An Economist Attending the Meeting of Lawyers: A Few Cautious Remarks on the Relationship between Economics and Law*

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Many thanks for inviting me to Krakow, to the Krakow University of Economics, and to the 10th anniversary celebrations of the Institute of Law. I am really honoured to have been asked to speak here today.

Coming to Krakow gives me the opportunity to be in Poland after a relatively long time – not just in Karpacz, where I have repeatedly attended the Karpacz Economic Forum in the last years. Krakow is, for me, the real Poland, whereas in Karpacz I constantly have the Czech borders and the Krkonoše mountains before my eyes.

Krakow was the first place abroad I have ever visited. It was in the late 1950s, before your university was established. It was in my pre-academic and pre-political era. Paradoxically, I came here to play basketball. At that time, I was a member of the Czechoslovak national junior basketball team, and we participated in an international tournament organized in this city.

Sixteen years ago, I experienced my last, and this time very sad visit to Krakow. It was on the occasion of the funeral of my dear friend, the former President of Poland, **Lech Kaczyński,** a few days after his tragic death. I say proudly that I did not have a better friend at that political level. I can assure you that many Czechs remember him and miss him even today.

I am not sure I am the right person to speak to lawyers, and especially to speak about law. I have never formally studied law. I have just received several honorary law degrees from prestigious universities from all over the world. After the fall of communism, at the beginning of the 1990s, the dominant position of the Czech law community was to criticize me, as Minister of Finance and then Prime Minister, for starting the radical economic transformation – as they put it – "without first transforming the legislation".

This was, of course, not true. **All fundamental changes were done by means of legislation, on the basis of laws.** These transformation measures were not done by Prime Minister's decrees or directives. I spent more time in the parliament then than at government meetings. It is fair to say that the Czech law community was – in principle – not against the actual sequencing of the transformation measures, but against the very substance of the radical changes we introduced and implemented at that time.

I am not aware of such a sharp dispute between lawyers and economists in Poland, although I can imagine that something similar may have occurred here as well.

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Our transformation measures were perhaps done in the first years more quickly and more radically – because of greater political stability and a much lower rate of inflation.

In my correspondence with Prof. Czubik concerning my presentation here today, he suggested that I speak about **the relationship between law and economics**. I protested at first, because I considered this topic too ambitious, but finally I accepted it. It would ask for a complicated, multidimensional, extremely sophisticated debate in the field of methodology of science. I am not capable of doing that. I ceased to be an academic more than three decades ago.

Let me start my today's remarks by saying that **the elementary difference between these two disciplines of academic discourse is hidden in the fact that law is primarily normative, whereas economics a positive science.**

Economics has, of course, its normative offshoots as well, but it is basically a positive science, which tries to understand, describe, and eventually model existing reality. Methodologically, I am fully on the side of **Milton Friedman**, the renowned Professor of Economics at the University of Chicago and Nobel Prize laureate, who in 1953 published his book **"Essays in Positive Economics"** (University of Chicago Press).

Not to be misunderstood, let me stress that I know that the methodological distinction between positive and normative science is not directly related to the well-known debate in the field of legal theory that we experienced in our country in the 1990s – **namely, the dispute between the exponents of natural law and those of legal positivism**. I did not directly participate in this debate, but it is evident that the latter insists on a strict interpretation of the letter of the law, whereas advocates of natural law promote a looser interpretation of written law. They even dared to develop the concept of the "spirit of the law" (or perhaps of the constitution), something which can't be clearly defined. It remains rather fuzzy. And dangerous. This was the essence of the debate in my country in the decade of the 1990s.

The difference between the positive and normative approach is for me decisive. I believe economics is basically a behavioural descriptive science, which tries to describe and understand economic phenomena and the relationships among economic subjects (actors) – **without trying to tell them how they should behave**. Economists don't pretend to know what is right or wrong, they just attempt to formulate what is economically rational. They don't make value judgements, at least genuine economists don't. I am not speaking about those who misuse economics for formulating ambitious prescriptions and for making normative statements.

One of my most favoured economists (and my implicit teacher), **Friedrich von Hayek**, warned economists against attempting to prescribe what should be done. His famous sentence suggests just the opposite: "The curious task of economics is to demonstrate to men how little they really know" about the reality. **He warned against**

economists acting as philosopher-kings. When he wrote this, he had in front of his eyes mainly **John Maynard Keynes**, the most influential economist of the first half of the 20th century. Some economists, of course, like to place themselves in that position to this day.

Serious academic economists succeeded in turning their discipline – economics – into a science by narrowing its subject matter, by accepting the economy of perfect competition as their analytical benchmark (to use the phrase of another Nobel Prize Laureate, **James Buchanan**). This made it possible to axiomatically construct their theory and to formulate it mathematically and graphically.

This also enabled them to create a generally accepted analytical box of tools – to use **Joan Robinson's** term – and to articulate economic ideas in textbooks accepted in the whole world. It was also helpful in rapidly transforming our universities of economics after the fall of communism into fundamentally different institutions. Marxist political economy was quickly forgotten.

