

Stanisław Starzyński (1853–1935) and the development of constitutional law in Poland

This book is dedicated to a professor of Jan Kazimierz University in Lvov (JKU), Stanisław Starzyński, the most outstanding Polish constitutionalist at the turn of the nineteenth and twentieth centuries, as well as to the study of constitutional law in the period when Starzyński worked.

As one of Stanisław Starzyński's students admitted, many Polish scholars and jurists before the II WW, including in particular constitutionalists, went through the so-called „Starzyński school”, or at least listened to his lectures, for example, Ludwik Ehrlich, Edward Dubanowicz, Zdzisław Próchnicki, Antoni Wereszczyński, Antoni Peretiatkowicz, Wacław Komarnicki, Antoni Deryng, Zenon Wachlowski, Marian Zimmermann. Starzyński was regarded as a venerable sage among constitutionalists, as was repeatedly emphasized. Among the lawyers who later would go on to achieve international renown was Hersch Lauterpacht, later a professor at Cambridge, who can be considered Starzyński's student. Raphael Lemkin also attended Starzyński's lectures.

Education and study

Stanisław Starzyński was born on April 18, 1853, in Snowicz, in the Złoczów district, to the Bojomir and Zofia family, but grew up in a family estate in Derewnia near Żółkiew. He received his initial education at home and took exams in a school run by the Dominican order in Żółkiew. In 1865 he entered Franz Joseph Middle School (Gimnazjum) in Lvov which he finished in 1872 with a matriculation examination. In the same year, he began studies at the Faculty of Law, University of Lvov. In the seventh semester, at Prof. Tadeusz Pilat's seminar, Starzyński prepared a work entitled *O kompetencji Trybunału Administracyjnego* (*On the Competence of the Administrative Tribunal*) for which he was awarded a prize. It was published shortly afterwards in „Przegląd Sądowy i Administracyjny” (1876) [„The Court and Administrative Review”]. Thus, being a student, he made himself known by a serious publication in scholarly literature. It should be added that at the time of his studies Starzyński was one of the founders and then later president of the respected association Towarzystwo „Biblioteka Słuchaczy Prawa” (Society of the „Library of Law Students”); he was also active in the Czytelnia Akademicka (Academic Reading Room). He was associated with those organizations until the end of his life, taking care of them over the years on behalf of the Academic Senate. It should be added that after professor Starzyński's death the „Society of the ‘Library of Jan Kazimierz University Law Students’” was named in honour of Starzyński.

In autumn 1876 Starzyński began work in the Lvov Governorship. A few months later, in January 1877, he passed the government theoretical examination in political science, thus completing his legal studies. In 1879 he took a doctoral *rigorosum* (exams) and on 9 April, 1879, he obtained the degree of Doctor of Laws. In the same month he was moved to clerical work at the District Office in Tarnów, where he worked until August of that year, then resigned from office work to continue his legal studies in the field of Political Law and the Law of Administrative Proceedings. He then returned to Derewnia where he completed a critical treatise entitled *Najnowsze zapatrywania na stanowisko i kompetencję Sejmów Krajowych* (*The Latest Views on the Position and Competence of Diets in Austro-Hungarian Empire*), 1879). At the end of 1879, he passed a „practical clerical written and oral examination in legislation and administrative and political proceedings” while still working at the Governorship. A year later, in October, he travelled to Vienna and Munich, where he stayed for a year (1880/1881) to study law. He enrolled as

an extramural student at the University of Vienna. He attended, amongst others, lectures by the following professors: Lorenz von Stein (1815–1890) – economist and politician, Johan Adolf Edler von Stadow Tomaszek (1822–1898) – law historian, Wenzel Lustkandel (1832–1906) – expert in political (constitutional) law and Theodor von Dantscher-Kollersberg (1844–1909) – expert in political law. He also worked on his future post-doctoral dissertation in various Viennese libraries: the court library, the university library and the library of the State Council (to the latter he received a pass thanks to the help of the then Vice-President of the Chamber of Deputies, Dr. Franciszek Smolka 1810–1899).

Professor, dean and rector of Lvov University

On November 9 1881, Dr. Starzyński submitted an extensive treatise which was the result of his studies abroad, entitled *O tzw. ustawodawstwie tymczasowym. Studium porównawcze z dziedziny prawa politycznego* (Lwów 1883) (*On So-called Temporary Legislation. A comparative study in the field of political law*), to the professorial staff of the Faculty of Law and Political Skills at the University of Lvov, with a request for admission to a post-doctoral degree (habilitacja) on the basis of this book. He attached a handwritten curriculum vitae and a syllabus of lectures in the field of Austrian political rights. Starzyński based the systematics of his lecture on Carl Friedrich von Gerber's textbook entitled *Grundzüge eines Systems des deutschen Staatsrechts* (1865–1869) and on a work by George Meyer entitled *Lehrbuch des deutschen Staatsrechts* (Leipzig 1878) which was often reprinted.

