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MISGUIDED COPYING OF ANGLO-AMERICAN PATTERNS? INTENTIONALISM AS A REASONABLE PROPOSAL FOR A CONTEMPORARY CONTINENTAL JUDGE

Abstract

In this paper, the author defies the thesis that intentionalism, as a concept of interpretation characteristic of Anglo-American legal culture, remains inadequate in continental systems. He then challenges the argument that the use of the intentionalist method in the practice of adjudication poses too many risks due to the alleged powerlessness of restrained judges against bad and archaic regulation.

The idea of resolving social conflicts through democratic rather than judicial discretion – and this is at the heart of intentionalism – is common to both common law and civil law. After all, according to the assumptions of the tripartite separation of powers and the rule of law, the shaping of legal norms relating to controversial issues in society must be the domain of democratically elected politicians, not judges. Concepts of interpretation, such as the school of exegesis and subjective theory, developed in 19th-century continental Europe. These bear a strong resemblance to Anglo-American intentionalism. All these concepts limit the freedom of the interpreter (of judgment), without, however, falling into an ossified literalism (textualism) that makes an unauthorized separation between the message, the context and the intention of the sender. Furthermore, they consider legislative history as a useful tool for resolving interpretive disputes.

The approach to interpretation defended in this paper does not necessarily mean that judges are helpless against bad or archaic legislation. Firstly, the intention of the legislator behind a given piece of legislation must always be seen in the horizon of the intention of the constitutional or international legislator (i.a., European Convention of Human Rights). In turn, trusting the legislator need not automatically be seen as riskier than trusting the judicature. Secondly, the intention of the legislator very often allows for flexibility for the interpreter, e.g., through vague expressions and general clauses. The interpreter, exercising discretion, should read the historical legislator's purposes in the context of current realities. However, he or she cannot replace this axiology with any other.

KEYWORDS

legal interpretation, intentionalism, originalism, judicial discretion, legislative history

SŁOWA KLUCZOWE

wykładnia prawa, intencjonalizm, oryginalizm, dyskrecjonalność sędziowska, historia legislacyjna

I. INTRODUCTION

The fundamental problem of interpretation, not only of the law, concerns the relationship between letter (form) and spirit (content). However, it is connected with another problem. What is this 'spirit'? Is it constituted by the aims and values of the author (lawmaker) or can the interpreter, while discovering this 'spirit', forget about the author? Normative theories of interpretation can be seen as attempts to establish a hierarchy between three elements: author (legislator) – text – interpreter (judge). In Anglo-American legal theory, the conception of legal interpretation that places particular emphasis on the first of these elements is intentionalism.¹

¹ On intentionalism in general and other theories of legal interpretation from an Anglo-American perspective: Mark Greenberg, 'Legal Interpretation' in Edward Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition) <<https://plato.stanford.edu/archives/fall2021/entries/legal-interpretation/>> accessed 28 February 2025. Intentionalism is a theory that is mainly current on the ground of statutory interpretation. The term originalism, on the other hand, is most often referred to constitutional interpretation. While, old originalism (e.g., Robert H Bork, Raoul Berger, William Rehnquist) focused on the search for the 'original intent' of framers, new originalism (e.g., Antonin Scalia) is eminently textualist in character – advocating the search for 'original public meaning'. Today, however, we see a convergence of both versions of originalism. See Randy

Today, English is the predominant instrument for international discourse, including legal and scientific discourse. Legal theorists operating in a continental legal culture are increasingly applying terminology developed in the common-law tradition to the study of issues in their own legal systems. One such term is intentionalism. A Polish example here is the monograph by Zygmunt Tobor entitled *In Search of the Legislator's Intentions*,² in which the author defends the assumptions of intentionalism. Zygmunt Tobor has been criticized by the doyen of the Polish theory of legal interpretation, Maciej Zieliński, for ‘unauthorized transplantation’ of the ideas of ‘various American intentionalists’ into the Polish culture of legal interpretation.³ Is this accusation accurate?

More than 10 years have passed since the publication of Zygmunt Tobor’s book. Nevertheless, the discussions triggered by this book are still ongoing. The most practical issue related to intentionalism (in this study treated as a normative, not descriptive, concept of interpretation), namely the question of the use of legislative materials in the interpretation of law, raises serious controversies both in the literature and in the judicature.⁴ Therefore, the concept of intentionalism still needs to be researched, especially in terms of the doubts arising in the Polish context and, more broadly, in the context of continental legal culture.

II. INTENTIONALISM AS AN ANGLO-AMERICAN CONCEPT OF LEGAL INTERPRETATION

In the Anglo-American system, legislation has a supplementary function vis-à-vis the law created spontaneously by judges. It thus constitutes an external inter-

Barnett, Evan Bernick, *The Original Meaning the Fourteenth Amendment. Its Letter and Spirit* (Cambridge 2021) and a return to originalism of intent, see Donald Drakeman, *The Hollow Core of Constitutional Theory. Why We Need the Framers* (Cambridge 2021).

² Zygmunt Tobor, *W poszukiwaniu intencji prawodawcy* (Warsaw 2013).

³ Maciej Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki* (7th edn, Warsaw 2017) 87.

⁴ The reasonable use of legislative materials is allowed by, among others: Agnieszka Bielska-Brodziak, *Śladami prawodawcy faktycznego. Materiały legislacyjne jako narzędzie wykładni prawa* (Warsaw 2017), as well as Olgierd Bogucki, *Model wykładni funkcjonalnej w derywacyjnej koncepcji wykładni prawa* (Szczecin 2016) 117, 205 and 241. However, the attempt to justify the use of legislative materials is controversial for other representatives of the Poznań-Szczecin school, which is represented by Olgierd Bogucki, as well as many lawyer-practitioners. Doubts in this respect are expressed by Michał Krotoszyński, ‘Legislative History, Ratio Legis, and the Concept of the Rational Legislator’ in Verena Klappstein and Maciej Dybowski (eds), *Ratio Legis. Philosophical and Theoretical Perspectives* (Cham 2018) 57–73; and Łukasz Dubiński, ‘Materiały legislacyjne w procesie interpretacyjnym’ (2023) 14(48) *Horyzonty Polityki* 59–78.

ference in forming an evolutionary ecosystem.⁵ Corresponding with the British doctrine of parliamentary sovereignty is the perception of laws as expressions of the will of parliament. Consequently, it is natural that the first question that arises when there are interpretative doubts about a statute is ‘What did the politicians want to achieve by interfering in this ecosystem?’. The influential 18th-century theorist of the Anglo-American legal system, William Blackstone, stated that ‘the fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by signs the most natural and probable’.⁶ These words constitute a kind of credo of intentionalism.

