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## Agency in Legal Institutions: Dispositionism and Situationism

Działanie podmiotowe w instytucjach prawnych:  
dyspozycjonizm a sytuacjonizm

### Summary

The following article attempts to utilize the conclusions emerging from the discussion between proponents of dispositionism and situationism in the examination of the decision-making process of a performer of a professional role. An example of this role would be that of a legal professional. By undertaking this adaptation, I defend the position which indicates the necessity of considering the variables that are given precedence by each school of thought. This objective I accomplish in three steps; firstly, I present the debate between dispositionism and situationism, referring primarily, to the work of Natasza Szutta. The next step is to introduce these findings to legal discourse. For this reason, I identify the dangers related to an individual's functioning in the world of institutions by referring to classical psychological experiments. It is against the background of this body of research that, finally, I attempt to demonstrate that interactionism is a theoretical proposition which includes both dispositional and situational variables in its presentation of the decision-making process.

Keywords: social role, legal professional, agency/structure, moral responsibility, social relation

### Streszczenie

Celem niniejszego artykułu jest próba adaptacji ustaleń, jakie wynikają z dyskusji między zwolennikami dyspozycjonizmu i sytuacjonizmu, do rozważań nad procesem podejmowania decyzji przez

wykonawcę roli zawodowej. Dla mnie przykładem takiej roli jest prawnik. Dokonując tej adaptacji, bronię stanowiska wskazującego na konieczność uwzględniania zmiennych, którym przyznane jest pierwszeństwo w każdym ze stanowisk. Tak postawiony cel realizuję w trzech etapach. Najpierw przedstawiam debatę między dyspozycjonizmem a sytuacionizmem, odwołując się przede wszystkim do pracy Nataszy Szutty. W kolejnym kroku adaptuję te ustalenia do dyskursu prawniczego. W tym celu wskazuję na niebezpieczeństwa związane z działaniem jednostki w świecie instytucji, odwołując się do klasycznych eksperymentów psychologicznych. Na tle tych badań – w ostatnim kroku – staram się wykazać, że interakcjonizm jest tą propozycją teoretyczną, która przedstawiając proces podejmowania decyzji, uwzględnia zarówno zmienne dyspozycyjne, jak i sytuacyjne.

Słowa kluczowe: rola społeczna, prawnik, działanie podmiotowe, struktura, moralna odpowiedzialność, relacja społeczna

## *0. Introduction*

The adaptive task suggested in the title of this article needs explaining and justifying. First of all, the sociologist Maria Borucka-Arctowa encouraged her colleagues to attempt the task as early as 1970s. Distinguishing four possible research areas that are conducive to such adaptation, she discusses the problems concerning the decision-making process of lawyers (Borucka-Arctowa 1973, 106). The answer to the question of the factors that influence this process can be sought in social psychology (Romer and Najda 2007, 102–126). The concept of acquiring psychological knowledge as a basis for legal considerations also strengthens the increasingly developing research trend of “psychology and law.” Secondly, the Polish debate on the actions of lawyers has been dominated by dispositionism, which focuses its attention on the performer of a role’s personality. This position is questioned in the following paragraphs. I intend to demonstrate that there are two major factors which influence the decision-making process of the individual who

performs a professional role: one of them concerning personal dispositions, while the other – situational variables. To me, the profession of the lawyer is an exemplification of such a role.

Pursuing the set goal, I start from expounding both dispositionism and situationism, which differ in their interpretation of the decision-making process. I present the debate between dispositionism and situationism, referring, most of all, to the work of Natasza Szutta. I use them as a context to consider the lawyer's performance guarantee. Next, referring to the findings of Zygmunt Bauman, I enumerate three personal dispositions which exert an impact on an individual's functioning in the world of institutions. These include: agency, responsibility, and discretion. Afterwards, I discuss experimental research addressing the three said dispositions, whose results suggest the necessity of including situational variables in the equation. Arguing for the latter proposition, I conclude by recommending a different perspective, which considers the actions of lawyers in the light of both the dispositional and the situational factors.

