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ENTANGLEMENTS OF LAW AND SPACE: AN INTRODUCTION

Abstract. Introduction to the thematic volume of *Acta Universitatis Lodziensis. Folia Iuridica* – devoted to the issue of law and space – provides basic context for the publication, placing special emphasis on the current state of legal geographical inquiries conducted by Polish scholars. Moreover, it briefly presents each article in the volume and comments on articles' selected aspects to show how they can be located within the entire broad legal geography scholarship.

Keywords: legal geography, non-places, Israel–Palestine, Recovered Territories of Poland, crime mapping, spatial analysis of crimes, Viking–Laval case, personal law.

SPLĄTANIA PRAWA I PRZESTRZENI: WPROWADZENIE

Streszczenie. Wprowadzenie do tematycznego tomu *Acta Universitatis Lodziensis. Folia Iuridica* – poświęconego zagadnieniu prawa i przestrzeni – omawia jego zasadniczy kontekst, kładąc szczególny nacisk na aktualny stan geograficzno-prawnych analiz prowadzonych przez polskich uczonych. Ponadto wprowadzenie zwięźle przedstawia każdy z artykułów w tomie i komentuje ich wybrane aspekty, by ukazać, jak mogą być umieszczone w całym szerokim nurcie geografii prawnej.

Słowa kluczowe: geografia prawna, nie-miejsca, Izrael–Palestyna, polskie Ziemie Odzyskane, mapowanie przestępczości, przestrzenna analiza przestępczości, sprawa Viking–Laval, prawo osobowe.

This volume of *Acta Universitatis Lodziensis. Folia Iuridica* is devoted to investigations concerning different forms of law-space entanglements. They are analyzed by Polish scholars, who, even though all have a background in law, in fact represent different research approaches and even different legal disciplines. Consequently, readers can find in this volume both "soft" – qualitative or even purely theoretical deliberations – as well as "hard" quantitative research reports. Moreover, the authors in this volume conduct their research as sociologists of law,

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historians of legal and political doctrines, and legal philosophers and theorists – both critically/continentally and analytically oriented. Despite their different academic legal affiliations and traditions, in this volume they all exhibit an interest in how law relates to space and how space relates to law. However, it should be stressed up front that not all of the contributions in this volume express an unwavering conviction on the value of the spatial problematization of law.

Leaving this particular issue for later, it is more important to stress at the beginning that although broadly understood legal geography is a vigorously developing research current that provides many interesting and promising avenues for a diverse array of scholars interested in law and legal phenomena (for a brief, relatively up-to-date overview, see, for instance, Derman 2020), in Poland it is still relatively unknown and rarely practiced. Without going into possible reasons for this, it is not to say that legal-geographical problematics is completely absent in Polish legal scholarship. On the contrary, the situation is changing, which is evidenced not only by single papers tackling such problematics (for instance, Mańko 2019, who addresses the delimitation of Central Europe from the rest of Europe), but also by entire book-length publications. The book we co-edited with Marcin Wróbel in 2018 was the first Polish volume dedicated to law-space entanglements. *Przestrzenny wymiar prawa* [*Spatial Dimension of Law*] (Dudek, Eckhardt and Wróbel 2018) contains highly original studies on legal cartography (Ptak-Chmiel 2018), crime mapping (Szafrańska 2018), explication of the phenomenon of honor through spatial concepts (Klakla 2018), theoretical framework for courtroom architecture analyses (Stępień 2018), multidimensionality and nonlinearity of borders on the example of Israel and Palestine (Górska 2018), single-sex public transportation in India (Drwal 2018), locations of refugee centers in Poland and their implications (Nazimek 2018), spatiality and territoriality in Polish mountain pastoral communities (Wróbel 2018), spatial consequences of selected examples of Polish People's Republic's legal regulations (Eckhardt 2018), and the Sunday trading prohibition that recently came into force in Poland (Dudek 2018).

Obviously, in comparison to how legal geography is developing in other countries like Israel or Australia, there is still much to do in Poland, in the sense of the mere quantity of legal-geographical studies that could be conducted. Nevertheless, we believe that the works presented in this volume of *Acta Universitatis Lodziensis. Folia Iuridica* and other already published works of Polish scholars propose substantial contributions to the dynamically developing studies on law and space. To convince readers of this, in the remainder of this Introduction we do not focus on giving a general impression on what specific articles are about (in the end, this function is realized by abstracts). Rather, we will try to present how particular articles in this volume or their specific parts correspond to various threads in the relevant literature and in what way they can be read as suggestions for some reflection on and future research in legal

geography. Having said that, we would also like to stress that the following remarks are nothing more than our own interpretations and opinions. Obviously, the presented articles can be seen differently than what we propose. Nevertheless, we decided to provide some commentary to put each contribution in a broader context and also explain the structure of the entire volume.

The volume begins with the article of Michał Dudek. In comparison to the rest of papers, his contribution can be regarded as the most general, tackling not so much a specific, delimited case of law-space entanglement, but engaging in theoretical discussion concerning one of the more influential spatial concepts in the humanities and social sciences. Namely, noting a significant neglect by legal scholars (legal geographers included) of Marc Augé's concept of non-places and conducting a law-sensitive close reading of the Augéan account (mostly Augé 2008), Dudek argues that law is in fact constitutive for non-places and that their legal nature is already between the lines in Augé's *Non-Places: An Introduction to Supermodernity* (orig. *Non-lieux, introduction à une anthropologie de la surmodernité*). In a way, then, Dudek's piece can be likened to many other studies that analyze various spatial concepts and theories – at first glance non-legal – from a broadly understood legal perspective and, for instance, show their relevance for understanding law and its functioning (for example, Butler 2012 on Henri Lefebvre's theoretical contributions). Specifically, in finally addressing Augé's non-places from a legal point of view, it can be regarded as filling a notable gap in a more theoretically-oriented legal geography.

The second article presents Ewa Górska's continuation of her interest in Israel–Palestine spatial politics (see Górska 2018). Drawing inspiration from Edward Said's concept of imagined geographies, she proposes a concise account of how Israel realized and still realizes, through its successive legal regulations, its projections with respect to Palestinian lands. Obviously, Górska's subject of interest can be considered as one of the more classical threads in legal geography, every now and then provoking new analyses (see relatively recent, Kedar, Amara and Yiftachel 2018). Her contribution tackles a number of interesting dynamics between imagined geographies and material and legal (in)existence of certain sites. One can read the following sequence from Górska's analyses. From Israel's perspective of rich and detailed imagined geographies, a certain actual, material state of Palestinian lands should be inexistent to make room for the realization of various projections. Before though these projections can be brought to life in a material, physical sense, they are specifically mediated through legal regulations. What is especially thought provoking and suggestive of further investigations is Górska's suggestion that law's inherent vagueness and low specificity with respect to the immense richness of legal regulations' objects (like existing sites incongruent with imagined geographies) is the feature that efficiently enables the realization of projections. In accordance with specific regulations, some materially existing site can be declared as legally inexistent. Such a lack of recognition

provokes and justifies some material actions that are intended to realize a declared legal status and thus take a significant step toward bringing to life imagined geographies. Naturally, there can and should be some questions with respect to this sequence suggested between the lines by Górska, most importantly about its adequacy not only with respect to Israel–Palestine, but also to other instances of broadly understood intergroup conflicts. Perhaps this sequence repeats throughout history? Such a question is justified because some of the other complex issues mentioned by Górska are indeed noticeable in contexts other than Israel–Palestine relations. For example, she briefly addresses the politically motivated practice of changing names of specific sites through legal regulations – the issue that is also a subject of interest in the next article in the volume, but which analyzes a completely different situation.

In the third paper, Piotr Eckhardt continues his highly original, unprecedented project to "spatialize" the law of the Polish People's Republic; that is, to analyze its various legal decisions and regulations from the perspective of their impact on space, including its very ordinary, everyday sense. Unlike in his previous work, however, in his contribution to this volume Eckhardt does not address regulations enacted in the Polish People's Republic long after the end of World War II and concerning more mundane issues like passports or the permissibility of residing in the capital, Warsaw (see Eckhardt 2018). His current article invites to consider a much more foundational aspect for the Polish People's Republic – how the space of western and northern lands (so-called Recovered Territories, as they were not within Polish jurisdiction before the war) was treated in the Polish legal system. Eckhardt carefully investigates what regulations were issued for these lands immediately after the war, what they contained, and how they can be understood. On this occasion, he tackles the same issue as Górska – legally-mediated renaming of certain sites. In light of such an explicitly recurring theme in both Górska's and Eckhardt's contributions and its more implicit, between the lines, presence in many other relevant works (see, for example, Trbovich 2008, 434), one can propose that scholars working in legal geography should perhaps theoretically deepen such remarks. Not to be groundless, it is actually surprising that the well-known concept of a palimpsest is so rarely explicitly used in a spatio-legal context (but see the exception of South Africa's Constitution Hill, for instance: van Merle, de Villiers and Beukes 2012, 567). Similarly is in the case of the ultimately broader issue of toponymy. While research on place-naming practices is not oblivious to law's relevance to them (see, for instance, Rose-Redwood, Alderman and Azaryahu 2010, 465), so far legal geography does not appear to use this specific resource. However, one can ultimately say that both Górska and Eckhardt are actually addressing specific palimpsests – stacking, successive resignifications (renamings) of certain sites. Moreover, their articles are reminders of law's highly significant role in that place-naming processes.

Keeping in mind the important call to stop thinking in binary categories of law and space and instead to think about their mutuality and codependence (for example Blomley 2003), for the sake of this short Introduction to the volume we can still say that Górska and Eckhardt are interested in how law influences space. In turn, the next two articles can be seen as tackling the issue of space's relevance for the law, but in more indirect way than is usually done in legal geography literature. Specifically, they are reports from original quantitative studies on the spatial distribution of, and spatial factors underlying, criminal acts. Even though they are both interested in space's broadly understood influence on crime, these particular dynamics have further consequences to real estate prices, a sense of safety, and, last but not least, changes in law enforcement strategies applied to given regions or even changes in law itself. In the end, in city districts with high crime rates one can expect that prices for houses and apartments will have to be decreased in order to attract potential customers, who may have reasonable concerns about a given "criminal" city region. Obviously, high crime rates can also cause increases in the number of police patrols or even amendments to some relevant regulations. Naturally, these space-crime-law dynamics are sketched here in very broad strokes, but this reminder of them is necessary because the fourth and fifth articles are ultimately focused on one part (space-crime), leaving the entire dynamics for readers to "guess" for themselves. With this reservation, we can say what exactly can be found in the two papers following Eckhardt's piece.

The fourth article, by Jan Bazyli Klakla, Ewa Radomska, and Michalina Szafrańska, is a continuation of their studies of crime mapping (see Klakla and Szafrańska 2017; Szafrańska 2018). In their contribution here, they carefully present and discuss their research on Kraków's (Poland) land use and facilities and their influence on the spatial distribution of property crimes. In the fifth article, in turn, Andrzej Porębski presents and explains his hierarchical cluster analysis of crimes in Baltimore (U.S.), as conducted on the basis of official, open access police data. Needless to say, these articles go well together. Because of this, they can be commented on here simultaneously. The already-suggested issue of expanding inquiries from space-crime analyses into a full account of space-crime-law dynamics is not crucial in their case. Moreover, realization of such an ambitious task requires much more space than allowable in *Acta Universitatis Lodziensis. Folia Iuridica*. In our opinion, in the context of the current state of legal geography, it is more important to notice that when it comes to empirical research, legal geographers use "soft," interpretative, qualitative methods, and seem to avoid "hard," quantitative tools (see, for instance, Gillespie 2020). Meanwhile, criminological research on space and criminality – to which both Klakla, Radomska and Szafrańska, and Porębski refer and which is in fact highly relevant for inquiries about space and law – successfully utilizes sophisticated quantitative methodology, a part of which is presented in these papers. In other words, it seems that legal geography should perhaps engage in dialogue with

other legally- and spatially-sensitive research currents that are also acquainted with quantitative tools, for example, environmental criminology and crime mapping, even more so because it is still surprisingly difficult to find attempts to compare and combine legal geography with such currents (but see the brief remark by Benforado 2010, 832, footnote 24 on environmental criminology and legal geography). Obviously, not only the mere process of production of legal geographical knowledge can benefit from discussion on and application of quantitative research methods. The way this knowledge is presented – crime maps, in the context of both discussed articles – also deserves some careful reflection, especially in the light of such proposals as critical legal cartography (see Reiz, O'Lear and Tuininga 2018).

While all of the aforementioned articles try to fill some notable gaps in current legal geographical scholarship and also can be read as suggesting some new research avenues for it, they all seem to generally consider legal geography as a very promising, widely applicable enterprise. However, as already suggested above, not all papers in this volume are similarly positive and optimistic. The penultimate article seems to be more skeptical about the applicability of spatial problematization to the law. Rafał Mańko's paper is devoted to discussion of the adequacy of interpretations of important Viking and Laval cases, tried by the European Court of Justice. He juxtaposes the spatially-indifferent interpretation according to which these cases are ultimately about basic, even universal economic antagonism between workers and businesses with a spatially-oriented outlook that argues in favor of geographical, regional antagonism underlying Viking and Laval. In light of this second interpretation, the cases in question are in fact concerned with conflict between the center and periphery of Europe – Western and Central Europe, respectively. Mańko carefully argues in favor of the spatially-indifferent view and rejects the spatially-oriented one. In the conclusion of his article, Mańko advocates the need to be very careful in trying to conduct spatial analyses of law, which can be read as a suggestion that not every part or aspect of law is suitable for "spatialization." If this interpretation is correct, then one can say that Mańko proposes a significant counterpoint to all those who argue that literally everything in/of law is spatial (see, recently, Layard 2020, 237). This then should provoke a discussion on who is right: those like Antonia Layard or those like Mańko? If the latter would win such a competition, then a fundamental research avenue emerges – what boundary conditions should be met by various legal acts, decisions, or phenomena so that their legal-geographical analyses would be justified? Without prejudging who is right in our opinion, we firmly believe that those identifying with legal geography should engage in discussion on its limits or limitlessness (with respect to law), especially in light of some other reflections and comments on this field of research and its underlying assumptions (see, for instance, Orzeck and Hae 2020).

The seventh and last paper in the volume can be read as a suggestion of what exactly should be considered in such a discussion, especially one that tackles the aforementioned issue of boundary conditions for legal-geographical analyses. In his piece, Hubert Izdebski provides a concise commentary – conducted mostly from the perspective of legal history and comparative law – on personal law, that is, rules that are applied under the condition of people's affiliation to a given group (mostly ethnic or religious). Obviously, personal law can be seen as in opposition to territorial law – applying given law to particular situations, when they happen in a specific territory (mostly within the borders of a given country). In short, in the personal-territorial law opposition what can be regarded as at stake is the issue of the most basic site of law: is it a person or is it a territory? Obviously, Izdebski shows quite clearly that legal reality is not so clear-cut. Namely, he raises an interesting issue of territorialization of personal laws: a situation where national jurisdiction recognizes some personal laws of specific groups that reside within the country's borders. Leaving this and other threads from his piece aside, more important in the context of our commentary here is Izdebski's introductory suggestion that personal law is simply unfit for legal geography. If we are not misinterpreting, then this suggestion, and its obvious implication that only territorial law is adequate for legal-geographical studies, are in fact fundamental points to discuss by legal geographers. Of course, this is not to say that the issues of territorial and personal law are completely absent in the literature on the spatial problematization of law (see, for instance, Raustiala 2005). However, it seems safe to say that this opposition has not been discussed in the context of the most basic assumptions underlying legal geography that determine the scope of objects suitable to be analyzed within this field of research.

Having provided our subjective commentary on the articles in the presented volume, there is not much more to say than the following. We not only hope that readers will find the collected papers interesting and inspiring, but also hope that all of the presented findings and suggested research avenues will be deepened and taken up, respectively, not only by the articles' authors, but also by all those who consider complex entanglements of law and space a fascinating area of research.

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NON-PLACES AND THE LAW: A PRELIMINARY INVESTIGATION

Abstract. In the context of the significant literature on Marc Augé's concept of non-places, including its various applications in different disciplines, and also constantly growing legal geographical analyses, it is striking that, to date, there have been no more focused discussion on non-places and the law. This paper aims to begin filling this noticeable gap. It focuses on an original presentation of Augé's concept and distinguishes three levels of non-places: their objective, material level (e.g. the buildings of non-places); the intersubjective, social level (the specific, distinctive feel of non-places, such as anonymity and detachment); and the purely individual, subjective level (the way particular people assess a specific non-place). The paper not only argues that Augé is already sensitive to the law in his original account of non-places, but also that the law – while directly irrelevant for the subjective level – is nevertheless very important for the objective and intersubjective levels of non-places, as, ultimately, it is a co-constituting factor of these aspects of the discussed type of sites.

Keywords: spatial turn, legal geography, Marc Augé, non-places, law.

NIE-MIEJSCA I PRAWO: WSTĘPNE ROZWAŻANIA

Streszczenie. W kontekście obszernej literatury na temat koncepcji nie-miejsc Marca Augé, włącznie z jej wieloma aplikacjami w różnych dziedzinach, a także stale rozwijanych geograficzno-prawnych analiz, zaskakujące jest, że dotąd nie przeprowadzono bardziej skupionej dyskusji nad nie-miejscami i prawem. Celem tego artykułu jest rozpoczęcie wypełniania tej luki. Skupia się on na oryginalnym ujęciu koncepcji Augé i wyróżnia trzy poziomy nie-miejsc: ich obiektywny, materialny poziom (np. budynki nie-miejsc); intersubiektywny, społeczny poziom (specyficzna, wyróżniająca atmosfera nie-miejsc, taka jak panująca w nich anonimowość i poczucie zdystansowania), oraz wyłącznie indywidualny, subiektywny poziom (to, jak poszczególni ludzie oceniają konkretne nie-miejsce). W artykule przekonuje się nie tylko do tego, że Augé jest uwrażliwiony na prawo już w jego pierwotnym ujęciu nie-miejsc. Ponadto prawo – jakkolwiek bezpośrednio nieistotne dla subiektywnego poziomu – jest bardzo ważne dla poziomów obiektywnego i intersubiektywnego nie-miejsc, jako, ostatecznie, czynnik współkonstytuujący te aspekty komentowanego rodzaju miejsc.

Słowa kluczowe: zwrot przestrzenny, geografia prawna, Marc Augé, nie-miejsca, prawo.

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1. INTRODUCTION

The general aim of this short study is to present a preliminary look at and discussion of Marc Augé's concept of non-places, based on its fullest account, which was originally expressed in 1992 in *Non-lieux, introduction à une anthropologie de la surmodernité* [*Non-Places: An Introduction to Supermodernity*] (Augé 2008 – second edition of English translation), from the broadly understood socio-spatio-legal perspective. Specifically, hereinafter one argues that not only was this particular perspective previously absent in the nonetheless quite significant and still growing scholarship on non-places, but also that Augé's original account of non-places seems already to be informed by a very basic kind of sensitivity to legal context. Further elaboration of this sensitivity allows for the proposal of a new way of explaining this quite often misunderstood concept and helps us to grasp it, which is no easy task, given the complexity of Augé's narrative. At the same time, a general account of the law's important and, to a certain extent, even constitutive role for non-places is presented and explained. Such an attempt to show a neglected legal dimension of Augé's influential concept proves that it can still be thought-provoking and that there are aspects of it which have yet to be thoroughly discussed, almost 30 years after the original French publication of Augé's essay.

However, in the face of the impressive development of legal geography, and especially considering its relatively recent highly original theoretical frameworks (e.g. Delaney 2010; Philippopoulos-Mihalopoulos 2015), one must admit that the proposed introductory conceptualization of the intersection of non-places and the law is only one of many possible approaches. In no way do ideas below rule out any other accounts of the title relationship that can be created within various legal–geographical frameworks; rather, the paper encourages such an enterprise. In the end, this study should be thought of as an invitation to begin considering the non-places–law nexus. Both elements of this relationship are extremely complex, thus it would be naive to assume that a short, even basic study can cover all of the subtle details of the issue. However, the first step in showing and understanding how non-places and the law relate to one another must be taken.

2. THE BASICS AND NON-BASICS OF NON-PLACES

Even though the concept of non-places was already proposed and used before Augé did so (e.g. Augé 2008, 69), it is he who popularized the concept and gave it the meaning most-known today and more or less faithfully employed by a wide range of scholars representing various disciplines. The basic, most general thesis of Augé (2008, 28) is that, today, one experiences a proliferation of non-places

that are opposed to the category of anthropological/sociological places. The latter are defined by the particular culture localized in a given time and space and by the specific functions they fulfill with regard to individuals (Augé 2008, 42–43). Namely, places are a source of meaning and have significance for those who inhabit them. They have a historical, sometimes even highly intimate, character for those who identify themselves through these sites and their relationship to them. By contrast, non-places lack features of identification, relationality, and historicity (Augé 2008, 63–64). Not only are they understood negatively regarding anthropological places, they also fulfill a completely different set of functions. To name just few of the most typical examples, non-places make fast movements/transitions possible (e.g. highways, airports), but are also suitable for temporary stays (e.g. global chain hotels/motels, but also refugee camps) and consumption (e.g. shopping malls, global chain supermarkets) (Augé 2008, 28).

Even though one might get the impression that places and non-places are fixed, objective categories, in the end, they can and should be understood as idealizations – two extreme points on one axis that do not exist in reality in a pure form (Augé 2008, 64). Namely, Augé (2008, 44) himself complicates this distinction when he explains the concept of historicity, a feature of places, not non-places. According to him, a place fulfills its condition of historicity if it is outside the scope of history understood as a science. Next, Augé (2008, 45–46) stresses that an anthropological place is basically subjective; it is an individual's image of his or her relationship with a certain site. As one might easily guess, due to "the two sides of the same coin" character of the places/non-places distinction, the same can be said of non-places. However, the experiencing of these sites is not constituted through the sense of identity, relationship, and history (outside history textbooks), but through a sense of detachment, solitude, anonymity, similarity, or even sameness and specific deindividualization (Augé 2008, 83). Individuals in non-places consider themselves as only one of many nearly identical people. One can say that, to consider a certain site as a non-place with regard to a given individual, the person has to have the impression that in this site, she or he is not a "one and only," but just "one of the many" of the same kind.

In his later writing, Augé does not commit the same specific mistake (see *Introduction to the Second Edition*, Augé 2008, VIII), but in light of his original essay, one might actually get the impression that, in non-places, there are only visitors. Significantly, Augé seems to neglect the obvious fact that, besides visitors or users (e.g. travelers or customers) in non-places, there are also inhabitants of these sites (broadly understood, but internally very diverse staff members or service providers) whose behaviors toward visitors are a significant medium for the experiencing of the non-place among the latter. For an "insider," something so standardized, schematized, and fitting regarding the general account of the non-place, such as an enormous international airport, can still be regarded as an anthropological place. In the end, the airport staff, or those who work for global

chain hotels, are much more familiar with these specific environments. Their relationships with these sites are also markedly different than those experienced by "outsiders," who simply use or pass through them, but do not "dwell" in them. Thus, quite understandably, one can safely say that a given site can be regarded at once by some as place and by others as a non-place.

This general remark fits perfectly well with the subjective character of place/non-place distinction that Augé stresses in many parts of his essay. Nevertheless, it would be a mistake to emphasize only the subjective character of places and non-places, giving the impression that they are one-dimensional and that their specific ontologies can be reduced to just the individual's experience. In the end, individuals' approaches constituting a place or non-place always refer to something objective, "extra-experiential," to some actual physical, architectural creation and setting. Accordingly, one can speak of the dual character of places and non-places. They are material, externally observable creations and kinds of relationships given individuals have with them. In other words, they are objective, physical formations and their subjective experiences. As mentioned above, non-places are defined by the very specific senses of anonymity, solitude, and deindividualization felt by particular individuals regarding these sites.

However, when one looks at the list of experiences that define non-places according to Augé, one might start to wonder: do notions of similarity, detachment, or the other characteristics mentioned above actually refer purely to individual, subjective evaluations, or are they, in fact, more objective – or to be more precise, intersubjective – characterizations of social relationships in sites described as non-places? To put it differently, is the sense of being just one of many of the same kind, and not the one and only really an only individual experience, or is it more general social regularity, a characteristic of a large part of social interactions in non-places that affects many individuals in a similar way, but who can, in the end, assess it differently? Namely, for one person, the anonymity, solitude, and specific traveler's sense of self-centeredness, which are in a way inherent in large modern international airports, can be very soothing, while for another person they can be simply unnerving.

This conclusion can even allow us to say that, in fact, non-places have triple character, a quite complex ontology. They can be described as being based in objective, actual physical creations and settings where many intersubjective, social relationships can be characterized by similarity, mutual anonymity, or sometimes even disinterest. These, in turn, can be and are differently evaluated from totally subjective, individual perspectives of some of the people in these sites (this triple model is inspired by the distinction of material, social, and mental spaces used by Blank and Rosen-Zvi 2010). Following this suggestion of non-places' triple character can be useful in the elaboration of the relationship between non-places and the law. However, before proceeding to this main task, a few more general remarks are warranted.

3. CONTEXT AND AIM OF THE STUDY

Even though, or maybe just because, Augé's account of non-places can be regarded as quite vague and open to different interpretations, and thus full of controversy, this concept made a tremendous career. It is commented on and discussed, usually outside any particular context, in a more general, conceptual manner as a research topic in itself (e.g. Bosteels 2003; Merriman 2009). It is also compared with other more or less well-known spatial concepts in the social sciences and humanities, such as Michel Foucault's heterotopia (e.g. Czaja 2013) or Edward Relph's placelessness (e.g. Freestone and Liu 2016) and used in more specific research areas, such as globalization (e.g. Ritzer 2007), literary and film studies (e.g. Gebauer et al. 2015), or design (e.g. Coyne and Stewart 2007). This is still a far from exhaustive enumeration, because Augé's non-places even inform some diverse empirical research and are used in a wide array of case studies in different disciplines and subdisciplines (e.g. Fitzgerald and Robertson 2006; Tawil-Souri 2011; Costas 2013).

This proves, quite undeniably, that non-places are a truly thought-provoking concept of impressive "bearing capacity." In the end, Augé's notion is employed in very different contexts. However, sometimes one might get the quite justified impression that some authors do not use it faithfully, but instead simply amend this general concept to serve their own research goals, which seems to be caused by the intricacy of Augé's argumentation style. Whether similar amendments to the concept of non-places are made in the case of the present study is, naturally, open to discussion.

Nevertheless, in the face of the staggering number of comments and applications of the non-places concept, what is most striking is the absence of its analysis from the broadly understood legal perspective. Representatives of the legal sciences seem to be completely oblivious to Augé's most famous work. Moreover and more specifically, dynamically developing analyses of the spatial dimension of the law and legal phenomena (i.e. legal geography or law and geography studies, which can be regarded as a part of a wider spatial turn in social sciences and humanities) also do not seriously take into account this influential concept. Even when non-places are actually referred to, they are still treated very perfunctorily (e.g. English 2003, 470; Cohen 2008, 193–194; Anders 2009, 137; Whitecross 2009, 58; Young 2014, 130; Maniscalco 2015, 198, 208, 221; Barr 2016, 18, 187; Dahlberg 2016, 22). Naturally, one might say in response to this that there is nothing interesting about non-places, from a legal perspective. Perhaps not much is said about non-places and the law because there is simply nothing to say about it.

Although this or other similar approaches are possible to take, they are flawed and misguided. Namely, sites popularly described as examples of non-places

(for instance, airports or refugee camps) seem to be interesting areas of specific socio-legal phenomena, such as micro-jurisdictional differences in comparison to a state's jurisdiction – as, in the end, non-places can be regarded as sites under a nation-state's jurisdiction that have their own legal peculiarities unknown to other distinguishable sites in the given state – but also, or even more importantly, the law appears to be specifically constitutive for them. This is exactly the aim of the presented study: to reveal and try to explain one particular approach to the legal dimension of or the law's importance for non-places. This feature of the "legality" of the non-places concept – hitherto neglected in various discussions on it – is even something Augé suggests between the lines, though he and other scholars (including sociologists of law and legal geographers) never elaborate on it. The elaboration of this feature begins with general remarks about non-places and the law – references to some of the "law's traces" found in Augé's original essay.

4. NON-PLACES AND THE LAW – GENERAL REMARKS

When one thinks about the intersection of non-places and the law, one might first look at the original French notion of *non-lieu*. Not only does this word mean "non-place," it also, and even more commonly, is the legal notion of the dismissal of a case, often because of a lack of grounds for prosecution (Augé 2008, 82, footnote 6).

Next to this additional and purely legal meaning of the original, French notion of *non-lieu*, one can easily find in Augé's account other, even more convincing arguments that justify the enterprise proposed in this paper: an effort trying to map the relevance of the law for non-places. Namely, Augé (2008, 43) explicitly states that broadly understood spatial structures correspond to some sort of rules. To put it differently, physical sites for human activity are co-constituted (with other factors) by social norms, regardless of whether these norms are customary, moral, religious, or legal. Spaces people inhabit or merely pass through have specific identities and can be distinguished from one another, not only because of their objective, visible, physical features, but also because of the fact that, for instance, in one type of space some activity can be even explicitly proscribed, whereas in another type the same activity can be normatively irrelevant (also, this can occur within one national legal jurisdiction). Needless to say, such an idea seems to be one of the fundamental assumptions for legal geography. As a consequence, non-places should also have some specific rules that co-constitute them and how they are experienced. Luckily, one does not have to guess about them, because Augé is remarkably clear when it comes to the issue in question.

Augé (2008, 77–78) argues that non-places, such as highways, global chain shopping malls or supermarkets, motels and hotels, and airports, define themselves and function through normative messages. Non-places are co-constituted through rather clear, non-ambiguous, and often strict rules (for example, interfering in

one's privacy) for functioning in them. These rules – expressed textually or visually – are addressed particularly to those who visit or pass through them.

What can and should be added to the very basic normative, rule-centered characteristics of non-places in Augé's original account is a stressing of the following. The mentioned normative messages either resemble legal rules or simply are legal rules created by legislative bodies explicitly for the sake of sites that can be characterized as non-places. To acknowledge this, consider the legal regulations concerning traveling on highways in a given country; the complex web of rules of conduct in an international airport, where international aviation associations and national and often internal (specific to a given airport) regulations intertwine; or the plethora of written, but also strictly visual, instructions for hotel guests.

Moreover, this particular remark requires us to refer once again to the issue of micro jurisdictions, suggested earlier, and to consider the following. There are general laws over the state territory in which a given non-place is physically located, and this non-place has its own characteristic legal rules or rules with some legitimizing foundation in official law that do not function outside the non-place in question. In other words, one can say that non-places often require from their users or passersby things that are not expected of them in any manner, not only – in Augéan terms – in more intimate, personal anthropological places, but also in sites that are usually conceptualized as instances of public places. In the sites of these last two types, there are also some rules that are relevant for them, yet often they are non-legal or, even if they are legal written rules, they are still not so specific, detailed, and miniscule as those in non-places.

The above is only a preliminary discussion, yet it shows that there is some legal relevance to non-places. Briefly, the French explicitly legal understanding of the notion of *non-lieu* and Augé's clear and unambiguous comments on the general spatiality–rules nexus, coupled with some basic characteristics of non-places' specific normative messages, that can be further described as generally legal or legal-like and not functioning outside the given non-places. Often, these are more detailed and even more demanding than the rules co-constituting other types of sites. However, there is more to say about non-places and the law than simply these general remarks. Namely, one can propose discussing the law's relevance for non-places in a more ordered, organized way, yet still retain a considerably high degree of generality, with the use of the already-suggested triple understanding of non-places.

5. NON-PLACES AND THE LAW – SPECIFIC REMARKS

Even though Augé proposes understanding non-places in terms of actual, material, physical sites, in addition to the individual, subjective relations particular persons can have with these sites (seen most explicitly in Augé 1999, 106, 109), one can argue that he should also clearly take into account a specific intermediary

between the objective and subjective levels of non-places. Namely, non-places are not only distinctive in comparison to other kinds of sites for human activity, because of their physical forms and appearances and the ways people relate to them, but also because interpersonal, intersubjective relations, those interactions people most usually engage in in non-places, are very specific. In other words, non-places are not only highly visually and architectonically standardized and leading their visitors to particular feelings or emotions (or a lack of them). They are also marked by some specific social, interactional features – not purely individual subjective experiences of these sites, but their traits, beyond the mere physicality, that can similarly affect whole masses of people who use or pass through non-places.

In consequence, one can analytically distinguish three levels of non-places. First, the objective level is about non-places as concrete material, architectural objects, buildings' exteriors and interiors in all their complexity and multifacetedness. Second, the intersubjective level concerns relatively common features of social relations that most typically happen in non-places and thus influence a plethora of individuals using or passing through these sites in a very similar way – many see or encounter the same things and situations in non-places. Third, the subjective level refers to purely individual, personal evaluations or experiences of non-places by a given person, ones that can even be quite surprising, in light of the specific non-place's objective and intersubjective levels and how other people individually assess the particular site. For instance, a specific visitor can be very satisfied by a given non-place, such as its appearance and the predominant characteristics of the social relations that happen within it, whereas other visitors who encounter the same things and situations assess them completely differently. This basic triple vision of the non-place, which can be interpreted from Augé's writings on non-places, is useful in discussion of non-places and the law, as called for in this paper. The subsequent subsections address the issue of how the broadly understood law relates to non-places or, to be more precise, to each of their analytically distinguished levels.

5.1. Non-Places' Objective Level and the Law

The law's relevance for the objective level of non-places is the easiest to address. In the end, one can simply say that the law, with its specific regulations concerning building construction, standards to be realized, or even building permits alone, actually plays a significant role for non-places in their most basic sense of specific constructions where different kinds of interactions happen and particular issues are taken care of by people. In short, the law regulates the physical creation of non-places and even, to a certain degree, their subsequent material maintenance. Without construction regulations and a wide array of legally determined standards and requirements that are periodically controlled, building

permits and other kinds of public administration institutions' legal involvement, including public procurement procedures, it is hard to imagine the creation and existence of a non-place as a building or a broader material infrastructure.

Having said that, one should stress that the above does not mean that the law's influence on non-places' objective level is so all-encompassing that it determines the entirety of it. The law is, indeed, fundamental to non-places' physical existence, but through the law one simply cannot explain all of the multifaceted material details of these sites, such as those that can be seen (e.g. sizes and colors of fonts used in signs, or decorative elements like fountains or statues), touched (e.g. handrails), heard (e.g. intercom messages or Muzak), or even smelled by those present (e.g. air fresheners). In the end, such details, which in conjunction constitute the broadly understood exteriors and interiors of non-places, are ultimately determined by extra-legal factors, including architectural norms, design paradigms, fashions or trends popular at the moment, more general aesthetic tastes, financial capabilities, and the products and services actually offered by potential contractors who may be chosen to complete the construction of a given non-place. The broadly understood aesthetics and material functionality of non-places, including their non-human constituents that can be grasped by human senses, are not completely irrelevant to the law, but the law does not determine these aspects thoroughly, to the most miniscule detail. This leads to the following. Even at their most basic, objective level, non-places are too complex and detailed to be explained exhaustively with reference to the law, although the law is still, to a certain considerable extent, relevant for this particular level of them.

When speaking of experiencing non-places, one must stress that they are not hollow, lifeless objects, whose experiencing is similar to being alone in an empty room or building, when a person can observe all the material aspects of a given site, with no actual interpersonal interactions in it. On the contrary, for a non-place to actually be a non-place, its specific aesthetics or material functionality are not enough. Next to aesthetics and functionality, there must be some specific social relations, that is, interactions between people within the non-place that are merely instrumental to or are actually a realization of the main, intended functions of the given non-place, like a transition, a temporary stay, or consumption, as mentioned above. Additionally, a non-place's specificity, when it comes to the human relations that happen in it, can be grasped by the already-noted concepts of detachment, solitude, anonymity, similarity, and deindividualization. These are the features of non-places Augé refers to constantly, not to mention the countless commentaries and applications of his concept – they can be said to constitute the intersubjective level of non-places. They are the traits of the social environments of non-places that most of the people in these sites encounter and are affected by, even though they may assess them differently, referring to the idea of the subjective level. Before one can try to address this particular level of non-places in connection with the law, one must first comment on the second, intersubjective level.

5.2. Non-Places' Intersubjective Level and the Law

As previously noted, the intersubjective level of non-places concerns the social, interactional conditions for those who are in non-places, especially those who use or pass through them, but are not these non-places' broadly understood staff (i.e. those who work in non-places). To be more precise, this level is about the distinctive feel, atmosphere, or climate in non-places of detachment, solitude, anonymity, sameness, and deindividualization. Those who use or pass through non-places, regardless of whether they are drivers on a highway, travelers in an airport or central railway station, motel or hotel guests, customers in a shopping gallery or a supermarket, or fun seekers in an entertainment park of a global franchise, are all within the range of this feel, but naturally each of them can assess that which they experience differently.

What constitutes this feel? The objective, material aspects of non-places also take part in its creation and maintenance; in the end, non-places are very often highly similar to each other, on the basis of their looks and material functionality alone, but one can say that a very particular atmosphere or climate in non-places comes from the sociality that is developed within them. In short, the ways people behave in non-places also create non-places. For instance, to achieve an environment where a specific solitude seems to be one of the predominant features, those who pass through it should simply behave in a highly self-centered way, focusing only on themselves and avoiding taking any interest in the others present.