Nowadays, intentionalism is one conception of legal interpretation that competes with alternative conceptions in judicial and professorial minds. Intentionalists, like the proponents of purposivism (e.g., Henry Hart, Albert Sacks)⁷ oppose the automatic identification of the meaning of a legal text with its linguistic meaning (*plain meaning rule*) as desired by textualists (e.g., Antonin Scalia, Amy Coney Barrett, Frederick Schauer, John Manning).⁸ Intentionalism, however, in contrast to purposivism and related concepts emphasizing the interpreter (the community of judges), i.e. pragmatism (e.g., Richard Posner⁹), dynamic interpretation

⁵ Martin Shapiro, *Courts. A Comparative and Political Analysis* (Chicago – London 1981) 65–125.

⁶ William Blackstone, *Commentaries on Laws of England* (book 1, 9th edn, Oxford 1783) 59.

⁷ See, i.a., Henry Hart, Albert Sacks, *The Legal Process. Basic Problems in the Making and Application of Law* (Westbury 1994).

⁸ According to Scalia: ‘The text is the law, and it is the text that must be observed’. Antonin Scalia, *A Matter of Interpretation. Federal Courts and the Law* (2nd edn, Princeton 2018) 22. It is the text and not the will of parliamentarians that constitutes the source of the law. Therefore, through a textualist approach, the idea of *the rule of law, not of men*, is realized. Ibid 17. By analogy, just as the legal text cannot be substituted for the will of the legislature, neither can it be substituted for the will of judges. Amy Coney Barrett, ‘2019 Sumner Canary Memorial Lecture. Assorted Canards of Contemporary Legal Analysis: Redux’ (2020) 70 Case Western Reserve Law Review 856. Of course, falling back on linguistic meaning can sometimes lead to morally intolerable consequences, as, for example, in the decision of the Supreme Court of the United States in *Chung Fook v White* case 264 U.S. 443 (1924). According to some textualists, such risks remain inherent in the democratic system and the principle of the separation of powers. Thus: Frederick Schauer, ‘A Critical Guide to Vehicles in the Park’ (2008) 83 New York University Law Review 1129. Some textualists, however, argue that linguistic meaning may be departed from in order to avoid absurd consequences or when the interpreter is faced with a clear legislative error. Thus: John Manning, ‘The Absurdity Doctrine’ (2003) 116 Harvard Law Review 2409. In this author’s view, context is essential to understanding a text. What distinguishes textualists from intentionalists and purposivists is the understanding of this context. For textualists, linguistic context related to how reasonable people use the words in question takes precedence over political context. Idem, ‘What divides textualists from purposivists?’ (2006) 106 Columbia Law Review 110.

⁹ Pragmatism seeks ‘the best decision having in mind present and future needs, and so does not regard the maintenance of consistency with past decisions as an end in itself, but only as a means for bringing about the best results in the present case’. Richard Posner, ‘Pragmatic Adjudication’

(e.g., William Eskridge¹⁰) and ‘law as integrity’ (Ronald Dworkin¹¹), links the proper understanding of a legal text to the meaning intended by the legislator (the *intended* or *speaker’s meaning*), and not to some general, ‘objective’ purposes of the law and ‘reasonable’ readings.¹² In other words, the difference between intentionalism and other non-textualist currents boils down to the fact that its proponents prefer arguments that appeal to the axiology of the historical legislator and thus preach judicial restraint. A valuable aid to the intentionalist interpreter is legislative history, which in a broader sense encompasses not only the materials produced in the course of legislative work, but also the political, social, economic, etc. context of the emergence of a given piece of legislation.¹³

The first significant critique of intentionalism was made in 1930 by Max Radin.¹⁴ Firstly, he questioned the possibility of collective entities having intentions. He noted that a law is written by ‘two or three’ people and that the probability that those voting on the bill have exactly the same range of potential future situations in mind is negligible. Secondly, he stated that even if a collective entity had an intention, no one has access to the thoughts of the other individuals. Thirdly, he pointed out that the US Constitution grants the force of law to a law enacted in a strictly defined procedure – and not to some mysterious will of parliamentarians.¹⁵ These three arguments, which can be described as 1) ontological,

in Morris Dickstein (ed), *The Revival of Pragmatism. New Essays on Social Thought, Law, and Culture* (Durham 1998) 238.

¹⁰ According to William Eskridge, since laws are used to solve social problems, their meaning is only constituted when a specific problem is faced in practice. Each case is a new construction of meaning. It occurs in the process of practical reasoning. William Eskridge, *Dynamic Statutory Interpretation* (Cambridge 1994) 50. The interpreter takes into account (should take into account) many interpretative premises, both legislative history and previous judgments, as well as general objectives of law and contemporary norms and values. The interpreter’s context (perspective), explained by reference to hermeneutic philosophy, includes, according to Eskridge, his ‘assumptions and beliefs about society, values and the act itself’. Ibid 56–58.

¹¹ Ronald Dworkin, *Law’s Empire* (Cambridge 1986).

¹² The difference between intentionalism and purposivism (and other approaches emphasizing the interpreter) is well captured by Eskridge: ‘Although one advantage of grounding statutory interpretation on legislative purpose is that general purpose is more easily determinable than specific intent, a corresponding disadvantage is that purpose is too easy to determine, yielding a plethora of purposes, cross-cutting purposes, and purposes set at such a general level that they could support several different interpretations. Purposive statutory interpretation, therefore, might be even less determinate than more traditional approaches’. Eskridge, ‘The Case of the Speluncean Explorers. Twentieth-Century Statutory Interpretation in a Nutshell’ (1993) 61 *George Washington Law Review* 1744–1745.

¹³ See Linda Jellum, *Mastering Statutory Interpretation* (2nd edn, Durham 2013) 197–209.

¹⁴ Max Radin, ‘Statutory Interpretation’ (1930) 56 *Harvard Law Review* 863–885.

¹⁵ Ibid 869–870.