Starzyński obtained his postdoctoral degree in Austrian political law in March 1883. Six years after obtaining the degree, in accordance with an imperial order of 23 April 1889 he was appointed associate professor of political law at the Faculty of Law and Political Sciences (Wydział Prawa i Umiejętności Politycznych), and thus the first independent Polish department of political, i.e. constitutional, law and also the first independent department of political law in Polish history was established at Lvov University. Three years later, by virtue of the imperial order of 4 July 1892, Starzyński was appointed professor of political law at Jan Kazimierz University.

Starzyński held many academic positions and dignities at the University of Lvov. In the years 1900–1903 he was a delegate of the Professorial Staff of the Faculty of Law to the Academic Senate. In the academic year 1895–1896 he was the Dean of the Faculty of Law, and Deputy Dean in the year 1896–1897. He served as Dean again in the academic year 1918–1919 (as Dean, he administered the oath of allegiance to the reborn Polish state from the members of the faculty), but then resigned from office at the meeting of the Faculty on April 24, 1919. In the year 1913–1914 he was a president (Rector) of Lvov University, while in the year 1914–1915 he was formally vice-rector, but because of the occupation of Lvov by the Russians, he stayed in Vienna. It has to be added that for the first time he was elected rector in 1902, however, he did not accept the result of the election then.

In 1923 Starzyński turned 70 and in accordance with Article 47 of the Act of Academic Schools of 1920 he should have retired. However, on 20 January 1923, the Faculty of Law adopted a petition to the Ministry of Religion and Public Education for allowing Prof. Starzyński to remain in office beyond the official retirement age. The university's Academic Senate backed the Faculty and the Minister gave his consent on the 9th of March that year. During the next two years (1923–1924 and 1924–1925), the Ministry also gave their consent for the professor to remain in the department. Despite this, Professor Starzyński resigned from the department in 1924. Stanislaw Edward Nahlik mentioned that two candidates were competing for the Lvov department: Dr. Ludwik Ehrlich Associate Professor of JKU and Dr. Hersch Lauterpacht, a graduate of Lvov University and Vienna University, later a prominent British scholar. Professor Starzyński's opinion prevailed, in favour of Ehrlich.

By a letter dated 3rd of March 1925, the Ministry of Religion and Public Education informed the Faculty of Law JKU that the President of the Republic, by virtue of the decision of 23 February 1925, had appointed Professor Starzyński honorary professor of political law at Jan Kazimierz University.

As professor emeritus, Starzyński could continue lecturing and was a member of the Faculty of Law JKU. He was also involved in the formation of a School of Diplomacy at the Jan Kazimierz University in 1930. In the years 1925–1930 he gave a lecture entitled „The League of Nations”, and in the years 1930–1935, in the Diplomatic School he taught issues related to European countries (Modern Europe).

In May 1928 the Faculty of Law JKU honoured professor Starzyński (together with professor Władysław Abraham), by founding rector's portraits painted by a renowned portraitist, Kazimierz Pochwalski. The renewal of his doctoral diploma (to commemorate the fiftieth anniversary of obtaining it) was another important event in the life of the venerable scholar. A booklet by Edward Dubanowicz and Ludwik Ehrlich dedicated to the Starzyński was published on the occasion of that event.

The award to the Professor of an honorary doctorate at the Stefan Batory University in Vilnius in 1930 should also be noted, which probably occurred on the initiative of his student – Waclaw Komarnicki.

Students

Over several decades of his teaching Starzyński educated several generations of lawyers, and had many students at that time. Among the best known of his students are: Edward Ignacy Dubanowicz (1881–1943) – co-author of the Polish constitution of 1921, Ludwik Ehrlich (1889–1968) – expert in the law of nations (international public law) and, among other activities, organizer of the only School of Diplomacy in this part of Europe, operating at the Faculty of Law JKU, Zdzisław Próchnicki (1875–1939), Antoni Wereszczyński (1878–1948) – who was later the last rector of the Polish Lvov Technical University (in 1939), and the aforementioned Waclaw Komarnicki (1891–1954) – later Professor of Stefan Batory University in Vilnius, a prominent scholar and political activist with conservative views.

It seems that the above-mentioned Hersch Lauterpacht – an eminent expert in the law of nations and human rights born and raised in Żółkiew, had been Starzyński's student, while studying law at the University of Lvov.