However, non-places are non-places in their intersubjective, social, and interactional sense, not only because of what their visitors, users, or passersby "bring in" to them in terms of actual behaviors, but also, or even especially, because of what is already in non-places that visitors encounter soon after entering them. In other words, visitors' actions are important in non-places, but even more important are the actions of those who simply work in non-places and with whom visitors interact the most, because they have to engage the staff to realize the specific goals to which these non-places are ultimately dedicated. In the end, senses of detachment, sameness, or deindividualization – all defining features of a non-place – are achieved not only through the highly standardized aesthetics of the building or construction, such as a lack of visual or auditory highlighting an ethno-cultural specificity of the region or country where the given non-place is located or the ubiquitous presence of global brands, their advertisements, and products, but also through similarly standardized ways in which non-places' staff members behave with respect to visitors. Non-places can be regarded as sites for providing specific goods and services for clients who do not form a single, internally consistent (in socio-economic-demographic terms) group, but are actually extremely diverse. Nevertheless, those who work in non-places typically approach non-places' clients in a very standardized and unified way, because

doing so is an element of what is professionally and even legally required of them: providing services of a particular quality, which is often specified in special, dedicated documents that are also of legal significance.

One can make such reference to the law not only in the course of explaining the behaviors of non-places' staff members with respect to their broadly understood visitors, but also when addressing the wide array of standards expected to be followed by visitors themselves. As suggested above, those who use or pass through non-places are subjected to a plethora of visual or textual normative messages of explicitly legal or legal-like provenance that often are far more detailed and stricter than rules found outside non-places. However, the law also seems to play a more general, fundamental role in non-places, or at least their intersubjective level, that one should factor out.

The legal or legal-like rules specific to non-places that are responsible for their micro-jurisdictional characteristics suggested earlier, regardless of whether they are manifest through the actions of staff members with respect to visitors or through the wide array of textual, visual, displayed, or announced instructions or requirements addressed directly to visitors, bring all the visitors to a state of sameness. In the end, there is one set of normatively determined actions or situations involving non-places' staff members, and an even easier to determine set of normative messages for the countless and significantly varied visitors. In consequence, if their specificity and individuality are not erased outright, they are certainly significantly neglected, leading to the creation of "average person" figures. These people are reduced to those traits deemed the most crucial for a particular non-place, such as the amount of money they spend or the weight of their luggage. People are thus deindividualized and detached.

This detachment is not only from the contexts from which people come and are most familiar with – these are temporarily replaced by standardized, "if you've seen one, you've seen them all" non-places. The detachment is also from others, because everyone is effectively occupied with their individual affairs and plans, filtered through the intricacies of the non-place – a site on which their affairs and plans ultimately depend. In effect, one can also speak of a peculiar mutual anonymization of people using or passing through non-places. Ultimately, everyone seems to everyone else to be similar to the blurry view outside the window of a moving vehicle. Such an interpretation is already justifiable in the face of two arguments Augé (2008, 80, 81) makes. He argues that non-places create a mass of single, mutually anonymized and even alienated people whose specificity is obscured, leading to their deindividualization and specific sameness. Moreover, he raises the issue of normative messages, on the basis of which non-places function and characteristically influence those within their range. It is this second argument that drives the present paper.

In sum then, one can say that the sameness that is so distinctive for non-places is achieved through normative messages which upon even a brief examination

can be regarded as legal or at least legal-like. One can add to that some further supplements to Augé's account, such as the issue of normative bases for actual behaviors of non-places' staff members, which are also crucial to the overall non-place experience. Moreover, the influence of specific non-place's rules can be "felt" even before one actually, physically enters a non-place. To acknowledge this, just consider weighing a piece of luggage to comply with airlines' requirements before going to the airport.

Augé's presentation of non-places clearly and explicitly does not take into account subtleties like those mentioned above because of the very broad, general character of his analyses (in the end, Augé does not address particular kinds of non-places in detail) or their frequent exaggeration. For instance, he argues that non-places are creating a mass of individual, mutually detached people, but is this really always the case? In the end, one can easily imagine a scenario when a similar experience in a non-place is a starting point for creating a specific temporary community of those who have encountered the same issue and evaluated it similarly. More specifically, think of those passengers who have not been informed properly about new luggage standards and are thus made to throw away excessive or forbidden goods, or to pay additional fees to bring on board some of their belongings. Needless to say, such situations can bring different people together, thus demonstrating that non-places are not so devoid of some more communal, solidary thinking and actions, as Augé's argumentation may suggest. However, in light of this paper's aim, one should first of all stress that behind such situations there are still very specific legal or legal-like rules of non-places.

In most cases, when the latter function properly, they contribute to a distinctive feel of alienation from other people, which Augé describes. He, or those who wish to analyze non-places' legal dimension further, should more fully consider "the opposite of the same coin" situation: what are the consequences of some distortions in the functioning of non-place's characteristic rules? Augé (2008, 81) even suggests this direction when he makes a remark on the "individualizing power" of non-places (and not their default deindividualizing influence). However, the individualization of some previously nearly completely anonymous individuals can be regarded as initiated by their nonconformity with some of the rules functioning in non-places. In other words, in non-places, one is not oneself, but instead one of the many nearly identical people, as long as one follows the rules. Naturally, it is still possible to become oneself, for instance, a non-place's visitor or passerby starts being called by his or her name by non-place's staff members, but when one breaks some rule, or when something bad or unwanted happens. For a more specific example, consider airport intercom announcements calling a specific passenger who is late for boarding, or supermarket or shopping gallery announcements asking the owner of a car with a specific registration number to move it or to simply come to the security office.

Situations like these can be seen as proof of the general, contractual (and thus legal or at least legal-like) relationship between visitors and non-places, which Augé (2008, 82) highlights. Often, one cannot even enter a given non-place without being compelled to follow some rules characteristic to it, not to mention one's subsequent presence and functioning in the non-place, using it in accordance with its main function (e.g. transition, temporary stay, or consumption), while it exerts its influence (detachment, solitude, anonymity, sameness, and deindividualization). This, in connection with Augé's (2008, 82) highly legal statement that "[i]n a way, the user of the non-place is always required to prove his [or her – M.D.] innocence," should clearly confirm the specific paradoxical nature of non-places, which is dependent on their legal or legal-like rules.

To experience non-places' ambivalent or, for some, even strictly negative influence on the self, one simply has to keep doing something rather positive, or at least neutral: follow specific rules, just like everyone else should. In non-places, in return for "playing fair" or "going by the book" one gets something that not necessarily can be considered fair – detachment, solitude, anonymity, sameness, and deindividualization. These distinctive social, intersubjective traits of non-places are, to a certain yet still significant extent, dependent on non-places' characteristic rules, which sometimes can be controversial and questionable because of their practical interference in individual privacy or even dignity. By contrast, breaking these rules, especially by visitors to non-places, can be said to reverse their default influence. For example, the previously deindividualized is individualized. Naturally, such nonconformity can provoke some legal or legal-like reaction with respect to the given nonconformist, a reaction that may be more oppressive than the mere conformity to non-places' legal or legal-like rules. In light of the above discussion, they can definitely be deemed relevant to, and in fact co-responsible for, the intersubjective level of non-places.

5.3. Non-Places' Subjective Level and the Law

Augé's presentation of non-places seems to be rather consistent, in the sense that he focuses on detachment, anonymity, deindividualization, and solitude. In consequence, often one could assume that non-places and their experience are negative, that people in them, especially those who do not work there, assess these sites and their feel and functioning unfavorably. However, one must recall that an individual, subjective assessment of a non-place experience does not necessarily have to be coherent with the general undertone of the concept, especially one that can be captured during the first, usually superficial, contact with Augé's views. In the end, categorization and the reduction to a common denominator, so characteristic of non-places, can also be perceived by those who experience them firsthand in a positive way, such as a specific emancipation. To acknowledge this, consider a "stranger in a strange land" scenario. Someone who is not acquainted

with some of the socio-cultural peculiarities of a given area may feel insecure and act in a very limited way until she or he finds in that area a non-place, a site not influenced by local specificity unknown to him or her, but which is, instead, an example of the realization of globalization processes that multiply the same patterns and solutions in very different contexts. For such a person, even the most typical non-place will not be seen as ambivalent or hostile, but instead as a site of relief and comfort.

The example above is only one of many that can highlight the diverse (from very negative to very positive) individual attitudes toward or assessments of non-places. A presentation and discussion of other examples is not necessary here. It is more crucial to stress that even though particular instances of non-places may seem meticulously designed and built at the objective level and realized at the intersubjective level, they still do not incapacitate their visitors' ability to assess them in highly individual, and even seemingly counterintuitive, ways.

One can even venture to make an analogy to Goffmanian total institutions (Goffman 1961). Namely, even prisons, possibly the clearest instance of the latter, are not so utterly totalizing that it is impossible to create in them some degree of familiarity or sense of place, even for those who find themselves in them against their will. Similarly, non-places, despite their dedicated, function-oriented, objective, material traits accompanied by consistently maintained intersubjective, social features and influences characteristic to the sociality developed in them, still cannot set or determine how exactly different people will individually and subjectively approach them. This is simply because people's individual attitudes and assessments, even with respect to the same object or phenomenon, can be and often are varied due to the differences among those people (for instance, cultural, educational, economic, occupational, or even age).

In light of the above, a question remains. How does the law relate to the subjective level of non-places – their diverse, individual assessments made by the different people who use or pass through them? Whereas the law proves to be relevant as co-constitutive at the objective and intersubjective levels, it would be unfounded to argue here that the law also takes part in the ways in which individuals approach non-places. As suggested earlier, their attitudes can have many different bases, such as broadly understood socio-demographic features. However, one can still hypothesize that individuals' legal consciousnesses or attitudes toward the law (e.g. Hertogh 2018) can also explain the ways people approach non-places. For instance, someone from a mature, established liberal democracy and someone from an impoverished country that only recently started to implement democratic institutions more fully might look at the same non-place and its legal or legal-like peculiarities differently, in accordance with how different their legal consciousnesses may be. Having said that, however, the law – in the sense used in this paper, that is, as institutionally created (mostly by state structures) rules – does not contribute to the subjective level of non-places.

6. CONCLUSION

One can say that the law seems to be generally co-constitutive to non-places, not only in their purely material and physical aspects, as the source of regulations that address their mere construction or maintenance, but also in creating their specific intersubjective, social characteristics by clearly establishing standards of conduct for visitors and staff alike who, through their compliance with these standards, are participating significantly in the production of the distinctive non-place's atmosphere. However, the law does not seem to take part directly in the creation of individuals' assessments of non-places, which, due to their subjective nature and diverse foundations, can be varied and often counterintuitive at first glance.

Given the different possibilities for interpreting Augé's own account of his concept, the ways in which it has, to date, been understood and even applied for different purposes, the possibility and the need to distinguish and thoroughly characterize various types of non-places, and the different ways of conceptualizing the relationship between spatiality and rules (legal ones included) offered not only by legal geography, the preceding remarks are nothing more than a preliminary proposal for understanding the non-places–law relationship, suggested by Augé himself. In a way, this paper can be read as a specific invitation to begin taking a closer look at this relationship also from completely different perspectives than the very basic one employed above. Only then will we be able to decide which is the most accurate and useful approach.

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CONSTRUCTION OF IMAGINED GEOGRAPHIES THROUGH LAW: THE CASE OF JUDAIZATION OF THE NEGEV DESERT

Abstract. This article draws on the postcolonial legal theories and the concept of imaginative geographies, aiming to shed light on the process of producing and realizing Israeli representations of the Negev Desert through the implementation of legal regulations. The focus is on chosen imaginations of the Negev Desert, researched here as a case study of material realisation of imaginative geographies. In the analysis, symbolic narratives, visions of spaces, and new categories, intertwined in legal acts as their foundations, justifications and goals are underlined. The conclusions of presented study show that imaginations and visions can be in fact reproduced in space through legal regulations, and in the analysed case law has three aspects: it is an expression of imagined geographies; it translates those visions into technical terms; and lastly, the implementation of its provisions becomes the main instrument of producing those representations in reality.

Keywords: imaginative geographies, space, Negev Desert, Israel, Judaization, postcolonialism, Bedouins.

BUDOWA GEOGRAFII WYOBRAŻONYCH POPRZEZ PRAWO: PRZYPADEK JUDAIZACJI PUSTYNI NEGEW

Streszczenie. Artykuł czerpie z postkolonialnych teorii prawnych i koncepcji geografii wyobrażonych, rzucając światło na proces tworzenia i realizacji izraelskich reprezentacji pustyni Negew poprzez wdrażanie regulacji prawnych. Nacisk położony jest na wybrane wyobrażenia pustyni Negew badane jako studium przypadku materialnej realizacji geografii wyobrażonych. W analizie podkreślane są symboliczne narracje, wizje przestrzeni i nowe kategorie, wplecione w akty prawne jako ich fundamenty, uzasadnienia i cele. Wnioski z przedstawionego studium pokazują, że wyobrażenia i wizje mogą być faktycznie odtwarzane w przestrzeni poprzez regulacje prawne, a w analizowanym przypadku prawo ma trzy aspekty: jest wyrazem geografii wyobrażonych; przekłada te wizje na terminy techniczne; i wreszcie implementacja jego przepisów staje się głównym narzędziem produkcji tych przedstawień w rzeczywistości.

Słowa kluczowe: geografie wyobrażone, przestrzeń, pustynia Negew, Izrael, judaizacja, postkolonializm, Beduini.

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Colonial law is closely associated with specific ideas of space. Historically, images of wild feral land, unpopulated or inhabited by native people portrayed as primitive, were used by European colonialists as an argument for taking over, populating and transforming occupied areas in the name of civilizing missions (Comaroff 2001, 309). According to the rhetoric used by Zionist lobbyists and politicians before Israel was created, Palestine's territories were represented as such empty area, waiting for Jewish settlers (George 1979). Especially in the Negev (ar. Naqab) a desert region, now constituting as much as 60% of present-day Israel, this Orientalist idea was fuelled by seemingly barren natural landscapes. However, the reality of those terrains were different – for centuries they were inhabited by Palestinian Bedouins, semi-nomadic shepherds of Arab ethnicity, who cultivated the lands and used it for pasture (Oren 1989; Rosen-Zvi 2004, 43). It was therefore not vacant, not neglected, and not waiting for new settlers. After the creation of the new State, Israel undertook actions to reshape its spatiality in line with its imaginations. To achieve that goal, it employed law in its service, implementing a complex strategy to recreate the space.

This article draws on the postcolonial legal theories, and the concept of imaginative geographies, developed by Edward Said in his discussion on Orientalism (1978). The analysis presented here aims to shed light on the process of producing and realizing Israeli representations of the Negev through the implementation of regulations. It underlines the symbolic narratives, visions of spaces, and new categories, intertwined in legal acts as their foundations, justifications and goals. The focus is on chosen imaginations of the Negev Desert, used here as a case study of state practices of using the law in the name of imaginative geographies.

1. IDEAS OF SPACE AND ISRAELI FOCUS ON LEGALITY OF LAND SEIZURE

Imaginative geographies are collective imaginations, representations of places and people, often unconscious and ambiguous (Said 1978; Gregory 1995; 2004). They are constructions that "fold distance into difference through a series of spatializations" (Gregory 2004), creating partitions and binary oppositions in how space is perceived, constructing a wide gap between what is familiar and unfamiliar, demarcating "ours" and "theirs." Though they are produced in specific spatial contexts, they are also performative, and affect the material landscapes. If space is socially constructed and constantly reproduced (Lefebvre 1991, 31–33), imaginative geographies are some of the projections affecting spatial changes. As they are rooted in biased representations of the "Other," they are often employed to devise, justify and legitimize colonialism and occupation (Gregory 1995; 2004).

Such is the case of Israel, created in 1948 and considered an ethnocratic settler state. Ethnocratic regimes are "states that maintain a relatively open government, yet facilitate a non-democratic seizure of the country and polity by one ethnic group" (Yiftachel 1999, 364). Settler states are based on colonial or ethnocratic ideologies, segregation, exclusion of the indigenous people, and the goal of achieving territorial and political dominance by the settling community (Kedar 2003). The power exercised by that community reaches different spheres to ascertain its control. In case of Israel, the ruling ethno-religious majority is pursuing a settler strategy of Judaization, to establish geographical, demographic, political and cultural dominance of the Jewish people in the country and the territories occupied by it. Spatially, as Oren Yiftachel (2004; 2006) argues, ethnocratic states are characterized by a specific structure, making marginalized groups of indigenous peoples function in "grey spaces" – outside society, on the periphery, out of control of the administration. These groups are often not included in hegemonic communities not because of a shortage of possibilities, but lack of willingness of official institutions, pursuing settler policies. The "grey spaces" become the semi-invisible zones, into which all that does not fit the prescribed and designed imaginative geography is pushed away.

One of the tools of spatial change and reshaping is law. Legal norms convey and express certain goals, aspirations and changes postulated by the legislator, as the law often does not define reality, but offers postulates about desired actions and conditions that should be achieved. Norms, their frameworks, phrasing, and enforcement can also affect the physical sphere and lead to the creation of new social facts. As David Delaney (2014, 239–240) writes: "the «legal» is not simply poured into preexisting «spaces» but, rather, is constitutive of spatialities, spatial relationships, spatial performances, and experiences, as these, in turn, condition the lived character of the legal." Regulations may therefore be used strategically to produce desired landscapes, making imaginative geographies a reality. The juristic language in such cases is not neutral; law uses codes and categorizations to rename objects, scenes, and conditions to fit political discourses and aims. Those codes constructed in language, supported by official power, can reshape reality and constitute what has been imagined. As Shamir (1996) mentions, generating new categories and terms is also part of the strategy for building different spatial hierarchies and giving different meanings to colonized spaces.

The Negev Desert and its indigenous community can be a revealing case study of all above-mentioned strategies and mechanisms. Two parallel processes took place during the creation of the state of Israel: on one hand, the formation of externally democratic political and juridical institutions, and on the other, the processes of the takeover of the territory by an ethnically dominant group using repression and coercion (Yiftachel 1999). What's more, the second of these processes was often hidden behind legal procedures and institutions, whose structure and content were created precisely to conceal the activities being

conducted behind a façade of neutrality (Kedar 2003; Rangwala 2004; Cook 2013). The use of law in such a way is one of the relatively permanent ways used by colonial and settler states to expropriate colonized areas from native inhabitants, normalize the spatial results of armed and internal conflicts, and to legitimize the power of the dominant group and colonial rule (Comaroff 2001, 309; Bisharat 1993; Forman and Kedar 2003).

Israel pressed very hard to create legalistic foundations for the occupation and seizure of land, although during the 1948 war the property of Palestinian refugees, and even those who did not flee, could theoretically be simply taken over by the state and Jewish settlers and become theirs as a *fait accompli*. Yet, such a takeover would not be in line with the idea of the rule of law being established and the narrative of creating "the only democracy in the Middle East," would allow greater support for the claims of expropriated Palestinians and refugees, and could raise doubts and opposition by Israeli citizens. Relying on juristic arguments in internal political rhetoric legitimizes all actions of the state while describing them in technical and neutral terms (Kedar 2003). Consequently, in the eyes of Jewish citizens, the idea of Israel as a democratic state might be upheld or even strengthened. Also on the international stage, the unemotional language of acting by the law created a picture of Israel as a state of justice, which was more likely to be assessed as fair by the international community. Moreover, that approach and enforcement of new regulations, rooted in a Western legal traditions and spirit, in the Middle East, could also be considered as a certain "civilizational mission" of democratization of the "savage" places (Marx and Meier 2005; Rosen-Zvi 2004, 48). In fact, it will be argued here that an Orientalistic narrative of a "civilisational" mission has been used by the Israeli government constantly in juristic discourses. Underneath such justifications and narrations, introduced laws concerning space have been part of a long-term political strategy, leading to the production of imagined geographies.

2. (RE)CONSTRUCTING THE VISION OF "THE LAND WITHOUT PEOPLE"

The main imaginative representation of the Negev, already mentioned, was the prolific idea of "land without a People for a People without a land." Due to armed conflict in 1948 and following years this concept had almost become a reality in the Negev. During the war, known as "Independence War" by the Israelis and as Nakba (ar. "catastrophe") by the Palestinians, Israeli forces physically took over 78% of the entire mandate territory of Palestine[1] (Cook 2013, 2). Around 80–85% of Palestinians (at least 700–800,000) fled or were forcibly displaced from lands,

[1] The rest was seized in 1967.

which are now part of the Jewish State[2] (Pappé 2006, xiii). As for the Negev, about 70–85,000 of the Bedouins were forced to leave their lands. Many were uprooted by the Egyptian army, some were pushed out after the Israeli forces took over the desert, others fled for fear of their lives during the fighting. After the end of hostilities, around 1953, only about 11–12,000 Bedouins (19 from 95 tribes) remained in the region (Rosen-Zvi 2004, 45; Nasasra 2012, 92–93; Amara and Yiftachel 2014). To maintain the achieved spatial and demographic advantage, the new government closed the borders and blocked all attempts of refugees to return (Boteach 2008; Swirski and Hasson 2006, 9).

Nevertheless, the lands of the Negev were not "empty" yet, as some indigenous inhabitants stayed in their homeland. Israel started a resettling process, to achieve the desired spatial and demographic changes in the south of Israel. To depopulate the region, the army demarcated an enclosed area – *Siyag* (ar. fence) – near Beer Sheva. It covered about 1000 km^2, or 8% of the desert, and was characterized by unfavourable conditions for agriculture and pasture. Since the early 1950s, most of the Bedouins were forcibly resettled there, and only a few managed to avoid this fate (Rangwala 2004; Amara and Yiftachel 2014). Legally, the concentration of Bedouins in the zone was based on Israeli military orders, and the resettled communities became subject to military law (Boteach 2008). The Armed forces executing the action managed communication about it in a way to minimize resistance – informing the indigenous communities that it was temporary (Rosen Zvi 2004, 45; Nasasra 2012, 92–93). That impression of the temporariness of the resettlement was further maintained by an almost complete lack of any permanent housing structures in the area, as the Israeli government refused to grant building permits, forcing newcomers to live in tents and barracks. In spite of that, the displacement was not short-timed and the Bedouins were required to stay in the enclosed area until 1966, in some cases more than a decade (Boteach 2008; Amara and Yiftachel 2014). The authorities declared the rest of the desert a military zone and banned Bedouins from entering it without a, rarely issued, permit (Rosen-Zvi 2004, 45; Swirski and Hasson 2006, 9). Depopulating the region fitted the vision of the vast, empty, undeveloped domain, waiting for the Jewish community.

3. CREATING ISRAELI TERRITORY FROM "ABSENTEE" LANDS

Even though the Bedouins of the Negev were concentrated in the *Siyag*, their land did not yet belong to the new state. At the end of the war, in Israel's new borders, only about 13.5% of the territory was owned by Jews or was under the formal control of the new state (Forman and Kedar 2004). The ownership rights of

[2] At the same time, already existing Jewish population doubled in five years between 1946 and 1951, reaching the number of 1.4 million (Forman and Kedar 2004; Kimmerling 1983).

Bedouins, recognized previously by the Ottoman and British Authorities (Nasasra 2012, 95) couldn't be ignored by the legalistically-oriented Jewish state, and the expropriation had to be made lawful.

Since 1950, the Israeli government started creating and enforcing new regulations legitimizing land takeover, also introducing in them new categories of subjects and spaces. A first major legal act regarding land and real estate was Absentee's Property Law 5710–1950. According to its provisions, plots owned by the refugees, who fled abroad (and could not come back due to closed borders), were defined as "abandoned,"[3] and their owners as "absentees." A newly appointed Custodian for Absentees' Property was entrusted with their possessions. The Custodian was forbidden from transferring the ownership rights of "absentees" to any person or institution other than the governmental Development Agency. Any actions countering the act or its institutions were punishable (Absentee's Property Law, 5710–1950). A committee composed of Israeli Army officers considered eventual appeals against land confiscation, generally to the detriment of the former owners (Shehadeh 1993, 63; Cook 2013, 74–75). It is currently estimated that around 70–88% of Israel's territory was declared as "abandoned" by Palestinians, and consequently taken over by the state (Rangwala 2004). Authorities designed another juristic category to define internal refugees, so they could fall under the above-mentioned act as well. New documents defined the Palestinians who were still present in Israel, but absent from their estate (after fleeing the war or being forcibly displaced by Jews), as "present absentees." About 30–35,000 people – 25% of Palestinians who remained in Israel – were classified as such[4] (Benvenisti 2000, 201; Cook 2013, 98). In 1952, under the new Citizenship Act, they obtained Israeli citizenship, but their land and estate ownership rights were transferred to the Custodian (Cook 2013, 34–35; Rangwala 2004).

The Absentee's Property Law 5710–1950 constructed new legal categories of "absentee" and "present absentee." While the language of this act did not conceal the reality that the Negev has not been in fact "empty land" before 1948, it used carefully chosen terms to present its recent history neutrally. It cultivated an illusion that the territory have been, for some reason, "abandoned" by the previous owners, who were now just "absent," but their possessions were dutifully entrusted to office of the Custodian. Such terms conveyed a picture of calm emigration of residents, abandoning worthless lands and possessions, rather than the image of expulsions, forced resettlement and expropriation. The previous owners become anonymous and non-existent "absentees," rather than refugees, sometimes living just a few kilometres away from their previous homes.

[3] This act was interpreted so that it was not applied to Jews living in mandatory Palestine, who might have left their lands during the war or, resettled before or after (Dajani 2005, 41).

[4] According to current estimates, about 250,000 "present absent" and their descendants live in Israel (Dajani 2005, 41).

Real estate and the land of the "absentees" – whether refugees abroad or internally displaced persons – were not incorporated into state property until 1953. The Land Acquisition (Validation of Acts and Compensation) Law (5713–1953) settled the issue, stipulating that all areas not in the possession of the legal owner as of April 1, 1952, should be registered as state lands. The introduction of these provisions allowed for the complete transfer of ownership of the plots and properties of the refugees. In any case, the Custodian, although until 1953 merely a trustee of the seized grounds and real estate, by that time has already transferred much of the occupied areas to Jewish communities or sold them to the Jewish National Fund (JFN[5]) (Cook 2013, 34–35; Rangwala 2004). In result, in 1948–1953, around 350 new Israeli settlements (out of 370 built at that time) had already been established in the lands of the "absentees." For that reasons, the Land Acquisition Act was also applied retroactively, legitimizing expropriation for military purposes and the construction of Jewish settlements before 1953 (Dajani 2005, 41).

At the time when "abandoned" lands were declared state property, most of the Bedouins in the Negev Desert were forcibly resettled to *Siyag* so they could not counteract the process. Some who managed to stay in their homes (especially those native to the lands where *Siyag* was placed) tried to register their estate with the new authorities. However, not only were their customary ownership rights not recognized, but the Israeli courts also denied the validity of purchase contracts, property deeds and other documents issued prior to 1948. Those who insisted on staying either had to lease their plots from the government, which was interpreted as an official admission that the land belonged to the state, or were accused of trespassing (Rangwala 2004). In the eyes of the law, by that time the Negev was an empty land with no owners, and members of the indigenous community became "absentees" and "trespassers" within the region.

4. MAKING THE JEWISH LAND BLOOM

In the following years a handful of new laws affecting the space of the new country and the Negev were introduced. In 1953, government introduced the Act on the Jewish National Fund, granting the organization status of "landowner for the state." The properties belonging to the JNF are a trust of Jews from all over the world. The covenant between the State of Israel and the World Zionist Organization signed in 1961 confirms that the plots belonging to the JNF are in the hands of the state, but obliges the government to consult

[5] The Jewish National Fund (JNF, Keren Kajemet LeIsrael) is an international Zionist organization established in 1901 to amass the lands in Palestine for Jewish settlers (Jewish National Fund 2017).

the JNF with all decisions (KKL-JNF – Israeli Government Covenant, 2017). In 1960, another two acts came into force – Basic Law: Israel Lands and the Israel Lands Law (5720–1960). The Basic Law consists of 3 articles, and above all prohibits any transfer of ownership of public property owned by the state, the Development Agency and the Jewish National Fund. The Israel Lands Administration Law, in turn, lists exceptions to the Basic Law, especially concerning areas belonging to the JNF. That act also established the Israeli Land Authority (ILA) – a government agency set up to administer territory owned directly by the state or managed by it under additional agreements (i.e. with the JNF). As Jonathan Cook shows (2013, 38, 40), the purpose of handing over the management board to the JNF was to exclude Palestinians from potentially accessing land. As per the Statute of the Fund (Jewish National Fund n.d.), it may lease parcels only to Jews: in this way, it is not the state institution *per se* that implements practices discriminating against minorities living in the state, but a foundation[6] that manages this institution.

The JNF has been also tasked with the mission to "make the desert bloom." In a 1951 speech, David Ben Gurion described a new vision of Israeli lands, revived and turned green by trees planted by Jewish hands (Fields 2017, 264). That representation of space was founded again on the myth of uninhabited desert, this time presented as infertile due to the inaction and carelessness of Bedouins (George 1979); for that reason, much of the process was focused on reshaping the Negev Desert (Fields 2017, 264–266). Since 2006, based on a long-term lease offered by the State, the JNF has been directly charged with afforestation of 30,000 hectares of the Negev (Tal 2006). The authorities chose European pine for afforestation – an evergreen and quickly growing tree, it allows a quick transformation of landscapes (Cook 2013, 40). Afforestation of terrain, in its political dimension, confirms its seizure and control over it. It also shapes collective memory, securing the Israeli hegemonic narrative against all facts in space that could violate it. For that reason Israel also planted the trees strategically, to hide ruins of former Palestinian villages, destroyed during the creation of Israel, thus indirectly counteracting their possible claims (Cook 2013, 136). On the imaginative level, planting of pine allowed for naturalization of areas and making the landscape more European, reminding the founders of Israel of their former homelands (Braverman 2009, 7–9). The JNF thus became the main institution constructing and producing imaginative geographies in Israel, reshaping the space in accordance with dreams of fertile Jewish land, familiar to the settlers of European descent.

[6] Moreover, the JNF is registered as a charitable foundation in the United States and Europe, which facilitates raising funds for further operations.

5. "CIVILISATIONAL MISSION" AND DISAPPEARING MINORITY

When the Bedouins were permitted to leave the "restricted area" in the mid-1960s, most of their territories were already seized and legally owned by the State, and they had no place to cultivate or herd animals. The government offered to resettle them in specially designed and built cities (called "planned townships"), located in the enclosed zone of *Siyag* (Boteach 2008; Rosen-Zvi 2004, 44, 49). The actions were again supported by a narrative of the indigenous people as outsiders, who stand in opposition to "progress" and "modernity" represented by Israel (Amara and Miller 2012). Their resettlement in modern cities with access to plumbing, electricity and running water was therefore supposed to be an improvement from their "primitive" life. It was also aligned with Israeli visions of an urbanized and highly developed country. However, the townships for Bedouins did not, and do not, provide the same infrastructure conditions as already existing and developed Jewish cities in the region – in most of them, the level of services such as public transport, medical care and cultural institutions is deplorable (Abu-Sa'ad 2004). Restricting access to land and freedom of movement was a serious blow to the nomadic Bedouin identity, and, combined with lack of work opportunities in the "planned" townships, resulted in the conversion of Bedouins into a cheap labour force for developing Israeli settlements (Rangwala 2004). The political goal was to prevent this community from going back to their pastoral-agricultural lifestyle, and thereby negatively impacting its culture, identity and independent development. The long-term effect was the introduction of racial segregation in the Negev, the factual Judaization of most of the desert, and the sedentarization and concentration of Bedouins. This, in turn, also lead to the development of a specific culture of such cities, where the exclusion of disadvantaged communities is deepened by hegemonic, official narratives presenting "grey spaces" as dangerous areas, overwhelmed by crime, plunged into chaos and dirt (Yiftachel 2004; 2009). These narratives emphasize the sense of danger and defilement of "normal" residents of recognized parts of the city but never mention that their situation is a direct result of the lack of recognition by the government administration and refusal to guarantee access to infrastructure and services.

6. MAKING THE OTHER INVISIBLE: ADMINISTRATIVE UNRECOGNITION AND GREY AREAS

The resettlement to "planned townships" was met with opposition, and, in the last forty years, only half of the Bedouins from the Negev Desert moved there. Another half currently resides in so-called "unrecognised villages" (Rosen-Zvi

2004, 44–46; Yiftachel 2009; Nasasra 2012, 98; Amara and Yiftachel 2014). Administrative recognition of certain settlements proves the existence of a housing estate as a legal fact and, consequently, also means that the state must fulfil its obligations regarding care and services for the residents. The "unrecognized villages" are deprived of those possibilities, even though 70–75% of them predate 1948 and are in areas inhabited by their clans for generations (whose inhabitants avoided resettlement); the remainder are settlements established in the *Siyag* by the internally displaced Bedouins (Fields 2017, 275).

Existence of such localities became a fact on basis of two laws. First, the Planning and Building Act (5725–1965) divided Israel's lands into residential, agricultural and industrial zones. As the existence of many Bedouin towns and settlements was ignored and they were not marked on maps or in documents (Boetach 2006), the areas of those villages were classified as agricultural, all construction on them was banned, and every built structure was to be demolished. Soon after in 1969, the Israeli authorities utilised Ottoman norms previously used to register ownership in the region. Prescription Law, 5718–1958, the Land (Settlement of Title) Ordinance (New Version), 5729–1969 (amended version of 5720–1960 law*)*, and the Land Law, 5729–1969 evoked the classification incorporated in the Ottoman Land Code of 1858, especially the provisions concerning the wastelands – *mawat. Mawat* were defined as uninhabited grounds, not owned privately, lying outside of towns (Eisenman 1978, 76–78; Shmueili and Khamaisi 2015, 31). Under Ottoman law their legal ownership, nonetheless, could be obtained by constant cultivation[7] (Rosen-Zvi 2004, 47; Cook 2013, 80). According to Israeli provisions, all plots classified as *mawat* became state property,[8] and their inhabitation and cultivation had to be documented to be a basis for claims of ownership. In the case of the Bedouins, the Israeli courts did not recognize the temporary shelters of the nomads as residential buildings or shepherding as a form of cultivation (Rangwala 2004), preventing registration.

The situation of those localities has not changed much since 1969. Until now the Israeli administration refuses to recognize the localities in question on the basis of the aforementioned regulations regarding land ownership (claiming that they invaded the state territory illegally), spatial planning (illegal settlement and

[7] According to art. 103 of the Land Code of 1858, a person who "revived" part of the land through constant cultivation for at least 3 years, could claim ownership of it even without official permission. British authorities partly amended the Ottoman provisions and demanded the act of registration of the land. The *Mewat* Lands Regulation of 1921 abolished Art. 103 of the Ottoman Land Code 1858. Persons who cultivated land classified as *mewat* could obtain ownership of it if they registered the land within 2 months of the entry into force of the regulation (Rangwala 2004; Nasasra 2012, 95).

[8] The Provision law of 1958 also repealed some of the British regulations regarding Ottoman land classifications.

construction on land classified as agricultural) and claims that there are too few inhabitants in them. Those laws are, at the same time, differently interpreted regarding Jewish settlements in the region (Rangwala 2004; Yiftachel 2009), showing that certain juristic categories are used only as a tool of Judaization.

As the Bedouins villages are not recognized, they are not subject to the administrative authority, so their inhabitants cannot apply for a possible building permit or change the classification of their land. Moreover, according to the Planning and Building Act (1965), even if private ownership of terrain is uncontested (Bedouins have a deed of ownership) or can be proved, any real estate in parcels zoned as agricultural is still unlawful. Art. 157a of the Planning and Building Act of 1965 also prohibits state-owned companies from providing municipal services or connecting illegal buildings to utilities (Rangwala 2004). Unrecognized localities are therefore deprived of access to roads, fresh water, electricity, medical care, education and other services (Abu-Saad 2008; Swirski and Hasson 2006; Yiftachel 2009). In case of those localities, codes of oppositions between the "primitive and wild" and "civilized and urban" are again used. Those places, due to lack of services, are characterized by higher levels of poverty, crime, and infant and child mortality (Yiftachel 2009). In political rhetoric, Bedouins living in unrecognized locations are named as criminals, savage tenants and intruders (Cook 2008, 36–37). Fostering fear of "illegal" neighbours by using stereotyped categories leads to an exacerbation of the ethnic-class conflict and deepens the social exclusion of the Bedouins. For decades now, Israel has been trying to evict Bedouins by a campaign of house demolitions (Fields 2017, 276), however to no avail.

In result, unrecognized villages are certain suspended beings – although they exist materially and can be visited (or demolished), in official administrative regulations and maps they do not exist. Their demolition because they do not have the administrative status of official settlements shows the advantage of abstract administrative regulations, expressing the imaginative geographies of those in power – over the facts in space. As the Bedouin settlements do not fit the desired imaginative geographies, not only are they spatially excluded, but the government has tried to erase them both physically and symbolically. On the latter level, the recreation of Negev takes the form of wiping out historical memory about localities. Around Beer Sheva, the names of around 45 Bedouin towns are never officially used in legal documents or maps, making these towns and their inhabitants, in a symbolic sense, "invisible" or even "non-existent." Arabic names of regions, topographic and historical points were also replaced with Hebrew names, to hide traces of Arab past (Benvenisti 2001). In effect, symbolic non-existence of "unrecognized villages" in documents and maps becomes the basis of performative actions to physically erase them, to reshape reality on a basis of imaginations of space.

7. CONCLUSIONS

As a result of the resettlement strategies and regulations introduced by Israel, currently, 93% of the grounds in the country are owned publicly – by the state, JNF, and the state Development Agency (Israel Land Authority n.d.). Of the 7% of non-state owned land, only 3% is in private Palestinian hands, which are also subject to Israeli administration and planning, and thus, in principle, cannot be used by the owners at will (Cook 2013, 37–38). Although most of the region was taken over by the state based on the aforementioned regulations, many of the Bedouins contest this form of legalistic dispossession and continue living in their villages, fighting to recognize their rights. As a result, instead of Israel taking over the imagined "empty land without people," where Judaization can be put into practice without hindrance, the government faces a situation in which it may succeed in taking over the territories (although the legality of transferring ownership rights to the state is widely questioned by Israeli, Palestinian and foreign lawyers, politicians and activists), but it is still inhabited by native people, who make justified claims to their fundamental rights. Nevertheless, new ideas of mass resettlements of Palestinians, also to the Negev, are still being proposed. The latest "imaginative geographies" of this land (this time representations of US ideas) described at length is the 2020 peace plan, better known as the "Deal of the Century," prepared by US administration of President Donald Trump (Peace to Prosperity 2020).