If I understand law correctly, it has been constructed quite differently and I state this without making any value judgments. If I am not wrong, law faculties did not undergo such **a paradigm shift** as economic faculties. The change of political system and the acceptance of freedom, democracy, political pluralism and parliamentarism is something else. It seems to me (and this is, of course, a disputable statement) that **the political revolution did not fundamentally change the principles of legal theory**. I know you would talk about it in different terminology, but I hope that the essence of my argument is understandable.

Let me touch briefly on several related issues.

The natural law approach is, to put it mildly, more flexible as regards the interpretation and application of law. It intentionally (or unintentionally) opens broad possibilities for the judiciary to interfere heavily in politics and to extend its own powers. **This ambition is referred to as juristocracy**, which I regard as one of the most dangerous phenomena of our time. It weakens democracy.

To say this – as an outsider – in front of such a distinguished law audience is almost a blasphemy. I hope you will forgive my eventual ignorance. I am not an insider in your field. I just express my experience in organizing the economic transformation of the Czech Republic and my occasional "excursions" into the field of methodology of science. An old-fashioned economist does not directly interfere in politics. The economic theory resists direct interventions in the decision-making of rationally behaving economic agents.

Economists believe in the superiority of economic theory over its scientific neighbours, an attitude sometimes referred to as economic imperialism – a term coined by **George Stigler**. This is not the term I would use or promote, but the scientific core

of economics is fundamentally different from the other fields often taught at economic universities – from business management. **Business management should not be confused with economics.**

Lawyers are primarily concerned with whether economic agents behave in accordance with the law, whereas economists ask whether they behave rationally. This is a fundamentally different way of looking at things, different perspective.

There are other differences. If I am not wrong, lawyers don't distinguish between human behaviour under certainty and under uncertainty. Another big difference is that the lawyers don't deal with the very complicated issue of intertemporal choice, which is based on the non-trivial concept of discounting (see Klaus V., Tříska D., Ke kritice používání konceptu solidarity a diskriminace v inter-temporální analýze tzv. globálních problémů, Politická ekonomie, Praha, 2008). Economists think in terms of trade-offs, which is another specific approach. I should certainly learn more about law to be able to fully appreciate its contributions to these or similar issues.

It would also be a mistake to concentrate on past disputes and animosities between lawyers and economists. We should look into the future.

The transformation of our societies, both in Poland and in the Czech Republic, is over. We should continue the gradual process of adjusting our institutional and legal – both political and economic – systems by repairing their inevitable flaws and imperfections. Such imperfections are, however, a standard phenomenon in any human society, and there is no need to continue transforming, which means radically changing, our societies more than societies in Western Europe. In this task, lawyers and economists should go together.

Both economists and lawyers must contribute to finding rational solutions concerning our participation in the European integration process. It would be, of course, easier to participate in the European Economic Community than in the European Union. And it would be easier to be part of this institution before its Maastricht and Lisbon era, which means **before shifting the integration into political unification**.

During the last decade, the EU has been transformed further, without widely debated treaties, and without serious discussions between European or Brussels politicians and the citizens of individual EU member states. Many recent important changes have been introduced by Brussels and by member-states governments more or less without standard constitutional procedures.

These changes are often introduced in the form of "**temporary emergency measures**" (brilliantly explained in a recent article by Swiss economist Claudio Grass, "How the West Traded Liberty for the Illusion of Security") – be it a pandemic, the unnecessary war with Russia, a geopolitical energy crisis, or the Iran war. The word "temporary" is crucial. These new policies and restrictions are usually announced and

implemented without asking the citizens for consent. Let me once again quote Milton Friedman who said: "there is nothing so permanent as a temporary government programme". Economists speak in this respect about the so called "ratchet effect" – when the crisis is over, the new competencies in the hands of government remain.

My opposition to the artificial unification and centralization of the European Union is motivated, among other things, by my belief in the usefulness of competition among political, social, and legal systems in Europe. Centralizing decision-making processes at the supranational level destroys competition among systems. We have been able to see this in the growing dominance of European law over the legal systems of nation-states.

A very substantial role in implementing and enforcing this unification and centralization is played by the European judiciary. The EU Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg, through their rulings, oblige member states to accept unifying and centralizing measures and the gradual erosion of their national sovereignty. They grant Brussels institutions the authority to enforce these changes and provide them with instruments such as fines and other forms of penalties.

National legislation, by contrast, is being reduced to the role of a passive recipient, of translator and adopter of legal acts and regulations coming from Brussels. Nothing characterizes the democratic deficit of today's EU better than this distancing of lawmaking from the citizens.

Coping with the EU's continuous expansion of competencies is only one of today's main challenges. We must remain on guard against **new intrusive ideologies** such as environmentalism, genderism, human-rightism, multiculturalism, and globalism, which we usually refer to as progressivism. This is a great challenge for both law and economics, and, as I see it, we both are currently not on the winning side. That is another reason for a future fruitful cooperation between lawyers and economists.

Let me stop here. My remarks were not meant as a full-fledged lecture. A detailed discussion of these issues would require for a different format and opportunity. Once again, thank you very much for your invitation and for giving me the chance to express some of my views to this distinguished audience. I truly appreciate it.

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