itemid=69) (last visited June 5, 2012); see also *The School of Polish Law*, U. WARSAW, [http://en.wpia.uw.edu.pl/95,School\\_of\\_Polish\\_Law.html](http://en.wpia.uw.edu.pl/95,School_of_Polish_Law.html) (last visited June 5, 2012).

30. See *Academic Versus Popular Journals*, U. OF AUCKLAND, [http://www.library.auckland.ac.nz/subjectguides/bus/topicguides/academic\\_popularjnl.htm](http://www.library.auckland.ac.nz/subjectguides/bus/topicguides/academic_popularjnl.htm) (last updated May 11, 2011).

31. See *id.*; see, e.g., Irwin J. Kuhn, *Collaborative Family Law Comes to Nashville*, NASHVILLE B.J. (Dec. 2011-Jan. 2012), available at <http://www.dvlawfirm.com/blogs/2012/01/30/nashville-bar-journal-article-collaborative-divorce>.

Books are published through university and private (domestic and international) publishers. Sometimes academics pay to have their books published abroad for increased prestige using, for example, the international publisher Peter Lang.

Most legal scholarship is published in the form of journal articles, book chapters, and conference publications. Understandably, given their length and the necessary preparation time, monographs are less numerous. While most scholarship is published in domestic journals or with domestic publishers in the author's native language, an emerging trend is to publish more and more in English.<sup>32</sup> As noted earlier, in Poland, the publication of an article in English can be more than twice as valuable in meeting a scholar's publication requirements as an article published in Polish.<sup>33</sup> There is some justification for this trend because articles published in English, an international language, will be accessible to a much wider academic audience.

A recent Polish study covering publication data for scholars in the social sciences and the humanities is reflective of where, and in what language, Eastern European legal scholarship is being published.<sup>34</sup> The study found that scholarship was published in the following forms and places: in Polish journals—42.20%; in other journals—3.20%; at international conferences—2.30%; at Polish conferences—7.10%; at other conferences—1.20%; as a book or monograph—7.20%; and as a book chapter—33.00%.<sup>35</sup>

The language of publication in which these works were published was primarily Polish, but with a significant percentage in English and other foreign languages. Specifically, 13.30% were published in English; 0.20% in both English and Polish; 8.40% in other languages; 7.80% in Polish; and 0.30% in Polish and another language.<sup>36</sup>

### III. Conclusions

There is still a vestige of *Homo sovieticus* in the halls of legal academia in Eastern Europe, though his influence is being steadily reduced.<sup>37</sup> Specific numerical publication requirements can be met with an attitude of doing the minimum amount required to achieve this goal and also through the use of personal relationships to assist one in getting something published. In that case, the overall quality of legal scholarship suffers. This is suggestive of the Soviet preference of quantity over quality.

Nevertheless, there has been a trend to reverse this preference and to emphasize the quality of legal scholarship. This trend has developed for a number of reasons. In particular, there is a sense of going back to pre-Soviet tradition. A number of university law faculties in Eastern Europe pre-date the Soviet era by hundreds of years, and in Poland and Lithuania there was a lively legal tradition in place in the interwar period.<sup>38</sup> Vytatuas Magnus University, the main university in interwar Lithuania, was closed down after the

32. See Klepek, *supra* note 27, at 16.

33. *Id.*

34. *Id.* at 11.

35. *Id.* at 12.

36. *Id.* at 13.

37. See *Russia: The Long Life of Homo sovieticus*, THE ECONOMIST (Dec. 10, 2011), <http://www.economist.com/node/21541444>.

38. See, e.g., *The History of the Faculty of Law of the University of Zagreb*, U. ZAGREB, [http://www.pravo.unizg.hr/en/law\\_school/history](http://www.pravo.unizg.hr/en/law_school/history) (last visited June 5, 2012); *Brief History of L'viv University*, IVAN FRANKO NAT'L U. L'VIV, <http://www.lnu.edu.ua/general/about.htm> (last visited June 5, 2012).

Soviet occupation in 1950.<sup>39</sup> It was reopened during the period when Lithuania was regaining its independence, and thus had the advantage of not having Soviet-era habits and practices to shed.

In addition, the trend of globalization in education (including legal education) has led to the adoption of global best practices at home in Eastern Europe. Law faculties in Poland and Lithuania have taken advantage of the Erasmus program (primarily open to European Union members), which promotes and enables faculty and student exchanges.<sup>40</sup>

Poland, for its part, has attempted to introduce a quality measurement to legal scholarship, assigning various levels of points (used for academic advancement) for articles written in a range of journals. Still, sometimes the point values for journals do not precisely match the actual level of quality, and in any case, this is not an exact science.

In all cases though, notwithstanding any limitations from their shared Soviet past, all three countries produce outstanding examples of scholarship. As more legal academics publish in English, these texts should become known to a wider audience—a trend that has already started. This will be a significant benefit to the greater community of legal academics and legal professionals in Eastern Europe and throughout the world.

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39. *VMU Now and Before*, VYTAUTAS MAGNUS U. (Dec. 8, 2011), [http://www.vdu.lt/vmu-now-and-before\\_2.html](http://www.vdu.lt/vmu-now-and-before_2.html).

40. *Social Erasmus: About the Project*, ESN.ORG, <http://www.esn.org/content/socialerasmus> (last visited June 5, 2012).