The analysis here shows that such visions, even if seemingly idealistic or far from on-the-ground reality, can be reproduced in space. In Israel such processes took place, largely through introducing laws and juristic categories which drew from collective imaginations of the settler state. Law has three specific aspects here: it is an expression of imagined geographies; it translates those visions into technical terms; and lastly, the implementation of its provisions becomes the main instrument of producing those representations in reality. In this case, it also becomes visible that the Judaization of the space through law largely took place at a symbolic level, by creating new terms and legal facts (such as "abandoned lands," "absentee property" "unrecognised villages" etc.). The Bedouins of the Negev were largely marginalized through such symbolic actions, in the end becoming excluded and invisible in the official discourses. Thus, in line with strategies of the settler state, and in the process of Judaization of landscapes, the "imaginative geographies" of the Negev were produced in reality.

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SEPARATE REGULATIONS REGARDING THE RECOVERED TERRITORIES IN THE LAW OF PEOPLE'S POLAND

Abstract. The paper contains an analysis of those legal regulations of the People's Poland which were specific to the Recovered Territories and an attempt to answer the question of why such regulations were created. The following sources of law are discussed: legal acts devoted entirely to the Recovered Territories; legal acts applied to the entire territory of Poland in which some provisions were devoted exclusively to regulating the situation in these areas; legal acts that formally applied to the entire territory of Poland, but in the Recovered Territories their regulations were of particular importance. The internal regulations of the Ministry of the Recovered Territories were also examined.

Keywords: People's Poland, Recovered Territories of Poland, western and northern territories of Poland, Ministry of the Recovered Territories (Poland), really existing socialism.

ODRĘBNE REGULACJE DOTYCZĄCE ZIEM ODZYSKANYCH W PRAWIE POLSKI LUDOWEJ

Streszczenie. Artykuł zawiera analizę regulacji prawnych Polski Ludowej odrębnych dla Ziem Odzyskanych oraz próbę odpowiedzi na pytanie, dlaczego takie przepisy były tworzone. Omówiono następujące źródła prawa: akty prawne w całości poświęcone Ziemiom Odzyskanym; akty prawne obowiązujące na terenie całej Polski, w których część przepisów odrębnie regulowała sytuację na tych terenach, a także takie akty prawne, które formalnie dotyczyły całej Polski, ale na Ziemiach Odzyskanych ich znaczenie było szczególne. Przebadano również wewnętrzne przepisy Ministerstwa Ziem Odzyskanych.

Słowa kluczowe: Polska Ludowa, Ziemie Odzyskane, ziemie zachodnie i północne, Ministerstwo Ziem Odzyskanych, realny socjalizm.

1. INTRODUCTION

Separate legal provisions for individual parts of the state are usually associated with federal states or some form of autonomy, e.g. regional autonomy, where the creation of local law with the rank of a statute is the purview of local authorities (Izdebski 2014, 58). There were significant changes in the Polish political system

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after World War II, but the country remained a unitary state. Nevertheless, in the first years after the end of the war, legal regulations were created for some parts of the country that were different from those applied in the rest of Poland. This space was the territory of the German Reich and the Free City of Danzig, which, according to the provisions of the Potsdam Conference, was granted to Poland (Konopka and Konopka 2003, 290). At that time, state authorities, for political reasons, promoted the name "Recovered Territories" for these areas. Later, the more neutral term "Western Lands" became popular, which, however, did not include the territory of former East Prussia. After 1989, the terms "newly acquired lands," "former territories taken over by Poland," and, perhaps the most popular, "western and northern territories" appeared in the literature (Tyszkiewicz 2018). In this paper, the terms Recovered Territories and the western and northern territories will be used interchangeably.

Separate legal regulations concerning these areas have not been comprehensively studied yet. Studies in the history of law are devoted to individual legal acts, especially those that remain of practical importance to this day, e.g. in re-privatization proceedings. There are also valuable historical works on various aspects of the management of the Recovered Territories, including those cited in this text, but in these works, the law only provides the backdrop for research on political or social history. Therefore, the subject of this paper is an initial query of the most important legal acts of the People's Poland,[1] on the basis of which the western and northern territories were regulated differently than in other areas of the country. The analysis covers legal acts entirely devoted to the Recovered Territories; country-wide acts, some fragments of which contain separate regulations for the Recovered Territories; the internal law of administrative bodies managing these areas; and, finally, the law applicable to the entire territory of Poland, which, due to the subject of regulation, was applied mainly or even exclusively in the area of the western and northern territories, including the law from before World War II.

This research, the results of which are presented below, aimed to answer the following question: why were separate legal regulations for the Recovered Territories created in People's Poland? To answer this question, select examples were examined to analyze in what specific situations and how the legal situation of these areas was regulated separately.

[1] People's Poland is the term for the Polish state that existed in the years 1944–1989, used in official propaganda materials, the press and literature. The official name of the People's Republic of Poland is used to describe the Polish state in the years 1952–1989, after the entry of the Polish Constitution of the People's Republic of Poland, passed by the Legislative Sejm on July 22, 1952 (Dz.U. 1952 nr 33 poz. 232).

2. THE MINISTRY OF THE RECOVERED TERRITORIES

First, the legal acts that were entirely devoted to the western and northern territories will be discussed. One of the most important acts was the Decree of November 13, 1945 on the Administration of the Recovered Territories (Dz.U.[2] 1945 nr 51 poz. 295), which created a separate public administration structure for these territories only. According to Art. 1, "for a transitional period, as long as extraordinary needs require it," the Ministry of Recovered Territories (MRT) was created. The next article contained a specific definition of the Recovered Territories – the newly created ministry was to cover "the lands recovered west and north to the state borders in 1939." According to Art. 3, the MRT was to prepare a development plan for these areas and ensure its implementation, carrying out a settlement action, management of the post-German property as well as administration of the regained lands. The purview of the Minister of Recovered Territories included all matters that outside this area belonged to the Minister of Public Administration. The role of the MRT was, therefore, twofold. On the one hand, this institution was to carry out tasks specific to the western and northern territories; on the other hand, it was also responsible for the normal, day-to-day administration. Moreover, the MRT also coordinated the activities of other ministries in the Recovered Territories (with the exception of the Ministry of Foreign Affairs and the Ministry of Shipping and Foreign Trade). The MRT was also empowered to apply to the Council of Ministers for a temporary division of the Recovered Territories into voivodships and counties and the appointment of voivodes. The minister himself was entitled to appoint starosts (heads of county administration) in the area under his control. A completely separate administrative structure was therefore established for the areas that are the subject of this study.

The Ministry of the Recovered Territories existed for just over three years. Its liquidation was carried out on the basis of the Act of 11 January 1949 on the Merger of the Management of the Recovered Territories with the General State Administration (Dz.U. 1949 nr 4 poz. 22). The authorities of the People's Republic of Poland decided that the "extraordinary needs" under Art. 1 of the Decree on the Administration of the Recovered Territories ceased to exist, and the "transition period" mentioned had ended.

It should be noted that a separate ministry for the Recovered Territories was established not only for pragmatic reasons, such as the specificity of problems occurring in these areas that requiring a different approach and extraordinary tools, e.g. the issues of the post-German estates, the vast number of incoming

[2] Dz.U. is the Polish abbreviation for the Journal of Laws of the Republic of Poland (Dziennik Ustaw Rzeczypospolitej Polskiej), which is not available in English. Therefore, the publication references were left in the Polish version, so that at least those readers who speak Polish could easily find the full texts of the legal acts.

settlers and the need to create an administration from scratch. There were also political reasons behind the decision to create it. In the first years after World War II, People's Poland did not yet have a one-party political system. At the head of the Ministry of Public Administration and the Ministry of Agriculture and Agricultural Reform stood politicians from the pre-war peasant Polish People's Party. The creation of a new ministry that would take over the management of the Recovered Territories and which would be headed by the communist Władysław Gomułka was, therefore, a priority political goal of the communists (Łach 1995, 136).

Previously, other forms of management of the Recovered Territories were proposed. In April 1945, the Council of Ministers adopted the conclusions of the communist Edward Ochab, the then Minister of Public Administration, appointing him the Plenipotentiary General for the Recovered Territories and establishing the office of the Undersecretary of State for the Recovered Territories in his ministry. The Office of the Western Lands, which dealt with the issues of these areas in the earliest period, was also incorporated into the Ministry of Public Administration. Why did this concept of governing the western and northern territories prove to be only temporary? One of the reasons was certainly the takeover of the Ministry of Public Administration by the Polish People's Party. The communists wanted to limit the influence of the agrarian party in these areas.

Of particular significance was the proposal presented to the President of the National Council of Poland, Bolesław Bierut, by the Warsaw District of the Polish Western Union on March 1, 1945. This patriotic organization was established in the interwar period, the original purpose of which was to act for Polish interests on the Polish-German border; it postulated the creation of the Ministry of the Organization of the Western Territories, which would have departments corresponding to the functions of individual ministries, with the exception of the Ministry of National Defense and the Ministry of Foreign Affairs (Majer 2018, 390–391).

3. INTERNAL LAW OF THE MINISTRY OF THE RECOVERED TERRITORIES

Due to the existence of a separate ministry dealing exclusively with matters of the western and northern territories, many lower-level legal acts addressed specifically to this part of the country were created. They can be found in the Official Journal of the Ministry of Recovered Territories. The content of these archival sources deserves separate, extensive research. Below are just a few examples of detailed regulations created by the MRT, showing what issues it dealt with and the kinds of problems this ministry solved.

One of the topics that appeared most frequently in the MRT documents is the problem of securing post-German property. On February 22, 1946, an ordinance

was issued prohibiting the removal of any movable property from the Recovered Territories (Dz.Urz. MZO[3] nr 1 poz. 2). When leaving these areas, one could take clothes, food and other similar items but only in quantities necessary during the trip. The removal of anything else had to be authorized by the Minister of Recovered Territories or another minister in certain cases (e.g. Minister of Forests for wood or Minister of Reconstruction for certain building materials).

According to the Ordinance of March 24, 1946 (Dz.Urz. MZO 1946 nr 3 poz. 25), it was decided to conduct an inventory of post-German movable property, including those located in private apartments and farms already settled by Poles. All movables located in the Recovered Territories were considered post-German property unless their owners came to the area after the war and could document that they brought particular items with them or had previously inhabited these areas but were verified as Polish nationals. The relevant offices verified the census forms filled in by the owners of post-German property and determined which items were necessary, taking into account their profession and the size of their families. The remaining movable property, considered surplus, was to be taken from the owners and transferred to other settlers or sold to the existing owner at an estimated price.

By the Ordinance of May 12, 1946, special bonuses were established for persons who contributed to the disclosure of hidden post-German property in order to stop the illegal removal of such property from the Recovered Territories (Dz.Urz. MZO 1946 nr 4 poz. 28). Detailed instructions on the method of securing post-German property were also contained in numerous circulars from the MRT. For example, Circular No. 28 (Dz.Urz. MZO 1946 nr 4 poz. 38) critically refers to the practice of arbitrary management of post-German property by mayors and presidents of cities without reporting these items to the relevant offices. However, care was taken not only about material values. Circular No. 33 (Dz.Urz. MZO 1946 nr 4 poz. 41) ordered the keeping of city chronicles as well as securing and collecting materials regarding the historical past of the western and northern territories.

4. POLISH CITIZENSHIP OF THE RESIDENTS OF THE RECOVERED TERRITORIES

Not all of the previous inhabitants left the western and northern territories at the end of the war. Some of them wanted and were able to stay there, regardless of their German citizenship, if they were of Polish nationality. The

[3] Dz.Urz. MZO is the Polish abbreviation for the Official Journal of the Ministry of Recovered Territories. The publication references were left in Polish for the same reasons as in the case of the Journal of Laws of the Republic of Poland.

status of this group is another area of activity of the MRT and the area of legal regulations issued by this institution. The ordinance of April 6, 1946 (Dz.Urz. MZO 1946 nr 4 poz. 26) regulated the procedure for confirming the Polish nationality of people who lived in the Recovered Territories. In order to be recognized as a Polish national, one had to prove their Polish origin (e.g. a surname that sounds Polish) or show their relationship with the Polish Nation (e.g. by fighting for Polish independence, belonging to Polish organizations, or cultivating Polish traditions). However, members of certain German organizations, teachers of German schools and people whose behavior showed full ties with the German nation, even if they were of Polish origin, were not considered a part of the Polish Nation. It is easy to notice that the criteria for recognizing people without Polish origin as belonging to Polish nationality and not recognizing them as such despite having Polish origin were formulated in a very general and discretionary manner.

Official confirmation of Polish nationality was needed to obtain (after submitting a declaration of fidelity to the Polish Nation and the Polish State) Polish citizenship on the basis of the Act of April 28, 1946 on the Citizenship of the Polish State of Persons of Polish Nationality Residing in the Recovered Territories (Dz.U. 1946 nr 15 poz. 106) – another piece of legislation adopted specifically for the western and northern territories, but so laconic that it does not need to be discussed separately. The regulations of this act were limited to stating that the right to Polish citizenship is granted to persons who obtained confirmation of belonging to Polish nationality. That is why the Ordinance of the MRT of April 6, 1946, analyzed above, established detailed rules on how citizenship would be granted in practice. Moreover, the property of the person who obtained confirmation of the Polish nationality on the basis of this ordinance was not treated as post-German property.

5. POLONIZATION OF GERMAN NAMES AND SURNAMES

Citizenship was not the only attribute of the population that remained in the Recovered Territories, which the authorities of the People's Poland wanted to sort out according to their political objectives. Much attention was paid to the issue of German names and surnames and Polish surnames with German spelling. This is a case in which the acts of the internal law of the Ministry of the Recovered Territories played a special role. The formal basis for their change was the Decree of November 10, 1945 on Changing and Determination of Names and Surnames (Dz.U. 1945 nr 56 poz. 310) – a regulation that applied to the entire country. According to its provisions, a surname change was only possible for important reasons, in particular, if the name was disgraceful or ridiculous; if someone took a different surname as a military pseudonym during the fight for

Poland during World War II; if he or she assumed a different surname in order to hide their identity during the German invasion or if they had a non-Polish surname (Art. 3). The name change was possible for similar reasons (Art. 10). Most importantly, in accordance with Art. 1, the change of the name or surname was the subjective right of a Polish citizen. It was to be made only at his or her request. Therefore, it was up to him or her whether he or she will make use of this option or not.

The archival research of the historian Anna Jankowska-Nagórka shows, however, that the practice was different in the western and northern territories. Between 1945–1949, i.e., during the existence of the Ministry of the Recovered Territories, an extensive campaign of Polonization of German or German-sounding indigenous surnames was carried out (Jankowska-Nagórka 2018, 219–220). Historical documents indicate that significant pressure was exerted on the population during this operation, and changes were often made under duress (Jankowska-Nagórka 2018, 225). On what basis were such actions taken if the Decree on the Change and Determination of Names and Surnames established the possibility of changing these personal data as a citizen's subjective right?

The operation was based on Circular No. 22/48 of the MRT on the changing of names and surnames, preserved in the archives but not published even in the Official Journal of the MRT. It contained many solutions to exert pressure on the population and carry out the Polonization campaign as soon as possible and on the largest possible scale. For example, once submitted, a declaration of a name change could not be withdrawn. The officials were supposed to "convince" people who were used to their German surnames but "not showing any ill will" and "make them aware." On the other hand, those showing ill will were to be reported to the county administration. For those reluctant to change their name, sanctions were introduced – a reprimand, changing the apartment for the worse, dismissal from office or a fine of up to 30,000 zlotys (Jankowska-Nagórka 2018, 222).

The operation of changing German surnames in the area of the Recovered Territories is an example of a situation in which separate regulations for the area of the western and northern territories were applied at the level of the internal law of the ministry, which were not only issued without an explicit basis in any decree or statute but, moreover, clearly contradictory with the Decree on the Change and Determination of Names and Surnames binding throughout the country. This decree regulated the change of (also non-Polish) surnames as a citizen's right. Circular No. 22/48 of the MRT treated the Polonization of a German-surname as the duty of a Polish citizen, the avoidance of which could be punished. Perhaps this circular was not published in the Official Journal of the MRT because of the illegality of MRT's actions, even in the context of the legislation of People's Poland.

6. POLONIZATION OF GEOGRAPHICAL NAMES

Another major task of public administration in the Recovered Territories was related to the change of German geographical names to Polish language ones. Such a change was urgent because very few German names had a longer history – many were the direct fruit of Nazi policy. Many geographical names in the western and northern territories for centuries had Slavic roots. However, during the Third Reich, especially between 1937–1938, a mass change of geographical names to Germanic was carried out in order to erase all traces of Slavicness in these areas (Utracki 2013, 50).

It is therefore not surprising that the Minister of Recovered Territories, together with the Minister of Public Administration, issued numerous ordinances on the restoration and establishment of official names of places, e.g. on May 7 (M.P.[4] 1946 nr 44 poz. 85), November 12, 1946 (M.P. 1946 nr 142 poz. 262) and March 15, 1947 (M.P. 1947 nr 37 poz. 297). Such ordinances essentially consisted of tables containing the Polish name, an adjective derived from that name and the former German name.

Why was the Official Gazette of the Republic of Poland, and not the Official Journal of the Ministry of Recovered Territories, the original place of publication of these ordinances? The reason was the legal basis on which the changes to the geographical names were made. It was an act formally binding in the country, one that dated back to before World War II – the Ordinance of the President of the Republic of October 24, 1934 on Establishing Place Names and Property Numbering (Dz.U. 1934 nr 94 poz. 850). Pursuant to this ordinance, the changes of geographical names were made by the Minister of the Interior (after World War II in the Recovered Territories by the Minister of Recovered Territories) through the ordinances published in the Official Gazette of the Republic of Poland (Art. 2). These decisions were to be made on the basis of the recommendations of the Commission for Establishing the Names of Places established pursuant to Art. 3 of the analyzed act, consisting of representatives of state authorities and scientists.

Despite the fact that it formally applied to the entire territory of Poland, the discussed regulation was almost exclusively applied in the Recovered Territories (and in part of Silesia, which was not part of the Recovered Territories but was heavily Germanized during the Nazi occupation). Changes in names in other parts of the country were sparse. They were limited to a few individual ordinances – for example, the Ordinance of the Minister of Public Administration of August 8, 1946 regarding the change of the name of one

[4] M.P. is the Polish abbreviation for the Official Gazette of the Republic of Poland (Monitor Polski). The publication references were left in Polish for the same reasons as in the case of the Journal of Laws of the Republic of Poland.

town in the Kielce Province (M.P. 1946 nr 83 poz. 154) or the Ordinance of the Minister of Public Administration of January 31, 1947, on the change of the name of one housing estate (M.P. 1947 nr 76 poz. 494). The full concentration in the western and northern territories is also confirmed by the organization of the work of the Commission for Establishing Names of Places, which was reactivated after the war. Within this framework, three regional commissions were established. All of them dealt with individual parts of the Recovered Territories (and the aforementioned fragment of Polish but Germanized Silesia) – the first in Silesia, the second in Eastern Pomerania and the third in Western Pomerania and the Lubusz Land (Utracki 2011, 115). Moreover, in practice, the scope of the commission's work was determined by the content of the German topographic map sheets at a scale of 1:100,000 issued after 1933. The commission aimed to replace all German names on this map with Polish names (Gołaski 2008, 46).

The Ordinance of the President of the Republic of Poland of October 24, 1934 on Establishing the Names of Places and Property Numbering was, therefore, a notable example of a legal act created for the entire territory of Poland. It turned out to be particularly useful after 1945, for solving problems related to the situation of the western and northern territories, constituting the legal basis for the activities of the Minister of Recovered Territories.

This preliminary and cursory review of the internal legal acts of the MRT shows that the main areas of the ministry's activities were related to solving problems specific to the western and northern territories, as areas previously belonging to another state – the issues of the acquired property, the local population that remained and a large number of settlers coming to these areas. On the other hand, the Ministry of Public Administration fully replaced the MRT in the western and northern territories, not only in matters specific to these areas. Therefore, circulars on problems that occurred throughout post-war Poland, such as fisheries, allotment gardens and the reconstruction of slaughterhouses, can be found in the Official Journals of the MRT.

At the end of this preliminary analysis of internal legal acts distinct to the western and northern territories, it should be noted that there were also several ordinances issued by other ministers that explicitly concerned these areas, e.g. the Ordinance of the Minister of Supplies and Trade of October 6, 1945 on Disposing of Post-German Goods (Dz.Urz. MZO 1946 nr 1 poz. 22) or the Ordinance of the Ministers of Industry and Treasury of August 25, 1945 on Bank Loans for Starting Industry in the Recovered Territories (Dz.Urz. MZO 1946 nr 1 poz. 20). Their common feature is the date of issue before the formation of the MRT.

7. CITIZENS' GUARD IN THE RECOVERED TERRITORIES

Another notable legal act establishing institutions specific to the western and northern territories was the Decree of March 1, 1946 on the Citizens' Guard in the Recovered Territories (Dz.U. 1946 nr 10 poz. 71). The decree established the Citizens' Guard in rural communes and the so-called non-designated cities (Art. 1). Its tasks included cooperation with the authorities of the Citizens' Militia to ensure security, maintain public order and protect public property, as well as assistance and defense in the event of a threat to the personal safety of fellow citizens or their property (Art. 2). Service in the Citizens' Guard was compulsory and unpaid (Art. 5), with a working time not to exceed sixteen hours a week (Art. 8). While performing their duties, members of this formation had the right to carry firearms (Art. 9) and use them in certain cases (Art. 11 and 12). They also had the right to ID and detain suspects (Art. 10).

Notably, at the same time, another organization supporting the Citizens' Militia was established. The Resolution of the Council of Ministers of February 21, 1946 established the Voluntary Citizens' Militia Reserves (ORMO[5]), the tasks of which were formulated similarly to those of the Citizens' Guard. They were to support the Citizens' Militia in combating banditry, robbery and other crimes, assist its organs and prepare reserves to supplement its ranks (Pączek 2012, 90). However, unlike the Citizens' Guard, service in the ORMO was voluntary (Pączek 2012, 89). The structures of this organization were to be created throughout the country and thus also in the Recovered Territories.

The historian Tomasz Pączek has noted that the motivations behind the creation of the Citizens' Guard are not entirely clear. He raises the question of why the communist authorities decided to take this step if the main organization supporting the security apparatus was to be the ORMO (Pączek 2012, 88). A partial answer can be found in studies on the history of the individual parts of the western and northern territories in the earliest period after World War II. For example, in connection with the problems of maintaining security and order in the Recovered Territories, particularly the large number of thefts and robberies, the Poznań Voivode recommended that the district administrations create civic guard units as early as October 1945 (Rymar 1997, 160). In 1945, the civic guard was also created on the Polish-German border, settled by demilitarized soldiers as part of the so-called military settlement. That formation was to consist of military settlers equipped with weapons (Osękowski 1993, 58).

On the other hand, in Głogów, after the analyzed decree was issued, previously formed self-defense groups were reorganized according to its

[5] ORMO is the Polish abbreviation for Voluntary Citizens' Militia Reserves (Ochotnicze Rezerwy Milicji Obywatelskiej). This abbreviation was widely used and much better known than the full name of this formation.

regulations (Chutkowski 1997, 27). Therefore, it can be surmised that the purpose of issuing the Decree on the Citizens' Guard in the Recovered Territories was not to create new formations but to provide a legal framework for groups that already existed. On the other hand, similar civic guards were also created in other parts of post-war Poland, e.g. in Gostynin (Maciejewski 1980, 7), and their activities were not formalized.

However, in the western and northern territories, the recruitment of volunteers to the ORMO was problematic. For example, in Western Pomerania, the number of members of this organization increased significantly only before the referendum on, inter alia, the agricultural reform planned for June 1946, because then the activists of the Polish Workers' Party began to join it (Kersten 1965, 18). Formalization of the previously existing civic guards in the Recovered Territories – and only there – could have been the result of both greater crime, and the slow organization of ORMO in these areas.

Formally, the Decree on the Citizens' Guard in the Recovered Territories was repealed pursuant to Art. 24 of the Act of June 13, 1967 on the Volunteer Reserve of Citizens' Militia (Dz.U. 1967 nr 23 poz. 108). However, based on the available historical sources, it can be argued that the Citizens' Guard units ceased their activities much earlier. For example, in Gorzów Wielkopolski, the Citizens' Guard appears to have been liquidated at the end of 1946 (Rymar 1997, 161). Therefore, it was another legal institution of a temporary nature, the purpose of which was to solve the problems specific to the Recovered Territories (in this case related to the security), and not to shape a permanent separate legal or factual situation in these areas. It is worth mentioning that, unlike the Citizens' Guard, the ORMO survived until the political transformation.

8. NATIONAL TRIBUTE FOR THE DEVELOPMENT OF THE RECOVERED TERRITORIES

A legal act entirely devoted to the issues of western and northern territories can also be found in tax law. These areas are covered by the Decree of November 13, 1946 on the National Tribute for the Development of the Recovered Territories (Dz.U. 1946 nr 10 poz. 71). Art.1 introduced a "national tribute," which was defined as a universal, one-time levy for "accelerating the development of the Recovered Territories and their economic unification with the Motherland." According to Art. 2 of the decree, the receipts from the "national tribute" could only be used for this purpose. As stated in Art. 3, the obligation to pay this levy was, inter alia, on taxpayers of the real estate tax (equal to the amount of the tax for 1946); turnover tax (also depending on the amount of this tax); land tax, i.e., tax on the agricultural real estate (depending on the size of the farm, the rate being progressive) and tax on wages (depending on the amount of remuneration

– in this case, the rate was also progressive, from 0.5 to 15%). It was possible to be obligated to pay the national tribute for several titles simultaneously (e.g. as a real estate owner receiving remuneration for work). In order to collect this levy, civic commissions of various levels were appointed, from commune and district committees to the main commission operating at the national level.

Contrary to most of the discussed regulations, the Decree on the National Tribute for the Development of the Recovered Territories did not refer to these areas by designating a group of addressees because the obligation to pay the levy was imposed on the inhabitants of all of Poland. The legal instrument was introduced in order to accelerate the development of the western and northern territories.

According to official propaganda, the funds collected as part of this tribute were to express the Polish nation's gratitude toward the Recovered Territories for their contributions to the national economy. It was also referred to as "a response to revisionist German attempts" (*Osadnik na Ziemiach Odzyskanych* 1946, 1). The Prime Minister of the Provisional Government of National Unity called the national tribute to develop the Recovered Territories "a measure of the effort and the resolute will of the nation to maintain the Western Lands" (*Echo Południa* 1946, 1). Bolesław Bierut wanted "the national tribute to transform the Recovered Territories into a [Polish] defensive bastion in the west" (*Jedność Narodowa* 1946, 1). As can be seen, the national tribute for developing the Recovered Territories was of great political importance to the communist authorities. However, on the basis of the available sources, it is difficult to determine its actual significance for the economy and the post-war reconstruction of the western and northern territories. It is impossible to establish what exactly these funds were spent on (Pazgan 2014, 86).

As a one-off levy, the national tribute for the development of the Recovered Territories was another legal instrument of a temporary nature, the purpose of which was to eliminate the differences between the western and northern territories and the rest of Poland, rather than consolidate and deepen them.

9. DECREE ON THE ABANDONED AND POST-GERMAN GERMAN ESTATES

The Ordinance of the President of the Republic of Poland of October 24, 1934 on Establishing Place Names and Property Numbering was not the only legal act that was more significant for the western and northern territories than for the rest of post-war Poland. Art. 2 sec. 1 of the Decree of March 8, 1946 on Abandoned and Post-German Estates (Dz.U. 1946 nr 13 poz. 87) stipulated that all property of the German Reich and the former Free City of Danzig, of citizens of the German Reich and the former Free City of Danzig, with the exception of persons of Polish nationality or any other nationality persecuted by the Germans, and of German

and Danzig's legal persons and companies controlled by German and Danzig's citizens became the property of the state by law. Therefore, the scope of these provisions was defined personally. Nevertheless, it was obvious that they were mainly used in the Recovered Territories where most of the property belonging to German or Danzig citizens, companies and legal persons was located.

In other parts of Poland, such situations were rare; although, of course, in these few cases, the provisions in question also applied. However, Art. 1 of the discussed decree primarily applied to assets located in other parts of the country, which concerned properties abandoned by owners due to warfare. The property was put under state management, but it was transferred to the state only when the owner could not be found and did not make efforts to restore possession within 10 years for real estate and 5 years for movable property (Art. 34). In the case of abandoned estates, the purpose of the legislator's decree was not to nationalize them but to protect the interests of lawful owners (Zawada 2010, 1227).

The Main Liquidation Office and District Liquidation Offices (Section II of the analyzed decree) were established to carry out tasks related to the taking over, securing and handing over to the competent authorities of both abandoned and post-German properties. It is worth pointing out that, in general, the Liquidation Offices were subordinate to the Prime Minister, but those operating in the western and northern territories were subordinated to the Minister of the Recovered Territories.

The Decree on Abandoned and Post-German Estates is, therefore, a legal act in which the application of the provisions was formally dependent on the personal characteristics of specific entities. However, these features were indicated in such a way that, in practice, the regulations were applied mainly in a specific space – that is, the Recovered Territories.

10. THE LAND REFORM IN THE RECOVERED TERRITORIES

Another issue that needs to be discussed is the legal regulation of land reform. It was one of the main points of the political program of the authorities of People's Poland. It is even sometimes called its founding myth (Kowalski 2014). Its conduct was already announced in the declaration of the Central Committee of the Polish Workers' Party of March 1, 1943. This plan was confirmed in the Manifesto of the Polish Committee of National Liberation (PKWN) of July 22, 1944 – the first official document of the emerging authorities of post-war Poland, the content of which was approved by the Soviet authorities (Jastrzębski 2018, 121–122). The legal implementation of this postulate was the Decree of the PKWN of September 6, 1944 on the Implementation of the Land Reform (Dz.U. 1944 nr 4 poz. 17). According to Art. 2, for the purposes of reform, agricultural real estates owned by natural persons were allocated if their size exceeded 100 ha of the total area of 50 ha of agricultural land. However, another point of this article stated that

the land estate of citizens of the German Reich and Polish citizens of German nationality would be designated for the purposes of the land reform regardless of their size. Thus, similar to the above-mentioned Decree on Abandoned and Post-German Estates, the scope of application of the provisions was formally defined by indicating the personal characteristics of specific entities. However, in most cases, the differences in its application essentially coincided with the borders of the western and northern territories.

Pursuant to the Decree on the Administration of the Recovered Territories, the validity of the Decree of the PKWN on the Land Reform was formally extended to the western and northern territories on November 13, 1945 (Michałowski 2012, 358). However, less than a year later, a separate legal act devoted to the agricultural reform for these areas was issued – the Decree of September 6, 1946 on the Agricultural System and Settlement in the Recovered Territories and the Former Free City of Danzig (Dz.U. 1946 nr 49 poz. 279). Art. 1 stipulated that all agricultural land and estates related to agriculture were to be taken over. However, it is worth pointing out that a large portion was already state-owned on the basis of earlier decrees. Therefore, in practice, these regulations extended the nationalization to only certain categories of real estate, e.g. real estate owned by the German local government (Michałowski 2012, 358). Separate regulations for the Recovered Territories contained certain procedural and formal differences regarding the implementation of the land reform in these areas that corresponded to specific local needs. For example, the institution of the land reserve was regulated in detail (section I of the decree) probably because, unlike other areas of Poland, there was more free land in the western and northern territories than settlers willing to take it, at least initially.

A significant change was introduced by Art. 9 of the discussed decree. The area of farms granted under the agricultural reform in the western and northern territories was increased from 5 to 7–15 ha and as much as 20 ha in the case of livestock farms. This provision adjusted the land reform principles to the specific nature of those areas where there was more free land to be settled. The possibility of obtaining a larger farm served as an incentive for the settlers.

Art. 18 of the analyzed decree gave priority to obtaining a farm for demobilized soldiers who fought for Poland during the war, including war invalids; widows and orphans of those who died in this fight; repatriates, i.e., people who came, among others from the territories of the Second Polish Republic that remained outside the new Polish borders after World War II, as well as owners of small farms in other parts of Poland. The possibility of receiving a farm was therefore not only a form of compensation for fighting during the war and the losses incurred in connection with that fight, but also an incentive for people who lost their farms due to the shifting of Poland's borders to move to these areas and for those who had farms too small to make a living off of them. The Decree on the Agricultural System and Settlement in the Area of the Recovered Territories

and the Former Free City of Danzig implemented the same political idea that stood behind the Decree of the Polish Committee of National Liberation on the Implementation of the Agricultural Reform, taking into account the separate specificity of the western and northern territories.

11. CONCLUSIONS

The above examples of separate regulations for the Recovered Territories do not exhaustively describe the entirety of such legislation. For the history of law, this work only constitutes preliminary research. However, the analysis of the cases discussed above already allows some general conclusions to be drawn.

Separate legal regulations concerning the Recovered Territories were introduced into the People's Poland's legal system in various ways. These were separate decrees, separate regulations in decrees concerning the entire country, and numerous acts of internal law, the role of which sometimes turned out to be much more significant than their place in the hierarchy of sources of law would indicate.

However, a common feature of the vast majority of provisions that differentiated the legal situation of the Recovered Territories and the rest of the territory of People's Poland can be indicated – their temporal limitations. Some already contain declarations that established solutions for a transitional period (e.g. the Decree on the Administration of the Recovered Territories). Others, such as the Decree on the National Tribute for the Development of the Recovered Territories, granted the authorities a competence to be used only once. Another group of legal acts, for example, those related to the settlement and establishment of farms, regulated certain processes that were assumed to be carried out and completed, creating a permanent, stable situation.

The separate legal regulations for the Recovered Territories from the first years of the history of People's Poland did not result from the fact that the authorities wanted to differentiate the social or economic situation in these areas and the rest of the country. On the contrary, it was the already existing significant differences that influenced the law-making process. The provisions that were introduced on an ad hoc basis responded to problems unique to the western and northern territories, leading, in the long run, to a situation where they would no longer be needed – because the law could be uniform for the whole People's Poland. This was the goal of its authorities, whose intention was not to create any regional distinctiveness.

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Legislation

Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. o ustaleniu nazw miejscowości i o numeracji nieruchomości [Ordinance of the President of the Republic of Poland of October 24, 1934 on Establishing Names of Places and on Property Numbering] (Dz.U. 1934 nr 94 poz. 850).

Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 6 września 1944 r. o przeprowadzeniu reformy rolnej [Decree of the Polish Committee of National Liberation of September 6, 1944 on the Land Reform] (Dz.U. 1944 nr 4 poz. 17).

Zarządzenie Ministrów Przemysłu i Skarbu z dnia 25 sierpnia 1945 r. w sprawie kredytów bankowych dla uruchomienia przemysłu na Ziemiach Odzyskanych [Ordinance of the Ministers of Industry and Treasury of August 25, 1945 on Bank Loans for Starting Industry in the Recovered Territories] (Dz.Urz. MZO 1946 nr 1 poz. 20).

Zarządzenie Ministra Aprowizacji i Handlu z dnia 6 października 1945 r. w sprawie dysponowania towarami poniemieckimi [Ordinance of the Minister of Supplies and Trade of October 6, 1945 on Disposing of Post-German Goods] (Dz.Urz. MZO 1946 nr 1 poz. 22).

Dekret z dnia 10 listopada 1945 r. o zmianie i ustalaniu imion i nazwisk [Decree of November 10, 1945 on Changing and Determining Names and Surnames] (Dz.U. 1945 nr 56 poz. 310).

Zarządzenie Ministra Ziem Odzyskanych z dnia 22 lutego 1946 r. w sprawie zakazu wywozu mienia ruchomego z Ziem Odzyskanych [Ordinance of the Minister of the Recovered Territories of February 22, 1946 Concerning Prohibiting the Removal of Movable Property from the Recovered Territories] (Dz.Urz. MZO nr 1 poz. 2).

Dekret z dnia 1 marca 1946 r. o Straży Obywatelskiej na obszarze Ziem Odzyskanych [Decree of March 1, 1946 on the Citizens' Guard in the Recovered Territories] (Dz.U. 1946 nr 10 poz. 71).

Dekret z dnia 8 marca 1946 r. o majątkach opuszczonych i poniemieckich [Decree on Abandoned and Formerly German Estates] (Dz.U. 1946 nr 13 poz. 87).

Zarządzenie Ministra Ziem Odzyskanych z dnia 24 marca 1946 r. w sprawie przeprowadzenia spisu poniemieckiego mienia ruchomego [Ordinance of the Minister of the Recovered Territories of March 24, 1946 on the Inventory of Post-German Movable Property] (Dz.Urz. MZO 1946 nr 3 poz. 25).

Zarządzenie Ministra Ziem Odzyskanych z dnia 6 kwietnia 1946 r. w sprawie trybu stwierdzania polskiej przynależności narodowej osób zamieszkałych na obszarze Ziem Odzyskanych [Ordinance of the Minister of the Recovered Territories of April 6, 1946 on the Procedure of Confirming Polish Nationality of Persons Residing in the Recovered Territories] (Dz.Urz. MZO 1946 nr 4 poz. 26).

Ustawa z dnia 28 kwietnia 1946 r. o obywatelstwie Państwa Polskiego osób narodowości polskiej zamieszkałych na obszarze Ziem Odzyskanych [Act of April 28, 1946 on the Citizenship of the Polish State of Polish Nationals Residing in the Recovered Territories] (Dz.U. 1946 nr 15 poz. 106).