2) epistemological, and 3) procedural, must be confronted by internationalists to this day.¹⁶

There are indeed intentionalists who believe that the intention of the legislator always determines the meaning of a legal norm.¹⁷ One might call this wing a subjective intentionalism.¹⁸ However, the objective (moderate) intentionalists are nothing like Dworkin's cynically created Judge Hermes (an unsuccessful rival to Hercules) in 'Law's Empire', who, instead of solving difficulties, can only multiply them.¹⁹ Firstly, they do not equate the intentions of the legislator with mental experiences – but treat them as conventional behavior. Secondly, this intention remains relevant for the interpreter only to the extent that it has been externalized and its cognition does not encounter undue difficulties. Legislative history is an auxiliary source used only in exceptional situations and only when it is readily available. For this reason, sources such as media statements of individual parliamentarians or their diaries remain irrelevant. Thirdly, it is impossible to understand a law or a constitution, which are sources of law, in isolation from the intentions of their creators.

For moderate intentionalists, the implicit expression of intention is the legal text as understood by language users. This thesis, however, does not derive from the fact that the text magically 'detaches' itself from the author but from the fact that the legislator, like any other sender of a linguistic message, tries to choose words in such a way as to be best understood. After all, language is public and not private. Linguistic pragmatics (especially Paul Grice's theory of implicatures),²⁰ confirms, according to many authors,²¹ that the context in which a statement is made is essential for understanding. Language users as social beings with a simple common sense, and in particular, lawyers as persons familiar with the language of legal texts, usually have the right sense of context and thus properly

¹⁶ See, i.a., Jeremy Waldron, *Law and Disagreement* (Oxford 1999) 119–146.

¹⁷ For example: Lawrence Alexander, 'Connecting the Rule Recognition and Intentionalist Interpretation. An Essay in Honor of Richard Kay' (2021) 52 Connecticut Law Review 1522–1532.

¹⁸ See Jeffrey Goldsworthy, 'Subjective versus Objective Intentionalism in Legal Interpretation', in *Moral Puzzles and Legal Perplexities. Essays in the Influence of Larry Alexander* (Heidi Hurd ed, Cambridge 2018) 170–188. Conf. Paweł Boike, 'O różnym pojmowaniu intencji prawodawcy w dyskursie anglosaskim – analiza poglądów Stanleya Fisha, Larry'ego Alexandra, Jeffrey'ego Goldsworthy'ego, Richarda Ekinsa oraz Victorii Nourse' (2023) 4 Archiwum Filozofii Prawa i Filozofii Społecznej 15–26.

¹⁹ See Richard Ekins, 'Legislative Intent in Law's Empire' (2011) 24 Ratio Juris 435–460.

²⁰ Herbert Paul Grice, *Studies in the way of words* (Cambridge – London 1989) 86–137.

²¹ See, i.a., Lawrence Solan, 'Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation' (2004) 93 The Georgetown Law Journal 427–486. Of course, not everyone shares this position, see, i.a., Izabela Skoczeń, *Implicatures within Legal Language* (Cham 2019).

read the intention of the sender of the message.²² However, it may happen that the sender of the announcement has chosen words incorrectly, that his/her words are ambiguous or incomprehensible, e.g., as a consequence of time passing. It is the context of the sender, not the context of the recipient, that is relevant for understanding a statement made a long time ago. There should be no doubt that the term ‘domestic violence’ in the US Constitution should be understood as its creators understood it, i.e., in a way that is different from the modern user of English.²³

According to the findings of linguistic pragmatics, the sender’s understanding of a given statement is inextricably linked to the goals he or she wished to achieve through the articulation of that statement. Hence, the sources of the law cannot be ‘detached’ from the creators. As Jeffrey Goldsworthy notes, the law, like the hammer, has no purpose of its own.²⁴ Someone who speaks of the purpose of a hammer has *de facto* in mind the purpose of the people who created, acquired or use it. In the case of laws, for reasons of democracy, tripartite government and legislative supremacy, the purpose of the creators must be regarded as binding.²⁵

III. SCHOOL OF EXEGESIS AND SUBJECTIVE THEORY AS ‘CONTINENTAL SISTERS’ OF INTENTIONALISM

During the Enlightenment, the idea of codification came to fruition in continental Europe. The answer to all potential cases was to follow directly (through logical subsumption) from an a priori existing legal norm. The idea to limit the power of lawyers and the postulate of exclusiveness of authentic interpretation, already known to Emperor Justinian and to numerous monarchs and popes, returned. An obligation to ask the legislature for the correct interpretation in every doubtful

²² *Objective* intention is whatever a reasonable audience would infer, from the publicly available evidence, was the author’s *subjective* intention. Richard Ekins, Jeffrey Goldsworthy, ‘The Reality and Indispensability of Legislative Intention’ (2014) 36 Sydney Law Review 48.

²³ See Derek Wills, ‘Domestic Violence in The Times. From Civil Unrest to Spouse Abuse’, The New York Times 10 September 2014, <<https://www.nytimes.com/2014/09/11/upshot/domestic-violence-in-the-times-from-civil-unrest-to-spouse-abuse.html>> accessed 28 February 2025. This example is cited by, among others: Jack Balkin, ‘Original Meaning and Constitutional Redemption’ (2007) 24 Constitutional Commentary 430.

²⁴ Jeffrey Goldsworthy, ‘The Meaning and Interpretation of Statutes in Anglo-American Legal Systems’ in Tomasz Gizbert-Studnicki, Francesca Poggi and Izabela Skoczeń (eds), *Interpretivism and the Limits of Law* (Cheltenham Glos-Northampton 2022) 53.

²⁵ *Ibid.*

case (*référé législatif*) proved impractical.²⁶ However, it remained clear for a long time that judges making interpretations must not act too freely. After all, their role cannot be to co-create law.

The Montesquieu idea that the role of judges is to be limited to being ‘mouthpieces of the law’ (*iudex est lex loquens*) underpinned the school of exegesis (*Ecole de l’Exégèse*) developed in 19th-century France.²⁷ From the perspective of this idea, the theory of interpretation was closely linked to the idea of the law. According to social contract theory, a law should be seen by analogy with a civil contract and, therefore, an expression of the will of the people (*volonté générale*). Words thus play a servile role in relation to the intention of those who came to a consensus to conclude the contract. After all, the sign is a reflection of the author’s thought – one can see here the analogy of the school of exegesis with the hermeneutics of Frederich Scheiermacher.²⁸ Consequently, the art of interpretation consists in ascertaining the intention. A good legislator expresses himself precisely and there is no need to cast doubt on the literal sense (*in claris non fit interpretatio*). It may happen that the legislator has expressed themselves unclearly or has chosen words incorrectly. The classicists of the school of exegesis in such cases recommended examining the intention of the legislator from the time of the enactment of the provision in question.²⁹ The legislative history (*travaux préparatoires*) should then be consulted. The intention of the author may thus take precedence over the letter, but never over judicial notions of what is right.³⁰

The exegetical method is a method that fully corresponds to the assumptions of legal positivism. In view of the plurality of beliefs about what is good and right, law must be defined as a command from a sovereign, which is the people acting democratically through their representatives. Obedience to this command is obedience to the sovereign’s intention. Thus, it remains adequate for interpreting the law in a democracy, where the role of judges must be a role subservient to the law.