Among Starzyński's students of the younger generation of Lvov constitutionalists and experts in the law of nations were: Antoni Deryng (1901–1978), Stanisław Hubert (1905–1983), Zenon Wachlowski (1905–1940), Stanisław Edward Nahlik (1911–1991) as well as Romuald Klimów (from 1939 Klimowiecki) (1896–1959), working as a junior lecturer at Professor Starzyński's department from March 1924, Seweryn Rosmarin (1905–1942), the author of an interesting dissertation on the Constitutional Court of Austria probably also attended Starzyński's lectures.

Ludwik Ehrlich wrote about Starzyński as an educationist: *Tens of thousands of students attended his lectures and learned according to his instructions. A vast majority of today's Council of the Faculty of Law is made up of his students. He was a good friend to his fellows, a loving father to young people, he treated each student individually, and hurt no one. He was attached to the university like a good child to the best parents.*

Political activity: Member of the Diet of Galicia and the Parliament of Vienna

Political activity in the life of Starzyński played an important role. On December 4 1884, he entered the Austrian Chamber of Deputies of the State Council. From 1884 he combined the duties of a deputy with work in the Lvov District Council and its department (board). He was also elected to the State Council in the seventh term (September 22, 1885 – January 23, 1891) – from the same curia. After three years, in connec-

tion with the work at the university and the planned appointment to an extraordinary department, he resigned his seat in Parliament in 1888.

Starzyński returned to active politics in 1901. On 15th January that year he was elected member of the Council of State of the tenth term (1901–1907). In the next election which took place under the new electoral law of January 26 1907 he entered the office of the State Council in the eleventh term (1907–1911). In June 1907 he was elected vice-president of the Chamber of Deputies and held the office until the State Council was dissolved in 1911. Starzyński returned to the parliament in Vienna in 1917 as a lifetime member of the House of Lords (*Herrenhaus*), appointed by the Emperor of Austria (*Kaiser*) Charles the First on 30th July 1917. He was a member of the *Herrenhaus* until the Chamber was dissolved on 12th November, 1918. At its meeting on 24th October, 1918 he delivered a patriotic speech about the reviving Poland and the future of Galizien as its integral part (*Speech delivered on 24 October, 1918 in the Austrian House of Lords on the Polish and Galician question*; pol. *Mowa wypowiedziana dnia 24. października 1918 roku w Austriackiej Izbie Panów w sprawie polskiej i galicyjskiej*, Krakow 1919).

While in the State Council, Starzyński worked in several parliamentary committees: the budget committee, the constitutional law committee, the committees for electoral reform, and press reform, for government officials and for the inviolability of the deputies. For a year and a half (1905–1906) he was the president of the latter. He actively participated in the work of the Polish Circle (*Koło Polskie*) in Council of State. He was an author or co-author of numerous drafts of bills in the area of constitutional (including voting rights) and administrative law.

In addition his duties as member of the Austrian Parliament in Vienna, in September 1907 and again in March 1908 Starzyński was elected to the Diet of Galicia in Lvov. In 1913 he entered the Diet of Galicia as a so-called virilist, by virtue of his holding the dignity of the rector of Lvov University.

At Starzyński's request of 30th November 1906, the Chamber of Deputies passed a resolution comprising interpretation of the concept of „national culture” (*ger. Landeskultur, pol. Kultura krajowa*), called the „Starzyński Resolution”. Since then the overall socio-economic issues related to agriculture and agrarian regime have been understood as „national culture”. On April 23, 1909, the Diet of Galicia passed a law which established a new meaning for the term „national culture” and dispelled doubts arising from the Statute of the Diet of Galicia of 1861. Probably Starzyński's most important parliamentary achievement, referred to as „a thing of monumental significance” by Józef Buzek, was an amendment to the State Constitution to extend the legislative powers of the national parliaments, adopted at the request of the Lvov scholar. (J. Buzek, *Prof. Dr. Stanisław Starzyński Rector Magnificus*, pp. 4–5). On 26th January 1907, the Parliament changed the content of § 12 of the Constitution (i.e. fundamental statute on the state representation). Since then, the new regulations have been named after Starzyński (*Lex Starzyński*). The essence of the changes made at Starzyński's initiative was to transfer civil law and penal law regulatory powers to national parliaments. Józef Buzek held that the above-discussed amendment to the constitution „has been the greatest autonomous development for the benefit of the crown countries since 1867”.

It should be added that a provision modelled on this regulation was introduced in the Constitution of the Republic of Austria of 1 October, 1920 (*Bundes-Verfassungsgesetz*), based largely on Hans Kelsen's theoretical assumptions. Paragraph 9 of Article 15 of the Constitution of Austria has to this day been called *Lex Starzyński* in the literature (e.g. Ewald Wiederin, *Bundesrecht und Landesrecht*, Springer-Vertrag, Vienna 1995, pp. 64, 127–145).