Zarządzenie Ministrów: Administracji Publicznej i Ziem Odzyskanych z dnia 7 maja 1946 r. o przywróceniu i ustaleniu urzędowych nazw miejscowości [Ordinance of the Ministers of Public Administration and Recovered Territories of May 7, 1946 on the Restoration and Establishment of Official Names of Places] (M.P. 1946 nr 44 poz. 85).

Zarządzenie Ministra Ziem Odzyskanych z dnia 12 maja 1946 r. w sprawie premiowania osób, które przyczyniły się do wykrycia ukrytych remanentów poniemieckich lub do zatrzymania nielegalnie wywożonego mienia z terenu Ziem Odzyskanych [Ordinance of the Minister of the Recovered Territories of 12 May 1946 on Awarding Bonuses to Persons who Contributed to the Detection of Hidden post-German Inventories or to the Seizure of Property Illegally Removed from the Recovered Territories] (Dz.Urz. MZO 1946 nr 4 poz. 28).

Zarządzenie Ministra Administracji Publicznej z dnia 8 sierpnia 1946 r. o zmianie nazwy miejscowości "Parszywka" w gminie "Góry", powiecie pińczowskim, województwie kieleckim, na "Orkanów" [Ordinance of the Minister of Public Administration of August 8, 1946 on Changing the Name of the Village "Parszywka" in the Borough of "Góry", Pińczów County, Kielce Voivodeship, to "Orkanów"] (M.P. 1946 nr 83 poz. 154).

Rozporządzenie Ministrów: Administracji Publicznej i Ziem Odzyskanych z dnia 12 listopada 1946 r. o przywróceniu i ustaleniu urzędowych nazw miejscowości [Ordinance of the Ministers of Public Administration and Recovered Territories of November 12, 1946 on the Restoration and Establishment of Official Names of Places] (M.P. 1946 nr 142 poz. 262).

Dekret z dnia 13 listopada 1946 r. o daninie narodowej na zagospodarowanie Ziem Odzyskanych [Decree of November 13, 1946 on the National Tribute for the Development of the Recovered Territories] (Dz.U. 1946 nr 61 poz. 341).

Okólnik Ministerstwa Ziem Odzyskanych nr 28, 16 marca 1946 r. [Circular of the Ministry of Recovered Territories No. 28, March 16, 1946] (Dz.Urz. MZO 1946 nr 4 poz. 38).

Rozporządzenie Ministra Administracji Publicznej z dnia 31 stycznia 1947 r. o zmianie nazwy osiedla "Boernerowo" na "Bemowo" [Ordinance of the Minister of Public Administration of January 31, 1947 on Changing the Name of the Estate "Boernerowo" to "Bemowo"] (M.P. 1947 nr 76 poz. 494).

Rozporządzenie Ministrów: Administracji Publicznej i Ziem Odzyskanych z dnia 15 marca 1947 r. o przywróceniu i ustaleniu urzędowych nazw miejscowości [Ordinance of the Ministers of Public Administration and Recovered Territories of March 15, 1947 on the Restoration and Establishment of Official Names of Places] (M.P. 1947 nr 37 poz. 297).

Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r. [The Constitution of the People's Republic of Poland adopted by the Legislative Sejm on July 22, 1952] (Dz.U. 1952 nr 33 poz. 232).

Ustawa z dnia 13 czerwca 1967 r. o Ochotniczej Rezerwie Milicji Obywatelskiej [Act of June 13, 1967 on the Volunteer Reserve of Citizens' Militia] (Dz.U. 1967 nr 23 poz. 108).

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LAND USE AND FACILITIES AND THE SPATIAL DISTRIBUTION OF URBAN PROPERTY CRIME

Abstract. The main research problem of this article is to check whether and how selected land use and facilities influence the spatial distribution of different kinds of urban thefts (and burglary) in Krakow. The analysis uses data on all crimes committed in Krakow in the years 2016–2018. Its results are generally consistent with the results of other similar studies in so far as they indicate a relationship between the increased criminal activity of perpetrators and the availability of potential victims or objects of attack. Both the higher density of crimes in general and theft in general occurred above all in facilities or in the immediate vicinity of facilities which accumulate large communities for various purposes (activity nodes) or in places which produce the high intensity of people flows (communication nodes). One land use and facilities coexist with an increased density of all types of thefts, while others coexist only with some of them. The results, however, seem inconsistent with the rational choice theory assumptions as high crime density rates were observed in the immediate vicinity of public and private monitoring cameras, as well as within 50 meters of police stations.

Keywords: crime mapping, spatial analysis of crime, spatial statistics, geographic information systems (GIS), property crime.

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FORMY I FUNKCJE ZAGOSPODAROWANIA PRZESTRZENI MIEJSKIEJ A PRZESTRZENNY ROZKŁAD PRZESTĘPSTW PRZECIWKO MIENIU

Streszczenie. Głównym problemem badawczym niniejszego artykułu jest sprawdzenie, czy i w jaki sposób wybrane formy i funkcje zagospodarowania przestrzeni miejskiej wpływają na rozmieszczenie kradzieży oraz kradzieży z włamaniem. W analizie wykorzystano dane dotyczące przestępstw zarejestrowanych w latach 2016–2018 w obrębie administracyjnych granic miasta Krakowa. Rezultaty przeprowadzonych badań są zasadniczo zgodne z wynikami podobnych analiz w zakresie, w jakim wskazują one na związek pomiędzy wzmożoną aktywnością przestępczą sprawców a dostępnością potencjalnych ofiar lub obiektów ataku. Większe zagęszczenie zarówno przestępstw ogółem, jak i kradzieży ogółem występowało przede wszystkim w tych obiektach lub bezpośredniej bliskości obiektów, które w różnych celach gromadzą duże zbiorowości (węzły aktywności) lub są miejscem licznych przepływów ludzkich (węzły komunikacji). Co jednak istotne, jedne tego typu funkcje zagospodarowania współwystępują ze zwiększonym zagęszczeniem wszystkich typów kradzieży, inne zaś jedynie niektórych z nich. Wyniki niniejszych badań nie pozostają natomiast w zgodzie z podstawowym założeniem teorii racjonalnego wyboru, wskazując na wysokie zagęszczenie przestępstw w bezpośrednim sąsiedztwie kamer monitoringu publicznego i prywatnego, jak również w odległości do 50 metrów od komisariatów policji.

Słowa kluczowe: mapy przestępczości, analiza przestrzenna przestępczości, statystyka przestrzenna, system informacji geograficznej (GIS), przestępczość przeciwko mieniu.

The influence of spatial factors on crime distribution has been explored for over two centuries.[1] Nonetheless, contemporary advanced crime mapping tools enable more complex and in-depth analyses than were available to the researchers of the cartographic school and the Chicago school of criminology. The GIS-based software not only allows to identify crime patterns and clusters, but also to understand the relationships between crime and the socio-demographic, architectural, urban, and functional characteristics of its location. Regrettably, utilization of these tools is still rather uncommon among Polish researchers and, in particular, our criminologists.[2] This primarily results from the virtual lack of cooperation of the police and other public security institutions with academia. In consequence, even the few organizations that have proper access to the crime mapping software are unable to fully utilize its potential, and their personnel lack qualifications to make use of the collected data. On the other hand, the researchers who possess the required knowledge and competence are usually denied access

[1] Andre-Michel Guerry and Adriano Balbi compiled the *Moral Statistics of France*, presenting the spatial distribution of crime and other anti-social behaviours (Friendly 2007).

[2] In Poland, they have been utilized mostly by social geographers, but relevant empirical studies are scarce (for the most current review of Polish empirical research on crime mapping see Mordwa 2016 and Lisowska-Kierepka 2019).

to databases.[3] This present study is thus one of a few Polish attempts to utilize the crime mapping tools in crime spatial analysis.

Crime mapping analyses assume that each location constitutes a different microenvironment characterised by the socio-economic status of its inhabitants and users, the efficiency of formal and informal social control, the level of social cohesion, the frequency of incivilities, the architectural and urban design, and spatial development. All these factors can influence the given location's vulnerability to crime and public order disturbance. The most influential theories of criminal aetiology, which consider spatial factors, fall into two groups. First are the creators and followers of the Chicago school focus upon the characteristics of a community that inhabits or permanently uses a given area (its socio-economic status, racial, ethnic and cultural heterogeneity, rental instability, geographic mobility, etc.). The so-called social ecologists explored the environment's influence on the integration of individuals with the (local) community, and thus on the distribution of anti-social behaviours. Some of the best-known theories of this kind include the social capital theory (Rosenfeld et al. 2001), the social cohesion theory (Hirschfield and Bowers 1997), and the collective efficacy theory (Morenoff et al. 2001). Conversely, the research presented in this paper is much closer to the views of the second group, so-called environmental criminologists, who traced the varied spatial distribution of crime to the environment's physical, architectural, urban, and functional features, as well as to its usage patterns.[4] Some of the most influential theories of this kind include the routine activities theory, the rational choice theory, and the crime pattern theory.

The routine activities theory assumes that crime is more likely to occur when three elements converge in space and time: a suitable target, a motivated offender, and a lack of a capable guardian (Cohen and Felson 1979). However, at the same time, this theory presents the relationship between crime distribution and the activities of space administrators (landlords, tenants, managers). The number of crime opportunities also stems from attention to the quality of formal and informal

[3] According to Feng et al. (2006), it is noteworthy that research into urban crime space in Western literature mainly focuses on developed countries, and many theoretical prototypes are also associated with developed countries. This applies in particular to Anglo-Saxon countries, where the flourishing of crime mapping is largely the result of close and long-standing cooperation between the police or other public security institutions and the academia (naturally, economic factors are also relevant). In recent years, more works from other parts of the world have been published (Sarangi and Youngs 2006) and China (Liu 2005), but still not many of them authored in developing countries of Central-Eastern Europe.

[4] While there is a tendency within the literature to consider environmental criminology and social ecology as competing conceptual frameworks (Braga and Clarke 2014), the perspectives can have joint utility for crime analysis. In particular, observations from crime-and-place research suggest that understanding community-level context may help explain some of the more nuanced research findings (Piza et al. 2017).

social control and adequate security, e.g. intercoms, surveillance cameras, lighting, the work of porters or security companies; and CPTED solutions.

The rational choice theory assumes that an individual offender, who decides to commit a crime in a specified place and time, intends to maximize the potential value to be gained by committing the act and to minimize their effort and the chances of getting caught (Cornish and Clarke 1986). The offender's decision is a result of informed consideration and weighing the costs, benefits, and risks of committing a particular crime, and thus the characteristics and purpose of the place of offence are very important for his or her decision (Hayward 2007). The rational choice theory – just as environmental criminology in general – is heavily oriented towards the situational aspects of crime. Its practical implications are situational crime prevention strategies. These include any activity of guardians, which increases the effort put into the crime by the perpetrator in order to achieve the assumed goal by: (a) increasing perceived risks, (b) reducing anticipated rewards, (c) removing excuses, and (d) increasing perceived effort (Clarke 1997).

Crime pattern theory can be considered a development of the above two theories: urban space planning sets patterns of everyday behaviour of individuals functioning in that space, and shapes the circumstances of their interactions, thus contributing to the supply of crime opportunities. The rational perpetrator selects the target of attack within the so-called action space, the boundaries of which are essentially determined by the daily routine of the perpetrator himself, as well as the potential victims of the crime (Brantingham and Brantingham 1981). In this space, three key types of areas carrying an increased risk of victimization have been identified: nodes, where many people gather simultaneously for a specific purpose, e.g. learning, work, leisure, entertainment (e.g. home, work, school, shopping centres, communication nodes); paths connecting individual nodes (e.g. to/from school, work, shopping, recreational activities, etc.) and edges – real or imagined boundaries separating spaces significantly differing in terms of their development or functions. It has been empirically confirmed that crime – in particular against property – is often concentrated along well-travelled routes (e.g. main streets, but also near public transport stops), in nodal places where large numbers of people gather for various purposes and in zones located near the edges, where crime opportunities occur more often (e.g. due to the fact that the presence of strangers, including potential offenders, in the "border area" between two different areas may easily go unnoticed) (Higgins and Swartz 2018).

Also, bearing in mind the appeal of a given area as a space for a potential criminal attack, the following were distinguished: crime generators – places that favour crime through the attraction of large numbers of people (e.g. stations, tourist attractions, boardwalks, and business/shopping streets, facilities and areas dedicated to the organization of mass events, popular recreational areas); crime attractors – places where criminal opportunities are well known to offenders (e.g. bars and nightclubs, large-scale shopping facilities, unguarded car parks); in

particular, they attract multiple perpetrators (repeat offenders); crime detractors – areas which, for various reasons, discourage the perpetrator from committing prohibited acts, e.g. due to the high quality or number of safeguards or the lack of potential subjects or objects of crime (e.g. monitored areas, fenced estates or areas constantly patrolled by the police) (Sypion-Dutkowska 2014; Higgins and Swartz 2018).

The results of research to date suggest that the factors which increase the amount of property crime, are above all:

– public transportation nodes, e.g. public communication stops, metro stations, bus or train stations (Feng, Dong and Song 2016; Kennedy and Caplan 2012; Loukaitou-Sideris, Liggett and Iseki 2002; McCord and Ratcliffe 2009; Poister 1996);

– commercial centres, e.g. supermarkets, shopping centres, shopping streets, markets (Brantingham and Brantingham 1995; Brantingham and Brantingham 1981, Kinney et al. 2008, LaGrange 1999; Lu 2006; Skubak Tillyer and Walter 2019);

– residential parcels (Kennedy and Caplan 2012; Lu 2006; Roncek, Bell and Francik 1981);

– unguarded car parks (Lu 2006);

– eating establishments, e.g. restaurants, fast food bars (Brantingham and Brantingham 1995; Brantingham and Brantingham 1981);

– places of alcohol distribution, e.g. pubs, bars, and liquor stores (Toomey et al. 2012; Wechsler et al. 2002);

– drug dealing locations (Ratcliffe and Taniguchi 2008; Kennedy and Caplan 2012);

– buildings and locations used as sport facilities, e.g. sport clubs, stadiums (Brantingham and Brantingham 1995; Kurland et al. 2014; Ristea et al. 2018);

– youth hangouts/youth clubs (Brantingham and Brantingham 1995);

– education institutions e.g. schools, universities (Kinney et al. 2008; LaGrange 1999);

– pawnshops (Kennedy and Caplan 2012).

Sypion-Dutkowska and Leitner (2017) have recently carried out a thorough review of previous most important research on the influence of numerous, different land use types on crime distribution. It led them to the conclusion that the results of previous studies are ambiguous and provide only fragmentary knowledge, and that further research in this field is needed. In addition, the authors themselves conducted one of the few surveys in Poland, taking into account the numerous land use and facilities in relation to numerous categories of crime. Referring to the assumptions of crime pattern theory, they pointed out the main crime attractors (alcohol outlets, clubs and discos, cultural facilities, municipal housing, and commercial buildings) and detractors (grandstands, cemeteries, green areas, allotment gardens, and depots and transport base). The also noted that the influence

of land use types analyzed is usually limited to their immediate surroundings (i.e. within a distance of 50 m) especially when it comes to commercial crimes and theft of property.

1. METHODOLOGY

The main research problem of this article is to check whether and how selected land use and facilities influence the spatial distribution of different kinds of urban thefts (and burglary) in Kraków. The analysis uses data on crimes committed in Kraków gathered by the Municipal Police Headquarters in Kraków. The data comes from the Electronic duty logbook kept by police, which contains information about all types of crimes.

Data

According to the data gathered by Municipal Police Headquarters in Kraków, in the years 2016–2018 49,198 crimes were registered, including 47,769 crimes that were committed in that period.[5] In this paper, an analysis of the latter, namely crimes that were committed from 2016 to 2018, is presented. Because the main purpose of the analysis was to determine the relationship between different types of urban space development and property crimes, certain types of property crimes were distinguished. Namely, all types of thefts and burglaries were subjected to analysis. Theft was defined as larceny – a crime involving the unlawful taking of the personal property[6] – and burglary was identified as an unlawful entry into a building or other location for the purposes of committing theft.[7] Additionally, separate analyses of pickpocketing, bicycle thefts, vehicle thefts, vehicle burglaries, home or apartment burglaries and commercial building burglaries were carried out.

Pickpocketing is distinguished based on *modus operandi* – thefts of pickpocketing are thefts that involve pulling something out of a pocket, backpack or purse. Bicycle thefts are defined simply as the unlawful taking of other people's bicycles. Vehicle thefts are thefts that involve the unlawful taking of someone else's vehicle (mainly car) or property from that vehicle; and vehicle burglaries are car thefts that involve breaking in. Finally, home or apartment burglaries and commercial building burglaries are examples of burglaries committed in particular locations – respectively in residential and commercial buildings.

[5] The difference between the number of registered crimes and the number of committed crimes is due to the fact that some crimes are reported or discovered (and thus registered) with a delay.

[6] Art. 278 of the Polish Criminal Code.

[7] Art. 279 of the Polish Criminal Code.

Crime data took the form of geographical coordinates and addresses describing specific points on the map. The table below contains information about the number of all property crimes included in the analysis.

Table 1. Number of incidents registered in 2016–2018[8]

Type of property crime	Number
Theft (all types)	14,423
Pickpocketing	4,282
Bicycle theft	1,333
Vehicle theft	1,091
Burglary (all types)	3,889
Vehicle burglary	1,167
Home or apartment burglary	813
Commercial building burglary	319
All crimes	47,769

Furthermore, in the course of the analysis, spatial data on selected elements of urban space were used. To be more precise, information about various building development functions was listed, as well as data on the following points in space: police stations, public CCTV cameras, private CCTV cameras, ATMs, public transport line routes, green areas, cemeteries, gas stations, churches and chapels. Except for the data on the location of churches and chapels – which were obtained through OpenStreetMap[9] – all spatial data on elements of urban space, including data on building development, were obtained from the Department of Security and Crisis Management in Kraków.

Data regarding police stations, public CCTV cameras, private CCTV cameras, ATMs and petrol stations were listed in the form of geographical coordinates and addresses describing specific points on the map. Data on development functions of buildings, green areas, cemeteries, churches and chapels were presented in the form of polygons representing particular locations on the map. And data regarding routes of public transport lines were presented in the form of polylines (polygonal chain), i.e. connected series of line segments.

Basic information for all urban space elements included in the analysis are summarised in Table 2. Data regarding the building development function are presented in a separate table (see Table 3).

[8] All tables and figures are the authors' own elaboration.

[9] Page source: https://overpass-turbo.eu/

Table 2. Elements of urban space taken into account in analysis

Element of urban space	Type of vector data	Number
Police stations	points	9
Public CCTV cameras[10]	points	184
Private CCTV cameras	points	2,384
Green areas	polygons	1,292
Cemeteries	polygons	16
ATMs	points	454
Public transport line routes	polylines	148
Gas stations	points	107
Churches and chapels	polygons	198

There are nine building development functions[11] included in the analysis: residential buildings; production, service and utility buildings; commercial buildings; transport and communications buildings; industrial buildings; buildings used as education, science, culture and sport facilities; offices; tanks, silos and warehouses; hospitals, medical care facilities. "Residential buildings" constitute the most numerous category (40% of all buildings), containing buildings where at least half of the floor space is used for residential purposes. The second most numerous category of building development function contains "production, service and utility buildings," which in Kraków primarily includes allotment gardens and utility buildings such as storage houses e.g. garages or sheds, located in residential areas.

A similar number of buildings was classified as either "commercial" or "transport and communications buildings." The first group of buildings comprises markets, flea markets, shopping centre, and independent stores and boutiques. While the category of "transport and communications buildings" consists of e.g. public transport stations (railway stations, bus stations), tram and bus depots, garage buildings and parking buildings, "industrial buildings" are mostly factories, production facilities and workshops. The category of "buildings used as education, science, culture and sport facilities" is very broad and contains facilities such as universities, schools, kindergartens, museums, and cinemas, theatres, botanic gardens, stadiums and sports halls. The "office" label is reserved for banks, post offices, courts, city offices, public administration buildings and private company offices. "Tanks, silos and warehouses" are simply tanks, silos, warehouse buildings and other storage spaces. Last but not least, "hospitals, medical care facilities" are

[10] Data for the end of 2018.

[11] All of the above functions are described in detail in the Classification of Fixed Assets established by the Regulation of the Council of Ministers in 2016. http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160001864/O/D20161864.pdf

buildings of hospitals and medical care facilities in which medical and nursing services are provided.

Table 3. Building development functions taken into account in analysis

Building development function	Number of polygons	Area (m^2)
Residential buildings	51,865	23,718,335.774
Production, service and utility buildings	22,318	12,648,356.658
Commercial buildings	2,822	2,187,422.706
Transport and communications buildings	2,739	2,997,290.923
Industrial buildings	1,440	401,129.400
Buildings used as education, science, culture and sport facilities	978	3,842,020.902
Offices	902	2,060,319.462
Tanks, silos and warehouses	775	1,202,655.553
Hospitals, medical care facilities	247	1,201,219.875
Other non-residential buildings	39,186	524,377.012
Total	**123,272**	

Analysis

In order to find the causes for differences in the spatial distribution of particular property crimes, two types of analyses were conducted. The first one consisted of density calculation of the particular types of property crimes within seven areas of the potential impact of all included factors. These areas were determined by creating, for each element (point, polyline or polygon), seven buffers at the following distances: 0–20 m, 20–50 m, 50–100 m, 100–200 m, 200–300 m, 300–400 m and 400–500 m.[12] After that, the spatial combination[13] of data on property crimes and data on buffers for all factors was made. As a result, information about the number of the particular types of crimes that were committed during the examined period within the buffers was obtained. These numbers were divided by buffers areas and multiplied by 1,000. The density coefficients calculated in this way were presented in the form of graphs (see Fig. 1–9).

The second type of analysis was an analysis of density of particular property crimes in different types of buildings. For the purposes of such analysis, spatial data on building development functions were used. Similarly to the first analysis, a spatial combination of data on selected types of crime and data on buildings

[12] Calculations were performed with the ArcGIS Pro software (the *Multiple Ring Buffer* tool).

[13] The *Spatial Join* tool was used – a GIS operation that affixes data from one feature layer's attribute table to another from a spatial perspective.

was made, but this time the areas of potential impact (in the form of buffers) were not taken into account. This operation resulted in obtaining information about the number of thefts, burglaries and all crimes committed in particular types of buildings (see Table 1). In order to get the coefficient in the form of the number of crimes per 1 ha, obtained numbers were divided by the area of the particular types of buildings (see Table 3) and multiplied by 1,000. Moreover, to enable comparison, coefficients for different types of crimes have been standardized and the results of this standardization were presented in the form of a graph (see Fig. 10–18).

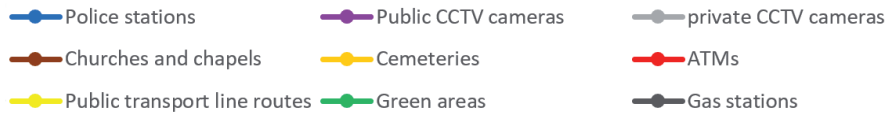
It is important to notice that two parts of the analysis described below use two different types of data: (1) points (cameras, police stations, gas stations, ATMs), lines (transport routes) and polygons (cemeteries, green areas, churches and chapels), in the case of selected, characteristic points in space, and (2) polygons, in the case of building development functions. The distance referred to in the analyses is the distance from a certain point or from borders of the polygon, which significantly affects the nature of the first of the value range taken into account in the study. At a distance of 20 m from a point that represents a large-area building, events in this buffer area can be either inside this object or in its immediate vicinity. A distance of 20 m from the polygon's borders means that these events take place beyond it. Therefore, in the text, we use expressions referring to the relationship of proximity, and not to „being contained within."

2. RESULTS

The analyses carried out allow for an interesting insight into the relationship between different types of property crimes and various functions of property development, as well as points in space such as police stations, public CCTV, private CCTV, ATMs, public transport line routes, green areas, cemeteries, gas stations and churches/chapels (hereinafter referred to as "factors"). The results of the analyses will be presented in this subsection as follows: first, the identified relationship between property crimes and the above-mentioned characteristic points in space will be discussed, initially as a whole, and then broken down into individual types of crime. Then, a similar formula will present the relation of property crimes with building development functions. The description of the results will be accompanied by their graphical representation.

Theft Density within the Areas of Influence of Selected Factors

The following charts graphically present the results of the analyses carried out. They should be interpreted with the following key:



A more detailed description of the results is provided further in this section.

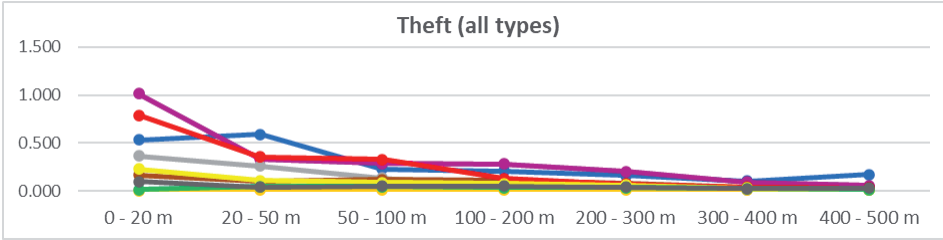


Figure 1. Theft density within the areas of influence of selected factors

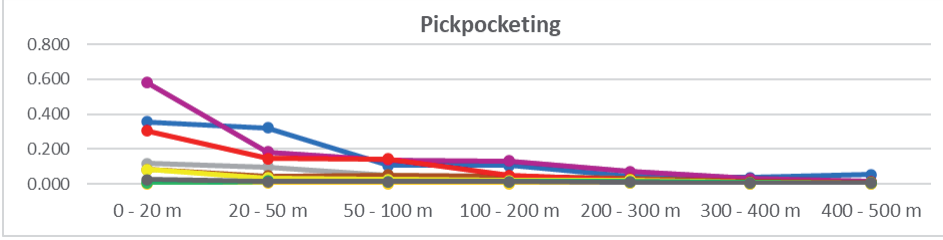


Figure 2. Pickpocketing density within the areas of influence of selected factors

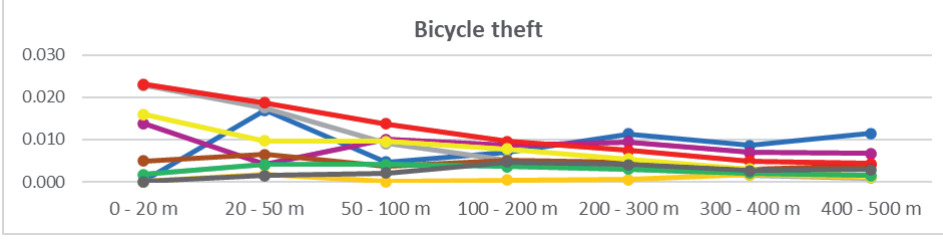


Figure 3. Bicycle theft density within the areas of influence of selected factors

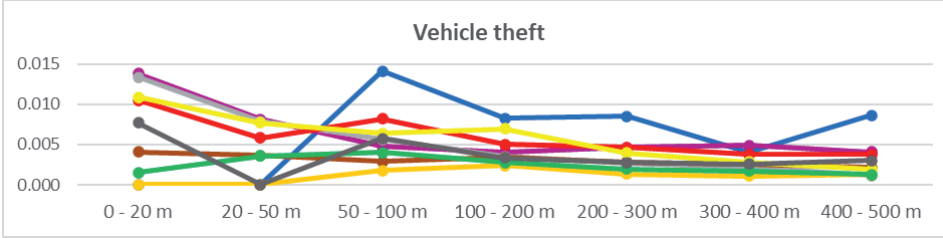


Figure 4. Vehicle theft density within the areas of influence of selected factors

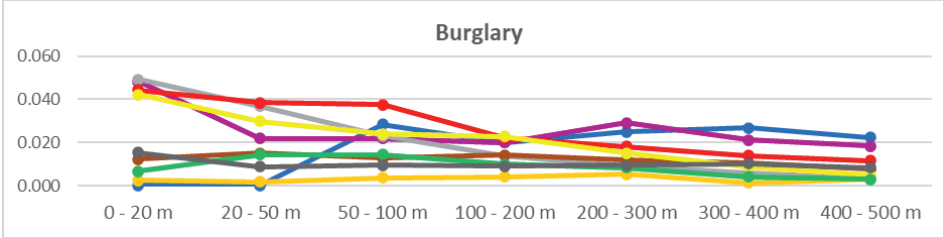


Figure 5. Burglary density within the areas of influence of selected factors

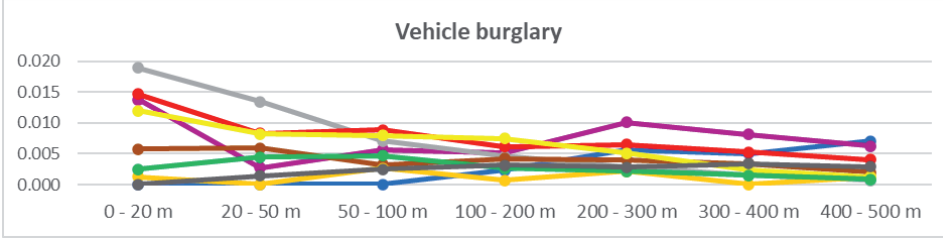


Figure 6. Vehicle burglary density within the areas of influence of selected factors.

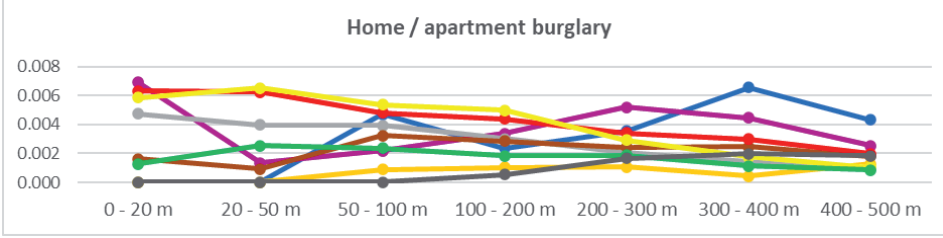


Figure 7. Home/apartment burglary density within the areas of influence of selected factors

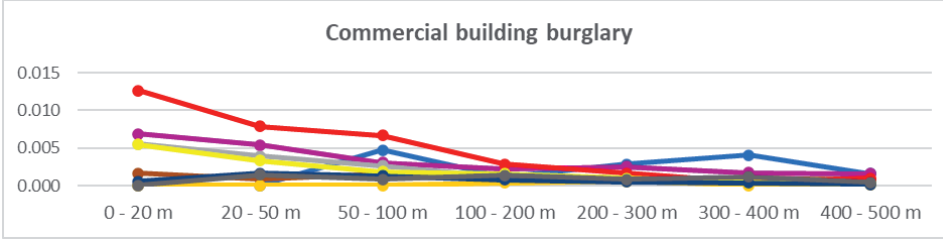


Figure 8. Commercial building burglary density within the areas of influence of selected factors

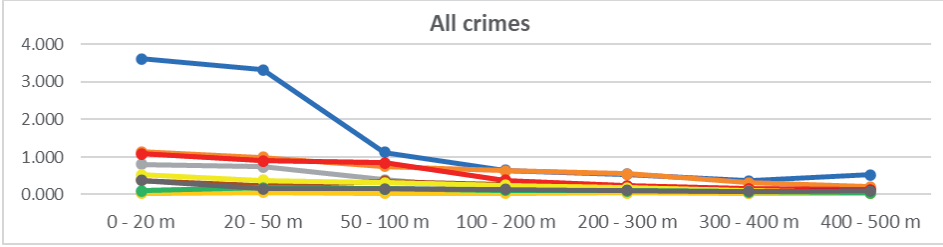


Figure 9. Crime density within the areas of influence of selected factors

An analysis of the density of theft (all types combined) in relation to their distance from selected, characteristic points in space shows that a greater density of these types of incidents in Kraków can be observed primarily within 20 m from public CCTV cameras and ATMs, and 50 m from police stations. Other factors whose proximity coexists with greater density of thefts, are the locations of private CCTV cameras and, to a lesser extent, the direct proximity of public transport line routes.

In the case of pickpocketing, the highest density of these types of events is related to the direct proximity of city monitoring cameras. The proximity of ATMs, police stations and public transport line routes is associated with pickpocketing to a smaller, but still significant extent.

Bicycle theft is a very specific type of theft, which is more difficult to analyze due to its relatively small number. The results, in this case, are ambiguous. The highest density of these types of incidents occurred in Kraków in the area up to 50 m from the nearest ATM and a private CCTV camera, in direct proximity (up to 20 m) of public transport line routes and public CCTV cameras, and 20–50 m from the police stations. A very small reverse relation may be observed with bicycle theft and distance from gas stations – there are slightly more thefts of this kind further from those facilities than in their direct proximity.

The density of vehicle theft in Kraków is the greatest in the direct proximity of private and public CCTV cameras, public transport line routes, ATMs and gas

stations. Especially noteworthy is the very low density of these types of incidents at a distance of up to 50 m from the police station and relatively large at greater distances from these facilities.

Burglary, just like vehicle theft, is characterized by a very low density of incidents within 50 m of the nearest police station. Factors, which co-occur with increased burglary density, are the proximity of private and public CCTV cameras at a distance of 50 m, ATMs (up to 100 meters distance) and communication line routes (mostly up to 50 m, but also – to a lesser extent – up to 200 m).

The density of vehicle burglary is the greatest within 50 m from private CCTV cameras and within proximity (up to 20 m) of public CCTV cameras, ATMs and communication line routes (to a lesser extent also within 20–200 m from these routes). The inverse relations between the density of these types of incidents and the distance from not only police stations, but also gas stations is noteworthy and distinguishes this type of theft from vehicle theft analysed earlier.

There is a positive relation between the density of burglary of an apartment or a house and the distance from public transport line routes. The direct proximity of public CCTV cameras also coincides with such incidents. As in the case with vehicle theft and burglary, the low density of these types of events should be noted at a distance of up to 50 m from police stations – and, in case of this type of theft, also gas stations and cemeteries – and relatively high at greater distances from these facilities (the highest at a distance of 300–400 m).

While analysing data on burglary into commercial facilities, it can be observed that by far the highest density of these types of incidents is associated with the proximity of ATMs, and, to a lesser extent, also public and private CCTV cameras and public transport line routes. A very low density of those incidents takes place in the immediate proximity of police stations.

In the case of analysis performed for all crimes committed in Kraków in 2018, the only clear relationship is the much higher density of these incidents within proximity (up to 50 m) to police stations. It is worth noting that, previously, a reverse relation with a direct proximity of a police station was often mentioned. Therefore, it differs significantly from most types of theft and burglary.

To sum up, due to the analysis of the density of different types of theft in relation to their distance from selected characteristic points in space, some regularities can be observed. The facilities which coexist with a greater density of theft of a particular type, are presented in the below table. In general, two types of both positive and reverse relations can be observed. Firstly, there exists a relation similar to linear function or exponential function, without any major derogation. This relation is marked in the table as (A). Secondly, there is a relation that differs from those marked as (A) at one or two points. This relation is marked in a table as (B). A category that is inconsistent with its generally linear or exponential character is listed in a bracket with annotation showing the direction of this derogation. For example, the "0–20L" the annotation signifies

that this relation differs from linear or exponential relation in category 0–20 m, in which the density of incidents is lower than it would be in an ideal linear or exponential relation. Similarly, the "20–50H" annotation signifies that this relation differs from linear or exponential relation in category 20–50 m, in which the density of incidents is actually higher than it would be in an ideal linear or exponential relation.

Table 4. Facilities which coexist with a greater density of incidents of a particular type

Incidents	Positive relation	Reverse relation
Theft	public CCTV cameras (A) ATMs (A) police stations (B: 0–20L) private CCTV cameras (A) public transport line routes (A)	
Pickpocketing	public CCTV cameras (A) ATMs (A) police stations (A) public transport line routes (A)	
Bicycle theft	ATMs (A) private CCTV cameras (A) public transport line routes (A) public CCTV cameras (B: 20–50L) police stations (B: 0–20L, 20–50H)	gas stations (B: 300–400L, 400–500L)
Vehicle theft	private CCTV cameras (A) public CCTV cameras (A) public transport line routes (A) ATMs (B: 50–100H) gas stations (B: 20–50L)	
Burglary	public CCTV cameras (B: 200–300H) private CCTV cameras (A) public transport line routes (A) ATMs (A)	police stations (reverse relation with a direct proximity)
Vehicle burglary	private CCTV cameras (A) public CCTV cameras (0–20 high density, 20–300 reverse relation, 300–500 linear relation) ATMs (A) public transport line routes (A)	police stations (A) gas stations (A)
Home/ apartment burglary	public CCTV cameras (0–20 high density, 20–300 reverse relation, 300–500 linear relation) private CCTV cameras (A) public transport line routes (A)	police stations (B: 50–100H, 400–500L) gas stations (A) cemeteries (B: 300–400L)

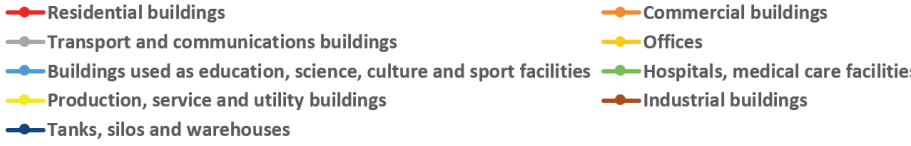
Table 4. (continued)

Incidents	Positive relation	Reverse relation
Commercial building burglary	ATMs (A) with a direct public CCTV cameras (A) private CCTV cameras (A) public transport line routes (A)	police stations (reverse relation proximity)
All crimes	police stations (A)	

After presenting the factors in the above table, it becomes clear that most of them coexist with an increased density of almost every type of theft – however, the degree of this relationship varies. CCTV cameras are an example of a point in space around which there is a greater density of theft. However, there are types of theft that are registered mainly around public CCTV cameras – like pickpocketing or burglary of an apartment or a house, as well as types recorded more often around private CCTV cameras – like bicycle thefts or vehicle thefts. Similarly, the importance of the proximity of an ATM, another characteristic point, co-occurs with a greater density of almost every type of theft, except for burglary of an apartment or a house – especially theft within a commercial object, bicycle theft and pickpocketing.