Thus, this article addresses some of the findings from social theories and attempts to incorporate them into the discussion on the role of lawyers as that of performers of roles. This adaptation aims to expose the dangers related to the diffusion of responsibility and the exclusion of individual agency and discretion in decision-making.

### *1. The dispositionist and the situationist responses to the actions of lawyers as the performers of roles*

Whether to seek the explication of the decision-making process in the performer of a role's personal disposition or rather in external variables is the divisive line between the proponents of dispositionism and situationism. The former point to personal variables, whereas the latter – to those external to the agent, especially the circumstances of an action, as well as the social and institutional conditioning. This disparity results from the

divergent premises on which the two views are based (Szutta 2017, 177–178). Firstly, dispositionism presupposes the existence of a person's individual character; secondly, it claims that character plays a crucial role in their actions and choices; and, thirdly, that the knowledge of a person's character makes it possible to anticipate their future behavior. Advocates of situationism dispute these assumptions; instead, they put forward three others (Szutta 2017, 229). First of all, a person's behavior is said to be largely determined by the situation in which an action is undertaken; secondly, to ascribe the attributes of permanence and stability to personal disposition is considered erroneous, and the latter may undergo some change depending on the given circumstances; and, finally, character traits are not believed to be integrated with any particular value system. Put simply, personality can be incoherent. People may act differently in the workplace and at home.

Exponents of situationism ascribe a global view of character to the dispositionist approach (Szutta 2017, 221). This view is encapsulated by three arguments. The first reveals an aspect of consistency; it is the assumption that an individual behaves in an identical way in all circumstances. The second, on the other hand, involves an aspect of stability: it is the belief that character traits are stable and do not change depending on circumstances. Finally, the third raises the question of integrity; the argument is that we can expect an individual representing a specific personality type to behave in a certain way.

In the light of these three presuppositions, it is believed that an individual is consistent and follows a coherent moral code in various situations as well as spheres of life: private, professional and public. The adoption of these assumptions is illustrated by the words of Jerzy Naumann, who states that:

To be a lawyer means to fulfil the social expectation that the person practicing this profession is authentically moral. Ethical righteousness is a term denoting a state of moral integrity.

They who act properly from a moral standpoint while practicing their profession but who behave in a way that infringes ethical principles after they finish performing their duties cannot be deemed moral. (Naumann 2012, 46)

Situationists call the global view of character into question. They are inclined to also consider factors external to the agent as having an impact on human behavior. One of them includes the performed role. Its effect on the decision-making process has been well demonstrated by an experiment that was conducted in 1980s by Ronald Humphrey (Szutta 2017, 242). Participants had been randomly divided into two groups; the first were to assume the role of managers, while the second – that of clerks. At the end of the experiment, they all assessed one another with reference to character traits. It transpired that the managers scored much higher in both groups. The performed role and its status proved crucial in the evaluation of its performer. The force of the role factor has also been indicated in a British television series, *The Edwardian Country House*. Out of eight thousand people who volunteered to take part in the reality show, nineteen were chosen. A 65-year-old man and professional architect, who was elected as the head butler of the house, was terrified by how quickly he transformed into an authoritarian major-domo (Zimbardo 2007, 213–214).

Philip Zimbardo employs the abovementioned example to issue a warning that:

Yet some roles are insidious, are not just scripts that we enact only from time to time; they can become who we are most of the time. They are internalized even as we initially acknowledge them as artificial, temporary, and situationally bound.  
(...)

To complicate matters further, we all must play multiple roles, some conflicting, some that may challenge our basic values and beliefs.

(Zimbardo 2007, 214)

I do not know whether he regards the profession of the lawyer as a role of this kind; nevertheless, when reviewing Zimbar-do's book, *The Lucifer Effect*, Bogdan Wojciszke remarked that its portrayal of the mechanism of submitting oneself to one's professional role is a helpful read that is addressed to lawyers.