²⁶ Benoît Frydman, *Le Sens des lois. Histoire de l’interprétation et de la raison juridique* (Bruxelles-Paris 2005) 395. See also Michael Stolleis, ‘Judicial Interpretation in Transition from the Ancien Régime to Constitutionalism’ in Yasutomo Morigiwa, Michael Stolleis and Jean-Louis Halpérin (eds), *Interpretation of Law in the Age of Enlightenment. From the Rule of the King to the Rule of Law* (Dordrecht 2011) 3–17.

²⁷ See, i.a., Jean-Louis Halpérin, ‘École de l’Exégèse’ in Mortimer Sellers and Stephen Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer 2023) 837–840.

²⁸ This connection is pointed out by Benoît Frydman in the following study: ‘Exégèse et philologie: un cas d’herméneutique comparée’ (1994) 33 *Revue interdisciplinaire d’études juridiques* 59–83. Quoted from: Maciej Kruk, ‘Proces wykładni w teorii francuskiej szkoły egzegezy’ (2018) 1 *Państwo i Prawo* 24–39.

²⁹ Eva Steiner, *French Law. A Comparative Approach* (2nd edn, Oxford 2018) 50.

³⁰ Frydman (n 26) 389–390.

There is no doubt that all these assumptions are also close to the Anglo-American intentionalism.

The postulates of the school of exegesis were not only implemented in the practice of French justice, but also in other countries where Napoleonic codifications were in force, or their legal systems were influenced by them. Eugeniusz Waśkowski's 'traditional' conception of interpretation was based, inter alia, on the achievements of the school of exegesis.³¹ The adjective 'traditional' is related to the fact that at the time of Eugeniusz Waskowski, his style of thinking was already on the defensive. French judges at the beginning of the 20th century began to use analogy and *praeter legem* interpretation when aeroplanes and cars appeared – inventions unknown in Napoleon's time. The Napoleonic Code did not provide for the concept of 'abuse of rights', but this is how the court prevented landowners from interfering with the flight of balloons over their property.³²

Although the significance of the exegetical method declined at the turn of the 19th and 20th centuries, and this situation persists to this day,³³ the relatively great attention paid to *travaux préparatoires* turns out to be a lasting element of the legal culture in French-speaking countries.³⁴ As the Belgian author notes 'provided that the legislator's intention is evident with sufficient certainty from the documents used to elaborate the rule, the judge finds in the legislative history the light he lacks to interpret a text that remains obscure'.³⁵ Although it is an argument from legislative history, it is only one of many arguments, so the conclusion that the exegetical method would still prevail is unjustified.

³¹ Eugeniusz Waśkowski, *Teoria wykładni prawa cywilnego. Metodologia dogmatyki cywilistycznej w zarysie* (Warsaw 1936). See Paweł Boike, 'Intencjonalizm a tradycyjna koncepcja wykładni Eugeniusza Waśkowskiego. Analiza porównawcza' (2024) 13(4) *Prawo i Więź* 323–345.

³² See Edyta Sokalska and Małgorzata Augustyniak, 'French Jurisprudence and the Dispute over the Method. From Positivist Exegesis to Free Scientific Research' (2021) 6 *Przegląd Prawa Konstytucyjnego* 224–235.

³³ See, i.a., Charles Perelman, *Logique juridique. Nouvelle rhétorique* (2nd edn, Paris 1999); Francesco Viola and Giuseppe Zaccaria, *Diritto e interpretazione Lineamenti di teoria ermeneutica del diritto* (9th edn, Laterza 2016) 149–155.

³⁴ Both the French Court of Cassation and the Constitutional Council frequently use legislative history, although the former often emphasises that it is ultimately not binding on the court. See, i.a., Claire Germain, 'Approaches to Statutory Interpretation and Legislative History in France' (2003) 13 *Duke Journal of Comparative & International Law* 195–206. The use of legislative history is one of the methods of interpretation mentioned in the guide to writing justifications for judgments recently published by the Court of Cassation, *Motivation enrichie: le guide de rédaction* (Paris 2023) 27–28.

³⁵ 'Pourvu que la volonté du législateur transparaisse avec assez de certitude à partir des documents qui ont servi à élaborer la norme, le juge trouve dans les travaux préparatoires la lumière dont il manque pour interpréter un texte qui lui reste obscur'. Xavier Dijon, *Méthodologie juridique: l'application de la norme* (Bruxelles 1990) 55.

In the German-speaking area in the 19th century, where the idea of codification did not quickly achieve complete success, a theorist of legal interpretation who played an enormous role was Karl Savigny. The canons of interpretation developed by him were adopted in many European countries.³⁶ As German lawyers in the 19th century had to apply rules from very different sources – sometimes ones from the distant past – Karl Savigny drew attention to the usefulness of legal history. Hence, in addition to linguistic, logical and systematic interpretation (i.e., relating to consistency with other rules), he distinguished between historical interpretation. Later, some began to make a clear distinction between historical interpretation (*historische Auslegung*) and genetic interpretation (*genetische Auslegung*). The former refers to how an issue was regulated in the past, which allows for a better understanding of the meaning of the current regulation. The second refers to the context in which the regulation was created, i.e., the objectives that guided the legislator in creating the current regulation.³⁷ In order to reconstruct these objectives, legislative history (*Geetzesmaterialien*)³⁸ can be useful.