Theft Density within the Areas of Various Functions of Property Development

The following charts graphically present the results of the analyses carried out. They should be interpreted with the following key:



A more detailed description of the results is provided further in this section.

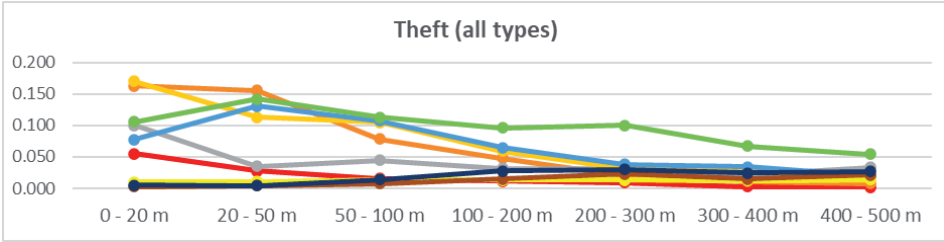


Figure 10. Theft density within the areas of various functions of property development

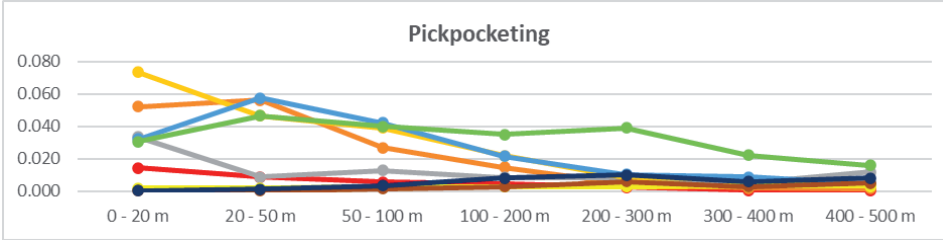


Figure 11. Pickpocketing density within the areas of various functions of property development

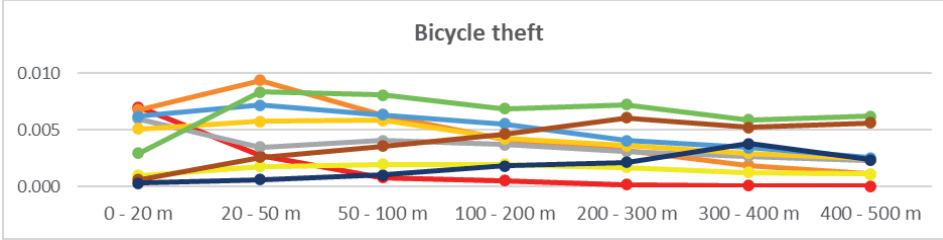


Figure 12. Bicycle theft density within the areas of various functions of property development

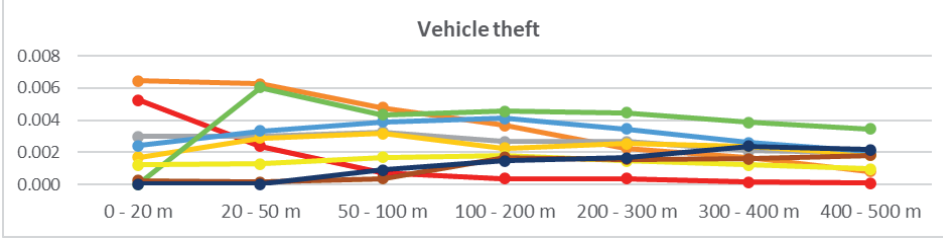


Figure 13. Vehicle theft density within the areas of various functions of property development

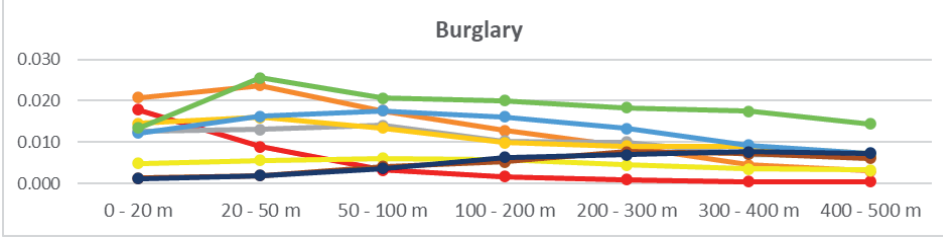


Figure 14. Burglary density within the areas of various functions of property development

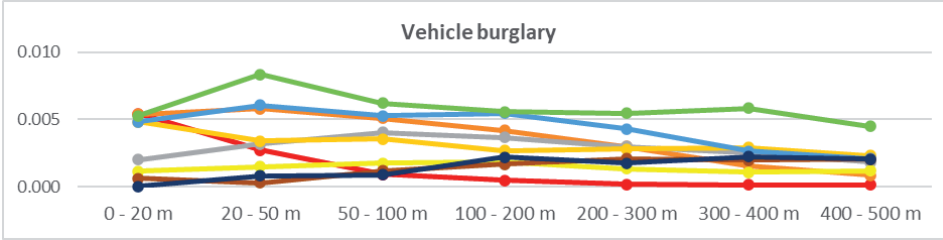


Figure 15. Vehicle burglary density within the areas of various functions of property development

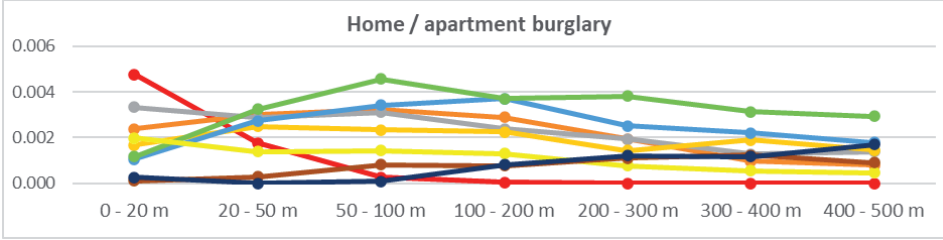


Figure 16. Home/apartment burglary density within the areas of various functions of property development

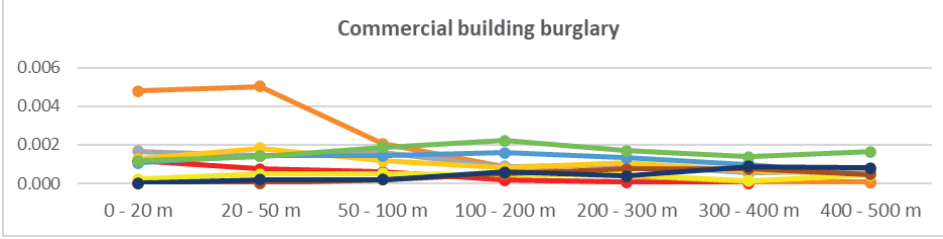


Figure 17. Commercial building burglary density within the areas of various functions of property development

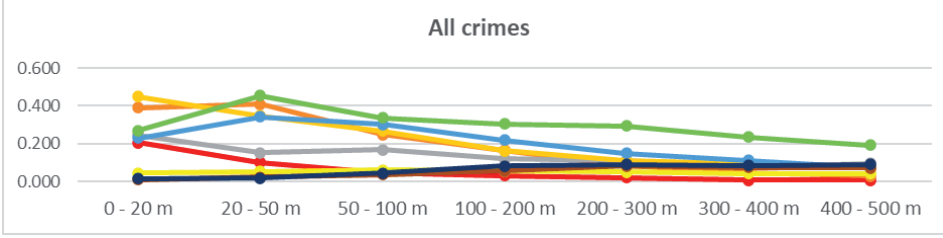


Figure 18. Crime density within the areas of various functions of property development

Analysing total theft density, without dividing it into various types (later referred as overall theft analysis), one can primarily notice a linear relationship between the number of these incidents and the distance from commercial buildings and offices, as well as a close to linear relationship between the number of these incidents and the distance from hospitals, medical care facilities and buildings used as education, science, culture and sport facilities (where the main difference is that the density in the immediate proximity, up to 20 m, is less than at a distance of 20–50 m). Theft density is also greater within proximity to transport and communications buildings. It is also noteworthy that the density of thefts is only slightly higher in the immediate proximity of residential buildings than in a further distance from them. There is a very small reverse relation with the proximity to industrial buildings, tanks, silos and warehouses – there are slightly more thefts of this kind further from those facilities than in their direct proximity.

Pickpocketing is concentrated within proximity to offices. A close linear relationship can also be observed between the number of pickpocketing and the distance from shopping facilities and education, science, culture and sports buildings – as was the case for the overall theft analysis (without breaking down into sub-types). The analysis reveals that, as was the case with overall theft analysis, the density of pickpocketing is also higher in the immediate proximity of transport and communications buildings and its density is only slightly affected by the proximity of residential buildings. Again, as in the case with overall theft density, a very small reverse relation with the proximity to industrial buildings, tanks, silos and warehouses can be observed.

A greater density of bicycle theft can be observed in the immediate proximity not only of commercial buildings, but also residential buildings. Also, a lesser (although still observable) relationship of this density with a distance from offices can be observed, distinguishing it from other types of theft. It is also worth noting the inverse relation between the density of bicycle thefts and the distance from industrial buildings, as well as tanks, silos and warehouses – the further from those facilities, the higher the density of these incidents.

Vehicle theft, similarly to bicycle theft, can be characterized by greater density in the immediate proximity of residential buildings, as well as commercial buildings. A high density of these types of incidents can be observed within 20–50 m distance from hospitals and medical care facilities. It is also noteworthy that their relation to the distance from offices came out to be irrelevant. Moreover, the inverse relation between the density of vehicle and vehicle theft and the distance from industrial buildings, tanks, silos and warehouses can be observed, as is the case with bicycle theft.

Analyzing the density of burglary we can observe similar relationships as observed with bicycle theft or vehicle theft. We may talk about its greater density in the immediate vicinity of residential buildings and commercial buildings (although in the case of the latter, burglary occurs even more often within 20–50 m

distance than at up to 20 m from them), as well as high density of such incidents at a distance of 20–50 m from hospitals and health care facilities. There exists a small, but visible relation with distance from offices, as well as an inverse relation between burglary density and distance from industrial buildings, as well as tanks, silos and warehouses.

Vehicle burglary density also shares similar characteristics. It is higher in the immediate proximity of residential buildings and commercial buildings (with a similar restriction as in the case of burglary) and high near hospitals and medical care facilities, especially at a distance of 20–50 m from them. It remains high at a distance of up to 200 m from buildings used as education, science, culture and sport facilities, to fall significantly further away from them. There is, same as with previous types of theft and burglary, small inversed relation with distance from industrial buildings as well as tanks, silos and warehouses.

In the case of burglary into an apartment or house, a definitely greater density of these types of incidents occurs, of course, in the immediate proximity of residential buildings. The relatively high density of such burglaries near hospitals and medical care facilities is also worth noting, especially at a distance of 50–100 m from these facilities. The same observation applies to the buildings used as education, science, culture and sport facilities, especially distance of 50–200 m from them. Small inversed relation with distance from industrial buildings as well as tanks, silos and warehouses can be observed as well.

The density of burglary into commercial facilities is, naturally, the largest in the immediate proximity of commercial buildings, within 50 m of them. Similarly to other types of theft and burglary, small inverse relation with distance from industrial buildings, tanks, silos and warehouses may be noted.

While analysing the density of crime, without dividing it into particular types, several regularities can be observed. First of all, it is the largest in the immediate proximity of commercial buildings, within 0–50 m from them, as well as from offices. It worth to note a higher density of crime within 50–100 m distance from hospitals and medical care facilities, as well as buildings used as education, science, culture and sport facilities. Also, the proximity of residential buildings, as well as transport and communication buildings coexists with a higher density of crime in Kraków. Finally, as with thefts and burglaries, there is a small inverse relation with distance from industrial buildings, tanks, silos and warehouses.

In conclusion, due to the analysis of the density differences of different types of thefts and burglaries within the areas of impact of selected development functions, some regularities can be observed. Particular development functions that co-occur with a higher density of theft or burglary of a particular type are presented in this table. Again, in general, two types of both positive and reverse relations can be observed. Firstly, there is a relation similar to linear function or exponential function, without any major derogation. This relation is marked in the table as (A). Secondly, there is a relation that differs from those marked as

(A) at one or two points. This relation is marked in the table as (B). A category that is inconsistent with its generally linear or exponential character is listed in a bracket with annotation showing the direction of this derogation. For example, the "0–20L" annotation means that this relation differs from linear or exponential in category 0–20 m, in which the density of incidents is lower than it would be in case of an ideal linear or exponential relation. Similarly, "20–50H" annotation means that this relation differs from linear or exponential relation in category 20–50 m, in which the density of incidents is actually higher than it would be in an ideal linear or exponential relation.

Table 5. Selected development functions which coexist with a greater density of incidents of a particular type

Incidents	Positive relation	Reverse relation
Theft	commercial buildings (A) offices (A) hospitals and medical care facilities (B: 0–20L) buildings used as education, science, culture and sport facilities (B: 0–20L) transport and communications buildings (just direct proximity)	industrial buildings (A) tanks, silos and warehouses (A)
Pickpocketing	offices (A) commercial buildings (A) buildings used as education, science, culture and sport facilities (B: 0–20L) transport and communications buildings (B: 0–20L, 200–300H)	industrial buildings (B: 300–400H) tanks, silos and warehouses (B: 300–400H)
Bicycle theft	commercial buildings (B: 0–20L) residential buildings (A) offices (B: 20–50H, 50–100H)	industrial buildings (B: up to 200 m, from 200 m positive relation) tanks, silos and warehouses (B: 400–500H)
Vehicle theft	commercial buildings (A) residential buildings (A) hospitals and medical care facilities (B: 0–20L)	industrial buildings (A) tanks, silos and warehouses (A)
Burglary	commercial buildings (B: 0–20L) residential buildings (A) hospitals and medical care facilities (B: 0–20L)	industrial buildings (A) tanks, silos and warehouses (A)
Vehicle burglary	commercial buildings (A) residential buildings (A) hospitals and medical care facilities (just 20–50 m) buildings used as education, science, culture and sport facilities (B: 0–20L)	industrial buildings (A) tanks, silos and warehouses (A)

Table 5. (continued)

Incidents	Positive relation	Reverse relation
Home/ apartment burglary	residential buildings (A) transport and communications buildings (A)	industrial buildings tanks, silos and warehouses
Commercial building burglary	commercial buildings (A)	industrial buildings (A) tanks, silos and warehouses (A)
All crimes	commercial buildings (A) offices (A) hospitals and medical care facilities (B: 0–20L) buildings used as education, science, culture and sport facilities (B: 0–20L) transport and communications buildings (A)	industrial buildings (A) tanks, silos and warehouses (A)

In this table many development functions have been placed in relation to almost every analysed type of theft, as with the analysis conducted with relation to distance from selected characteristic points in space. They differ in the degree of observable relation as well. Commercial buildings, around which we can observe the highest density of theft in general and some of the particular types of property crimes – pickpocketing, bicycle theft, vehicle theft, burglary, vehicle burglary and burglary into commercial facilities – are not associated with greater density of burglary into an apartment or house. The proximity of residential buildings, on the other hand, which is in direct relation to the density of this type of theft, does not turn out to be as important in the case of pickpocketing and burglary into commercial facilities. Some development functions appear only for certain types of thefts. It is worth to notice the relation between hospitals and health care facilities with such types of theft as vehicle theft, burglary, vehicle burglary, as well as burglary into apartments or houses (although most often they occur not in the immediate proximity of these facilities, but a bit further). The proximity of transport and communication buildings coincides with pickpocketing. There is an inverse relation between all types of theft and burglary density and distance from industrial buildings, as well as tanks, silos and warehouses – in most cases the relation is small, but visible. In rare cases, such as bicycle theft and vehicle burglary, this relation seems stronger.

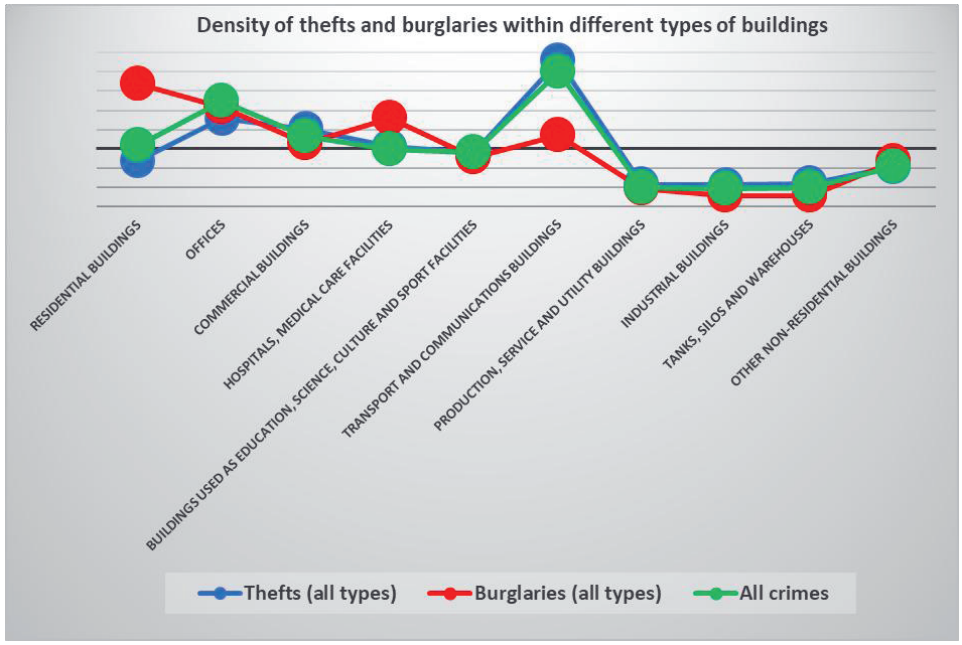


Figure 19. Density of thefts and burglaries within different types of buildings

The analysis of incidents that occurred within different types of buildings is presented in the chart above, simplified to three categories of incidents for better readability. Several characteristic patterns can be observed here. Residential buildings coexist significantly with a higher density of burglary than other crimes and thefts, and transport and communications buildings exactly the opposite – with a lower density of burglary. A lower density of crime, theft and burglary in the proximity of production and industrial buildings, tanks, silos and warehouses is also noteworthy. This particular analysis, as it was described in a methodology section, was conducted without the use of multiple buffer methods. Therefore it takes into account only incidents that were located within the range of polygons assigned to one of those development functions and excludes incidents that happened in their proximity. Raw data used for that analysis is presented in a table below.

Table 6. Density of thefts and burglaries within different types of buildings

Building development function	Theft		Burglary		Crime	
	N	Density (N/ha)	N	Density (N/ha)	N	Density (N/ha)
Residential buildings	2,654	1.119	971	0.409	10,351	4.3641
Production, service and utility buildings	1,074	0.849	165	0.130	2,852	2.2548
Commercial buildings	12	0.055	8	0.037	52	0.2377
Transport and communications buildings	764	2.549	59	0.197	1,594	5.3181
Industrial buildings	226	5.634	9	0.224	469	11.6920
Buildings used as education, science, culture and sport facilities	10	0.026	4	0.010	24	0.0625
Offices	303	1.471	30	0.146	764	3.7082
Tanks, silos and warehouses	363	3.018	39	0.324	1,051	8.7390
Hospitals, medical care facilities	10	0.083	1	0.008	23	0.1915
Other non-residential buildings	92	1.754	15	0.286	210	4.0048
Total	**5,508**		**1,301**		**17,390**	

3. DISCUSSION

The results of the conducted analyses are undoubtedly in line with the assumptions of the theories of environmental criminology referred to above, in so far as they indicate a relationship between the increased criminal activity of perpetrators and the availability of potential victims or objects of attack. Both the higher density of crimes in general and theft in general occurred above all in facilities or in the immediate vicinity of facilities which accumulate large communities for various purposes (activity nodes: commercial buildings, offices, residential buildings, buildings of education, science, culture and sport, ATM's, gas stations) or in places which produce a flow of people (communication nodes: transport and communications buildings over public transport line routes). The reverse relationship can be observed in relation to categories of land use and facilities, which relate to places that (usually) do not generate large clusters of people (i.e. industrial buildings, tanks, silos and warehouses, production, service and utility buildings). Bearing in mind the assumptions of the theory of rational choice, it is worth noting that committing theft in this type of objects may be associated with greater effort on the part of the perpetrator (often accessing more

peripherally located objects, less efficient escape routes, potential problems with loot disposal etc.).

Land use categories in the vicinity of which no increase in the density of criminal events was recorded were green areas and churches and chapels. The first category is internally very diverse: some of them are areas regularly or recurrently gathering larger human communities (parks, squares, green areas), often adjacent to residential or commercial areas. Some are peripherally located and rarely frequented areas, which do not provide many criminal opportunities. It cannot be excluded that some of these areas have the property of „attracting" perpetrators, but this would require further, more in-depth analyses. The results of previous research on places of similar nature are quite ambiguous.[14] Churches, chapels and cemeteries are categories that raise most doubts in interpretation. These are facilities that can potentially provide criminal opportunities because they regularly or recurrently gather large clusters of people (especially facilities visited for tourist purposes, which are common in Kraków). Some of them are a particularly attractive object of attack (elderly people, tourists), and goods gathered in religious buildings can also motivate criminals. However, the analysis did not show that the crime density ratio (including theft) increased nearby. Perhaps their special nature stops some of the more „spiritual" perpetrators from criminal activity in this area.

As Cohen and Felson (1979) emphasized, an opportunity is crime specific, and therefore, when analysing the situational conditions conducive to committing crimes, their diversity should be taken into account. The results of the conducted analyses indicate that one land use and facilities coexist with an increased density of all types of thefts, while others coexist only with some of them. For example, a greater density of vehicle theft was observed primarily in the immediate vicinity of residential buildings, commercial and service buildings, and around gas stations. All these locations can be confirmed with the results of other research to date on this type of crime. Lu (2006) found that auto theft locations in Buffalo were associated with commercial locations with parking lots and residential areas. Potchak et al. (2002) investigated auto theft in the theoretical context of routine activities theory and found that car theft is more likely on major and frequently

[14] Some studies show that green urban spaces serve as a deterrent to crime, in general, or some type of crime (Kuo and Sullivan 2001; Sypion-Dutkowska and Leitner 2017; Shepley et al. 2019) and others that in some circumstances they can attract certain anti-social behaviors. For instance, DeMotto and Davies (2006) proved that in areas with high levels of resource deprivation and physical disorder parks may function as criminal marketplaces. Another study finds that although parks, in general, are associated with increased levels of crime in the surrounding area, specific park characteristics are related to higher crime levels (Groff and McCord 2012). Moreover, it has been shown that observation of crime in parks should take into account temporal variables: spatial-temporal analysis of property crime is more positively associated with crime but only during spring and summer seasons (Quick and Law 2019).

travelled roads, and gas stations are usually located along such roads.[15] The higher density of vehicle thefts within 20–50 m from hospitals and medical care facilities, as well as lower around offices, which has been observed in this study, is also noteworthy. It may be associated with the fact that office buildings are more often equipped with parking lots (sometimes guarded or equipped with various types of anti-theft devices). In the case of hospitals and medical facilities, drivers are often forced to use temporary parking areas in public spaces, which significantly increase the likelihood of theft (cf. Clarke and Mayhew 1994). Meanwhile, near the offices, a relatively high rate of bicycle theft was observed – an increasingly popular commuter vehicle for Poles – as well as pickpocketing. The latter showed an increased level of density also near other crime generators, such as transport and communications buildings, as well as buildings used as education, science, culture and sport facilities.

The results obtained in these studies, however, raise some significant interpretation doubts as to one of the fundamental assumptions of all key theories of environmental criminology. The rational choice of criminal opportunities should essentially mean avoiding places that increase the chance of foiling the commission of a crime or apprehending the perpetrator. The presence of a capable guardian should act as a deterrent to the perpetrator, but it may manifest with the activity of people (police patrol, security guards' or place managers' surveillance, informal social control exercised by residents, etc.[16]) or devices (CCTV cameras, street lighting, etc.). The findings of a systematic meta-analysis of the high-quality research on the effectiveness of CCTV on crime in public space showed that CCTV can have a significant effect on crime reduction, especially in car parks and is most effective when it is combined with street lighting improvement (Welsh and Farrington 2009[17]). This effect is often observed in relation to crimes

[15] Levy and Tartaro (2010) in their research on repeat auto theft victimization in Atlantic City treated gas stations as one of the activity nodes.

[16] Cornish and Clarke (2003) in their classification of situational crime prevention differentiate three types of surveillance that can be used for crime prevention: formal surveillance, natural surveillance, and surveillance by employees/place managers.

[17] It should be emphasized that the results of research on the effectiveness of monitoring are highly ambiguous. So far only a few review papers fairly summarizing the findings have been published. The meta-analysis of Welsh and Farrington (2009) including 44 experimental studies indicates a 16% decrease in crime. A closer look at the results, however, leads to the conclusion that this fact is primarily due to a significant decrease in crime in closed parking lots (51%). Meanwhile, the recorded decline in crime in public space was relatively small (7%) and statistically insignificant. Undoubtedly, the methodological quality of research conducted in the area of evaluation of activities in the field of preventing and combating crime significantly differentiates the results obtained. It is clear from the meta-analysis by Weisburd, Lum and Petrosino (2001) that the less internally accurate the methodology of the study, the more likely it is to show a positive or expected relationship between the analysed variables. Similar conclusions were reached by the authors of a meta-analysis of 136 studies on preventive measures focused on monitoring public space (primarily CCTV and CPTED activities, e.g. street lighting) and their impact on crime (Welsh et al. 2011).

against property, including primarily car theft, pickpocketing, shoplifting, burglary, property damage (Alexandrie 2017). There is also scientific evidence showing that a highly visible presence of police or other local guardians (Welsh, Farrington and O'Dell 2010) has a deterrent effect on perpetrators (Sherman and Eck 2002; Weisburd and Eck 2004; Bowers et al. 2011)[18]. Meanwhile, in the studies presented here, high crime density rates were observed in the immediate vicinity of public and private monitoring cameras, as well as within 50 meters of police stations. Although at first glance this may call into question the rationality of the perpetrators of crimes against property in Krakow, making a thorough assessment of the results obtained, one cannot forget about three important issues.

First, observations made in the studies do not necessarily exclude the assumption of an informed and competent risk calculation by perpetrators. Rational offenders may just consider the potential benefit from a crime committed in the area of intensive surveillance as greater than the risk. In Poland, where anecdotal stories about the poor quality of recordings from CCTV cameras are well known, this kind of reasoning would not be surprising. Secondly, the issue of correctness of geocoded data may also be relevant. It is based on police reports providing addresses of crime locations. Although we strive for the greatest accuracy in this regard, there are times when a certain event is assigned to an incorrect address; to the nearest address that does not coincide with the actual place of committing the act; or to any address where the address of committing the act is impossible for the Police to determine. It was not a very good practice, used in similar situations, to identify the locations of police stations. Although police officers are more and more aware of the impact of this type of data inaccuracy on the results of spatial analysis, it cannot be ruled out that this habit has still not been fully eradicated. Moreover, some crimes whose density was taken into account in the research may be committed in such a way and in such circumstances that the presence of a camera monitoring the (semi) public space may not be relevant to detecting the perpetrator. A perpetrator of car theft or theft with burglary will not be indifferent to his image being recorded by a CCTV camera outside the building. On the other hand, a perpetrator of pickpocketing committed inside a building in a crowded club on a busy street can be completely indifferent to that fact. Unfortunately, the data we had at our disposal did not allow us to take these circumstances into account. Thefts – regardless of whether they were committed indoors or outdoors – are attributed to the nearest address. Therefore, it is impossible to state, in specific circumstances of the perpetrator's spatial activity, if the presence of a camera monitoring public space should be part of the perpetrator's rational calculation or not. Finally, it is also possible that

[18] For the sake of further considerations it is important to notice that the crime reducing effect was observable only for directed police patrols targeted to crime hotspots and not just for a random presence of police (Sherman and Eck 2002; Weisburd and Eck 2004).

the higher density of events recorded in the vicinity of cameras or in the vicinity of police stations is not due to the above-average activity of perpetrators in these areas, but to a higher detection rate. Therefore, such factors cannot be treated as generating greater density of thefts around them, but as increasing their detection and likelihood of the successful apprehension and conviction of the perpetrator.

Taking into consideration most influential theories of criminal aetiology, this research – both its results and limitations – as well as other crime mapping studies, we highly recommend further studies on the subject of spatial distribution of urban (property) crime. To ensure high validity of studies we argue for more extensive use of methods allowing to control for most important variables other than those related to urban space, i.e. socio-economical ones. We are aware that in Polish context getting to certain types of more advanced data might be difficult in a particular institutional and organizational setup that researchers and city authorities are involved in. Nonetheless we recommend including in further studies such information as real population density (day/night) and socio-economic structure of local communities. This way the sole effect of spatial factors may be determined while maintaining control over other significant variables. Such data may be obtained e.g. from cooperation with big data management companies, that analyse information coming from mobile phones (see i.a. Pędziwiatr, Stonawski and Brzozowski 2019).

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APPLICATION OF CLUSTER ANALYSIS IN RESEARCH ON THE SPATIAL DIMENSION OF PENALISED BEHAVIOUR

Abstract. This paper is focused on some of the possibilities of the use of cluster analysis (clustering) in criminology and the sociology of law. Cluster analysis makes it possible to divide even a large dataset into a specified number of subsets in such a way that the resulting subsets are as homogenous as possible, and at the same time differ from each other substantially. When analysing geographical data, e.g. describing the location of crimes, the result of cluster analysis is a division of a territory into a certain number of coherent areas based on an objective criterion. The division of the territory under study into smaller parts is more insightful when the clustering method is applied compared to an arbitrary division into official administrative units.

The paper provides a detailed description of hierarchical cluster analysis methods and an example of using the Ward's hierarchical method and the *k*-means combinational method to divide data on crime reports in the city of Baltimore between 2014 and 2019. The analysis demonstrates that the resulting division differs considerably from the administrative division of Baltimore, and that increasing the number of groups emerging as a result of cluster analysis leads to an increase of variance of variables describing the structure of crime in individual parts of the city. The divisions obtained using clustering are used to verify the hypothesis on differences in crime structure in different areas of Baltimore.

The main aim of the paper is to encourage the use of modern methods of data analysis in social sciences and to present the usefulness of cluster analysis in criminology and the sociology of law research.

Keywords: cluster analysis, environmental criminology, geography of crime, crime in Baltimore, computational social science.

ANALIZA SKUPIEŃ W BADANIACH NAD PRZESTRZENNYM WYMIAREM ZACHOWAŃ SPENALIZOWANYCH

Streszczenie. Prezentowany artykuł poświęcony jest wykorzystaniu w socjologii prawa oraz kryminologii środowiskowej jednej z nowoczesnych metod obliczeniowych przydatnych do badania dużych zbiorów danych – analizy skupień (grupowania; klasteryzacji). Metoda ta pozwala na podzielenie zbioru obserwacji na ustaloną liczbę podzbiorów takich, że elementy tego samego podzbioru są do siebie możliwie podobne, a elementy różnych podzbiorów – możliwie odmienne. Jeśli dane dotyczą położenia geograficznego, na przykład umiejscowienia przestępstw, rezultatem wykorzystania analizy skupień będzie podział obszaru na ustaloną liczbę wewnętrznie spójnych rejonów według zobiektywizowanego kryterium. Podzielenie badanego terytorium na mniejsze części

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z zastosowaniem klasteryzacji wydaje się być lepszym rozwiązaniem od kryteriów stosowanych tradycyjnie, w dużym stopniu arbitralnych, takich jak na przykład podział administracyjny.

W pracy przedstawiono szczegółową charakterystykę hierarchicznych metod analizy skupień, a następnie wykorzystano metody kombinatoryczną *k*-średnich oraz hierarchiczną Warda do podziału zbioru danych o zgłoszeniach przestępstw w mieście Baltimore w latach 2014–2019. Wykazano, że powstały w ten sposób podział różni się w sposób znaczący od podziału administracyjnego Baltimore, a także że zwiększanie liczby grup powstających jako wynik analizy skupień prowadzi do pożądanego w pewnych przypadkach wzrostu wariancji zmiennych opisujących strukturę przestępczości w poszczególnych częściach miasta. Utworzone przy użyciu klasteryzacji podziały wykorzystano także do zweryfikowania hipotezy o odmienności struktury przestępczości w różnych obszarach Baltimore.

Głównym celem pracy jest zachęcenie do stosowania w badaniach społecznych nowoczesnych metod analizy danych oraz pokazanie, że analiza skupień może być cennym narzędziem w kryminologicznych i socjologicznoprawnych analizach poświęconych relacji między prawem a przestrzenią.

Słowa kluczowe: analiza skupień, kryminologia środowiskowa, geografia przestępczości, przestępczość w Baltimore, obliczeniowe nauki społeczne.

1. INTRODUCTION

The rapid development of information technologies observed over the last years has significantly influenced not only sciences, but also fields of non-exact research. The potential of employing calculation technologies and big data in social sciences was first stressed within the computational social science movement, which has been growing rapidly (Lazer et al. 2009; Conte et al. 2012). Modern data analysis methods combined with a remarkable amount of data being continuously gathered by electronic devices and public information systems create unprecedented opportunities for social sciences research.

Sociologists and criminologists studied the influence of environmental factors on crime long before the era of computers. Already in the 19th century, works on the topic provided quantitative analyses of crime with respect to various geographic areas (e.g. Glyde 1856). At present, the entire branch within crime research can be distinguished, where emphasis is placed on how space affects criminal behaviour. This branch should be understood as containing both the field of environmental criminology, where the issue is usually analysed from an individual's point of view (Wortley and Townsley 2016), and the geography of crime, which tends to use a macroscopic description. A detailed overview of Polish literature dealing with the geography of crime can be found in (Mordwa 2016), in spite of the scarcity of publications on the topic (Mordwa 2016, 197). Recently, more attention has been drawn to the relation between space and – not only penal – law, which has resulted in the first Polish monography concerning the topic (Dudek, Eckhardt and Wróbel 2018).

Spatial research on crime constitutes a great example of a field where modern methods of data analysis and big data can be used. Unfortunately, modern

methods of quantitative analysis are still used rather infrequently in the fields of sociology of law and criminology. Contributions by, for instance, Kinga Kądziołka (Kądziołka 2016a; 2016b), where modern statistical models are employed in crime research, remain exceptions rather than a rule in the Polish subject literature, which is highly unfavourable.

Since modern data analysis methods can facilitate a better understanding of the spatial dimension of crime, they require a closer investigation. In this paper, I present the possibility of applying one of such methods, namely cluster analysis, which seems to be a tool perfectly fit for work with geographical data.

2. METHODOLOGICAL ISSUES

2.1. Objectives and Research Hypotheses

The primary aim of this work is to argue that the method of cluster analysis can be successfully applied to criminological and sociological analyses focused on links between space and crime, in which geographical data are used. Furthermore, it is the author's goal to encourage such analyses. In order to fulfil these goals, the cluster analysis method will be described in detail and an example of its usage will be presented. The example will be based on crime data from the city of Baltimore. The attempt of verificationying of the following hypotheses will be made:

1. The crime clusters resulting from performing a cluster analysis are substantially different from the administrative division of the city of Baltimore into districts.

2. The structure of crime is different across crime clusters, in particular with respect to the rate of a) murder, b) theft, c) car theft.

3. Variance of crime grows with an increasing number of areas defined by means of a cluster analysis. For a sufficiently large number of such areas, the variance for the areas exceeds the variance for administrative districts – in particular when it comes to a) murder, b) theft, c) car theft.

2.2. Cluster Analysis Method Description

Cluster analysis (or clustering – these two terms will be used interchangeably) is one of the statistical methods, which makes it possible to divide a dataset into a particular number of subsets grouping similar objects (observations) based on a defined similarity measure. The aim of cluster analysis – fulfilled in an ideal situation, which is of course not always the case – is to detect such groups (clusters) in the dataset that are naturally present in the set's structure as a result of data character. Distinguishing such groups should furthermore be interpretable

in a sensible way. In other words, the goal of the analysis is to split the initial set of objects into such subsets that elements belonging to different subsets should vary between one another more than elements of the same subset (see: Wierzchoń and Kłopotek 2015, 19–20; Krzyśko et al. 2008, 345–346).

A slightly more formal definition of cluster analysis is worth mentioning at this point: "a data analysis tool used to group *m* objects described with a vector of *p* features into *K* nonvoid, disjoint and, as much as possible, 'uniform' groups-clusters" ([translation mine – A.P.] Krzyśko et al. 2008, 345). Two aspects of this definition must be stressed. Firstly, the number of groups into which the set of objects will be split is not defined by the algorithm itself and the decision lies with the analyst. Secondly, objects are grouped based on the data known about them, that is the data the objects are described with. It is of utmost importance to be aware of the fact that the clustering of objects will always refer to their chosen representation. Another representation of the same objects, which means a different choice of features relevant to the research, is likely to result in obtaining radically different clusters. Naturally, the grouping algorithm has no knowledge about the real nature of objects, only about their features which have been intentionally formalised.