In addition to Starzyński's parliamentary activity, from 1911 to 1918 he was a member of the Austrian Court of the State, operating in the years 1869–1918, and rightly regarded as the predecessor of the Constitutional Court.

Other political and social activity

From 1917, as a member of the Galician Governing Commission, Starzyński worked on projects concerning the political systems of Poland and the Kingdom of Galicia and Lodomeria. At the same time, from the beginning of 1917, having been invited by the Provisional Council of State of the Polish Kingdom in Warsaw, he participated in the project for the Polish constitution. At that time he was a supporter of the monarchy. He proposed that Austrian Archduke Karl Stefan Habsburg should become the Polish king. His plans as well as many others' developed during that period fell through. He also participated in a constitutional survey organized at the initiative of the Prime Minister Ignacy Jan Paderewski. At that time Starzyński was repeatedly asked for his opinion as an expert in the field of constitutional law. In 1931 he took part in a study published in the same year by the Marshal of the Sejm (lower chamber of Polish Parliament). In 1934 he was appointed one of three experts of the Constitutional Committee of the Senate of the Republic of Poland (along with Waclaw Komarnicki and Michał Bobrzyński), contributing many comments to the bill adopted by the Sejm (lower house of the Polish parliament) in January 1934. Among other things, he called for providing for a Constitutional Court, civil rights, and a Council of National Defense in the Constitution in case of war.

Starzyński was also an activist in landowners' and business associations, and among other organisations, for years he belonged to the Galician Agricultural Society. It should also be noted that for decades he was a member of the Law Society in Lvov, from 1920 a member of the Scientific Society in Lvov, and on June 8 1928 he was elected an active member of the Polish Academy of Learning in Krakow. From 1926, Prof. Starzyński was member of the Council of Lawyers, appointed in the same year on the initiative of the Minister of Justice and Warsaw University Professor Waclaw Makowski. He also had honorary citizenship of Rawa Ruska, Sokal and Żółkiew.

Last years

Professor Starzyński spent his last years partially in Lvov and partially in his native Derewnia. He actively observed what was happening in Polish and European politics, in what direction the work on a new constitution progressed, and how the systems of European countries were evolving. He substantively criticised politicians and authors of projects. He was active as a teacher and legal scholar almost to the last moments of his life. On his deathbed, he was preparing a critical analysis of the Constitution of April 1935. Prof. Stanisław Starzyński died on 17 November 1935 and was buried beside his brother Tadeusz and mother Zofia Starzyńska née Kulczycka in the family chapel of Derewnia estate near Żółkiew. When the Soviets re-entered Galicia in 1944, they destroyed the Starzyńskis' two-storey brick mansion, garden and ancestral chapel where the mortal remains of the Starzyński family including Prof. Stanisław Starzyński had been buried.

Scientific output before 1918.

Stanisław Edward Nahlik wrote that Starzyński was a positivist, but the one who saw *above the norm of human origin, the ideal of God's law, the ideal of morality which this norm is to put into life* (*Ś.p. Profesor Stanisław Starzyński*, PPIA 1935, p. 315) (*The Late Professor Stanisław Starzyński*). The author adds that in many works Starzyński engaged with issues concerning civil rights. Confirmation of this fact can be found merely by noticing how often he raised the need for the introduction of a Constitutional Court, regulations concerning the rights and duties of citizens in the constitution, and the fight for rights *in personam*.

The works from the earliest period of Starzyński's output had already met with a very good reception. In his treatise on the competence of the Administrative Court, young, only 23 years old, Starzyński took up a very topical problem (the Administrative

Court was introduced in the Habsburg monarchy in 1876). In his work he analyzed the problem of rights *in personam* to which he returned several times later. The second study was written as a polemic, and it concerned the competence of national parliaments (*Najnowsze zapatrywania na stanowisko i kompetencję Sejmów krajowych*, PSiA 1979) (*The Most Recent Views on the Position and the Competence of National Parliaments*).

In 1881 a monumental, three hundred and thirty-five-page post-doctoral dissertation entitled *O t.zw. ustawodawstwie tymczasowym. Studium porównawcze z dziedziny prawa politycznego* (Lwów 1883) (*On So-called Temporary Legislation. A Comparative Study in the Field of Political Rights*) appeared. According to Ludwik Ehrlich it was „one of the most important achievements in the Polish science of contemporary political rights” (E. Dubanowicz, L. Ehrlich, *Stanisław Starzyński z okazji pięćdziesięciolecia doktoratu [Stanisław Starzyński on the Occasion of the Fiftieth Anniversary of the Doctorate]*, p. 19). In this work Starzyński presented his own views on the state, state power, sources of law, separation of powers (or the function of power), constitutional monarchy, the relation of fundamental laws to ordinary laws and regulations. He included, on a broad comparative background, deliberations of the so-called right of state necessity whose reflection in the legislation is temporary laws. Starzyński supplemented the presented work with an article published in the same year in the „Przegląd Sądowy i Administracyjny”.