Before we take a closer look at this mechanism, we should first present the predominant method of studying the role of the lawyer in Polish ethical and professional discourse. In order to do so, let us consider for a moment the question of the performance guarantee as a rationale for including a person on a list of qualified lawyers. Given the existing legal tradition, it is accepted that it is those who are of immaculate character and have by their own past behavior guaranteed proper professional performance as lawyers that can be placed on the list. In the Polish history and practice of court rulings, it is fairly widely recognized that immaculacy of character denotes "nobility, rectitude, and honesty: that is, the exclusively moral and ethical value judgements of the candidate."<sup>1</sup>

In turn, the candidate's past behavior becomes assessed in terms of morality, ethics, and professional competence.

On the basis of the rationales enumerated in the appropriate act of law, which specify who can be placed on the list of qualified lawyers, in a ruling dated November 4, 2009, the regional Administrative Court in Warsaw formulated the following criteria:

1. The immaculacy of character is evidenced by personal attributes such as honesty in both private and professional lives, responsibility for one's words and actions, civil courage, assiduity, the ability to co-exist in harmony with the surrounding social environment.

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<sup>1</sup> Ruling of WSA (Wojewódzki Sąd Administracyjny [Voivodship Administrative Court]) in Warsaw, November 4, 2009, VI SA/Wa 1450/09, LEX no. 589497.

2. The criterion of the ‘lawyer’s performance guarantee’ is to ensure an appropriate moral and professional level of a member of this company.
3. Even a single incident may undermine the reliability and the immaculate character of the party in question.<sup>2</sup>

The following conclusion can be drawn from what has been established so far; the kind of a person that an individual practicing the profession of the lawyer is has an effect on their behavior – hence the importance of the personal disposition of the performer of a role. This disposition has a crucial influence on the individual’s decision-making process and choices, both inside and outside their profession.

### *2. The three nuisances of the decision-making process<sup>3</sup>*

When describing the problems linked to the performer of a role’s functioning in the world of institutions, Bauman employs the term “adiophorisation of action” (Bauman 1993, 125). The objective of this mechanism is “to extend the distance to such a degree that the moral significance of action is eliminated” (Wodziński 1998, 297).

Inquiring as to the factors contributing to the mechanism described above, Bauman indicates three sources (Bauman 1993, 125–127):

1. the politics of distance, i.e. maintaining distance between the performer of an act and the act’s addressees,
2. the social division of labor, which facilitates the adoption of the personality required for a “performer of orders,”

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<sup>2</sup> Ruling of WSA in Warsaw, November 4, 2009, VI SA/Wa 1450/09, LEX no. 589497.

<sup>3</sup> In this passage I use the conclusions and parts from my article (Kaczmarek, forthcoming).

3. diffusion of the work performed through multiple persons taking decisions.

The process of diffusing responsibility is reinforced by the administrative division of labor; more precisely, the argument of professionalization formulated within its boundaries boils down to acknowledging that responsibility for action rests on the institution. This leads to the formation of the identity of the performer of a role as one of accessorial obedience. In this manner, responsibility remains devoid of a moral dimension. Its place is assumed by an accessorial dimension, reduced to a responsibility to be obedient, to observe existing norms in such a way as to eliminate space for doubts as to the existing mode of action.

The abovementioned processes reveal three problems involving: (1) the lack of moral judgement of actions; (2) replacing moral responsibility with obedience, or professional responsibility; and (3) the loss of agency in one's performed role (Bauman 2000, 98–100, 159–163).

The first of the aforementioned processes, i.e. the absence of moral assessment of acts performed, is grounded in the assumption that the performer of a role behaves in accordance with the commands of the role, and does not problematize those orders. Bauman identifies the basis of this process in the policy of distance, which assumes both a physical and a psychological distance between the act performed and its attendant consequences. In the opinion of the author of *Modernity and the Holocaust*, this leads to the elimination of a potential conflict between the rules under which the performer of a role should act, and that performer's personal morality (Bauman 2000, 98–104). Within the boundaries of ethical and professional discourse, the problem under discussion can be presented in the form of a dilemma: are individual decisions the subject matter of moral judgement, or do we also examine the rules underlying them (Hutchinson 2006, 49–50)? The first of

