

Jan Wasilkowski, *Zarys prawa rzeczowego* [An Outline of the Law of Things], Warszawa 1963, PWN, 289 pages.

In 1957 Jan Wasilkowski published his first study of Polish property law, giving in the title *Prawo rzeczowe w zarysie* [The Law of Things in Outline]. That book was meant as a university textbook, as well as *Zarys prawa rzeczowego* [The Outline of the Law of Things] of the same author, published in 1963. In the second book, with the (slightly different title, there has been some abbreviation of the argument. It is also better suited to the existing *curricula*. But the main difference lies in the complete rewriting of the book, based on a confrontation of the views previously expressed by the author and the assumptions made by him, with the development of legislation over the six-year period and with the latest conceptions. In this new book the author has revised his previous arguments and methods.

The method, firmly based on the principles of dialectical and historical materialism, has not been changed, since there was no necessity for change. The author has kept closely to his old principle of discussing legal institutions strictly within the setting of their socio-economic background, which he describes beforehand, as well as his principle of showing the reader the class colouring and political foundations of these institutions. Although this method is generally followed in Poland in legal studies, it would be difficult to find such a masterly example of its application as that given us by professor Wasilkowski. What is more, the socio-economic analysis undertaken by him in 1957 has undergone no essential change despite the passage of those six years, and, which should be emphasized, despite the fact that, being the basis of detailed regulations of the law, it was constantly being tested.

The author fully maintains the distinction between property in the constitutional law sense and in the civil law sense. He defines the relationship between the two as the relationship of the general category of property, to the particular rights of the owners, in this case the law of property, which is concerned with material things. The author has also retained his thesis as to the so-called unity of State property. According to this thesis, as far as national, or State, property is concerned, the rights accrue to the State and not to individual State legal persons. This thesis has also been incorporated *in toto* in the new Polish civil code of 1964.

Professor Wasilkowski has not hesitated to express a change in his views where he thought they required modification. For instance, in his new book he has withdrawn his opinion that agricultural producer co-operatives cannot acquire land as their own property, although he previously attached great weight to that standpoint, and went into his reasons for his views very carefully. But, as is not always the case with other authors, his conscience as a writer has led him to express a distinct change in viewpoint; he does not simply pass over the subject in silence through false shame. The author has also revised his views on the sources of State and

co-operative ownership. He now ignores extended reproduction as a source of that ownership, and gives reasons for doing so although, in my opinion he was not altogether right in ignoring it, for it seems to me that the civil law course would be to convert the whole matter into the acquisition of property rights in the profits and other natural benefits.

The author, on the other hand, has maintained his previous view that contracts on the transfer of property include two elements, the transfer of property and the transfer of obligations, following the practice of French legislation and doctrine, not German. Although in my opinion this is, to put it mildly, a highly questionable view, the new civil code takes the same standpoint as professor Wasilkowski.

Those parts of the book that dealt with history and with comparative law have been considerably curtailed. The choice of problems in the newer book (perpetual usufruct, the registration of land and property) is undoubtedly a happy one.

Wasilkowski's skill as a writer is probably most evident in those sections of the book that deal with registration and mortgage. Although the whole book is on the same high level, these parts in particular show how successfully the author sustains the reader's interest in apparently dry and abstract problems, while losing nothing in lucidity and precision. His account of the historical development of the socio-economic function of property registers is a model of its kind. His argument that the property registers are guaranteed by public faith in them is more precise and detailed than any other such argument in the whole of our legal literature.

The chapter on possession, written by professor W. Czachórski, does not differ from the rest of the book in its approach. Czachórski had no easy task, when we take into consideration the fierce arguments that have been taking place among Polish jurists of late about the essence and the function of possession.

The book as a whole has been planned as a compact university textbook. For this reason the author has omitted certain especially difficult questions where they are of no particular practical importance (e.g. the mortgaging of private real property), as well as a number of special questions which come into other university subjects (e.g. ownership in agriculture), and most aspects of comparative law. This book by professor Wasilkowski will, however, prove useful not only to students but also to practitioners of the law and to those engaged in advanced theoretical studies. It is hoped that the author will give us a much wider study of the law of things as part of a comprehensive book on the civil law by a number of authors.

Certain views put forward by the author are, of course, open to discussion. It is only natural that views will vary. But I am also convinced that there should be a divergence of views. At any rate it is certain that the true scholar will publish his views only after careful thought, having brought the whole store of his knowledge into play, and writing only according to his real conviction. The work published by professor Wasilkowski fully meets those requirements. The very fact that there is so little difference between the first book and the second is an indication that a great deal of thought has been devoted to the problem. What is perhaps most important is that the other books which appeared on this subject after the publication of Wasilkowski's book in 1957 are proof of the fecundity of his ideas. One of Wasilkowski's greatest services has been his unceasing struggle against the omnipotence of constructions which we ourselves create only to become their slaves. Taking this struggle onto Marxist ground, Wasilkowski improves the methods used in the struggle, and leads it to a successful conclusion. We may disagree with the author on a number of points, but we cannot deny that this struggle, as waged by him, has

germinated many new ideas in Polish jurisprudence. It would, I think, be difficult to imagine a greater success for the scholar than the inspiration of new ideas in other people, and the setting of new trends.

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