Karl Savigny was soon followed by Rudolf Jhering. His conception of the purposes of the law referred to the goals that the participants in the trade, not the creators of the law, associate with the law. The law serves to resolve conflicts between the interests of individuals and not to realize the will of politicians. Henceforth, German study began to contrast the concepts of objective and subjective purpose and consequently the subjective theory with the objective theory.³⁹ It is difficult not to see in this dispute an analogy with the Anglo-American conflict between the intentionalists, who refer to the aims of the actual legislator, and the purposivists, who discuss the ‘objective’ or ‘general’ aims of law.⁴⁰

Subjective theory seems to have lost with the objective theory.⁴¹ One German author, in a book with the telling title *The Secret Revolution From the Rule of*

³⁶ See Jan Wintr, ‘Canones of Savigny as the Basis for Interpretation of the Law in European Continental Legal Culture’ in Dawid Bunikowski (ed), *Historical and Philosophical Foundations of European Legal Culture* (Newcastle upon Tyne 2016) 117–136.

³⁷ Friedrich Müller, *Fallanalysen zur juristischen Methodik* (2nd edn, Berlin 1989) 10–11.

³⁸ On legislative history from the perspective of Germany: Tino Frieling, *Geetzesmaterialien und Wille des Gesetzgebers* (Tübingen 2017); Markus Sehl, *Was will der Gesetzgeber?: Ziel und Methode rationaler Argumentation mit Gesetzesmaterialien* (Baden-Baden 2019).

³⁹ Thomas Wischmeyer, *Zwecke im Recht des Verfassungsstaates. Geschichte und Theorie einer juristischen Denkfigur* (Tübingen 2015) 339–355.

⁴⁰ See Stephen Meyer, ‘Subjective or Objective Legislative Intention: An Australian/German Perspective’ (2024) 1 *Statute Law Review* 1–19.

⁴¹ The greater influence of the objective theory is indicated, among others, in Polish and Spanish literature: Joaquin Rodríguez-Toubes Muñoz, ‘El criterio histórico en la interpretación jurídica’ (2013) 22 *Dereito* 614; Maciej Zieliński and others, ‘Zintegrowanie polskich koncepcji wykładni prawa’ (2009) 4 *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 33 – both quoted from: Paulina

Law (Rechtstaat) to the Rule of Judges (Richterstaat), goes so far as to claim that continental judges have transformed themselves from ‘servants of the law’ into ‘masters of the law’.⁴² In a nutshell, the point is that they do not shy away from ‘discovering’ new, sometimes far-reaching meanings of laws. The line between legal dispute and political dispute is blurring. This trend has an additional dimension in the so-called postcommunist countries, where judges have taken over much of the responsibility for the systemic transformation.⁴³ The socialist power is gone, but the laws passed during that period remain. Referring to the intentions of the historical legislator in times of transition was devoid of *raison d’être*.⁴⁴ Another reason is that before the digitalization, access to legislative materials was very difficult in Poland.⁴⁵

It is hard not to notice that what continental judges do, especially in supreme courts, constitutional courts and supranational courts (European Court of Human Rights and Court of Justice of the EU), is often more law-making than interpreting. Although precedent in the civil law system cannot provide an independent rationale for decisions to apply the law, it plays a very important role in the practice of applying the law, while also determining the behavior of the subjects of the law.⁴⁶ The doyens of comparative civil law go so far as to say that the differences between the two systems in terms of the importance of the *stare decisis* principle

Konca, ‘Legislative Materials in the Light of Polish and Spanish Law, Judicial Practice and Theoretical Literature’ (2018) 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 9–10.

⁴² Bernd Rütters, *Die Heimliche Revolution Vom Rechtsstaat Zum Richterstaat. Verfassung und Methoden. Ein Essay* (2nd edn, Tübingen 2016) 76.

⁴³ See Wojciech Sadurski, *Rights Before Courts A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Dordrecht 2005). Due to the judicial activism (not only in the Constitutional Tribunal) during transition period Jacek Sokołowski calls the Third Polish Republic a ‘lawyers’ state’: *Transnarod. Polacy w poszukiwaniu politycznej formy* (Kraków 2023) chap 4.

⁴⁴ See Zygmunt Ziemiński, ‘Lex and Ius in the Period of Transformation’ (2019) 10 *Adam Mickiewicz University Law Review* 111–129; Rafał Mańko, ‘Demons of the Past? Legal Survivals of the Socialist Legal Tradition in Contemporary Polish Private Law’ in Rafał Mańko, Cosmin Cereșel, Adam Sulikowski (eds), *Law and Critique in Central Europe: Questioning the Past, Resisting the Present* (Oxford 2016) 66–89.

⁴⁵ Agnieszka Bielska-Brodziak, ‘Using Legislative History in Interpreting Polish Law: Examples of Changes in Understanding Principles of Law During the Transition Period’ (2019) 2 *Acta Universitatis Carolinae – Iuridica* 46.

⁴⁶ The role of precedent in countries with a civil law system, such as Germany, France, Italy, Poland, and Spain – is devoted to the individual chapters contained in the collective work: Donald Neil MacCormick and Robert Summers (eds), *Interpreting Precedent. A Comparative Study* (Aldershot, Brookfield, Singapore, Sydney 1997). In the context of constitutional courts (Germany, Hungary, Italy, Latvia, Poland, Romania), as well as the CJEU and the ECHR, see Monika Florczak-Wątor (ed), *Constitutional Law and Precedent* (Abingdon 2022).

are de facto ‘microscopic’.⁴⁷ The emancipation of judges in civil-law countries is the main reason why it has been said consistently for several decades that there is a progressive convergence of continental and Anglo-American legal culture.⁴⁸ This emancipation, however, does not lead to a perception of statutory interpretation in the way presented by William Blackstone, but quite the opposite.

IV. IS THE POSTULATE OF OBEDIENCE TO THE LEGISLATOR’S INTENTIONS NAIVE OR DANGEROUS?

From the discussion so far, it appears that intentionalism is the counterpart of ideas that were familiar to continental Europe at the time of the great codifications, but which have been on the defensive for a long time. Is not, then, the promotion of an intentionalist interpretation in the context of continental Europe an attempt to reheat ideas that have long since been discredited? The answer to this question must be preceded by an explanation of this discrediting. Two strands can be distinguished here. The first is related to the rooting of the concepts in question in legal positivism. The second deals with their preference for a static interpretation, insensitive to the changes in reality that take place while an unchanged legal provision is in force.

Referring to the first strand, one might ask, in a conscious manner, whether one can point to obedience to the legislator as a value after the experience of the 20th-century totalitarianisms? In front of the Nuremberg Tribunal, after all, the guilty explained that they were merely following orders. Is intentionalism, therefore, not a judicial ‘escape from freedom’ and consequently an ‘escape from responsibility’? Can an intentionalist defend himself against such a serious charge? In the contemporary reality of most European countries, the answer is ‘yes’.