the two choices is termed the strategy of “act-utilitarianism,” while the second – “rule-utilitarianism” (Luban 1988, 118). In adopting the approach of “act-utilitarianism,” the interpreter attempts to engage in acts which are marked to a significant degree by individual morality. The situation is different in the case of “rule-utilitarianism.” The selection of this strategy assumes that adherence to the rules of an institution to which one belongs is a fundamental value. The argument in favor of adoption of the second attitude is widely known: an approach based on the primacy of “rule-utilitarianism” leads to the greater predictability of the behavior of social institutions. The price paid for the selection of “rule-utilitarianism” is ignoring (radical hypothesis) or marginalizing (moderate hypothesis) the individual dimension, the moral aspect based on assessment of acts.

The second of the processes proposes replacing moral responsibility with accessorial responsibility (Bauman 2000, 100). Invoking the etymology of the word “responsibility,” we can say that it is based on answering for one’s actions. The choice of accessorial responsibility assumes that in the moral dimension: (1) responsibility rests with the institution in which we are functioning, or (2) there is no responsibility, neither on the part of the performer of the role, nor of the organization. In the first instance, responsibility rests with a structure external to the individual. In turn, the second assumes that responsibility can only be spoken of from a retrospective position, rather than prospective (Filek 1996, chapter II). Insofar as retrospective responsibility has a negative character, prospective responsibility, being positive, is oriented towards the future. Prospective responsibility results from the assignment of duties, while retrospective responsibility ensues from their violation (Kutz 2000, 49–53). Retrospective responsibility thus concerns past acts.

The third of the distinguished processes, i.e. the loss of subjectivity, is a consequence of the two preceding tenden-

cies. The exclusion of consideration of an action undertaken in conjunction with the “dissection” of moral responsibility for performed acts leads to the reduction of an individual person to functionary who obeys commands (Bauman 2000, 102–104).

### *3. On the performer of a role’s moral responsibility in the light of Stanley Milgram’s obedience experiment*

The process of neutralizing moral responsibility can be demonstrated using the example of Stanley Milgram’s obedience experiment (Milgram 1974, Kaczmarek 2014b, 96–98). He published a notice in a local newspaper, informing the readers that he was searching for test subjects for a scientific experiment conducted by a team of psychologists from Yale University. The notice said that the experiment would be linked to research on memory and learning. The people who volunteered were asked to enter the room in which the experiment was to take place. On walking into the room, they met the experimenter and a second volunteer, who, in reality, was the former’s assistant (Milgram 1974, chapter 1). The task of the “learner” was to memorize words, while that of the teacher – to punish the learner should they make a mistake. Administering the punishment involved inflicting electric shocks on the learner, each 15 volts higher than the previous one, whenever they were wrong. The teacher received a device with buttons marked 15 to 450 volts. Allocating the respective roles was orchestrated, since the volunteer always became the teacher, while the second, fake participant – the learner.

The underlying scheme of the experiment was generally the following: the learner made mistakes and started to moan in pain as the voltage of the electric shocks increased, until they declared that they wanted to halt the experiment. This was followed by the teacher’s asking who would be responsible for the learner’s health in the event of the latter’s injuries, to

which the experimenter responded by taking the responsibility upon themselves. More than 60 per cent of those performing the role of the teacher did not stop the experiment, applying the maximal voltage of 450 volts. This study has been undertaken in many countries around the world, and the percentage of participants who take the experiment to the very end oscillates between 63 and 65 per cent of the test subjects.

One interpretation identifies such obedience as originating in an individual's moral disposition, especially in an authoritarian personality. This proposition presumes that those who have yielded to the pressure of the experiment represent an authoritarian personality type, and that they are sadists, insensitive to human suffering. It seems doubtful that this type of personality is shared by two thirds of the world's population; moreover, even if one does accept this conclusion, it is problematic to defend the thesis that people exhibiting authoritarian traits are inclined to submit to authority and show obedience.

According to Milgram, a possible explanation for obedience to authority can be sought in a pragmatic attitude in day-to-day decisions and choices which prompts reverence for authority. This mechanism relies on the following reasoning: we ascribe the function of a role model to someone who is an authority in a given field, and if that person decides on a certain course of action, we trust them. Thus, the basis for obedience can be sought in the adoption of an attitude that involves being a tool in the hands of an expert.