In another extensive work – *Kilka kwestii spornych z zakresu prawa politycznego* (Lwów 1882) (*Several Contentious Issues in the Field of Political Law*) – he defined in a pioneering way a number of important problems in the areas of constitutional law and the law of nations. This work was based on a few critical reviews. One of the most important issues he subjected to a thorough analysis was whether the Austro–Hungarian monarchy was a federal state, or a real union of a certain number of states. To present his own opinion, Starzyński thoroughly reported on the views of the doctrine on fundamental issues, such as the essence of the state and its sovereignty, the federal state, the real and personal union, the local government, decentralization, the relation between international agreements and domestic laws (i.e. he was in favour of the so-called Monistic direction), the essence of a legal person (E. Dubanowicz, L. Ehrlich, *Stanisław Starzyński*, p. 20). In the same year, in the pages of the Viennese „Österreichische Zeitschrift für Verwaltung” appeared his article where he outlined his views on the acts of law issued by the state (*Ein Beitrag zur Lehre von Gesetz und Verordnung*, Nos. 49–51). In turn, in 1883, Starzyński’s remarks about the critical problem of the equality of nationalities in Austria were published (*Uwagi o prawnej stronie równouprawnienia narodowości [Notes on the Legal Aspect of the Equality of Nationalities]*, Lwów 1883), and a year later, an important and extensive study on the state language in Austria (*Sprawa języka państwowego w Austrii [The Issue of the State Language in Austria]*, Lwów 1884). It complements the considerations in this matter made by Ludwik Gumpłowicz and Stanisław Madeyski.

Among Starzyński’s written achievements there are, still valuable today in terms of sources, comprehensive studies reporting on the work of representative bodies, both central – in Vienna and national as well. As noted by Ludwik Ehrlich, these are not merely reported facts, but often these accounts include interesting observations, „in the field of the science of political law, or the science of politics”, such as temporary laws, the suspension of jury courts, anti-socialist laws. Reports on the Vienna Parliament’s work date back to 1884, as well as accounts from the work of the Diet of Galicia.

In 1903, Starzyński published in Polish a very important, (and the first in the Austria–Hungary), complete set of Austrian constitutional law, entitled *The Code of political law (Kodeks prawa politycznego, czyli Austriackie Ustawy Konstytucyjne 1848–1903 [The Code of Political Law or the Austrian Constitutional Laws 1848–1903]*, Lwów 1903). Owing to its comprehensiveness, it had no counterpart in the German-language literature. This unique collection was preceded by Starzyński’s participation in Jerzy Piwocki’s project of 1898 where he developed legislation in the field of constitutional law. This work is still an excellent source of knowledge of Austro–Hungarian constitutional law in a broad historical perspective, because the Author included in it his earlier collection of

the texts of constitutional laws. Above all, he systematized and elaborated the whole of constitutional legislation. The collection was divided into two unequal sections: the *Historical Section* (1848–1860), containing the matter set out in the first 224 pages, and the *Dogmatic Section* (1860–1903) divided topically into smaller editorial units. The Code takes into account the judicature of public law tribunals until 31 December 1900.

In 1904 Starzyński devoted a great deal of space in his deliberations in the pages of newspapers and scientific journals to § 14 of the Austro–Hungarian Constitution of 21 December 1861 concerning the representation of the state.

In the years 1907 and 1909, a two-volume work was published under the title *Studia konstytucyjne* [*The Constitutional Study*], t. I: *Różne projekty reformy prawa wyborczego* [*Vol. I: Various Proposals for Electoral Law Reform*], Lwów 1907; t. II: *Różne reformy prawno-państwowe* [*Volume II: Various Legal and National Reforms*], Lwów 1909) which consisted of articles published earlier in the „Gazeta Narodowa” [„National Gazette”] (Volume I) or previously unpublished papers and texts from other journals (Volume II). Volume I covers electoral law reform projects while Volume II analyzes legal and political projects. Because of its reporting value and comparative remarks, this work is today worth reading by those dealing with constitutional law. It should be noted that as regards the issues, *Studia konstytucyjne* (*Constitutional Studies*) allude to *Studia z zakresu prawa wyborczego* (*Studies in Electoral Law*) published in the years 1895–1897 in the pages of „Przegląd Prawa i Administracji” [„Review of Law and Administration”] (also published in a separate print, Lvov 1897), which appeared in connection with the electoral reform which took place in Austria in the years 1893–1896. This time, Starzyński took up another electoral reform – of 1905–1907, the so-called Gautsch, Hohenlohe, and Beck reform, but some texts go beyond it. This time, he wrote, among other subjects, about the principles of electoral law, electoral coercion, women's suffrage (he was their supporter), deputy Members of Parliament and the House of Lords reform. The work was also of great importance for contemporary political life. Starzyński returned to the subject undertaken in *Studia...* in the pages of scholarly journals as well as a political treatise (e.g. *On Deputy Members of Parliament* 1908), a study on women's suffrage, „Scientific and Literary Guide” 1908 and studies on the extension of autonomy of 1910 („Przegląd Prawa i Administracji” and „Przegląd Polski”).