Mankind has fortunately learned its lesson from the tragedy of Hitlerism. Natural law has been positivised – henceforth, conflicts between *ius* and *lex* can be resolved by the interpretation referring to the constitution or, e.g., the European Convention of Human Rights. The vision of the constitution not as a political declaration, but as a directly applicable legal act, became widespread. The creation of constitutional courts in many more countries (and the recognition of the

⁴⁷ Konrad Zweigert and Hein Kötz, *An introduction to comparative law* (2nd edn, Oxford 1998) 263.

⁴⁸ On the similarities between the civil-law and common-law systems in the context of interpretation: Robert Summers and Michele Taruffo, ‘Interpretation and Comparative Analysis’ in Donald Neil MacCormick and Roberts Summers (eds), *Interpreting Statutes. A Comparative Study* (Aldershot 2016) 461–510.

jurisdiction of international courts) makes it possible (unfortunately not always, but nevertheless often) to effectively eliminate unjust laws. It must, therefore, be emphasized that the interpreter of the law must respect the hierarchy of legal acts. The intention of the legislator from whom a lower order act originates is binding insofar as it can be reconciled with the intention of the legislator from whom the higher order act originates.

Secondly, it is worth noting that injustice can come not only from the legislator, but also from the ‘creative’ interpreter who does not want to obey the historical legislator. It is forgotten that it was the objective theory of interpretation, which is opposed to the subjective theory, that led to the fact that in Germany, after 1933, the unchanged provisions of the Civil Code of 1896 and labor law legislations began to be given new meanings in line with the Nazi ideology. This phenomenon is analyzed in detail by Bernd Rüthers.⁴⁹

With regard to the second strand, it can, in turn, be argued that the concepts in question (in the event of the legislator’s failure to keep up with the needs of legal transactions and changes in society) attempt to keep the social relations (regulated by law) in an ‘open-air museum’. Was it not the exegetical method that led judges to a situation in which they could do nothing when the benefit of one party to a contract had become, due to inflationary processes, sharply out of line with the benefit of the other party?⁵⁰

It is worth noting that many of the problems of adapting laws to new circumstances can also be solved by taking into account the intentions of the constitutional or international legislator. It should also be remembered that the modern legislator, unlike Napoleon Bonaparte, is aware of the dynamics of social reality. Conclusions have been drawn that regulating civil law relations too rigidly is not

⁴⁹ Bernd Rüthers, *Die unbegrenzte Auslegung. Zum Wandel der Privatrechtsordnung im Nationalsozialismus* (9th edn, Tübingen 2022). One of the many examples of an interpretation contrary to the intentions of the historical legislator and consistent with Nazi ideology concerns the prohibition of discrimination in the workplace based on gender. According to the court in Gleiwitz, married women could be fired in order to hire unemployed men due to ‘the new government’s effort to return women to the domestic sphere’. Judgment of Regional Labour Court in Gleiwitz of 7 August 1933, case no ARS 19, 16 (17), quoted from: *ibid* 148–149.

⁵⁰ The case in question is the Judgment of French Court of Cassation from 1876, case no 1.193 *De Gallifet v Commune de Pélissanne*. The plaintiff’s legal predecessor had built an irrigation canal in 1567 and undertook to maintain it in a proper condition in return for a certain fee paid annually by the owners of the fields who benefited economically from the construction of the canal. As is easy to guess after 300 years, this amount turned out to be ridiculously low... However, since Article 1134 of the Civil Code provided that agreements ‘can only be revoked by mutual consent, or for reasons authorised by law’, and French law did not know the institution of judicial valorisation or *rebus sic stantibus* until 2016, the plaintiff could not claim an increase in the amount established in the 16th century.

a good solution. In order to ensure the need for flexibility in the application of the law, the general clauses are used deliberately. This means that the judge is given discretion based on the intention of the legislator! In the author's opinion, the use of analogy can be reconciled with intentionalism, provided that the interpreter is guided by the axiology of the historical legislator (what he would have decided if he had foreseen such a case...) supported by the axiology of the constitutional legislator who, in the name of the idea of equality, advocates similar treatment of similar situations.

Anglo-American intentionalists have ways of dealing with new challenges. Undoubtedly, the 'original method of updating criteria' that Donald Drakeman writes about can also be useful on 'continental soil'. They read as follows:

1. What 'states of affairs' existed at the time of enactment that led to the lawmaker's end-means decision?
2. What 'fresh set of facts' bearing on that policy have arisen?
3. Do the new circumstances 'fall within the same genus of facts' as the ones originally addressed by the lawmaker? Or, if not, can the purpose of the provision (that is, the policy chosen by the lawmaker) be fulfilled only if extended to the new facts and circumstances?
4. Does the language of the text signal that its interpretation should either be 'restrictive' or 'liberal'⁵¹ ?

Donald Drakeman, in presenting the above criteria, does not pay lip service. He gives two examples from judicial practice in which dynamic interpretation has been applied in a manner consistent with the tenets of intentionalism. The first example is from the United Kingdom and concerns statutory interpretation,⁵² while the second is from the United States and refers to constitutional interpretation.⁵³ Let us look at the second case in more detail.

It concerns the 14th Amendment to the US Constitution, which in section 1 provides that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'. This Amendment has repeatedly been used by the Supreme Court to limit the powers of individual states by 'discovering' civil rights that its creators never dreamed of. For example,

⁵¹ Drakeman (n 1) 93.

⁵² The Judgment of House of Lords of United Kingdom, case no 2 WLR 279 (5 February 1981) *Royal College of Nursing v DHSS*.

⁵³ The Judgment of Supreme Court of United States, case no 347 US 483 (17 May 1954). *Brown v Board of Education of Topeka*.

it has been used to impose the institution of same-sex marriages on conservative states,⁵⁴ which, from the point of view of intentionalism (and democratic principles more broadly), must be judged negatively. After all, treating same-sex unions in the same way as two-sex unions does not fit into the axiology professed by the 19th-century authors of the Amendment, and anyone who knows even a little bit about the history of morality knows this. Therefore, any change in this respect, especially in view of the controversies that still surround this issue today, should only be a new constitutional amendment.