In the situationist response, it is the factors external to the agent that have a crucial influence on the agent assuming the role of an instrument in the hands of their superior. The site of the experiment (university), the payment given in return for participation in the experiment, the knowledge and authority of the superior – all of these are believed to have had a major impact on the test subject's evasion of personal responsibility.

#### *4. On the performer of a role's loss of agency in the light of Philip Zimbardo's prison experiment*

The Stanford Prison Experiment, carried out by Philip Zimbardo, Craig Haney and their colleagues, is a classic example demonstrating the effect of the performed role on an individual's agency (Zimbardo 2007). For the sake of the study, the basement of the Department of Psychology at Stanford University was adapted to house a jail. Participants were divided into two groups: "guards" and "prisoners." The aim of the experiment was to show the change that a person undergoes while adjusting to a new role.

On the very first day of the role-play, the guards began tormenting the prisoners. After four days, the test subjects had fully internalized their assigned roles; the prisoners referred both to one another and themselves with identification numbers, whereas the guards exercised more and more of their power. On the sixth day, the experiment was terminated on account of the dangerous situations that had taken place in the jail. It is worth recalling that there were seventeen rules regulating the test subjects' behavior in the Stanford prison (Zimbardo 2007, 44). One of the observations formulated by Zimbardo after the experiment concerns the fact that the prisoners did not shift all of the responsibility onto these rules (Zimbardo 2007).

Zimbardo adduces the situational context as an explanation for the mechanism of being consumed by one's role presented in this experiment (Zimbardo 2007, 210–213). It is the situations in which people happen to function that have an impact on the decision-making process of an individual performing a certain role. The influence of external factors is crucial and determines the performer of a role's behavior – this is the lesson that the Stanford Prison Experiment teaches us. However, many more conclusions can be reached on the basis of this knowledge (Luban 2007, 269; Kaczmarek 2018, 27).

Firstly, the explanation for the mechanism of altering one's moral principles in order to adjust them to the structural obligations of a role may be sought in the tendency to maintain coherence, which consists in continuing to be the same person regardless of the performed role. Employing this mechanism in order to achieve this coherence is simpler than adjusting one's behavior to one's moral principles.

Secondly, each act is rationalized by the previous one. This scheme is well illustrated by the "foot-in-the-door" experiment, conducted in 1966 by Jonathan Freedman and Simon Fraser, in which real estate owners were asked for permission for a billboard saying "Drive carefully" to be placed in front of their houses. It transpired that merely 17 per cent of the proprietors had consented to do so. In another study, this figure soared to 75 per cent. What distinguished the second test from the first one was that two weeks before the actual experiment an experimenter had visited the owner and asked them to put a small sticker bearing the aforementioned words on one of the windows of their houses. Up to 75 per cent of the respondents who had previously acceded then agreed to have a billboard set up on their land.

Thirdly, people tend to alter their moral principles especially in the event of a moral disagreement which threatens their self-image. In this case, we are liable to adjust our moral convictions to the cause we are following for fear of admitting our own wrongdoing. This is reinforced by the phenomenon referred to as "groupthink." The Polish sociologist Jacek Szmatka links the latter to the process of deindividuation – a situation in which one perceives oneself not as a single, distinct person, but as part of a group (Szmatka 2008, 190). The consequent loss of agency results in submission to the pressure of institutional reasoning, which leaves no room for individual judgement (Szmatka 2008, 194). Answering the question of what engenders groupthink, Irving Janis begins by focusing on the group's structural features. In this respect, the group's unity and the

isolation of the decision-makers from the rest of the group as well as from public opinion all facilitate groupthink.