The fullest, very interesting, but forgotten, systemic study of political law by Starzyński is a large lecture textbook entitled *Ogólne i austriackie prawo polityczne* (*The General and Austrian Political Law*) published at least five times. The fifth edition appeared in duplicated form, under the imprint of Towarzystwo „Biblioteka Słuchaczy Prawa” (The Society of „The Library of Law Students”) in 1911 and amounted to 928 pages. This work is unique for many reasons. First of all, it is a compact lecture on constitutional law elaborated in the author's manner, though partly modelled on the then known and fairly extensive literature on the subject (general and Austrian). The handbook is a mine of knowledge about the views of the Polish scholar of constitutional law which he sets in relation to the views of other authors, clearly marking his own position – for example, he writes about the functions of the state, rather than state authorities.

In 1893 Starzyński published, under the provocative title of *Prawo państwowe jako przeciwieństwo nauk prawnych* [*The State Law as the Opposite of Legal Sciences*], 1893) a very extensive and thorough polemic supporting the propositions contained in a handbook by an eminent scholar of Polish origin, Ludwik Gumplowicz, entitled *Das österreichische Staatsrecht (Verfassungs- und Verwaltungsrecht). Ein Lehr- und Handbuch*. As he himself acknowledged in the introduction, he should have written the deliberations contained in this remarkable review much earlier – when the first treatise by Gumplowicz appeared (*Race und Staat. Eine Untersuchung über das Gesetz der Staatenbildung*, Wien 1875) in which he presented his theory of the state.

Starzyński repeatedly returned to his deliberations on the subject of civil rights. He undertook them in both his first and last treatises. An interesting elaboration in this aspect is a short text prepared for a student journal „Prawnik” [„Lawyer”] edited by his

student Ludwik Ehrlich, entitled *Państwo, prawo i jednostka [The State, the Law, and the Individual]* („Prawnik” 1912, pp. 41–44) which began with the sentence: *The modern state is in many respects similar to Moloch, devouring, though in the public interest, its own children.* The notion of „public rights in personam” i.e. a theory intrinsically binding with the contemporary concept of the state of law, then fiercely criticized, is related to civic rights. Starzyński commented on this matter, most extensively in 1925 in the „Księga Pamiątkowa ku czci Oswalda Balzera” („Visitors’ Book in Honour of Oswald Balzer”) in which he included an article entitled *W obronie praw podmiotowych (In defense of rights in personam)*. It was a kind of polemic with Władysław Leopold Jaworski’s propositions placed in the work entitled *Nauka prawa administracyjnego* (Warszawa 1924) (*The Science of Administrative Law*) where he questioned the need for separating the category of public rights in personam which – as he wrote – were only „the processing of the objective law in the mind of an individual” and an auxiliary concept in the study of norms. Starzyński concluded his substantive polemic with a criticism of the assumptions of the so-called Kelsen school and Hegelian mysticism.

Scholarly achievements in the years 1918–1935

Starzyński did not reduce his scholarly activity after Poland regained its independence. He dedicated himself to it completely after he retired from political activity.

Already in 1921, he subjected the Constitution of 1921 to a thorough evaluation, publishing articles about it in the pages of „Przegląd Prawa i Administracji” and „Ruch Prawniczy i Ekonomiczny” and in the local press. In an article printed in PPIA he expressed his delight when the Basic Law (Constitution) was introduced in the reborn homeland. Not only did he analyze the Basic Law in detail (*Konstytucja Rzeczypospolitej Polskiej z dnia 17. marca 1921 r. [The Polish Constitution of 17 March 1921]*) but also carefully pointed out the different editions of the text of the Constitution, which were printed with errors (*Błędne teksty różnych wydań Konstytucji Rzeczypospolitej polskiej [Incorrect Texts of Different Editions of the Constitution of the Republic of Poland]*, PPIA 1921). In the same year, 1921, but before the entry into force of the Constitution, in a series edited by Jagiellonian University Professor, Michael Rostworowski, entitled *Z zagadnień konstytucyjnych, (Constitutional Issues)* published under the imprint of Krakowska Spółka Wydawnicza (*Cracow Publishing Company*), Starzyński’s work on citizenship in the Polish state appeared – a very urgent problem at that time (*Obywatelstwo państwa polskiego – Citizenship of the Polish State*).