However, the example of the case cited by Donald Drakeman concerning racial segregation in schools should be considered as an example of dynamic interpretation in line with the assumptions of intentionalism. The aim of the creators of the Fourteenth Amendment, introduced in 1868, was to guarantee equal rights to African-Americans, as simply abolishing the institution of slavery three years earlier by means of the Thirteenth Amendment proved to mean little when, for example, they were denied contracts. When, almost a century later, education was mass and research revealed not only the illusory nature of the ‘separate, but equal’ principle, but also its negative impact on the functioning of successive generations of African Americans, it was fair to say that it was impossible to achieve the goal of equal citizenship without prohibiting racial segregation.

V. CONCLUSIONS

Intentionalism is not a ‘foreign body’ to civil law systems. Its main assumptions (i.e., the belief that law is a manifestation of the will of the people and that legislative history can be an aid to a better understanding of this will) are common to the French school of exegesis and to, proper to the German-speaking area, subjective theory. All these currents are children of the Enlightenment and legal positivism. They are inevitably linked to judicial restraint, understood as judges refraining from making decisions that should be decided by politicians. Only the latter have the democratic legitimization to decide, in a binding manner, which of the possible (i.e., proposed in the discourse, supported by certain communities) solutions to a given social problem is to be binding.

This is not a naive vision of the judge not withstanding confrontation in the case of immoral or archaic laws. It is important to remember that it is not only the bad acts or omissions of the legislator that are responsible for the unjust consequences of

⁵⁴ The Judgment of Supreme Court of United States, case no 576 U.S. 644 (26 June 2015) *Obergefell v Hodges*.

the application of the law, but also the attribution of new meanings (to unchanged provisions) by lawyers – the interpretation of the German Civil Code in the Third Reich is a case in point. Intentionalism does not absolve judges from thinking, nor does it reduce them to the role of automatons. Firstly, the intention of the ordinary legislator must always remain in line with the intention of the constitutional or international legislator (i.a., European Convention of Human Rights). Fortunately, many countries have learned from the tragedy of the Second World War, and the constitution and international law can be applied directly. Secondly, the modern legislator, unlike Napoleon Bonaparte, often consciously leaves judges a certain amount of room for interpretation, e.g., through general clauses, where this is really necessary. Judges are then granted a certain amount of discretion, which is indisputably due to the will of the legislator itself. However, judges wishing to remain faithful to their role should remember that in exercising the discretion granted to them they cannot rule in a way that does not fit within the axiology of the historical legislator.

REFERENCES

- Alexander L, 'Connecting the Rule Recognition and Intentionalist Interpretation. An Essay in Honor of Richard Kay' (2021) 52 Connecticut Law Review 1522–1532
- Balkin J, 'Original Meaning and Constitutional Redemption' (2007) 24 Constitutional Commentary 427–532
- Barnett R, Bernick E, *The Original Meaning of the Fourteenth Amendment. Its Letter and Spirit* (Cambridge 2021)
- Bielska-Brodziak A, *Śladami prawodawcy faktycznego. Materiały legislacyjne jako narzędzie wykładni prawa* (Warsaw 2017)
- , 'Using Legislative History in Interpreting Polish Law: Examples of Changes in Understanding Principles of Law During the Transition Period' (2019) 2 Acta Universitatis Carolinae – Iuridica 37–53
- Blackstone W, *Commentaries on Laws of England* (book 1, 9th edn, Oxford 1783)
- Bogucki O, *Model wykładni funkcjonalnej w derywacyjnej koncepcji wykładni prawa* (Szczecin 2016)
- Boike Paweł, 'O różnym pojmowaniu intencji prawodawcy w dyskursie anglosaskim – analiza poglądów Stanleya Fisha, Larry'ego Alexandra, Jeffrey'ego Goldsworthy'ego, Richarda Ekinsa oraz Victorii Nourse' (2023) 4 Archiwum Filozofii Prawa i Filozofii Społecznej 15–26
- , 'Intencjonalizm a tradycyjna koncepcja wykładni Eugeniusza Waśkowskiego. Analiza porównawcza' (2024) 13(4) Prawo i Wiąż 323–345

- Coney Barrett A, '2019 Sumner Canary Memorial Lecture. Assorted Canards of Contemporary Legal Analysis: Redux' (2020) 70 Case Western Reserve Law Review 855–869
- Court de Cassation, *Motivation enrichie: le guide de rédaction* (Paris 2023)
- Dijon X, *Méthodologie juridique: l'application de la norme* (Bruxelles 1990)
- Drakeman D, *The Hollow Core of Constitutional Theory. Why We Need the Framers* (Cambridge 2021)
- Dubiński Ł, 'Materiały legislacyjne w procesie interpretacyjnym' (2023) 14(48) Horyzonty Polityki 59–78
- Dworkin R, *Law's Empire* (Cambridge 1986)
- Ekins R, Goldsworthy J, 'The Reality and Indispensability of Legislative Intention' (2014) 6 Sydney Law Review 9–68
- Ekins R, 'Legislative Intent in Law's Empire' (2011) 24 Ratio Juris 435–460
- Eskridge W, *Dynamic Statutory Interpretation* (Cambridge 1994)
- , 'The Case of the Speluncean Explorers. Twentieth-Century Statutory Interpretation in a Nutshell' (1993) 61 George Washington Law Review 1744–1745
- Florczak-Wątor M (ed), *Constitutional Law and Precedent* (Abingdon 2022)
- Frieling T, *Gezetesmaterialen und Wille des Gesetzgebers* (Tübingen 2017)
- Frydman B, *Le Sens des lois. Histoire de l'interprétation et de la raison juridique* (Bruxelles-Paris 2005)
- , 'Exégèse et philologie: un cas d'herméneutique comparée' (1994) 33 Revue interdisciplinaire d'études juridiques 59–83
- Germain C, 'Approaches to Statutory Interpretation and Legislative History in France' (2003) 13 Duke Journal of Comparative & International Law 195–206
- Greenberg M, 'Legal Interpretation' in E Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition) <<https://plato.stanford.edu/archives/fall2021/entries/legal-interpretation/>> accessed 28 February 2025
- Grice HP, *Studies in the way of words* (Cambridge-London 1989)
- Halpérin J-L, 'École de l'Exégèse' in Sellers M and Stephen K (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Dordrecht 2023) 837–840
- Hart H, Sacks A, *The Legal Process. Basic Problems in the Making and Application of Law* (Westbury 1994)
- Goldsworthy J, 'Subjective versus Objective Intentionalism in Legal Interpretation' in H Hurd (ed), *Moral Puzzles and Legal Perplexities. Essays in the Influence of Larry Alexander* (Cambridge 2018) 170–188
- , 'The Meaning and Interpretation of Statutes in Anglo-American Legal Systems' in T Gizbert-Studnicki, F Poggi and I Skoczeń (eds), *Interpretivism and the Limits of Law* (Northampton 2022) 43–59
- Jellum L, *Mastering Statutory Interpretation* (2nd edn, Durham 2013)