*5. On the moral judgement of the performer of a role's actions in the light of the Abu Ghraib abuse scandal*

A discussion on the effect of situational and dispositional factors on an individual's functioning within their role has also been held with reference to historical events. This was done, for example, by Harald Welzer (Welzer 2005). He observes that the reasons for Nazi war crimes have often been sought in the perpetrators' personalities. This diagnosis was long questioned by Hannah Arendt, who formulated the theory of the "banality of evil" (Arendt 1964, postscript). In Arendt's conception, evil is not common and ordinary, she rather means that evil becomes manifest in human thoughtlessness. A person who commits a vile act is not only unaware of its consequences, but does not feel responsible for the action taken, the choices made. This is a consequence of the emergence of a model of role performance which assumes that responsibility is impersonal and ancillary. This model does not burden the subject, but rather impersonal institutional structures, and reduces responsibility to obedience to existing rules of behavior and fixed practices. In this way, a person performing their functions becomes an executor of commands.

Following Hannah Arendt, I contend that the identity of an executor of commands can be described in two ways (Kaczmarek 2014a, 79–82). The criterion is whether this figure (describing the identity of the performer of a role) is assumed in a thoughtless or cynical manner. Assuming the thoughtless attitude comes down to switching off individual judgement of both the way of acting and the professional rules, which results in switching off reflection or acting against one's own judgement. The second of the two attitudes is a kind of camouflage, which serves the purpose of rationalizing the action, i.e.

justifying it as an institutional measure for which an individual is not responsible and at the same time can make decisions at his/her own discretion (the attitude of a cynic).

I consider both of these models of role performance to be dangerous. The cynical approach constitutes a threat because “being in a role” might conceal various practices, also ones that result in carrying out professional tasks, resolving emerging dilemmas and doubts at one’s own discretion. The adoption of such a perspective with regard to the identity of the role agent, where the intersubjective dimension is lost, can give rise to anxiety, especially in the context of the juridification of social life. In turn, assuming the “identity of command” executor, in a thoughtless manner, may prove costly – both in the social and personal dimension, because it is related to a serious impoverishment of the role agent’s moral experience. The vision of an individual who acts as part of an institution and refuses to think in moral terms about his/her actions may raise doubts not only from the moral perspective, but also from the perspective of living in society, in which even greater control is taken by expert systems.

Another point of contention between proponents of dispositionism and situationism concerns the events that took place in the Abu Ghraib prison. In April 2004, pictures documenting the tortures that terrorism suspects had suffered at the hands of American soldiers appalled the public worldwide. The photographs presented various forms of physical and psychological abuse of prisoners. Initially, it was claimed that these incidents were the isolated behavior of people who should never have worn an American uniform in the first place. In the courtroom, the defense for those accused of perpetrating the crimes in Abu Ghraib disputed the line of argumentation based on dispositionist notions. Under the influence of Zimbardo, who himself was called on as an expert during the trial, they proposed a situationist interpretation of those events, referring to Zimbardo’s metaphor of apples and barrels. According to this exam-

ple, whether or not apples will rot in a barrel depends on their environment: that is, on the barrel in which they are stored. The metaphor was employed to stress the influence of the surrounding social environment on the actions of the soldiers. As noted by Zimbardo, they were embroiled in a situation which inhibits people's judgement and disturbs their decision-making process (Zimbardo 2007, 344–345; Szutta 2017, 211–218).

### *6. Towards an interactionist approach to studying the decision-making process of a lawyer*

Zimbardo remarks that “A large body of evidence in social psychology supports the concept that situational power triumphs over individual power in given contexts” (Zimbardo 2007, X). These contexts form what Erving Goffman has referred to as a “total institution;” further, he claims that the circumstances in which we make our decisions may be the chief influence on the decisions themselves, sometimes greater than that of the performer of a role's personal disposition. Goffman's argument should not, however, lead to the conclusion that the responsibility for any action lies with the system or the social environment, but rather to the acknowledgement of the importance of situational variables. Let us therefore consider a proposition which assumes that the decision-making process of a lawyer can be presented by means of dispositional and situational variables (Szutta 2017, 291). Such an approach does not ignore the effect that a situation has on an individual's behavior. Moreover, it does not marginalize the significance of individual traits which account for the fact that various people may react in different ways to the same situation.