The most widespread clustering methods can be divided into hierarchical – based on linking and dividing observations – and combinational – in which a particular clustering performance function is optimised. Hierarchical methods can be further split into agglomerative (initially each object is a separate cluster, then the clusters are merged), and divisive (at the beginning there is a single group comprising all objects that are gradually divided into smaller and smaller clusters). Other methods are used less often and are more sophisticated. They include, among others, relational and graph methods. The most popular combinational method is called the *k*-means or centroid method. It must be borne in mind that for reasons of space, the subsequent sections of this paper will refer to the hierarchical agglomerative methods only. However, all the remarks regarding object formalisation and distance measures remain valid not only for the chosen group of clustering methods.

2.2.1. Formalisation of Real Objects

The problem of real objects formalisation requires a more detailed description. The proper choice of examined objects features, i.e. aim-oriented objects formalisation, will be the factor distinguishing a well-designed analysis from a "blind" (haphazard) one. Formally, following the basic definition that will be considered in this paper, the problem is fairly simple.[1] A set of *n* objects is given by the following matrix:

[1] Such a presentation of the problem meets the requirements of this paper. For a more elaborate description of object formalisation, and a more complete formalisation of the entire problem, see Wierzchoń and Kłopotek (2015, 20–23).

$$X = (x_1, \ldots, x_n)^T,$$

whose each element is described by a p-dimensional vector (p – the number of features):

$$x_i = (c_{i1}, \ldots, c_{ip}) \text{ where } i \in \{1, \ldots, n\}.$$

Then, c_{ij} is the j-th feature of the i-th object, and the vector x_i is that object's image (i.e. the vector of object's features).

In order to partially deformalise the above conclusions, it is useful to present the matrix in a tabular form. Let the rows be objects, and columns their features:

Table 1. A generalised matrix of p features for n objects

Feature / Object	**Feature 1**	**…**	**Feature *p***
Object 1	Value of feature 1 for object 1	…	Value of feature *p* for object 1
…	…	…	…
Object *n*	Value of feature 1 for object *n*	…	Value of feature *p* for object *n*

Source: own elaboration.

As a result of assuming non-void and disjoint clusters, n must be not less than the number of groups K. In practice, only the cases where n is visibly higher than K will be interesting.

Object formalisation allows displaying them as points in a p-dimensional space with each dimension representing a feature – that will be used further in this work. Better understanding of clustering's key point, the mathematical modelling of real objects, can be facilitated by noticing that each such object (for instance a man, an animal, an organisation, a usable item) can be to some extent described by enumerating its characteristics of interest. Even though the list of all features of any real object is enormous (if not infinite), the number of features relevant for a particular problem will certainly be finite and encompassed by a small set (a set of low cardinality).

From the perspective of crime research viewed from the spatial context, the features relevant for an object will naturally refer to the incident location, and disregard, for instance, offender's characteristics or incident's type. The formalisation of an incident will be based on its geographical coordinates. Cluster analysis will then refer to points of a plane, which can be intuitively understood as dots on a map.

2.2.2. Similarity (Dissimilarity) Measure

It is not enough just to formalise the objects. By definition, clustering includes searching for groups of similar objects, which differ from the objects in other groups. Such a search would not be possible were it not for defined mathematical

criteria of similarity. Thanks to them, it is possible to calculate similarity of vectors on the basis of the data these vectors consist of. Such a criterion will be called the similarity measure or dissimilarity measure. It may seem counterintuitive that these two expressions can be used interchangeably but, indeed, the maximal dissimilarity is equivalent to the minimal similarity, and *vice versa*, therefore the maximisation of similarity is the minimisation of dissimilarity.

Mathematically speaking, a similarity measure is a function satisfying some specific (yet irrelevant for the purpose of the present paper) conditions in form $s: X \times X \rightarrow \mathbb{R}^+ \cup \{0\}$, i.e. associating each ordered pair of the considered set's Cartesian product with exactly one nonnegative real number.

As it has already been mentioned, having formalised objects, one can position them as points in a p-dimensional Euclidean space. Such display is a very convenient one since it allows for a very intuitive presentation of similarity (dissimilarity) as distance in such space. It is worth mentioning that for the present study, the distance between points is exactly the distance between the acts of crime. Thus, the interpretation of the mathematical distance is exceptionally simple in this case.

Even though numerous similarity measures can be considered and utilised (among which various variants of correlative measures using the Pearson, Spearman or Kendall correlation coefficient are worth mentioning), the most widely employed are distance functions, also called metrics in the subject literature. For a measure to be considered distance (metric), function $d: X \times X \rightarrow \mathbb{R}^+ \cup \{0\}$ (already here it can be noticed that its set of destination is nonnegative numbers) must fulfill the following conditions:

1) $d(x, y) = 0 \Leftrightarrow x = y$,
2) $d(x, y) = d(y, x)$,
3) $d(x, y) \leq d(x, z) + d(z, y)$.

Defining the similarity measure as a distance is convenient in this way as it lets the created system of formal terms to be highly intuitive. Objects "closer" to each other, i.e. less distant from each other, will also be less different, and thus more similar.

The most popular as well as the simplest distance used in cluster analysis is the Euclidean distance:

$$d_E(x, y) = \sqrt{\sum_{i=1}^{p} (x_i - y_i)^2},$$

where $\boldsymbol{x_i}$ – value of the i-th feature of the object x,
$\boldsymbol{y_i}$ – value of the i-th feature of the object y,
$\boldsymbol{p}$ – number of features for the considered objects.

The Euclidean distance will be used in the analysis pursued in this paper. This being said, it is worth mentioning that when considering points that cannot be connected as the crow flies, the Manhattan distance (city block distance, taxicab distance) can be used instead:

$$d_M(x, y) = \sum_{i=1}^{p} |x_i - y_i|.$$

For the purpose of this paper, no further considerations of similarity measures are necessary. However, one should bear in mind that numerous measures exist (Walesiak 2002; Wierzchoń and Kłopotek 2015, 136–139; Krzyśko et al. 2008, 23–34). An adequate choice of either measure based on the characteristics of the available data as well as on the purpose and assumptions of the research is a vital element of cluster analysis.

Having defined the measure to be used for a given analysis, one can obtain a matrix with aggregated information about the similarity of any two considered objects. If the similarity measure is a distance, such a matrix is called a distance matrix. It is the base for hierarchical clustering.

2.2.3. Clustering Algorithm

As mentioned above, various types of object clustering algorithms can be distinguished (Wierzchoń and Kłopotek 2015; Krzyśko et al. 2008, 345–361). The presentation of both hierarchical and combinational methods lies outside of the scope of the present contribution. More thorough accounts are available for free on the internet, including both simpler (Gareth et al. 2017, 385–401, 404–407, 410–413) and more formalised ones (Hastie, Tibshirani and Friedman 2009, 501–528).

In this section, the agglomerative method used in this study will be presented. Several reasons justify its choice. First and foremost, this method is easy to present using informal terms, which matches the main goal of this paper – presenting cluster analysis. Secondly, unlike the combinational method of *k*-means, the agglomerative method does not require defining the number of clusters in advance. This facilitates a researcher's task by allowing for the modification of this number at later stages of data analysis. In this and similar research, this means dividing a city into a number of areas after the first iteration of the algorithm. Thirdly, the agglomerative methods, contrary to the combinational *k*-means method, are 1) deterministic (non-random): their result will always be the same for same data and measure; and 2) "monotonic": changing the number of clusters by *m* will make objects of exactly *m* groups move to another cluster, while the other groups will remain unchanged. Moreover, the agglomerative method makes it possible to display the result as a dendrogram, thus enabling the visualisation of higher

level relations between clusters. At the same time, hierarchical methods have a significant disadvantage: they require the distance matrix, which makes them unsuitable for very large datasets.[2] Even then, it is sufficient to limit the number of observations to make the agglomerative methods useful.

The algorithm of the agglomerative variant of hierarchical clustering begins with creating n clusters containing one object each. The next step is finding two most similar objects. This step is equivalent to finding the two most similar clusters as at this stage each cluster contains exactly one object. The most similar objects are defined on the basis of the distance matrix (which can be called the similarity matrix as well, further on, the two terms will be used interchangeably – in spite of some formal nuances, that should not pose risk of misunderstanding). Subsequently, the two clusters closest to each other are merged into the first two-element cluster. In the following steps, the closest clusters continue to be merged until, depending on the algorithm version, 1) only one cluster of all n objects is left or 2) there are K clusters, where K denotes the initially intended number of clusters. It may be unclear how to determine the distance (similarity) between clusters as the distance matrix is equivalent to the matrix of cluster distances only at the very first step. Such uncertainty is well justified – the intercluster distance measure must be defined for the grouping process to complete. The clustering algorithm as well as its result will depend on that definition. There is a variety of ways of determining the distance between clusters (Wierzchoń and Kłopotek 2015, 35; Murtagh and Contreras 2012, 88–89). For the purpose of this research, it is sufficient to mention the two most basic ones, and the third – more complex – used further in the paper.

a) Single linkage (minimum method) defines the distance between clusters as the closest distance between objects belonging to different clusters. Its informal, yet detailed, description can be found in Marek and Noworol (1983, 35–37).

b) Complete linkage (maximum method) defines the distance between clusters as the largest distance between two objects belonging to different clusters.

c) Ward's method defines the cluster closest to a group as the one whose incorporation will result in the lowest increase of variance within that group. In other words, the closest cluster is the one, whose incorporation will optimise an objective function (Ward 1963; more: Murtagh and Legendre 2014).

Having defined the measure of cluster similarity, one can present an informal and simplified algorithm of agglomerative hierarchical clustering:

1. Treat each object as a separate group.
2. Find two groups closest to each other and merge them to obtain one group.
3. Repeat step 2. until all objects belong to the same group.[3]

[2] For example, the distance matrix for the entire data set considered further in the paper (254442 observations) would require 241.2 Gb drive memory.

[3] Alternatively: Repeat step 2 until K clusters are formed.

3. EMPIRICAL RESEARCH APPLYING CLUSTER ANALYSIS

In this section, the hypotheses outlined in 2.1. will be verified, and advantages of cluster analysis against using arbitrary divisions (like the division into districts) will be discussed. It must be emphasized that a division into districts is itself a result of some clustering. However, firstly, the criterion of that clustering is unknown and, secondly, it is not objective. Thirdly, the number of clusters, in this case districts, is set in advance.

The cluster analysis will consider objects formalised in such a way that they are described by just two variables: *Longitude* and *Latitude*. That is, clusters will be based on geographical data only. Thus, in this case, a cluster will be such a set of crimes – objects, for which their location diversity is minimised. Clustering will take into account the non-uniform distribution of crime acts across neighbourhoods. Therefore, the clusters formed will depend on the spatial distribution of crime, and must not be understood as based on geographical features of city terrain.

Statistical analyses were performed using the R v. 3.6.3 language (RCore Team 2020), RStudio IDE (RStudio Team 2020) and R packages: *ggplot2* (Wickham 2016), *dplyr* (Wickham et al. 2020), *VIM* (Kowarik and Templ 2016), *readr* (Wickham, Hester and François 2018).

3.1. Data

The data was extracted from an open-source (licence CC BY 3.0) database containing 260200 observations (records) of crime in the city of Baltimore.[4] Information stored in the database comes from testimonies of victims (reporting persons). Thus, whenever the word "crime" is used, it actually refers to "a reported event, in which an offence is likely to have been committed."

6 out of 16 variables included in the database were chosen for further analysis:

- **Longitude** – approximated longitude of the incident;
- **Latitude** – approximated latitude of the incident;
- **CrimeDate** – the date of crime according to its report; the newest offence found in the base was committed 6th June 2019, the oldest 1st January 2014;
- **District** – the city district where the incident took place; districts of Baltimore include: "Southwestern" (henceforth SW), "Northwestern" (NW), "Central" (C), "Northern" (N), "Eastern" (E), "Southeastern" (SE), "Southern" (S), "Western" (W) and "Northeastern" (NE);
- **Weapon** – indication of the weapon used: gun, knife, fist, fire or other;

[4] Open Baltimore, Part 1 Crime data (formerly: BPD Part 1 Victim Based Crime Data), https://data.baltimorecity.gov/datasets/part-1-crime-data-3/, accessed 13th February 2021. The study used the June 2019 version of the data.

• **Description** – reported crime type; fourteen kinds of offences are distinguished in the database (following its naming convention): aggravated assault (AN), arson (P), auto theft (KS), burglary (W), common assault (ZN), homicide (M), larceny (K), larceny from auto (WA), rape (G), robbery – carjacking (RS), robbery – commercial (RH), robbery – residence (RM), robbery – street (RU), shooting (S).

3.2. Data Pre-Processing; Descriptive Statistics

Some of the records did not contain any information of incident location. Even though methods of clustering for incomplete data are known (Matyja and Simiński 2014), in this case using them would be of no value since this particular cluster analysis considers objects defined only by geographical data. There were also observations referring to offences supposedly committed far beyond the borders of the city of Baltimore.

The size of the corpus used made it possible to disregard portions of the data. Therefore, all 5758 observations with incomplete geographical data as well as those of or (not in Baltimore) were removed. As a result, 254442 observations left in the database.

For 1824 further observations, there was no value of *District*, even though these incidents had complete location data. In such a case, when the location of a given incident was known and so was the District of the closest incident, the given crime's *District* could be correctly identified with nearly 100% accuracy. Thus, the classifier of *k*-nearest neighbours method (Zhang 2016; Jonge and Loo 2013, 48–49) was used to fill the missing values of the *District* variable with $k = 5$.

The data was neither normalised nor rescaled. Although normalisation is critical for most analyses and there are means of making variables comparable (Walesiak 2014; Jarocka 2015), the data considered in this paper do not require this procedure as longitude and latitude can be compared without any normalisation for such a small area.

The resulting dataset makes it possible to determine how often particular types of offences were reported, and if there was any information regarding the weapon used. This information is presented in Table 2 and Table 3.[5] The value of Percentage_1 shows the share of offences committed using a particular weapon among all offences, while Percentage_2 is the share of offences where a particular weapon was used among offences involving the use of any weapon.

Table 2 shows that the crimes reported most often in Baltimore are theft (about 22%), less aggressive assaults (about 16%) as well as burglaries (15%), and larceny from auto. The least commonly reported crimes involve arson, homicide, robbery on a street, carjacking and rape – each of them less often than in 1% of cases. Of course, the fact that some crimes are rarely reported does not necessarily

[5] Unless specified otherwise, precision of the results is three decimal digits, i.e. 0.1%.

mean they are also rarely committed. This is true particularly for rape, which is often hard to report due to victim's psychological distress or a privileged position of the offender. Table 3 reveals that in most cases no use of weapon is reported. Again, this observation does not have to mean that the offender had no weapon, however it is likely the weapon was not used, at least not in the way noticeable for the witnesses. In 19% of cases information about a weapon was provided. If it is present, it is most often a pistol, which is a pattern very much different from what is known in Poland. Using a knife was reported roughly three times less often than a pistol.

Table 2. Crimes of various types in Baltimore between 1.01.2014–1.06.2019

Type	**AN**	**P**	**KS**	**W**	**ZN**	**M**	**K**
Number	27170	1183	22578	38056	41604	1641	56637
Percentage [%]	10.7	0.5	8.9	15	16.4	0.6	22.3
Type	**WA**	**G**	**RS**	**RH**	**RM**	**RU**	**S**
Number	33620	1592	1985	4645	2610	17820	3301
Percentage [%]	13.2	0.6	0.8	1.8	1	0.7	1.3

Source: own elaboration.

Table 3. Using of weapon in crimes in Baltimore between 1.01.2014–1.06.2019

Type	**Gun**	**Knife**	**Fist**	**Fire**	**Other**	**None/no data**
Number	24730	8751	3284	1183	14871	201623
Percentage$_1$ [%]	9.7	3.4	1.3	0.5	5.8	79.2
Percentage$_2$ [%]	46.8	16.6	6.2	2.2	28.2	–

Source: own elaboration.

3.3. Comparison of *k*-means Clustering Results by Districts

As mentioned above, it is impossible to divide such a large set of data by means of hierarchical algorithms using ordinary computer devices. Before just a fragment of the observations is selected for further analyses, it is reasonable to use the *k*-means method, which has not been described in detail yet but which is capable of dividing a data set of virtually any size. This procedure will make it possible to compare an arbitrary division into city districts with an automated design based on mathematical criteria (distance between points).

Figure 1 displays all points representing approximated crime sites in the city of Baltimore. In the upper chart, points are grouped by the value of District variable (i.e. the set division into Baltimore city districts). The lower figure

shows a grouping resulting from clustering by the *k*-means method with nine clusters ($k = 9$). The groups presented in the upper chart will be called "districts," while the groups presented in the lower one will be referred to as "clusters." The clustering was performed on objects characterised only by their geographical coordinates, i.e. *Latitude* and *Longitude*.

It is visible that the resulting clusters are much more coherent than the districts. It is especially clear for the Southern (S) district which has been replaced by the cluster no. 8 which however does not reach that far north and west. The Northeastern district has remarkably decreased its area too – the border of cluster no. 1 crosses the area around (–76.58; 39.34) where there are no offences.

The first hypothesis will shortly be verified using the reduced set of data but already now it can be assessed that there is a solid support for deeming it true. The result of clustering is remarkably different from the division into city districts. This is not surprising as it was certainly not among the objectives of the city of Baltimore while creating the district division to ensure internal coherence of the criminal incident locations set. Detailed information about the distribution of points from the districts across the clusters is presented in Table 4.

All figures presented here constitute an own elaboration.

Table 4. Distribution of points in districts within each cluster

Cluster	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**
C	0	8178	0	369	0	0	0	0	20191
E	0	0	0	0	0	0	7275	0	14725
N	0	6255	14549	0	0	4317	0	0	2709
NE	23789	0	10624	0	0	0	3708	0	212
NW	0	1661	0	0	1659	21168	0	0	0
S	0	0	0	13148	0	0	66	11135	5159
SE	0	0	0	0	0	0	27878	0	9296
SW	0	138	0	7375	18404	4	0	0	0
W	0	12790	0	6580	1080	0	0	0	0

Source: own elaboration.

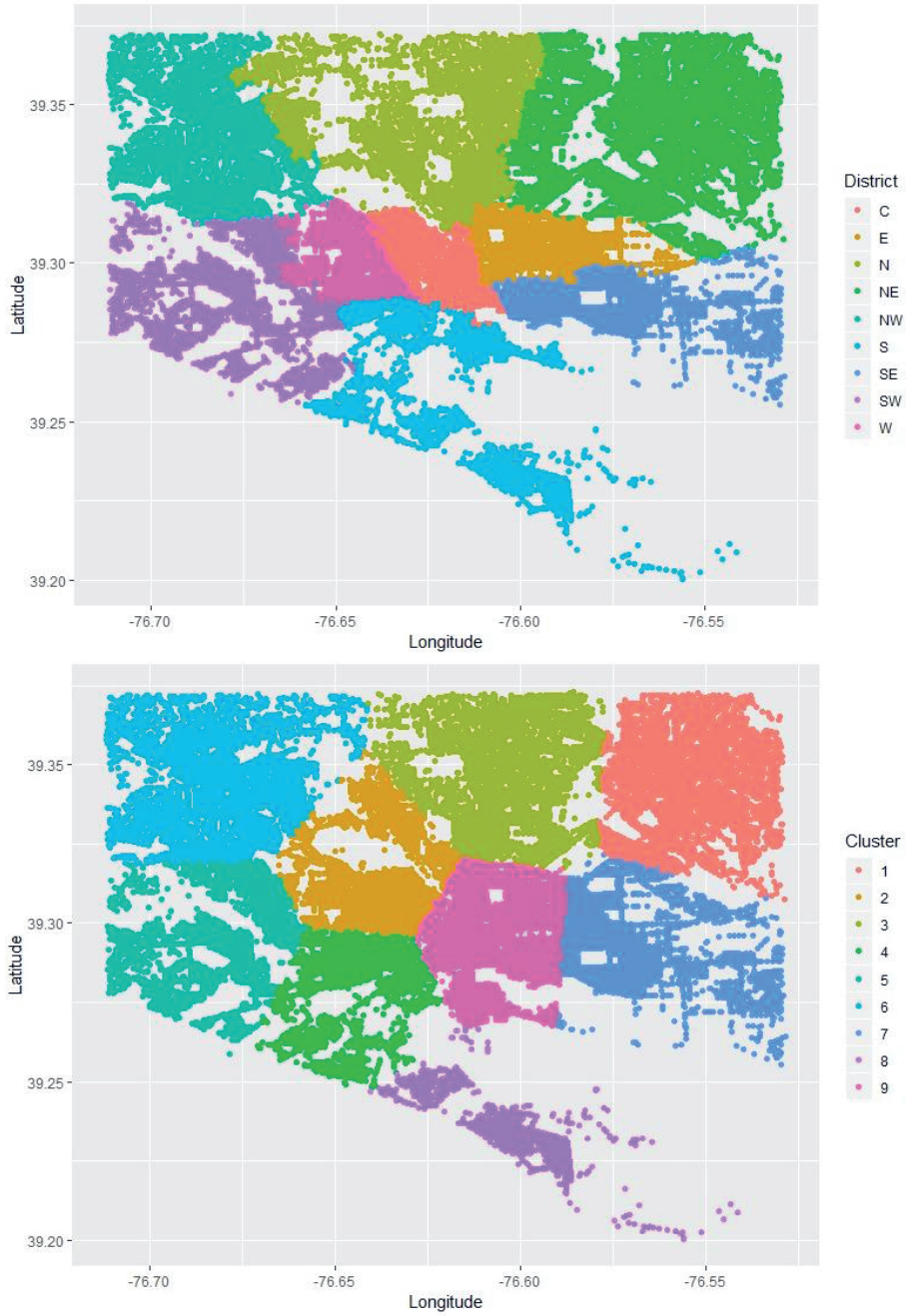

Figure 1. Location of crimes displaying data from the period between 1.04.2014–1.06.2019 in Baltimore by districts (upper chart) and clusters obtained with the *k*-means clustering, $k = 9$ (lower chart)

3.4. Hierarchical Clustering and Its Result

In order to group the data hierarchically, a subset of 10000 newest observations was extracted. They represent crimes committed between 3rd March 2019 and 6th June 2019. Same as previously, the clustering was performed on variables referring to geographical coordinates only (*Latitude* and *Longitude*). The corresponding Euclidean distance matrix was created, and Ward's clustering algorithm was executed. As a result, a dendrogram presented in Figure 2 was generated. It represents the process of merging smaller clusters into larger ones. The vertical axis presents the distances between clusters being merged.

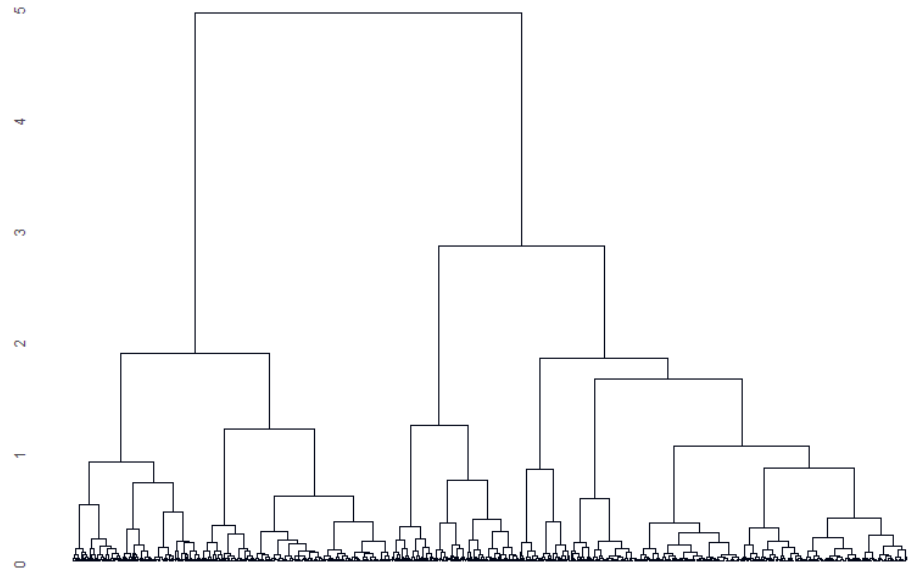

Figure 2. Dendrogram of Ward's method clusterization

As can be seen, the observations get merged into larger and larger clusters until a cluster grouping all of them is obtained. It seems reasonable to divide crime incidents in Baltimore into less than nine clusters, on the one hand, and more than that, on the other. This decision will facilitate assessing if the variance of crime patterns can be observed for large-scale city parts as well as for small neighbourhoods, provided that such variance can be observed. To begin with, the division into nine clusters was chosen again so as to verify the first hypothesis in conditions differing from those presented in section 3.2. The result is shown in Figure 3.

What seems especially striking at the first glance, is the decrease in the "density" of the chart when compared to Figure 1. It results from limiting

the number of visualised points, which is about 25 times less than it used to be. Still, the distribution of points in clusters is clearly different from their distribution in the districts. Hence, visual inspection again lends support to the first hypothesis: cluster analysis divides Baltimore into areas different from its official districts.

Moreover, at least a few areas visible in Figure 3 seem naturally separated (for example, the group of points in the southern or easternmost part). Therefore, the set was divided into 14 clusters. To contrast an additional division into three clusters only was created. Its result can be seen in Figure 4, while Figure 5 presents the division with 14 clusters. It can be observed that almost all of 14 clusters are clearly separated from each other and intrinsically homogenous. It would be still reasonable to split some of the clusters, however it is clear that increasing the number of clusters has already increased internal coherence and intuitiveness of the division. On the contrary, a reasonable division cannot be provided with only three clusters, which are clearly too few for such a varied set.

In order to verify the second hypothesis, which postulates a different crime structure in various city areas, the share of particular types of incidents (homicide, auto theft and larceny) in the general number of incidents was examined for the obtained clusters. Subsequently, for the division with $k = 14$ the mean and standard deviation was calculated for the set of the fourteen shares. The Table 5 contains information about the calculations made.[6] The value of the coefficient of variation[7] calculated for the three types of offence exceeds 15%, which suggests that at least when it comes to these kinds of crime, the crime structure in Baltimore is not uniform. In order to check more reliably if this assumption is justified, the test was performed separately for each of three offences considered. The null hypothesis here was a uniform distribution of the percentage of the given crime in clusters. Another test was performed for the three offence types combined. The null hypothesis of the test is that crime structure is independent of a district. Test results are presented in Table 6. Each of them provides very strong evidence for rejecting the null hypothesis ($p < 0.01$), which strongly suggests confirming crime structure variance for the offences considered. This leads to confirming the second hypothesis that the crime structure is not the same in various areas of Baltimore.

[6] Because of small order of magnitude of some shares, the results are presented as percentages with 0.01% precision, i.e with four decimal digits.

[7] Defined as the standard deviation divided by the mean: $\frac{\sigma}{\bar{x}}$.

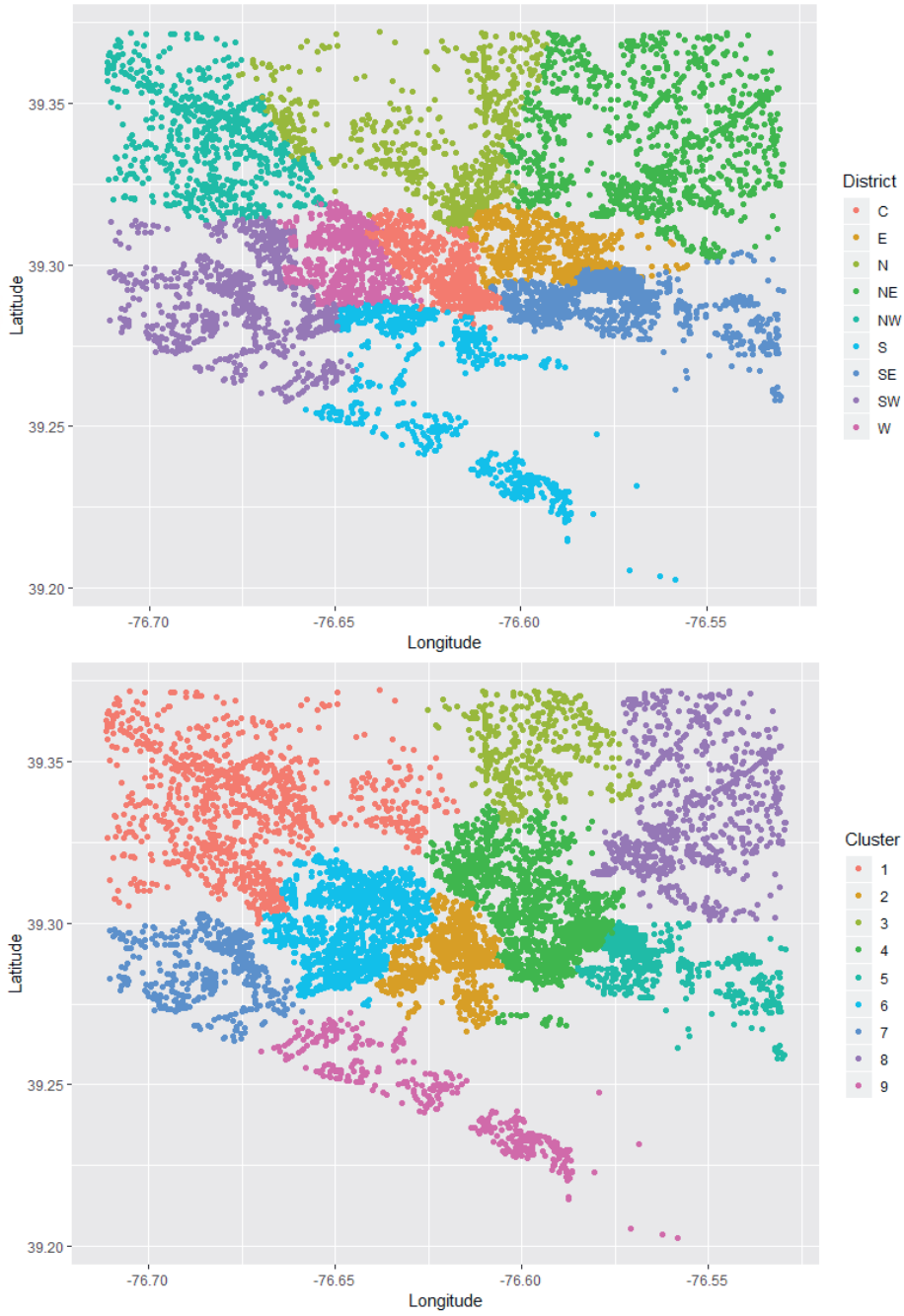

Figure 3. Location of crimes displaying data from the period between 3.03.2019–1.06.2019 in Baltimore by districts (upper chart) and clusters obtained with the Ward's method, $k = 9$ (lower chart)

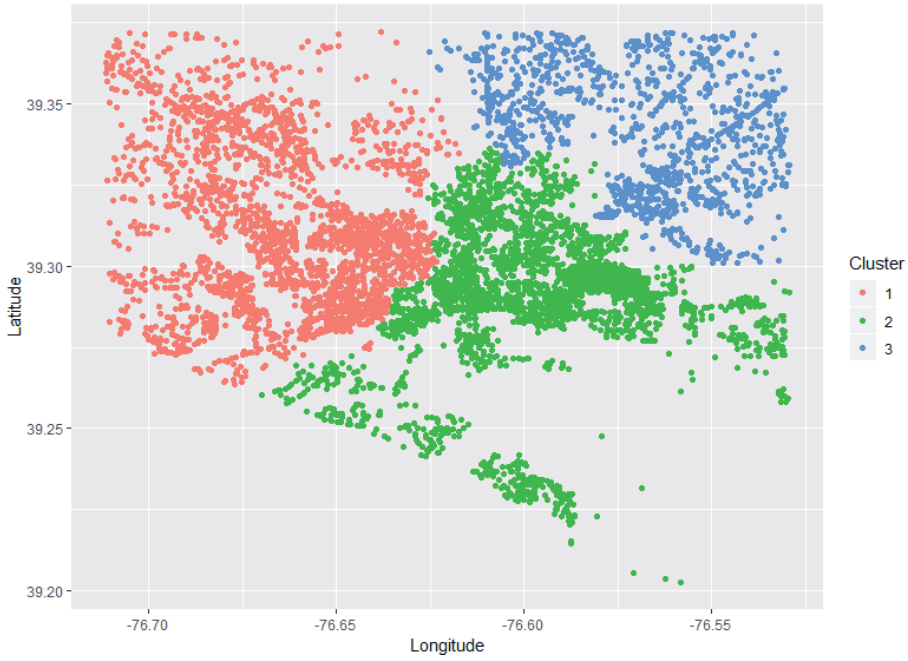

Figure 4. Plot for clustering obtained with the Ward's method, $k = 3$

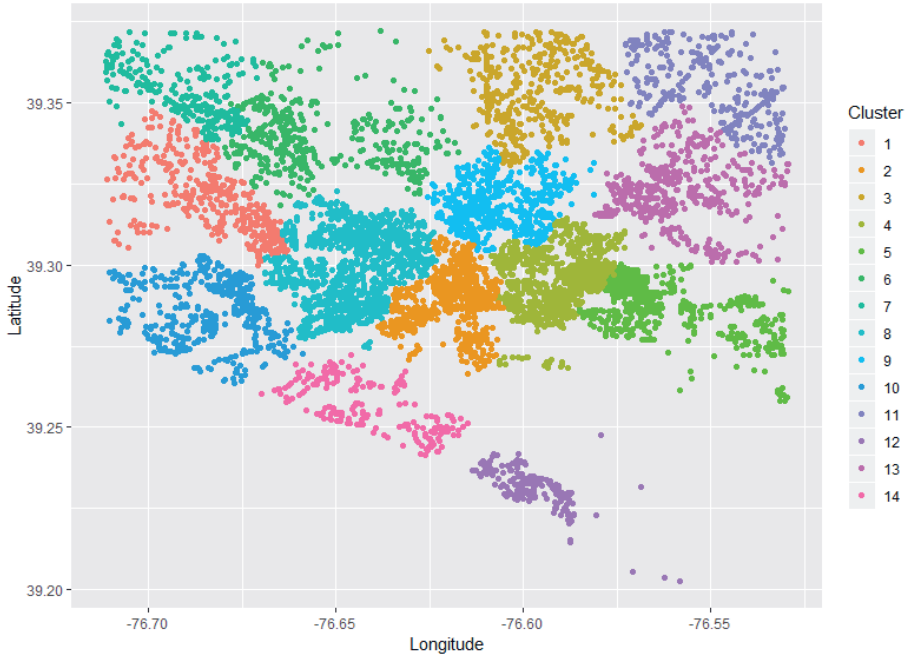

Figure 5. Plot for clustering obtained with the Ward's method, $k = 14$

Table 5. The percentage of selected crimes in particular clusters, $k = 3$, $k = 9$ and $k = 14$

Cluster	Percentage M [%]	Percentage KS [%]	Percentage K [%]
Number of clusters to divide into: *k = 3*			
1	1.2	9.21	22.2
2	0.52	7.34	25.6
3	0.45	9.74	21.6
k = 9			
1	0.78	9	24.4
2	0.16	4.47	33.2
3	0.38	9.28	20.5
4	0.86	7.94	21.4
5	0.12	8.12	25.8
6	1.65	9.68	21
7	1.09	8.54	19.9
8	0.89	9.98	22.2
9	0.67	10.2	23.2
k = 14			
1	0.86	7.2	20.6
2	0.16	4.47	33.2
3	0.38	9.28	20.5
4	0.82	8.08	18.6
5	0.12	8.12	25.8
6	0.51	9.48	29.4
7	1.08	11.1	22.2
8	1.65	9.68	21
9	0.92	7.72	25.8
10	1.09	8.54	19.9
11	0.28	9.89	22.3
12	1.2	8	22.8
13	0.61	10	22.2
14	0.29	11.8	23.6
Mean	**0.71**	**8.81**	**23.41**
Standard deviation	**0,44**	**1,74**	**3,83**

Source: own elaboration.

Table 6. Results of uniformity tests of crime structure in different clusters of Baltimore

Considered variables	Number of degrees of freedom	χ^2 value	*P*-value
M	13	33.447	0.001
KS	13	112.82	< 0.001
K	13	43.227	< 0.001
M; KS; K	39	176.62	< 0.001

Source: own elaboration.

3.5. Variance of Crime Structure by Number of Clusters

The third hypothesis to be examined referred to changes in variance of crime among clusters depending on the number of clusters. For a few reasons, it is worthwhile to consider dividing the area into subareas according to objective criteria.

Firstly, designing social research and testing the effectiveness of social campaigns or suggested environment changes is typically constrained by limited funding. Thus, such initiatives can rarely be performed or introduced on a large area. Even when disregarding criteria of administrative divisions, the created areas may be too large, making the implementation of projects impossible due to the high costs involved. Cluster analysis suggests an objective way of delimiting smaller and more homogenous areas based on the spatial distribution of crime incidents.

Secondly, sometimes it is especially vital to monitor some variables with high resolution. For instance, research examining how the presence of police affects the crime rate in a particular area would definitely benefit from using sub-district level data.

Thirdly, operating with data referring to entities of administrative division may effectively disable the creation of high quality econometric models unless the number of such entities is high enough. Moreover, high variance of variable values is sometimes wanted. For example, when modelling the relations between a certain type of the crime rate and some local factors, it is beneficial if the variables have high level of variance. Cluster analysis makes it possible to handle the first of the above mentioned problems by splitting a dataset into smaller parts, and thus obtaining several values of the variable. But can this method increase the variance of the variable value? Verifying the third hypothesis will bring an answer to this question.

In order to verify this issue, a function dividing the previously selected set into k clusters was created using the Ward's method, with k ranging from

3 to 40. Next, standard deviation (square root of variance)[8] was calculated for these samples, accounting for the following crimes: homicide, larceny and auto theft. The standard deviation for the sample representing the Baltimore division into districts was used as a reference. The results obtained as well as the regression line (estimated with the ordinary least squares method) are presented in Figures 6–8. The black horizontal line represents the standard deviation obtained for the Baltimore district division.