- Konca P, 'Legislative Materials in the Light of Polish and Spanish Law, Judicial Practice and Theoretical Literature' (2018) 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 38–50
- Krotoszyński M., 'Legislative History, Ratio Legis, and the Concept of the Rational Legislator', in *Ratio Legis. Philosophical and Theoretical Perspectives* (Klappstein V and Dybowski M eds, Cham 2018) 57–73
- Kruk M, 'Proces wykładni w teorii francuskiej szkoły egzegezy' (2018) 1 *Państwo i Prawo* 24–39
- MacCormick D-N and Summers R (eds), *Interpreting Precedent. A Comparative Study*, Aldershot, Brookfield, Singapore (Sydney 1997)
- Manning J, 'The Absurdity Doctrine' (2003) 116 *Harvard Law Review* 2388–2486
- , 'What divides textualists from purposivists?' (2006) 106 *Columbia Law Review* 70–111
- Mańko R, 'Demons of the Past? Legal Survivals of the Socialist Legal Tradition in Contemporary Polish Private Law' in R Mańko, C Cercel, A Sulikowski (eds), *Law and Critique in Central Europe: Questioning the Past, Resisting the Present* (Oxford 2016) 66–89
- Meyer S, 'Subjective or Objective Legislative Intention: An Australian/German Perspective' (2024) 1 *Statute Law Review* 1–19
- Merrill T, 'Faithful Agent, Integrative, and Welfarist Interpretation' (2010) 14 *Lewis & Clark Law Review* 1565–1600
- Müller F, *Fallanalysen zur juristischen Methodik* (2nd edn, Berlin 1989)
- Perelman Ch, *Logique juridique. Nouvelle rhétorique* (2nd edn, Paris 1999)
- Posner R, 'Pragmatic Adjudication' in M Dickstein (ed), *The Revival of Pragmatism. New Essays on Social Thought, Law, and Culture* (Durham 1998)
- Radin M, 'Statutory Interpretation' (1930) 56 *Harvard Law Review* 863–885
- Scalia A, *A Matter of Interpretation. Federal Courts and the Law* (2nd edn, Princeton 2018)
- Rodríguez-Toubes Muñoz J, 'El criterio histórico en la interpretación jurídica' (2013) 22 *Dereito* 599–632
- Rüthers B, *Die Heimliche Revolution Vom Rechtsstaat Zum Richterstaat. Verfassung und Methoden. ein Essay*, (2nd edn Tübingen 2016)
- , *Die Unbegrenzte Auslegung. Zum Wandel der Privatrechtsordnung im Nationalsozialismus* (9th edn, Tübingen 2022)
- Sadurski W, *Rights Before Courts A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe* (Dordrecht 2005)
- Sehl Markus, *Was will der Gesetzgeber?: Ziel und Methode rationaler Argumentation mit Gesetzesmaterialien* (Baden-Baden 2019)
- Shapiro M, *Courts. A Comparative and Political Analysis* (Chicago-London 1981)

- Schauer F, 'A Critical Guide to Vehicles in the Park' (2008) 83 *New York University Law Review* 1109–1134
- Sokalska E, Augustyniak M, 'French Jurisprudence and the Dispute over the Method. From Positivist Exegesis to Free Scientific Research' (2021) 6 *Przegląd Prawa Konstytucyjnego* 224–235
- Sokołowski J, *Transnaród. Polacy w poszukiwaniu politycznej formy* (Kraków 2023)
- Solan L, 'Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation' (2004) 93 *The Georgetown Law Journal* 427–486
- Steiner E, *French Law. A Comparative Approach* (2nd edn Oxford 2018)
- Stolleis M, 'Judicial Interpretation in Transition from the Ancien Régime to Constitutionalism' in Y Morigiwa, M Stolleis and J-L Halpérin (eds), *Interpretation of Law in the Age of Enlightenment. From the Rule of the King to the Rule of Law* (Dordrecht 2011) 31–17
- Summers R and Taruffo M, 'Interpretation and Comparative Analysis' in D-N McCormick and R Roberts (eds), *Interpreting Statutes. A Comparative Study* (Aldershot 2016) 461–510
- Tobor Z, *W poszukiwaniu intencji prawodawcy* (Warsaw 2013)
- Viola F and Zaccaria G, *Diritto e interpretazione Lineamenti di teoria ermeneutica del diritto* (9th edn, Laterza 2016)
- Waldron J, *Law and Disagreement* (Oxford: Oxford University Press 1999)
- Waśkowski E, *Teoria wykładni prawa cywilnego. Metodologia dogmatyki cywilistycznej w zarysie* (Warsaw 1936)
- Wismeyer T, *Zwecke im Recht des Verfassungsstaates. Geschichte und Theorie einer juristischen Denkfigur* (Tübingen 2015)
- Wills D, 'Domestic Violence in The Times. From Civil Unrest to Spouse Abuse', *The New York Times* 10 September 2014 <<https://www.nytimes.com/2014/09/11/upshot/domestic-violence-in-the-times-from-civil-unrest-to-spouse-abuse.html>> accessed 28 February 2025
- Wintr J, 'Canones of Savigny as the Basis for Interpretation of the Law in European Continental Legal Culture', in Dawid Bunikowski (ed), *Historical and Philosophical Foundations of European Legal Culture* (Newcastle upon Tyne 2016) 117–136
- Zieliński M, *Wykładnia prawa. Zasady, reguły, wskazówki* (7th edn, Warsaw 2017)
- – and others, 'Zintegrowanie polskich koncepcji wykładni prawa' (2009) 4 *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 23–39
- Ziemiński Z, 'Lex and Ius in the Period of Transformation' (2019) 10 *Adam Mickiewicz University Law Review* 111–129
- Zweigert K, Kötz H, *An introduction to comparative law* (2nd edn, Oxford 1998)