Considering both personal and situational variables in the decision-making process finds further justification in the light of the dual process theory. Daniel Kahneman distinguishes between two modes of thought: fast and slow (Kahneman 2012, chapter 1; Szutta 2017, 355). The former is a system that in-

volves automatic thoughts, and it is used to make decisions that have been influenced primarily by situational factors. An unquestionable advantage of this type of decision-making is a sense of continuity; every choice is based on previous patterns of behavior. The automatic system unburdens an individual of the dilemma of choice. Nevertheless, there are situations in which this sort of decision-making may be perceived as morally dubious, and this doubt arises from the mode being switched to reflexive thinking, which requires the agent's engagement. In this case, it is personal disposition that becomes vital. The slow system of thinking can be viewed as complicating the automatic one, and its work as a process of abandoning the fast system's suggested decision. Kahneman posits that a cognitive process founded on a pre-existing pattern of behavior is the outcome of the working of automatic thinking, while a departure from a pre-existing interpretative framework results from the operation of reflexive thinking. This theory explains how moral dilemmas – questions of how to behave in given circumstances – are resolved.

In theory, the reflexive system is supposed to curb the automatic decision-making process. It seems, however, that “switching” to the former depends upon personal disposition, among other factors. The issue of developing criticism of the existing social prescriptions directs our attention towards human character. Therefore, it can be assumed that both types of variables – situational and dispositional – complement each other; hence, considering them both makes it easier to explicate the process of decision-making, including that of lawyers. The proposed distinction between automatic and reflexive thinking can be deployed in order to account for the decision-making process of lawyers, especially in relation to easy and hard cases, as well as the concept of precedent.

Considering all of the above, I believe that interactionism is a perspective which, despite some difficulties, enables the findings of situationism and dispositionism to be combined

(Oleś 2011, 279–280; Szutta 2017, 176). The interactionist approach has also been present in the debate over the professional role of the lawyer (Skąpska 1989, 56–76). Its conception of performing a role rejects two extremes, namely situational determinism and voluntarism. Instead, it adopts a relational interpretation of the process. An agent's actions are depicted as determined by the institutional structure in a way that does not ignore their agency, which is said to play an important part in performing the role. In interactionism, it is possible to ask questions both about the responsibility of the performer of a role (the dispositional factor) and the conditions that might have contributed to the actual decision (the situational factor). From this perspective, the social reality is explained through the notion of interaction between the members of the social group, the individual and the institutional structure. This solution allows one to attribute to action both the subjective character and the reproductive one. This entails not only a reformulation of the epistemic model of social reality (by overcoming the subject-object of knowledge opposition and relating thought with action), but also an emphasis of the role of the individual in its co-creation. On the ontological level, it challenges the claim according to which the individual and the social structure are separate entities. The dilemma of the individual vs. structure, is dispensed with by adopting a dualistic perspective. It assumes that both these aspects complement each other, and it is not possible to investigate reality (social, institutional) by reducing one to the other.

The choice of an interactionist role theory corresponds with an alternative conception of the role of the lawyer propounded by Gerald Postema (Postema 1980, 82). At this point, let us mention that Postema distinguishes between two concepts of the social role: the fixed role and the recourse role. According to the former, the duties of jurists, as well as the ways in which jurists act, are somewhat imposed upon them. The latter, on the other hand – which Postema refers to as an optional role

– does not present the ways in which jurists act and resolves moral (and, in exceptional cases, also cognitive) dilemmas as being predefined by an institutional structure. Such an understanding of the role leads to the creation of an identity of its performer on the basis of a sense of moral responsibility for their choices. Grounded on the idea of interaction, this theory assumes that lawyers' duties and their scope of responsibility are not specified in a way that excludes the performer of a role's agency. It also considers the role factor, which is said to impact the decision-making process. Robert Cover mentions both factors and their significance in the decision-making process, identifying the legal act, the lawyer's personality, and the structure of the performed role as three points of reference for statutory interpretation (Cover 1986, 1617–1618).

The greater part of this article was translated by Mathias Foit of the University of Wrocław. Given the lack of English versions of Polish sources referenced in this article, quotations from these sources have been translated into English by the translator (including court rulings and the text by Jerzy Naumann).

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