Even though the standard deviation does not increase monotonically with the increase of the number of clusters, the correlation is evidently positive. For each clustering, such k can be determined that the variance of a set of values for this k is higher than for Baltimore districts. In spite of a local variance decrease, the coefficient in each linear regression model with k as an independent variable and standard deviation as a dependent variable was significant ($p < 0.001$) and positive. There was no rationale to reject the null hypothesis of normality of the distribution of model residuals (p-value of Shapiro-Wilk tests > 0.1). Moreover, the coefficient of determination in the models ranges from about 0.77 to 0.92, suggesting that the number of clusters obtained constitutes the main variable responsible for the increase in crime structure variance.

The third hypotheses should then be considered true. It means that this clustering method has a greater potential of explaining the influence of various factors on crime in cities than arbitrary administrative divisions into districts. Even though this relation has been proved neither for all kinds of offences, nor for cities other than Baltimore, there is no reason to assume that it cannot be at least partly generalised.

Of course, the findings of this section do not imply that it is always reasonable to maximise the number of clusters. Increasing their number yields positive results as long as it can be justified by the aim of the research undertaken or the structure of the dataset. If an adequate number of clusters cannot be determined based on the above mentioned criteria, analytical criteria can be helpful (Milligan 1985; Jung et al. 2003).

[8] An ordinary descriptive statistics of standard deviation (a biased estimator of standard deviation) was calculated, given by: $\sigma = \sqrt{\frac{\sum_{i=1}^{n}(x_i - \bar{X})^2}{n}}$.

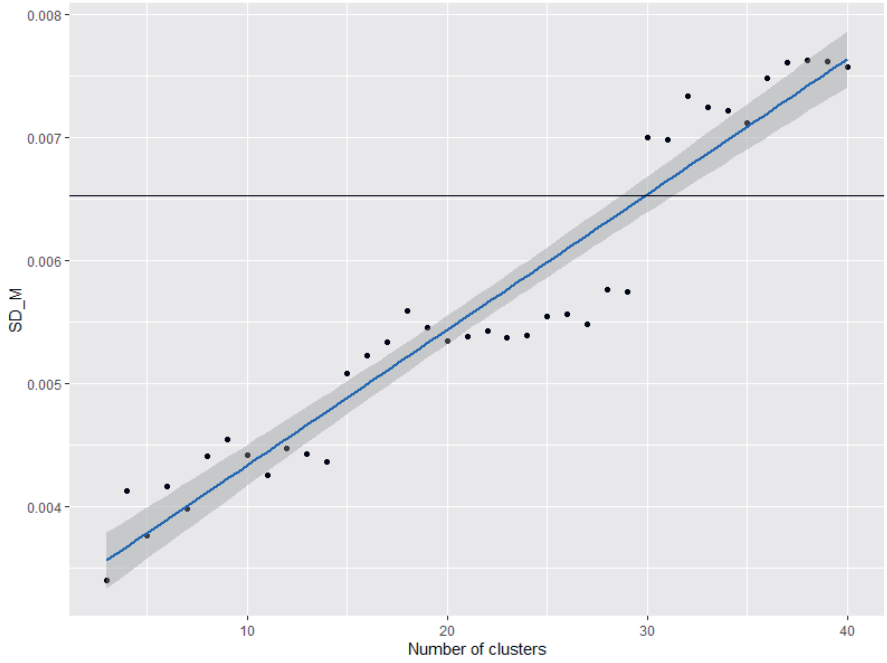

Figure 6. Standard deviation of homicide percentage by number of clusters

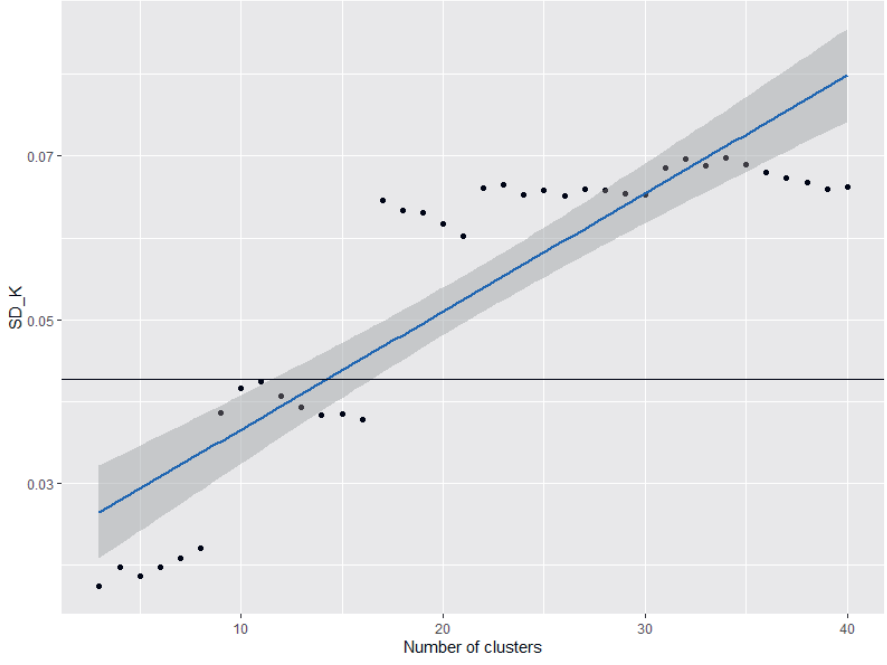

Figure 7. Standard deviation of larceny percentage by number of clusters

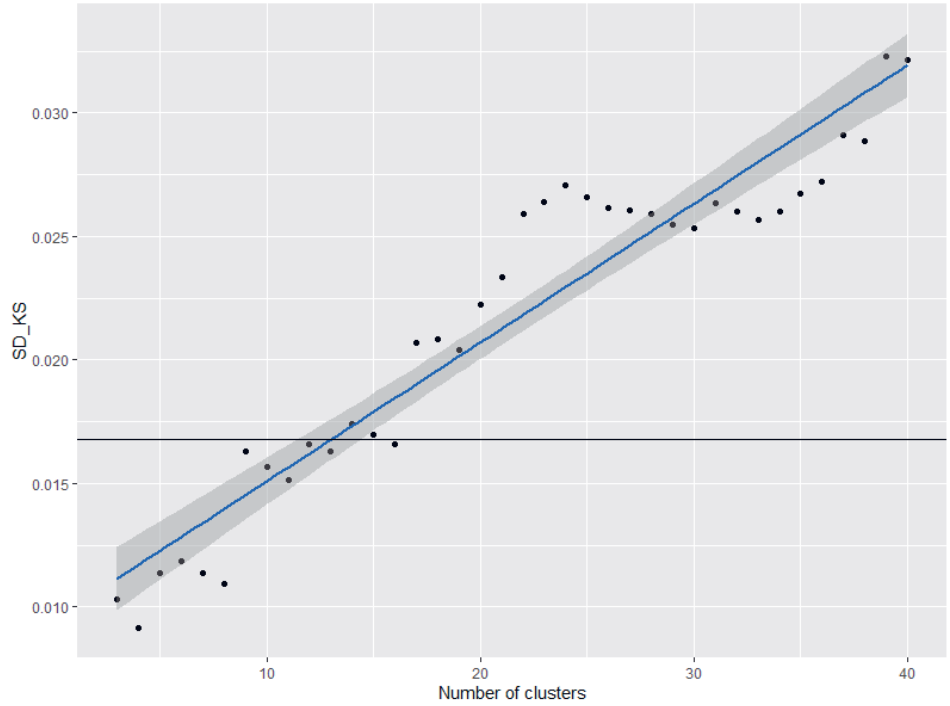

Figure 8. Standard deviation of auto theft percentage by number of clusters

4. CONCLUSIONS

The goal of the paper was to present hierarchical cluster analysis methods and to apply them to the clustering set of 10000 observations concerning crime in Baltimore. Moreover, the entire dataset was divided into groups using the *k*-means method. The results obtained have revealed that cluster analysis leads to the division of the city different from the administrative boundaries. It was also demonstrated that spatial factors correlate with the crime structure in Baltimore, which is different in various areas. Finally, it was shown that the variance of percentage of crime types rises with an increase in the number of clusters.

It seems that the cluster analysis method can be extremely useful in criminological and sociological research concerning the relation between crime and space. Not only does it ensure an objective criterion for division, but also allows for adjusting the number of areas and takes into account the spatial distribution of crime. Broader use of clustering in the research concerning the spatial dimension of law, including breaking it, is recommended. In fact, only a small part of the applications of the method were discussed in the present paper.

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THE CENTRE–PERIPHERY ANTAGONISM IN ADJUDICATION: A CASE STUDY ON THE SPATIAL DIMENSION OF THE POLITICAL

Abstract. One of the key elements of the critical theory of adjudication is the identification of an objective antagonism that is at stake behind a given court case. The identification of the antagonism allows to develop an axis, along which interpretive possibilities can be spread and arranged from those most favourable to social group A (e.g. workers) to that most favourable to social group B (e.g. businesses). The paper discusses the famous *Laval–Viking* case-law which was concerned with the fundamental rights of workers (right to strike and undertake collective action) and their relation to the economic freedoms of businesses, seeking to escape the high standards of worker protection in their own country either by changing the flag of a ship to a flag of convenience (*Viking*) or by importing cheap labour force from abroad, without guaranteeing the workers equal rights (*Laval*). Whereas the vast majority of scholars have interpreted the *Viking–Laval* jurisprudence as relating to the fundamental socio-economic antagonism opposing workers and businesses, the Slovenian scholar Damjan Kukovec has proposed an alternative reading. According to him, the real antagonism is ultimately between workers from the periphery (Central Europe, *in casu* Baltic countries) and workers from the centre (Western Europe, *in casu* Scandinavian countries). By introducing the spatial dimension to the political, Kukovec entirely changes the formulation of the underlying antagonism. The paper engages critically with Kukovec's analysis and argues that the objective interest of Central European workers lies not in selling their labour at dumping prices, but gaining the same guarantees of social protection as existing in the West.

Keywords: adjudication, the political, centre, periphery, spatial justice.

ANTAGONIZM CENTRUM–PERYFERIE W ORZEKANIU: STUDIUM PRZYPADKU O PRZESTRZENNYM WYMIARZE POLITYCZNOŚCI

Streszczenie. Jednym z kluczowych elementów krytycznej teorii orzekania jest identyfikacja obiektywnie istniejącego antagonizmu, którego dotyczy dane orzeczenie. Identyfikacja antagonizmu pozwala rozwinąć oś, wzdłuż której układane są możliwości interpretacyjne, od najkorzystniejszej dla grupy społecznej A (np. pracowników) do najkorzystniejszej dla grupy społecznej B (np. przedsiębiorców). Artykuł analizuje słynne orzecznictwo *Laval-Viking*, którego przedmiotem są podstawowe prawa pracownicze (prawo do strajku i działania zbiorowego) oraz ich relacja

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do swobód gospodarczych przedsiębiorców, którzy zmierzają do uchylenia się od wyższych standardów ochrony praw pracowniczych w ich własnym kraju, już to poprzez zmianę miejsca rejestracji statku na tanią banderę (*Viking*), już to poprzez import taniej siły roboczej z zagranicy bez zapewnienia pracownikom sprowadzonym równych praw pracowniczych (*Laval*). Podczas gdy większość badaczy postrzega orzecznictwo *Viking–Laval* jako dotyczące społeczno-gospodarczego antagonizmu pracowników i przedsiębiorców, słoweński badacz Damjan Kukovec zaproponował odczytanie alternatywne. Jego zdaniem rzeczywisty antagonizm ma miejsce pomiędzy pracownikami z peryferii (Europy Środkowej, *in casu* Pribałtyki) a pracownikami centrum (Europy Zachodniej, *in casu* państw skandynawskich). Wprowadzając wymiar przestrzenny do polityczności, Kukovec całkowicie zmienia sposób sformułowania analizowanego antagonizmu. Artykuł podejmuje krytykę analizy Kukovca, argumentując, że *obiektywny* interes środkowoeuropejskich pracowników nie polega na tym, by sprzedawać swą pracę po cenach dumpingowych, ale by uzyskać te same gwarancje ochrony socjalnej, jak na Zachodzie.

Słowa kluczowe: orzekanie, polityczność, centrum, peryferie, sprawiedliwość przestrzenna.

1. INTRODUCTION: THE SPATIAL DIMENSION OF THE POLITICAL IN ADJUDICATION

According to critical legal theory, adjudication is a process in which conflicting interests are decided upon by judges under conditions where legal materials do not fully determine the outcome of cases (Kennedy 1997). Given the judge's proactive role in deciding cases, and the fact that from her perspective the law functions as a "medium" (Kennedy 2008, 6–7, 18–19, 25), the judge can never be considered to be a completely impartial umpire, as she must side with one or the other conflicting interest which is at stake (Kennedy 2008, 160, 181; Mańko 2018a, 215–220). Of course, the judge can opt for interpretations which seem prima facie to be a "compromise" between the conflicting interests: for instance, if legal norm N_1 can be interpreted in five different ways (I_1… I_5) the judge can adopt a "compromise solution" by opting mechanically for interpretation I_3, which is equally distant from interpretation I_1 (most favourable to the plaintiff) and I_5 (most favourable to the defendant) (Mańko 2020a, 99–101). But what if only four interpretations are possible (I_1… I_4), or if interpretation I_3 is actually more favourable to the plaintiff, despite formally being located mid-way between I_1 and I_5? Ultimately, therefore, the judge must make choices – she must take a *politico-juridical decision* – which affects the antagonism, both in its concrete form (between the plaintiff and defendant) and in its collective form (between the abstract subjectivities, e.g. workers and employers) (Mańko 2018b).

The most obvious types of antagonisms are those based on economic struggles, such as, for instance, the aforementioned workers/employers antagonism, or the consumers/traders antagonism, or landlords/tenants antagonisms (Mańko 2018b). Other antagonisms which are easy to identify are those based on clearly-cut ideological lines, such as the antagonism between progressives and conservatives in their various facets (e.g. pro-choice vs. pro-life, LGBT vs. traditional family).

For the critical theory of adjudication to make sense, the antagonisms must exist *objectively*, not only in the minds of the individual litigants, but also on the level of *social structures* they represent (in the philosophical, not necessarily juridical sense).[1] This objectivity can be measured by the third-party effects of cases: if the European Court of Justice ("ECJ") decides a case between a bank and a client, the interpretation given in that case, for instance concerning the legality of Swiss franc clauses, will have an impact upon millions of clients (as in the *Dziubak* case and its aftermath in Poland).

Given the requirement that criteria for identifying social antagonisms need to be objective, the question arises whether geographical or spatial criteria could also be employed. After all, they refer to objective elements and could help to identify the antagonism at stake, allowing to speak of the spatial dimension of the political. As a case study I will analyse the *Viking–Laval* jurisprudence, two well-known judgments, decided one after the other in the time-span of only one week in December 2007. Most scholars commenting on the *Viking–Laval* case-law have seen them as instances of the conflict between workers and employers (Warneck 2010b; Zimmer 2011; Hendrickx 2011; Barnard 2012; Christodoulidis 2013). Damjan Kukovec, in contrast, proposed to introduce the *spatial dimension* into the political and to reframe the antagonism as that between the periphery (Central Europe) and the core (Western Europe) (Kukovec 2014; 2015a; 2015b). This seems to be a promising conceptual move which could be an important contribution to the on-going theoretical discussions on the role of the core-periphery dichotomy for legal studies and for framing legal questions in general. In this paper, I will subject Kukovec's analysis to a critique, showing that despite the *prima facie* appeal of the spatial dimension, in casu its introduction to the definition of the antagonism at stake is ultimately flawed. This will serve as a more general methodological caveat against the overestimation of spatial factors, based on alleged regional interests, and their deployment for purposes of trumping the objectively interesting economic antagonisms.

The discussion proceeds as follows: in Section 2 I present the two cases, *Viking* and *Laval*, focusing on the facts, which are of crucial importance for ascertaining the antagonisms, and the legal aspects of the Court's findings. Then in Section 3 I discuss the *communis opinio* analyses, on one hand, and the spatial analyses, on the other hand, of the *Viking* and *Laval* jurisprudence, contrasting the *communis opinio* with Damjan Kukovec's claim. In Section 4 I question the approach of Kukovec, arguing that the objective interests of workers in

[1] Representation in the juridical sense will, however, take place if the case is a class action (representation *sensu stricto*) or if the case takes place between a court whose judgments are considered a source of binding or at least persuasive precedent (representaiton *sensu largo* and *sensu largissimo*, respectively). Given that the case-law of the European Court of Justice is considered, in European law as a source of law (binding precedent), any litigation between representatives of subjectivities (social groups) entails juridical representation *sensu largo.*

the periphery cannot be identified with that of businesses, but should rather be assimilated to the interests of workers in general. On this basis, I reject the utility of Kukovec's spatial analysis. Section 5 concludes.

In terms of methodology, the present paper should be seen as an intervention in the critical theory of adjudication, based on a concrete case study (*Viking–Laval* jurisprudence) and engaging critically with existing literature (especially Kukovec's model of spatial analysis). As such, the paper aims to contribute to developing the critical theory of adjudication (general theoretical aim) and at the same time properly framing the social antagonism at stake in the *Viking–Laval* case-law (specific theoretical aim with practical implications).[2] The main claim advance in the paper is that Kukovec's reframing of the antagonism as a spatial one must be *in casu* rejected because it is based on an improper understanding of the objective conditions of workers of the periphery and wrongly seeks to identify their interests with those of their socio-economic antagonists in the name of regional/national identity trumping class identity. Whereas such a reframing could, possibly, correspond to the subjective state of mind of certain workers, seeking "market access" at any cost, it fails to follow the objective interests at stake which cannot be identified with seeking to work under conditions of appalling economic exploitation, against which the Finnish and Swedish trade unions rightly protested.

2. THE TWO CASES: *VIKING* AND *LAVAL*

2.1. The *Viking* Case

The case of *Viking* opposed, on the one hand, the Finnish company Viking Line, and, on the other hand, two trade unions: the International Transport Workers' Federation (ITF) and the Finnish Seamen's Union (FSU), which is federated in ITF. The ITF pursues a "flag of convenience" policy, whereby it tries to pressure ship owners to abide by the labour law rules of the state of beneficial (actual) ownership, especially demanding the collective agreements be concluded with trade unions from the state of beneficial ownership, not a state of the flag of convenience. ITF uses boycotts and solidary actions among workers to enforce its policy.

The litigation concerned the ship Rosella, owned by Viking Line. Initially, Rosella raised the Finnish flag, and its crew were subject to the high standards of Finnish labour law. According to the terms of a collective bargaining agreement, Rosella crew members received the same pay as was applicable in Finland.

[2] By contrast, the paper is not intended as an intervention in the doctrine of EU law. Therefore, certain complex issues of EU consitutional, administrative and labour law have been omitted for the sake of providing a clear picture of the theoretical issue in focus. For a proper doctrinal analysis of the *Viking–Laval* jurisprudence, see especially Barnard (2012).

However, the route operated by Rosella came under competitive pressure from Estonian vessels, where crews were subject to Estonian labour regulation and were paid less than Finnish seamen. In this context the socio-economic background contrasting Finland, a well-established Nordic welfare state, and Estonia, a post-socialist country subject to neoliberal policies, should be underlined:

> Under a neo-liberal political and economic framework Estonia has followed policies of radical market liberalisation with minimum attention and resources devoted to the welfare state or social cohesion. This dominant political-economic discourse resulted in a poorly developed system of industrial relations, where social partners are hardly influential players. Estonia is one of the countries in the EU with the lowest proportion of employees in trade unions (10 per cent) and collective bargaining coverage (33 per cent). The individualistic, neo-liberal economy and weak social partnership of the three post-socialist Baltic countries stand in a sharp contrast to the neighbouring Scandinavian countries where autonomous collective bargaining systems are strong (Evas 2014, 140–141).

It is in this precise context that we should view Viking Line's plans to reflag Rosella from the welfare state Finland to the neoliberal Estonia.[3] This would allow Viking Line to escape Finnish law and the existing collective agreement, which was beneficial to the crew, guaranteeing them decent working conditions. As required by Finnish law, Viking Line notified the Finnish Seamen's Union of its plans, and the Union informed it is opposed to them. The Finnish Seamen's Union, in turn, informed the ITF federation about Viking Line's plans to switch to a banner of convenience, recalling that the Rosella ship is "beneficially owned in Finland" and therefore the Finnish Union retains "the right to negotiate with Viking," rather than any Estonian or Norwegian trade union. Upon the FSU's request, this information was passed to all unions federated in ITF, which – in line with union solidarity – were asked not to enter into negotiations with Viking Line.

When the existing collective agreement for Rosella expired, the Finnish Seamen's Union was entitled to start a strike, which it did. It demanded from Viking Line to increase the crew by eight new seamen, and to refrain from plans to reflag the Rosella. Viking Line agreed to expand the crew, but insisted on reflagging the Rosella. FSU indicated that it would agree to renew the collective agreement only if Viking Line understood that regardless of the possible reflagging of the Rosella, Finnish law would still apply to labour relations, that no seamen would be laid off as a result of the reflagging, and that the employment conditions would not be changed without the employees' consent.

Viking Line sued the FSU before Finnish courts but in the end a settlement was reached. Once Estonia became EU member (on 1 May 2004), Viking Line returned to its plans to reflag it, choosing the Estonian flag of convenience. Viking Line brought proceedings in the courts of England against both

[3] It transpires from the facts of the case that Viking Line was also contemplating to reflag Rosella to Norway which, given that the latter is also a welfare state, is not clear as to its economic purpose.

FSU and ITF, arguing that the trade union's actions violated Art. 43 of the EC Treaty which guarantees freedom of establishment. The English court of second instance decided to stay proceedings and submit a number of questions to the ECJ concerning the interpretation of the Treaty articles concerning the freedom of establishment (Art. 43 EC), the freedom of movement of workers (Art. 39 EC) and the freedom to provide services (Art. 49 EC), on one hand, and Art. 136 EC, guaranteeing social rights as set out in the European Social Charter and the Community Charter of Fundamental Social Rights of Workers, on the other hand.

The ECJ, sitting in the composition of the Grand Chamber, ruled only on the interpretation of Art. 43 EC, considering that the questions regarding freedom of movement of workers and freedom to provide services remain hypothetical until the Rosella would be actually reflagged. The Court's interpretation of Art. 43 EC was to the effect that:

1) the scope of Art. 43 EC covers collective action initiated by a trade union or a group of trade unions against a private undertaking in order to induce that undertaking to enter into a collective agreement, the terms of which are liable to deter it from exercising freedom of establishment;

2) Art. 43 EC has horizontal direct effect, i.e. it is capable of conferring rights on a private undertaking which may be relied on against a trade union or an association of trade unions horizontal dire;

3) collective action such as that between Viking Line and FSU/ITF, which seeks to induce a private undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction within the meaning of that article;

4) such a restriction may, in principle, be justified by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

The Court, therefore, did not give a ready answer to the national court, but nonetheless confirmed that the EU rules in question apply. It was left to the national court (of England) to decide whether the restriction, arising through FSU/ITF action, is justified "by an overriding reason of public interest, such as the protection of workers." We do not know how the national (English) court would have decided the case, since following the reply from the ECJ – which arrived two years after the initial reference – the parties decided to settle case out-of-court (Malmberg 2010, 5). It is true that the decision opened up the possibility of using the freedom of establishment as a legal tool against trade unions, but on the other hand national courts were given room to justify such action; however, they would have to apply the test of proportionality (*Viking*

para. 84). Given the unpredictability of outcomes of proportionality tests, and the inherent judicial discretion they involve (Kennedy 2015; Barnard 2012, 126–127), this alone constitutes a serious limitation of trade union freedom. After all, balancing (weighing) "takes place either arbitrarily, or unreflectively" (Habermas 1996, 259). Introducing the proportionality test also reverses the burden of proof: it is up to the trade union to prove that the industrial action was justified and proportionate (Christodoulidis 2013, 2011). In fact, as Zimmer points out, had an EU fundamental right be put to the test of proportionality at national law, that "would have been considered as interference in fundamental union rights" (Zimmer 2011, 215). Indeed, whereas the economic freedom of businesses is treated "absolute," the workers' rights are "treated as imposed barriers" (Zimmer 2011, 215). The proportionality test introduced by the ECJ deteriorates the situation in comparison e.g. to German or Swedish law where a margin of discretion is afforded to the trade unions (Zimmer 2011, 221–222).[4]

Looking upon the *Viking* judgment in the light of critical theory of adjudication (Mańko 2020a; 2020b), one should consider all the possible interpretations of the law that the Court *could have* adopted in this case. Due to the limited scope of the present article such an analysis cannot be performed here in full, but it can be said that, given the wording of Art. 43 EC, the systematic arrangement of the Treaties and the open-ended category of purpose, the Court could have equally well ruled that Art. 43 EC is not applicable to industrial actions (for instance, for systemic and teleological reasons), that is has no direct effect (for instance, owing to its wording and purpose), and that, to the contrary, EU law protects the right to collective action enshrined in Art. 136 EC, or at least that is a matter of national law. This would have been the most pro-worker possible interpretation, but – in line with the methodology of critical theory of adjudication – a number of other possible interpretations should be considered, and placed on an axis (cf. Kennedy 1976) from the most pro-worker to the most pro-business interpretation. All in all, the interpretation adopted by the Court is definitely very close to being the most pro-business of all. Perhaps the only positive aspect of the *Viking* case is that, as Zimmer points out, "the ECJ acknowledged for the first time the right to take collective action and the right to strike as fundamental, 'even if' the court gives priority to the fundamental (economic) freedoms over the fundamental (union) rights" (Zimmer 2011, 215).

[4] This aspect, incidentally, has its own centre-periphery aspect, in which a centralised court imposes its own understanding of the law upon even distant areas (cf. Economides 2012, 2–3), rather than deferring the judgment on how to protect workers' rights to the local courts of Sweden and Finland. Indeed, as Kim Economides points out: "The rule of law implies the rule of central law over peripheral law; the former dominates the latter, which is usually silent but, if heard, will be subordinated to the former" (Economides 2012, 3).

2.2. The *Laval* Case

Laval was a Latvian company which, upon Latvia's EU accession, posted 35 workers to Sweden to work on a building site operated by a Swedish company L&P Baltic. Laval was not bound by any collective agreements in Sweden. The Swedish trade unions of the construction sector wanted to force Laval to sign a Swedish collective agreement. Negotiations were opened. The Swedish trade unions wanted to guarantee for the Latvian workers more decent remuneration than they were receiving under Latvian law. However, in the end the negotiations broke down and Laval did not subscribe to the Swedish collective agreement, as proposed by the trade union. As a result, collective action against Laval was initiated by the Swedish trade unions, including the blockading of the construction site where Laval was operating, which included the prevention of people, vehicles or goods from entering the site. Laval asked for police assistance, but the Swedish police explained that the collective action was lawful under Swedish labour law. Following that, a mediation meeting was arranged and Laval was given the chance to sign up to the Swedish collective agreement, whereupon the blockading action would be immediately stopped. However, Laval refused. Collective action intensified, including a solidarity action by the electrical workers' trade union, which prevented Swedish companies from providing electricians' services to Laval. In the end, Laval gave up that specific construction site, and sent its workers back to Latvia. Meanwhile, solidarity actions ensued, with all Laval's constructions sites in Sweden being blocked, and Laval withdrew from the Swedish market.

Whilst the collective actions were on-going, Laval brought a case against the Swedish trade unions involved, demanding a declaration that both the blockading and the solidarity actions were illegal and should be stopped. The Swedish court referred a question to the ECJ concerning the freedom to provide services (Art. 49 EC) and the Posted Workers Directive.

The ECJ ruled that Art. 49 EC and Art. 3 of Directive 96/71 "are to be interpreted as precluding a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Art. 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, from attempting, by means of collective action in the form of a blockade ('*blockad*') of sites such as that at issue in the main proceedings, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down, as regards some of those matters, more favourable conditions than those resulting from the relevant legislative provisions, while other terms relate to matters not referred to in Art. 3 of the directive." The first part of the Court's answer was, therefore, directly concerned with the facts of the case and left the national court with

no manoeuvre. The second part of the ECJ answer stated that: "Where there is a prohibition in a Member State against trade unions undertaking collective action with the aim of having a collective agreement between other parties set aside or amended, Art. 49 EC and Art. 50 EC preclude that prohibition from being subject to the condition that such action must relate to terms and conditions of employment to which the national law applies directly." In the motives, the Court signalled that the legal evaluation could have been different if the trade unions were merely trying to enforce a legally binding minimum salary for the sector at stake (*Laval*, para. 109–110), which, however, is an inadequate criterion for Sweden where, thanks to the social partners' "large extent of self-regulation (…) there are no statutory minimum wages but the social partners themselves regulate rates of pay and working conditions" (Zimmer 2011, 222). The Court's interpretation of the Posted Workers Directive is open to debate: a directive hitherto considered as a *minimum* standard allowing for better protection of workers (in line with what is explicitly provided in motive 17 of its preamble), is suddenly transformed into an act of *maximum* harmonisation (Warneck 2010b, 10; Zimmer 2011, 217).

Given the definitive nature of the ECJ's judgment, which did not leave the national court any room for manoeuvre, it was left with the decision on the amount of damages to be paid to Laval (Malmberg 2010, 10). Laval demanded EUR 140 000 in damages, but the Swedish court was not satisfied with evidence concerning actual economic damage, and awarded about EUR 50 000 in punitive damages, a decision reached by a narrow 4-to-3 majority (Malmberg 2010, 10).

As in the *Viking* case, in line with the methodology of critical theory of adjudication, all plausible interpretations would have to be confronted with one another, and the decision taken by the court – analysed in the context of other interpretive options. One of them could have been, like in *Viking*, to consider (for linguistic, systemic and teleological reasons) that Art. 49 EC is directed only to the Member States and has no direct effect (Reich 2008, 128, 135), or – arguing by analogy to competition law – that labour rights constitute a protected exemption (Reich 2008, 129).

3. *COMMUNIS OPINIO* ANALYSIS VS. SPATIAL ANALYSIS

The critical theory of adjudication insists on analysing court judgments as *politico-juridical decisions* which intervene in the sphere of the political, i.e. that of collective social antagonisms is a given society (Mańko 2018b). A crucial step in the analysis is, therefore, the identification and description of an objectively existing *social antagonism* which is at stake in a given case (Mańko 2020a; 2020b). Once such an antagonism is properly identified and described, all legally possible interpretations (plausible under a given legal culture) need

to be arranged from the most favourable to social group *A* to the most favourable to social group *B*, assuming that the antagonism is between those two groups (subjectivities, collectivities). The method of critical theory of adjudication does not provide a mechanical tool for solving cases, but invites a critical reflection upon the content of judgments from the point of view of their actual consequences for social groups – such as workers, migrants, women or minorities – at stake.

Prima facie the social antagonism at stake in the *Viking* and *Laval* cases should seem obvious: it is yet another instance in the on-going struggle between workers and businesses, and more specifically it is concerned with the scope of the right to collective action, such as strike (*Viking*) or blockade (*Laval*). Due to the specificity of the European legal order, both cases are concerned with the interrelation between the so-called "fundamental freedoms" of business operators, on one hand, and workers' collective rights, on the other hand, and in line with what Norbert Reich pointed out, the two judgments "certainly tend to a more 'liberal' and less 'social' approach by invoking a certain precedence of free movement rights over the fundamental right to strike, despite the 'social rhetoric' of the ECJ" (Reich 2008, 159–160). Indeed, in both cases the Court has given more weight to the rights of businesses, severely restricting workers' rights at national level, despite the fact that the EU has no competence to regulate the right to strike or other form of collective action (Warneck 2010a, 563; Hendrickx 2010, 1063; Zimmer 2011, 212; Barnard 2012, 135). Thus, the vast majority of legal scholars have focused on the worker-business antagonism and, indeed, taken the side of workers (Warneck 2010a, 563).

Also those (few) scholars who supported the *Viking–Laval* jurisprudence looked at the problem from the angle of the workers vs. business antagonism, just siding with the businesses, rather than with the workers. Thus, for instance, Roger Blanpain asked and immediately answered himself: "Was the industrial action, namely to boycott of Laval by the Swedish unions compatible with freedom of services? The Court said no, and rightly so" (Blanpain 2009, xxii), and Alicia Hinarejos opined that "[i]t is doubtful that the Court could have dealt with the conflict … in any other way" (Hinarejos 2008, 728).

In contrast to the *communis opinio* framing of the antagonism in the *Viking–Laval* jurisprudence, Damjan Kukovec took a different view, proposing to replace the class antagonism by a regional antagonism (Kukovec 2014; 2015a; 2015b). His views were also partly shared by Norbert Reich (2008). Concerning the *Laval* case, Kukovec wrote that

> …no one in the *Laval* debate noticed that the case could just as well have been framed as a conflict between Latvian workers' social rights and Swedish businesses' interpretation of freedom of movement provisions which would impede the realization of these rights (in order to make it impossible for a Latvian business to compete with Swedish businesses in Sweden) (Kukovec 2014, 143–144).

Later on in the same paper Kukovec drops entirely the reference to businesses as a side of the antagonism, and focuses on purely spatial (geographical) terms, arguing that

> the *Laval* debate could just as well have been framed as a conflict between Latvian workers' social rights and the Swedish interpretation of the freedom of movement provisions, which impedes the realization of these rights (Kukovec 2014, 145).

Also Reich drew attention to the spatial dimension at stake, claiming that the *Laval* case "concerned a 'non-proportional' social action of labour unions against service providers and their workers from another, namely a 'new' Member country; this action violated the principle of solidarity in the EU and was clearly aiming at protecting and segregating the national (Swedish) labour market from competition" (Reich 2008, 160), thus at least partly sharing Kukovec's core-periphery rhetoric, but also emphasising the neoliberal value of competition, rather than – as we will see below – the value of "market access" for peripheral workers, although, to an extent, both ways of framing the case are congruent.

Indeed, Kukovec goes as far as to argue that stake of Latvian workers was "a social right claim of Latvian workers struggling to improve their livelihood – or, to place it in the register of the EU Charter of Human Rights, their 'right to dignity and just working conditions'" (Kukovec 2014, 145), somewhat forgetting that the litigants were not the Latvian workers, exploited due the neoliberal regime in their country (cf. Lulle and Ungure 2019), but the employer who sought to exploit them by exporting "cheap labour force." Noting that a lot of critique of the *Laval* judgment focused on the critique of capitalism, Kukovec retorted:

> One solution in the *Laval* case is not more "capitalist" than another. As such, capitalism is not something that can be located in these choices and "tamed." All possible solutions in the case are capitalist. In this sense, there is nothing outside of capitalism. The solutions are just different and lead to a different constellation of entitlements and distributional consequences within the capitalist structure of society (Kukovec 2014, 150).

It is difficult to agree with Kukovec's view, because precisely the choice in the *Laval* case was between two varieties of capitalism: the Nordical welfare-state, social-democratic capitalism or neoliberal capitalism. Perhaps for the time being in Europe there is, indeed, "nothing outside capitalism," but at the same time – there is no *single and uniform* capitalism, as the scholarship on varieties of capitalism has shown (e.g. Hall and Soskice 2001; Westra, Badeen and Albritton 2015).

Kukovec then goes on to reproach scholars who have criticised the *Laval* judgment for remaining silent with regard to those legal solutions "harming the periphery" (Kukovec 2014, 150) and focusing only on those – as the commented judgment – which "actually or purportedly harm the center" (Kukovec 2014, 150).

His view on the *Viking* judgment is similar. He notes that "[t]he reactions to this judgment equally portray a limited understanding of harm to actors of

the periphery" (Kukovec 2014, 150), as in the *Laval* case. The Slovenian scholar proposed the following reinterpretation of the antagonism at stake in *Viking*:

> The debate in *Viking* was framed in the sense of a general conflict between workers and universalized social considerations on the one hand, and companies and universalized economic interests on the other hand. But an interpretation that the periphery workers' interests aligned with the center businesses' interests, while the periphery businesses' interests aligned with the center's workers interests, is equally if not more plausible. In this interpretation, the interests of workers of the periphery aligned with those of Viking, the company of the center, as those workers gained employment. And the companies of the periphery's interest aligned with the interests of the particular workers of the center in view of not allowing Viking to relocate to Estonia, a country of the periphery. Companies of the periphery would face, as a result of relocation, stiffer competition from Viking taking advantage of lower labor costs, which could drive them out of the market or at least reduce their profits (Kukovec 2014, 150).

In his view, the dominant academic narrative about *Viking*, i.e. a focus on the right to strike and collective action belongs to "considerations of the center" (Kukovec 2014, 150). Furthermore, he claims that "the discourse of the opposition between market freedoms and social concerns does not allow any meaningful discussion about distribution between regions and countries in Europe" (Kukovec 2015b, 414).

One of the authors to respond to Kukovec's striking line of argumentation is the Greek-British critical legal theorist from Glasgow, Emilios Christodoulidis, who speaks of

> …ululations of lawyers and theorists from the "new," post-2004, EU countries loudly proclaiming a victory against the arrogance of the older Member States. If the workers of the Baltic states want to sell their labor – and their life – cheap, goes the "inclusionary" argument, why should they be constrained from doing so (…)? (Christodoulidis 2013, 2005–2006).

Commenting on the two judgments, Christodoulidis makes the important claim that the Court's argumentative strategy is not so much about adopting the superiority of the economic over the social, but rather a deconstructive strategy undermining the very antagonism between the two. Christodoulidis notes that the notion of "market access" (access to the labour market) is prioritised over workers' rights:

> On the 'access' register, the clash is no longer between rights and freedoms, the social and the economic, but between the social rights of two constituencies seeking market access. It is now between those who are prepared to work for half the wage and those who are not. Incidentally, it does not matter to the advocates of this position that the halving of the salaries does not double the number of the workers but the profits of the entrepreneurs (Christodoulidis 2013, 2015–2016).