In 1925, fearing for the quality of Polish parliamentarism (in the light of the chaos in the years 1922 to 1925), Starzyński proposed to change the electoral law in such a direction that it would not only require amending the Constitution, but would also improve the quality of Polish democracy (*Sejmowa Reforma wyborcza [The Sejm Electoral Reform]*, PPIA 1925).

In the years 1930–1932 the Lvov scholar published a few brief, albeit important studies which dealt with the fundamental problem of constitutional and legal issues. In the paper of 1930 *O dążeniach do reformy ustroju w niektórych państwach a zwłaszcza w Polsce [On the Efforts to Reform the System in some Countries and Especially in Poland]* (RPEiS 1930) he presented the trends that existed in the context of political changes in the United Kingdom (also in relation to India and Egypt), Turkey, Yugoslavia, Lithuania, and Poland. He noted that in the Kingdom of Serbs, Croats, and Slovenes (named Yugoslavia from 3rd October 1929) absolute rule was exercised. He defined the Lithuanian and Polish system as constitution „crypto dictatorship”. He noted that there was a need to amend the constitutions in Poland and Austria in order to strengthen the governments. A study of 1931 entitled *Rozważania konstytucyjne [Constitutional Deliberations]* (RPEiS 1931) was a continuation of the above discussed essay where the scholar subjected proposals for a reform of the Polish constitution to a thorough analysis. He divided the proposals into groups: the 1st containing a completely new codification of the

system, stemming from different assumptions and completely deviating from the current system, the 2nd being a new codification, but referring to the most defective provisions of the constitution and seeking something better to replace them, and 3rd fragmentary projects, only amending certain provisions of the constitution. He placed his draft constitution of 1928 in the second group. In turn, a study entitled *Nadrzędność czy równorzędność ustaw konstytucyjnych z ustawami zwykłymi?* [*Supremacy of Constitutional Laws over or Equivalence with Ordinary Laws?*] (Lwów 1930) is in large part devoted to polemics against the views of other authors, primarily Władysław Leopold Jaworski.

An essay entitled *Luźne refleksje na temat ustrojów państwowych* [*Loose Thoughts on Political Systems*] was issued on the occasion of the conferring of an *honoris causa* doctorate on Starzyński by the Stefan Batory University in Vilnius (Wilno 1932) and is a collection of the Author's thoughts on current trends in constitutional law. He wrote about the observed trend for „the transformation of concepts”, which also touched upon „the field of the system and state”. In this state of affairs Starzyński found it necessary to repeat some of the old views on key constitutional issues. At first he analyzed the concept of constitution in its material and formal aspects. He also wrote about the position of head of state, sovereignty, and about the country: *today the state is conceived as a single organism, and as a legal entity, having its own will, and legally defined bodies, authorized to manufacture and reveal the will*. It should be noted that in that essay Starzyński expressed the idea that it is impossible to maintain the assumption that national sovereignty must always be complete, and if it is not complete, there is no state. According to the scholar an assumption that „*sovereignty may also be impaired without overthrowing the concept of the state*” must be accepted.

In 1928, Starzyński published the mentioned draft constitutional reform (*Projekt skodyfikowany nowej Konstytucji Rzeczypospolitej Polskiej* [*A Codified Draft of a New Constitution for the Polish Republic*], Lwów 1928) in order not to, as he wrote, make a political revolution. It consists of 132 articles. The preamble was to remain the same as in the Constitution of 1921, Chapter I, entitled *The Republic* contains two articles. The first states that „the Polish State is a Republic” and the second, that the only source of all state power in the Polish Republic is the nation who acts through the bodies of the nation, while maintaining the separation of powers into legislative (the Sejm or the Chamber of Deputies and the Senate), executive (the President of the Republic with subordinate ministers) and judicial (independent courts), and the official language is Polish. Chapter II regulates the legislative power (Articles 3–41). It should be added that at the beginning of the chapter, the rules of passing laws, the rules of testing the constitutionality of laws (the Constitutional Court) and the principle of government control (Supreme Audit Office) are set out. The following sections discuss the composition of the Chamber of Deputies and of the Senate. The Chamber of Deputies was to be composed of deputies elected throughout the entire state, in the territorial districts and, in the same number, deputies elected in the districts *formed from professional, social, and economic associations, existing under the laws and legally organized, and connected in accordance with Article 74 of the Constitution into the Supreme Chamber of Commerce of the Republic, and likewise from other economic organizations which will be defined by the law*. In the first group each Polish citizen who had turned 24 years of age by the date an election, without distinction of sex, was to have the right to vote; while in the second group (business associations) one also was to have the right to elect the authorities of a given association (Article 15). However, the passive electoral right was acquired upon turning 30 years of age. Chapter III regulated the executive (Articles 42–79). The fourth chapter contains the regulation of an independent judiciary (Articles 80–92), with references to the specific statutory regulations. The large Chapter V contains „universal civil rights and obligations” (Articles 93–130), regulated as widely as in the Constitution of 1921, but with some modifications. In Chapter V, consisting of the article entitled „General Provisions” (Article 131) ways to amend the Constitution were provided for, and in Chapter Seven entitled „Transitional provisions” (Article 132) the specified date of entry into force of the Constitution was given.