Leading specialist on EU labour law, Catherine Barnard, commenting on Kukovec's argumentation points out that:

> It distracts from the general thesis … that in terms of preserving the integrity of national social systems, the *Viking* judgment is severely damaging to rules developed by the states in the social field – the very area over which the initial Treaty of Rome settlement deliberately gave autonomy to the states – because fundamental (EU) economic rights take precedence in principle over fundamental (national) social rights (Barnard 2012, 123).

Commenting on Barnard, Christodoulidis notes

> Barnard is right, of course. But she misses something profoundly disturbing about "the merit" of an argument that suggests a mutual substitution (…) that pivots on market access, understood in its functionality of sustaining a downward spiral of lowering wages (social dumping); of an argument, that is, that assumes "market access" in this modality as sole guarantor of both social and economic rights. Social rights depend on political decisions. To hand them over to the market in this way, and assume that the social costs of the erosion of standards, conditions, and wages are inevitable, folds political thinking into the most reductive form of what Alain Supiot calls "total market" thinking (Christodoulidis 2013, 2016).

Concluding this section, it can be said that the vast majority (*communis opinio*) of scholars, regardless of their ideological preferences, frame the *Laval–Viking* case-law in terms of the classical antagonism between the owners of the means of production and the workers. While in his publications Kukovec (2014; 2015a; 2015b) tried to frame the *Laval–Viking* cases as entailing an antagonism between peripheral workers and businesses from the core, this position is untenable and one should rather understand his argument along the lines proposed by Christodoulidis, namely as an antagonism between "those who are prepared to work for half the wage and those who are not" (Christodoulidis 2013, 2015), i.e. between workers from Europe's core, especially the social-democratic welfare states, such as Sweden or Finland, and from Europe's Central European periphery, where severe neoliberal policies have been in place since the dismantlement of state socialism at the turn of the 1980s and 1990s. Essentially, therefore we are faced with the alternative of reading the key antagonism in the *Laval–Viking* case-law as a class antagonism (workers vs. businesses) or as a regional antagonism (Central Europe vs. Western Europe, or, more narrowly, Baltic countries vs. Scandinavian countries).

4. IS THERE A CENTRE–PERIPHERY ANTAGONISM AT STAKE?

The key analytical question, therefore, that needs to be posed from the perspective of critical theory of adjudication, is whether the antagonism at stake *involves a spatial dimension or not*. As I have shown above, Kukovec argues that it does, and he embeds his argument in a more general discussion of Central Europe's economic peripherality (Kukovec 2014, 134–137; Kukovec 2015a, 321–323; 2015b, 408–411). These arguments, based on objective criteria such as GDP per capita, or value of foreign direct investments, or role in global value

chains, are absolutely persuasive and I do not intent to question them. Incidentally, Kukovec's classification of Central Europe as a periphery is not isolated, the same conclusions are also drawn by Polish scholars applying Immanuel Wallerstein's theory[5] of peripherality (e.g. Zarycki 2016). Peripherality is visible not only in the economic field, but also in fields of symbolic production, such as culture or science (e.g. Warczok 2016), including legal culture (Mańko 2019, 71–74), legal science (Mańko, Škop and Štěpáníková 2016) and even legal practice (Dębska 2016). The *premise* used by Kukovec is, therefore, correct. But does the fact that Central Europe is a periphery automatically warrant the *conclusion* that the proper reading of the social antagonism at stake in the *Viking–Laval* jurisprudence is a spatial one? Or is it rather a reading which, in itself, imposes symbolic violence, on top of economic violence, upon Central European workers, trying to tell them that their best interest is mere "market access," i.e. to sell themselves as cheap as possible?

This question brings us to the conceptual core of the critical theory of adjudication, namely to the objectivity vs. subjectivity of the criteria, according to which an antagonism ought to be identified. In other words: do the feelings or convictions of the Latvian construction workers, sent in to Stockholm, or the severely underpaid Estonian seamen (potentially) to be employed at Viking Lines after the Finnish seamen would have been fired or quit voluntarily (due to low wages), should be taken into account? What about the subjective understanding of the situation by the owners of Viking Line and the Laval construction company, as well as by the Finnish and Swedish workers, engaged in collective action? To give a properly empirical answer to these questions would require a great deal of fieldwork which, years after the litigation, could be difficult to accomplish (e.g. tracking down former workers of Laval in Stockholm,[6] or former seamen of the Rosella, or – even more impossibly – the potential Estonian seamen of Rosella, who never got the job, because the vessel in question ultimately remained under the Finish banner,[7] etc.). Furthermore, even if such subjective feelings or convictions were to be researched, I think they would be irrelevant from the point of view of the critical theory of adjudication which focuses on *objectively existing* antagonisms, and not on *subjective* feelings or convictions which are individual and can change.[8]

[5] Wallerstein (2004). For an overview of other core-periphery theories, see e.g. Pylypenko (2014).

[6] In analysing their own understanding of their situation, the concept of "legal-spatial consciousness" could be useful (see Flores, Escudero and Burciaga 2019).

[7] Following the *Viking* litigation, the Rosella has been refurbished and transferred to a Sweden – Finland route, continuing to raise the Finnish flag (of the Åland Islands, a Finnish region). See e.g. https://www.sales.vikingline.com/find-cruise-trip/our-ships/ms-rosella/; https://www.dfly.no/uppgraderade-ms-rosella-ater-pa-ostersjon/; https://www.youtube.com/watch?v=dOX_neGDVI0 (all last accessed on 12 February 2021)

[8] Incidentally, it can be remarked that according to a 2017 opinion poll (Eurobarometer 2017, 20), Lithuanians and Latvians, just like Swedes and Finns, would prefer more solidarity in European societies. This is the desire of 79% of Swedes, 71% of Lithuanians, 66% of Finns, and 65% of

Putting Baltic workers against Scandinavian workers, as Kukovec does, is constructing an artificial antagonism, which ultimately seeks to obfuscate the real one, which is true, global and perennial: that between the owners of capital and those who do not own it, but have to sell their own labour to make a living. The difference in bargaining power between the two groups is enormous, and the entire legal invention of labour law – with such institutions as protection of the durability of the labour contract or the right to collective action – is aimed at remedying, even if only partly, the injustice inflicted every day upon those who need to sell their work to make a living. The alternative is not between free movement or its restriction: keeping borders open for people (cf. Jones 2019) is one thing, but using free movement as a tool for demolishing labour law, is another. I cannot agree with Kukovec when he bemoans the justice rhetoric by stating that, in the view of progressive lawyers, "[e]fficiency is contrasted with 'just distribution' or fairness. More 'justice' means less free movement; the argument of justice should fight free movement considerations" (Kukovec 2015b, 417). The question is not about the free movement of Latvian or Estonian workers; the question is about the conditions of work of *European* workers and the undermining of those conditions by means of social dumping.

Kukovec's claim that "what appears as an economic freedom in the dominant EU legal discourse could just as well be a social right of Latvian workers struggling to improve their livelihood, dignity as well as fair and just working conditions" (Kukovec 2015b, 415) tells only part of the truth or, to be precise, obfuscates the more important part of the truth. Whereas Latvian or, more generally, Central European workers indeed "struggl[e] to improve their livelihood, dignity as well as fair and just working conditions," this does not *per se* put them objectively in an antagonistic position towards Swedish or Finnish workers who – let us paraphrase Kukovec – struggle to *maintain* their livelihood, dignity as well as fair and just working conditions from the neoliberal onslaught. Why turn Central Europeans into the Troian horses of neoliberalism? Such a framing of the issue is, at the very least, a manipulation, and the use of spatial justice discourse is *in casu* not justified. Why shouldn't Central European workers enter Western European labour markets *respecting their rules*, and, especially, *respecting the social acquis*,[9] which is the outcome of decades-long, largely successful, class struggle?

Latvians. The situation of Estonians is a bit different, as 47% would prefer more solidarity, but 29% would like to have an equal share of solidarity and individualism, while 15% would like more individualism than solidarity (the latter view is shared by 12% Swedes, 13% Lithuanians, 24% Finns and 14% Latvians). Despite the differences between the views of the Baltic societies and Scandinavian societies, the converge is visible. Most workers simply desire better working conditions, and it can be plausibly claimed that a vast majority would prefer to stay in their home country if they could get a decent and well-paid job there.

[9] Which they actually do – "Labour mobility, that is, mobility of the workforce, within the EU tends to be predominantly from jurisdictions with weak social protection to jurisdictions with strong protection" (Evas 2014, 152–153).

The use of the centre-periphery rhetoric by Kukovec cannot justify his far-fetched claims. He argues that:

> The social claim of the periphery is thus almost inexistent in the current discourse. The latter is most often not seen. However, even after I have reversed the social and economic assumptions, the social of the periphery is foreclosed from operating powerfully. Because the centre's social claim is consistently strong, the periphery's free movement claim is weak. And as the periphery's social claim is weaker, the centre's free movement claim is stronger. The centre's social claim – the claim against social dumping – is honoured, and this weakens the periphery's free movement claim (Kukovec 2015b, 419–420).

Ultimately, the fundamental difference between the approach of Kukovec and that of myself and most other authors is the *identity of the subjectivity* at stake. Let me recall here that for the critical theory of adjudication, the subjectivities (such as workers and businesses) which are in a conflict of interest, are crucial in identifying the antagonism (Mańko 2020b). Antagonisms are, by their very definition, *collective* conflicts, and an individual conflict is perceived, in line with that theory, as an instantiation of a general (collective) conflict of two (or more) subjectivities (Mańko 2018, 84–88). The question therefore arises: should one speak of workers, or rather of "Latvian workers," "Estonian workers," or "Swedish workers"? Should the interests of workers be treated as a pan-European question, or should it be confined to national borders? Should priority be given to *class solidarity* or *national unity*? It seems that a tacit assumption behind Kukovec's approach is, in fact, a different answer to those fundamental questions from the one given by most commentators.

This approach – national unity over class struggle – is visible in Kukovec's reading of the *Laval* case: "An equally plausible, if not more plausible interpretation in the Laval case is that the PW's and PB's interests aligned against the interests of the CW and CB" (Kukovec 2015b, 424), where "PW" stands for workers of the periphery, "PB" – businesses of the periphery, whereas "CW" and "CB" stand for, respectively, the workers of core and the businesses of the core. Kukovec bemoans that "in the academic debate, the demise of social Europe has been lamented as it was deemed that the workers' interests were not sufficiently honoured and that the wealthy businesses were given priority by the judges. The periphery's social considerations and periphery's businesses' interests were out of the profession's picture" (Kukovec 2015b, 425) whereas, in fact, the interest of peripheral businesses (such as Laval, attempting to dump its services in Sweden) is not congruent with workers' interests, but is precisely based on their *exploitation*. As for the *Viking* case, Kukovec's analysis is even more striking: "The periphery's workers' interests aligned with the centre's businesses' interests and the periphery's businesses' interests aligned with the centre's workers interests" (Kukovec 2015b, 425), he claims. Once again, this is deeply problematic, as it requires the assumption that it lies in the interest of peripheral workers *to be exploited*, to receive lower wages, worse working conditions, in other words, to be treated with less dignity

that Western workers. After all, let us recall, if the Finnish trade unions were not successful, Viking Line would reflag the Rosetta and hire cheap Estonian workers, laying off the more fairly paid Finns. One can say that the Estonians would not be paid more on the Talinn–Helsinki line than other Estonians were paid on an Estonian vessel. What kind of gain would they, then, ultimately have? Would it not have been the syndrome of the dog-in-the-manger attitude? The only genuine gain for the Estonian workers would have been for the Estonians to gain an employment contract on the Finnish vessel *under Finnish law* (or, in the long term, for the working conditions in Estonia to be harmonised with those in Finland to remove social dumping). But Kukovec does not even analyse such a scenario, limiting himself to the assumption that Estonians want to be paid less.

5. CONCLUSION

The aim of the present paper was to analyse the famous *Viking–Laval* jurisprudence from the point of view of critical theory of adjudication, focusing on one preliminary question: the definition of the social antagonism at stake. It was noted that the vast majority of authors see the antagonism in both cases as one between workers, on one hand, and business, on the other hand, and most authors have sympathised with the former, bemoaning the negative effects of the two cases upon workers' rights in Europe. Against this backdrop, Slovenian-British scholar Damjan Kukovec has put forward a perspective based on introducing the spatial element into the equation, and effectively proposing to see the antagonism as a regional one between Central European workers, on one hand, and Western European workers, on the other. The former wish to enter the labour market by offering their time, effort, and ultimately life at a bargain price, whereas the latter seek to defend the social *acquis* from unfair competition and what is precisely described as social dumping. Despite the fact that Kukovec's analysis rests on a proper understanding of the core-periphery dynamic in Europe, whereby Central Europe is indeed in a peripheral position, whereas North-Western Europe is the core, his reasoning with regard to the antagonism underlying the *Viking–Laval* cases is fundamentally flawed.

This example shows that introducing a spatial element into legal analysis must be done carefully and should not be performed mechanically. The analytical force of the critical theory of adjudication rests on a correct identification of the social antagonism in a given case: this is the basis for creating an axis of possible legal interpretations (cf. Kennedy 1976), ranging from those most favourable to group A (e.g. workers) to that most favourable to group B (e.g. businesses). Assuming with the majority of scholars that indeed, the relevant antagonism in the *Viking–Laval* jurisprudence is that of workers vs. businesses, the Court's reading of the conflict between "fundamental freedom" of business operators

and fundamental workers' rights is definitely one which is extremely favourable to business operators. However, should we adopt Kukovec's perspective, we would have to analyse those solutions as spanned on an axis between the interest of Central European workers (seeking to sell their labour at a bargain) and Western European workers (seeking to protect their labour rights). The evaluation of the solutions chosen by the Court would be different, in Kukovec's terms – moderately positive for the Central European workers.

But the ultimate question needs to be asked: does the objective interest of Central European workers really lie in selling their labour at half the price, working in bad conditions, and being deprived of the rights enjoyed by workers in such countries as Scandinavia? Regardless of what false consciousness might dictate them, the only answer can be: no. Therefore, it is impossible to accept Kukovec's analysis which, in fact, only conceals what is purportedly reveals: whereas on the surface Kukovec speaks of the interest of workers, in fact, he means (consciously or not) the interest of capital, while wrapping it up in an attractive labelling of giving voice to the periphery.

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CONTEMPORARY EXPRESSIONS OF PERSONAL LAW: CO-EXISTENCE OR CONFLICT WITH THE TERRITORIAL LAW?

Abstract. The paper concerns the present role played in law-in-the-books and law in action as well by a very traditional law type, namely that of personal law. In spite of the dominating role that the other type, i.e. territorial law, has played in Western law for more than a thousand years, there are numerous contemporary expressions of the existence and application of personal laws. In particular, this is the case of the vivacity of traditional personal laws characteristic of non-Western legal traditions (above all shari'a), including attempts at their application in the Western environment. There are also various other examples of the recognition, at least in the practice, of personal laws in the Western law jurisdictions, which is indicated with the example of Polish law.

Keywords: personal laws, territorial law, shari'a, legal multivalence, conflict of laws.

WSPÓŁCZESNE PRZEJAWY ZASADY OSOBOWOŚCI PRAWA: WSPÓŁISTNIENIE CZY KONFLIKT Z ZASADĄ TERYTORIALNOŚCI PRAWA?

Streszczenie. Opracowanie dotyczy obecnej roli, jaką w przepisach prawa i w praktyce jego stosowania odgrywa tradycyjna zasada osobowości prawa. Mimo dominacji, występującej od ponad tysiąclecia, zasady przeciwnej, tj. terytorialności prawa, napotkać można wiele współczesnych przejawów występowania i stosowania zasady osobowości prawa. Dotyczy to, w szczególności, żywotnych tradycyjnych praw osobowych charakterystycznych dla niezachodnich tradycji prawnych (w pierwszym rzędzie szariatu), w tym prób ich stosowania w otoczeniu zachodnich społeczeństw. Są także inne różne przykłady uznania, co najmniej w praktyce, przejawów osobowości prawa w państwach zachodnich, co jest wykazywane na przykładzie Polski.

Słowa kluczowe: osobowość prawa, terytorialność prawa, szariat, multicentryczność prawa, kolizja praw.

In accordance with the general scope of the author's scientific interests, that is to say law and legal science, the present paper concerns problems that can be qualified as the reverse of the subject of legal geographical inquiries (e.g. Dudek, Eckhardt and Wróbel 2018). The choice of the problem – the present role played in law-in-the-books and law in action by a very traditional law type, namely that of personal law – is not an effect of the author's perversity (though perversity

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with respect to what the others do is not the worst approach that can be adopted with regard to scientific activity), but it is rather a result of being inspired by the following passage from the study which reflected on the polemical paper from 2009 entitled "Can There be Maps of Law?" (Bavinck and Woodman 2009):

> Reflections contained in the text [of both authors] concern mainly the territorial law. Personal law is a distinct category. Because of its specificity, expressing in the most general way in a link between legal norms and characteristic features of the given individual, and not the territory, (…) the contents and the scope of application of that law could not be fit to a cartographic take (Ptak-Chmiel 2018, 23).

The inspiration did not consist in simply following the author of these words in her reflection on the possibility of such application, but rather in seeing a need of a much broader treatment of the phenomenon referred to in the study as personal law.

It has to be noted that the term "personal law," can be confusing, and not only in Polish, because for a contemporary lawyer, in particular a European continental lawyer, personal law means mainly – if not only – a part or a branch of the private law in force on a given *territorium iuris* (or, according to the English terminology, a given jurisdiction); in Poland, the basic regulation thereof is to be found in Title II of the First Book of the Civil Code: "Persons." Therefore, in this meaning personal law cannot be an opposition to territorial law, i.e. law effective with respect to all the legal subjects acting in a given territory (in principle, the territory of the given state) or in a given jurisdiction, including the Polish civil law.

In the contemporary world dominated by the Western model of law, insofar as it is defined in opposition to territorial law, personal law constitutes a kind of exception to the principle of law territoriality. Therefore, from the historical point of view personal law can be perceived as a relic of non-Western legal traditions: in some jurisdictions formally recognized and, therefore, legally coexisting with the given territorial law; whereas in some other jurisdictions it is simply tolerated and therefore coexists *de facto*, while in other places it is rejected and therefore combatted, which does not automatically mean that a conflict between the two legal principles is always to be decided in favour of territoriality. One could ask what the causes of such different approaches are, and this paper attempts to provide a preliminary answer to that question. However, particularly in Polish law, there are expressions of personal law that are in no way relics of non-Western legal traditions. Noting them and searching for reasons why they are turned to is another aim of the present author.

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Textbooks on the universal history of the state and law teach that the principle of personal law was in force for a prolonged period in ancient Rome, where *ius civile*, as the name suggests, was the law exclusively of Roman citizens in their legal relationships. Later, in the beginning of the Middle Ages, it was the law of

the people belonging to a given ethnic group, that is, a tribe (e.g. Sczaniecki and Sójka-Zielińska 2016, 102–103, 137–138). In other words, only from the 10th century did the principle of territorial law increasingly take shape at first in a relatively small spatial framework of relatively small jurisdictions (with the exception of England after the Norman conquest), and then, more and more, within the borders of emerging national states. It is necessary to point out that territorial law denotes a spatial separation of legal systems made on the basis of a political map, and not on any non-spatial criteria.

As far as national states are concerned, it has to be noted that relations of the state organization and the national substrate were shaped in different ways. In France, unlike many other European states, the state created the nation (which also explains the term *l'état-nation*) as well as the nation's law, and not vice versa. On the other hand, the creation of the state by the nation was particularly observable where the process of shaping the nation, identified for that reason on a different basis from the allegiance-citizenship of France, had preceded the establishment of the national state. The best examples thereof could be Italy and Germany, but also, though in different circumstances at the beginning and in the end of the national formation process, Poland – which was deprived of its statehood in the formative period of the nation.

Though the present paper is written in English, the following remarks may be important from the point of view of relationships between personal law and territorial law. The Polish word for the nation is *naród.* This word is composed of two elements. The first one, *na*, is easy to translate and to explain in English, as it means simply "on," thus having a spatial, territorial connotation. The other element: *ród* can be directly translated into English as "kin" and/or "big family" (which also gives *naród* a personal flavour), but it is also noted that *ród* is closely associated with *rodzenie,* i.e. birth, which permits explaining *naród* as the space of *na-rodzenie*; on the other hand, however, *narodzenie* may be also associated with a large number of people (Tarasiewicz 2003, 5–8). Space in this context denotes a physical phenomenon, as well as a spiritual one, and the term *na-rodzenie* expresses, above all, the process of socialization in a given space, as well as the effects of such process.

The national state requires a certain intensification of the effects of *na-rodzenie*, but, independently from that, it bases itself on the force of public power, on *imperium*, and the law always plays the role (though not the exclusive one) of an instrument of power pertaining to a given territory. This is the national law, in the sense of the law of a given state (or a part of the state, constitutionally authorised and spatially allotted, in particular in a federal state) applicable to all who find themselves on its territory, which can serve as one of the most useful instruments for the exercise of *imperium*.

Traditional concerns focus on the national state and the national law. Until relatively recently, law – in the sense of a set of rules regulating behaviour of individuals and other legal subjects – was really confined within state borders,

and international law, situated outside the national law, contained far more rules of international morality (as it was qualified almost 200 years ago by John Austin) than those of law. Today, however, the spatial dimension of law can largely extend beyond the space delimited by the state borders, which substantially changes the perspective on law territoriality.

The phenomenon, relatively well diagnosed, of the development of the multi-centric nature of contemporary law (Łętowska 2005) is accompanied by the phenomenon, not fully diagnosed, of the shaping of cosmopolitan and/or continental law, which is composed not only of "hard" rules but also of diverse elements of "soft" law. Nonetheless, cosmopolitan and/or continental law remains a territorial law, though having greater spatial coverage – or even much greater – than traditional national law.

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The continued progress of territorial law, and the predominance of the principle of territorial law, is nowadays unquestionable. However, it is always possible to ask the question of whether the principle of personal law has really become merely a historical phenomenon totally superseded by the contemporary principle of territorial law.

In 1963, an English lawyer was able to state that:

> (…) however the Personal Law may at some time been justified, that justification can no longer be supported today. (…) It emerged that the actual doctrine of the Personal Law was unsound in theory and unworkable in practice. (…) The time is ripe (…) for the Personal Law to be shown the gate to the field of legal history. There should be no difficulty in closing the gate behind it (Raeburn 1963, 125–126, 147).

More than half a century ago it was thus possible to arrive at an affirmative answer to the above question. The answer was supported by a kind of juristic occidentalism, that is, treating Western law with its principle of territorial law as the only appropriate – or at least workable – model of law in the contemporary world. Although occidentalism could be justified in the colonial era (in spite of the imperial authorities maintaining, in various forms, the personal law of the native population), it had less and less grounds in the period of decolonization and with the emergence of more and more postcolonial states that had no bases for a sense of national identity, in particular those typical of Southern and Central Europe. For many postcolonial states, territorial law was not the only type of law to be enforced, as their citizens had been accustomed to another type of law, i.e. personal law. In Africa, the idea of the territorial or spatial separation of legal systems could only be superimposed upon working and workable traditional legal systems (Allot 1970, 107).

One of the important proofs of occidentalism weakening was the development of the macro-comparison approach in the science of comparative law, besides

the traditional interest in micro- and meso-comparison (Siems 2018, 13). In 1964 – a year after the publication of the above quoted condemnation of personal law – a very important book was published: "Les grands systèmes de droit contemporains" by René David, in which the phenomenon of the particular vitality of personal law had to be mentioned and explained within the presentation of non-Western legal families; the book was soon translated into several major languages and became perhaps the most widely known comparative law book of its time (Fauvarque-Cosson 2006, 46), and is still published, obviously in an updated form (David, Jauffret-Spinosi and Goré 2016).

Today, it would be difficult to write a book on macro-comparative law without taking into account the existence of personal laws, or even without such concluding observations:

> There are conflicting principles, and much of the theoretical debate is in terms of these conflicting principles. On the one hand there is a notion of citizenship which would demand exclusive loyalty to the state and which would relegate other legal traditions, if recognized at all, to the realm of a purely private sphere. On the other hand there is the model of "personal laws", representing the co-existence of different legal traditions and groups, which would (perhaps fatally) weaken the structure of the state. In the law of the states of the world, solutions are usually found between these two poles (…) Multivalence in law is in the order of the day, whether recognized in political or state theory or not –

followed by treating jurisdictions which recognize personal laws as something natural and susceptible of persistence (Glenn 2007, 364–365).

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The present interest of legal comparatists in the phenomenon of personal law arises, on the one hand, from the continuing formal situation. Personal laws are recognized, and to a large extent by the legislation, as the source of law in force – in the Republic of India, in Arab states, or in Israel (for a comparison of the situation in India and Israel, see Subramanian 2014). Such recognition means, however, a certain territorialization of personal law – applied to persons who want to be subject to it, but according to the substance and procedures admitted within borders of the particular state, and by its courts of law.

On the other hand, one has to notice diverse practical phenomena outside the legislative regulation of particular states, and sometimes formally contrary to regulation. In particular, there is no legislative basis for an application by courts of law in the Republic of South Africa, in a limited field, of the "non-state law" of inhabitants – citizens ("non-state law" is nothing else than personal law), instead of the "state law," i.e. the territorial law (Rautenbach 2014). There are also attempts at solving, even in contravention of the legislation of the place, problems resulting from migrations of persons who, being attached to the tradition of the choice of law typical of the model of personal law, want to preserve their personal law while

living in countries ruled by Western law. The latter problems concern above all *shari'a*, the very vital personal law of Islamic people, though not only (in Poland, there was a well-known example, subject to judicial examination, of a Sikh who did not want to remove his turban in the course of the border control, and the turban had been taken off by force). Generally speaking, personal laws, except for the customary laws of some African peoples, are inseparably linked with a given religion, and they are based upon the lack of distinction between the orders of the law and orders of the religion.

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In those states which develop their territorial law but which also formally recognize personal laws as well, the application of personal law is, in principle, limited to "personal status." While using our classification of branches of the law, this "status" can amount to personal law, family law, and the law of succession. Moreover, it is not at all accidental that the field of "personal status" is very close to the scope of the historical application of the Canon Law to laics (this law is also a kind of personal law based upon religion but differing from Talmudic, Islamic or Hindu law).

In the Republic of India, where the most developed juristic reflections on the effects of the model of personal laws (limited to the field of "personal status") are to be found, there are, formally recognized by the series of legislative acts dating back mainly to the time of the British rule, personal laws of: the Hindu people, the Muslim people (in the 1937 Muslim Personal Law Application Act explicitly named *Shariat*) and Christians. Particular legislative acts relate to the marriage law of Zoroastrian Persians (Parsi), and the marriage law of Jews is respected without respective legislation. However, the experts mention that the legal value of those laws originated rather in the decisions of the British colonial authorities than in the force of the religions standing behind each particular law – "there is nothing inherently personal about personal laws" (Agarwalla 2018 – and to compare, Mouloi 1880), but respective decisions did not simply result from the discretion of the British but were an effect of pressures from elites of particular communities, leading even to alterations of their legal systems in ways that served their own interests (Newbegin 2009). Whereas followers of Hinduism agree with increasingly stronger regulation of their status by means of legislative acts that implement the constitutional principle of the equality of women and men, Muslims defend their legal autonomy. This means that in India there is a sufficiently strong socio-political basis for maintaining the formal coexistence of the core of both personal law and territorial law. Art. 44 of the Constitution of the Republic, declaring that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India" remains a vague programmatic address, and is not an expression of a legal norm.

In any case, the example of India has proved that the 1963 statement on the purely historical nature of the model of personal law was at least premature, and,

taking into account the richness of the Indian legal doctrine relating to that subject (and thus not only Hindu), the author's thesis that "the actual doctrine of the Personal Law was unsound in theory and unworkable in practice" was completely inadequate, as it is inadequate today.

Legal comparatists, having a vested interest in the experience of India, tend not to note another example of a formal declaration of the principle of personal law coexisting with that of territorial law. The 1960 Constitution of the Republic of Cyprus, a country inhabited by the members of two communities – Greek and Turkish – divided the legislative power among the national House of Representatives and two Communal Chambers representing Greek and Turkish Cypriots, respectively. The Chambers are to dispose legislative powers not only with regard to, for instance, all educational, cultural, and teaching matters (which could suggest a federal form of government, though without a respective territorial division of the Republic) but also – or rather above all – with regard to all religious matters, personal status, and the composition and instances of courts dealing with civil disputes relating to personal status and to religious matters. The sphere of personal status, together with that of religious matters, is thus constitutionally legitimated in the state, which is member of the European Union. It is another matter that the Cypriot constitution has not worked in this respect since 1963 because of the dispute between the Greek and Turkish Cypriots and, then, between Turkey and Greece, including Turkey's military intervention; the territory of the Republic is *de facto* divided into the self-proclaimed Turkish Republic of Northern Cyprus and the territory fully administered by Greek Cypriots. The lack of application could also be a reason for legal comparatists lacking interest in those particular solutions aimed at protecting the rights, including personal status, of Turkish Cypriots.

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The conflict between personal laws in general (legal disputes between persons representing different personal laws) and in particular (examined in the context of the territorial law – still more difficult to solve when the dispute proceeds on another *territorium iuris*, which occurs quite frequently in marriage law) belongs, together with the formula of choice of law, to the field of private international law.

It is very characteristic that the contemporary doctrine represented by those few who are interested in the conflict of personal laws does not differ substantially from what was elaborated in that field in England a century ago (Robertson 1918), which inclines one to agree only partially with the somewhat different opinion – expressed in 1976 – of a representative of Islamic legal doctrine and an expert in private international law (Tier 1976). Nonetheless, it cannot be disputed that the issue was largely ignored by the mainstream scholars of private international law, despite the fact that the conflict of laws has been a crucial issue for this branch

of legal science. The silence was a result of the conviction that the problem was only of historical importance, and there were also some authors who added an another argument: typical schemes of private international law, such as *lex fori*, *lex situs*, *lex loci contractus*, or *lex domicile*, are incompatible with the conflict of personal laws, because those laws overlap on the same territory, and the legislation of a given state relating to the judiciary organization decides whether there are distinct courts of law for particular personal laws or the same court of law could be competent for different personal laws – and the latter solution complicates the life of diverse legal communities, which makes those in a given jurisdiction search for sophisticated rules (Tier 1986).

On the other hand, one could speak about a distinct – to a certain extent – doctrine of conflicts pertaining to formally recognized personal laws. The undeniable vitality of Islamic law is an important factor in the need for the development of such doctrine, which has to be, by definition, sophisticated.

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The theme of contemporary expressions of personal law, however, is not exhausted by evoking relationships between formally recognized non-Western personal laws with a religious basis and the territorial law of the state recognizing those laws, since it would be difficult not to notice various other expressions, and, moreover, within the framework of Western law, which is territorial in its essence. The other thing is that the expressions found within Western law are dispersed and seem to be less important than those examined above, despite the fact that, since they arise out of the political and/or social need to have them within the legal system, it is difficult to call them simple or unsophisticated.

To start from the sphere of the "hard" law, one such expression is the typically personal (and also typical for Western law) application of the Polish penal legislative act to Polish citizens who committed a criminal offence abroad (the principle stipulated in Art. 109 of the Criminal Code), unless (Art. 111) it is not considered an offence by the law in force where it was committed (except, however, for a Polish public official who has committed an offence while performing his duties or a person committing an offence in a place not under the jurisdiction of any state authority). Art. 109 and Art. 111 of the Polish Criminal Code can be treated as an exception from the principle of territoriality – declared in Art. 5 of the Code:

> Polish criminal law applies to an offender who commits a prohibited act in the Republic of Poland, or on a Polish vessel or aircraft, unless the Republic of Poland is party of an international agreement stating otherwise.

As other exceptions, one could indicate the various particular privileges, provided for in international agreements or in constitutional and statutory provisions,

of a given group of persons. They concern, in particular, immunities: diplomatic and consular above all, but also substantive and formal parliamentary immunity.

A very special privilege resulted from the interpretation, presented in the 1991 judgment of the Polish Supreme Court, of the provision of the Criminal Code pertaining to passive bribery, i.e., accepting bribes (at present, it is Art. 228 of the Code), leading to the exclusion of responsibility of persons performing public functions in a foreign state or in an international organization. However, the exclusion disappeared as a result of the ratification by the Republic of Poland of the Paris Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions – not by a change of interpretation but by adding an explicit provision to the Criminal Code (Izdebski 2011, 282). Moreover, the Convention is an example of the development of "cosmopolitan law," which is still territorial, but on a scale much larger than any national law. The best example of "cosmopolitan law" is the Rome Statute of the International Criminal Court (Benhabib 2007).

It is also justified to qualify the right of Polish nupturients to choose so-called concordat marriage, ruled by Canon Law, and taking simultaneous effect in the field of state law, as a specific expression of the formal application of personal law. This form of marriage was reintroduced by the Polish government, following the Concordat concluded in 1993 with the Holy See, thereby taking advantage of the great devotion of the Polish people shown to the Catholic religion, and aiming at having the best relations with the Catholic Church.

At the border between the law (partially "soft") and simple practice, we can identify another expression of the working of personal law in Poland. This is the recognition, within constitutionally guaranteed autonomy of churches and other religious communities, of the special legal status of clergymen which, with respect to clergymen of the Catholic Church, can lead (and, moreover, has led) to their – practical, if not formal – exemption from the operation of the territorial law; in particular as far as sexual offences are concerned, with priority – if not monopoly – being too frequently attributed to the respective provisions of the Code of Canon Law.

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As far as the practical phenomena relating to expressions of personal law are concerned, the most important are those which are connected with migrations of persons who want to retain, in the states under Western law, their own law, also observing a personal law tradition of the choice of law. This concerns, above all, followers of Islam, and therefore of *shari'a*.

Formally, in Western states there is no room for *shari'a* – except for certain of its elements (such as validity of marriage) – in situations where, even though it has been recognized within the field of personal status in the Republic of India or in numerous Arab states, the rules of *shari'a* are in a conflict with the relevant

territorial law. In that field, solutions should and could be provided by the rules of private international law.

However, conservative or radical Islamists try to go beyond that limited range of *shari'a*'s operation, and, going beyond operating in an "underground system" (Black 2010, 65), and try to bring about its practical operation to a much larger extent. Thus, there can be attempts to apply *shari'a* as a basis for adjudication in formalized and recognized institutions of alternative dispute resolution (ADR). There are experiences of debates in the Canadian province of Ontario in 2003–2006 which led to a certain formalization of Islamic arbitration in family law (Boyd 2007; Korteweg and Selby 2012), and then of similar debates in Australia, without, however, leading to a similar effect (Black 2010). On the other hand, in the German Islamic Charter, the official document of Muslims of Germany, there is the following provision: "The command of Islamic law to observe the local legal order includes the acceptance of the German statutes governing marriage and inheritance, and civil as well as criminal procedure" (Black 2010, 67). Legal multivalence may, therefore, have different faces due to the historical experiences and socio-cultural background of particular Western countries.

Conservative or radical Islamists can also try to benefit from, or abuse, the freedom of religion – one of the generally recognized fundamental rights. That freedom is not generally considered to be absolute – in spite of what was stated orally by the President of the Polish Constitutional Tribunal while justifying the judgment of the Tribunal of the 10th of December 2014 relating to the ritual slaughter – and neither is it almost absolute, as was stated in the written justification of the judgment. However, the extent to which it may be limited while protecting other constitutional and international principles and values (there is reference to Art. 9 of the European Convention on Human Rights and Fundamental Freedoms) is a matter of discussion (Olszówka 2016, 1273–1275), and the problem can be solved in different ways in different states. As an example of diverse approaches one can recall the legislation of some European states prohibiting women from wearing traditional Islamic burqas in all public places (such as in France, Belgium, Denmark or Bulgaria) or in some public places (the Netherlands); moreover, this prohibition was accepted in 2017 by the European Court of Human Rights.

In that field, however, it is not easy – and perhaps it is impossible – to make a distinction between matters of law and matters of politics, in particular the acceptance (or not) and comprehension of the policy of internal multiculturalism as a particular form of the protection of minority rights. As has been noted by a legal comparatist,

> states such as the United States of America and France have (traditionally) placed greatest emphasis on exclusivity of citizenship and loyalty to the state. (…) In France the principle of secularity has been found by courts to be compatible both with the wearing of religious garb in schools (providing public order – a fuzzy standard – is not violated) and judicial orders designed to compel the granting of Talmudic divorces (Glenn 2007, 364–365).

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Jacob Soll, professor of philosophy, history and accounting (this combination is very original) of the University of Southern California has noted very recently (The New York Times, 2018):

> Sophistication used to be valued, both as a way of looking at the world and a means of living in it. Now, as our affairs become dizzyingly complex and depressingly straightforward, it is getting lost. It's odd and it's troubling. We are losing our grasp of the general concept that things are complicated, and that deep knowledge – civic, political, cultural – is a perfect old tool for the challenges of the new world.

To be workable, the model of personal laws (or even elements of it in contemporary law) has to be sophisticated. It cannot be denied that they work practically all over the world – sometimes better, sometimes worse, in formal and/or *de facto* coexistence with territorial law, or in conflict with it.

The existence of personal laws and their sophistication has had to be noted in contemporary comparative legal science; and also examined, taking into account the diversity of causes of different approaches in different countries, represented both by those who are partisans of the conservation of the principle of personal law and those who are attached to the principle of territorial law. The examination seems to be increasingly important, in particular to evaluate from their point of view the extent to which legal systems, including those entirely belonging to the Western law, are multi-centric and, protecting minority rights, multivalent as well.

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