Starzyński stressed that he wrote the draft only of his own will and based it on the Constitution of 1921 proposing to remove from it what was most harmful and supplement it with the most useful. The changes went in the direction of a balance of powers, by strengthening the powers of the President and the Senate (almost equating both chambers), removing a so-called „Sejmocracy” (pol. Sejmokracja) and changing the electoral law. Starzyński advocated universal suffrage, but departed from the principle of equal suffrage. He criticized the d'Hondt system and proposed his own. The right to vote should be based in half on existing rules in half on social organizations, which would favour grouping voters strictly into parties.

In his article about the independence of the court (*Kilka uwag o niezawisłości sądowej wedle art. 77–78 Konstytucji polskiej [A few Remarks about Judicial Independence According to Articles 77–78 of the Polish Constitution]* „Czasopismo Sędziowskie” 1931) Starzyński introduced the views of the then representatives of Polish politics and scholarly thought on the issue of the independence of the court, supplementing them with a look at this issue in the constitutions of other European countries.

Starzyński was a supporter of the existing constitutional control system in Austria, which he widely discussed during his lectures at JKU. He appreciated the existence of the Court of the State (*Reichsgericht*) as a jurisdictional dispute settlement body, though, as a lifetime member of the Court, he saw the disadvantages of that institution. Since the beginning of the twenties (possibly as the first person to do so in Poland), he repeatedly raised the need for a Constitutional Court. He clearly raised this deficiency in the Polish Constitution in 1923 in a review of a work by Wacław Komarnicki entitled *Polskie prawo polityczne. (Geneza i system) [Polish Political Law (The Origin and the System)]*. In his *Rozważania konstytucyjne (Constitutional Considerations)*, The Constitutional Considerations, published in Poznań's RPEiS in 1931, he called the absence of the Constitutional Court „a painful gap in our public law”. He wrote similarly in later studies, including the posthumously published work on the Constitution of 23 April 1935.

Starzyński took part in surveys on political issues many times. In 1924 Starzyński placed a text about the shortcomings of the Polish constitutional system and expressed his views on the legislative (Article 35) and the nature of the executive in „Ankieta o Konstytucji z 17 marca 1921 r.” (The Survey of the Constitution of 17 March 1921) published by Władysław Leopold Jaworski. A year later he took part in a consultation on the revision of the constitution and electoral law, conducted at the initiative of Peretiatkowicz and published in the pages of Poznań RPEiS. He based his official response to the constitutional poll announced by the Marshal of the Sejm in 1931 on his draft constitution of 1928. Starzyński also commented on the revision of the Constitution in the survey which appeared in 1930 in RPEiS. In 1934, he placed his comments on the draft constitution adopted by the *Sejm* on January 26, 1934 in the Lvov „Głos Prawa” (The Voice of Law).

In the last months of his life, Starzyński prepared a critical analysis of the April Constitution which was issued after his death (*Analiza Konstytucji Rzeczypospolitej Polskiej z 23 kwietnia 1935 r. [Analysis of the Constitution of the Republic of Poland of April 23, 1935]*, „Rocznik Prawniczy Wileński” 1936). Wacław Komarnicki wrote that disease tore the pen out of Starzyński's hand two weeks before his death. The work was to include 120 pages, 57 of which Prof. Starzyński sent to the editorial section of „Vilnius Legal Yearbook” and the next pages, incomplete, were handed over after the scholar's death by JKU Assistant Professor and at the same time Professor of Catholic University of Lublin, Antoni Deryng. Komarnicki wrote about this unfinished article that it was *the most authoritative and competent voice of the Great Scholar on the new Polish political system*.

During the Second Polish Republic, Prof. Stanisław Starzyński published several works of a textbook character. One of them is a small booklet entitled *Konstytucja Państwa Polskiego (The Constitution of the Polish State)*, published shortly after the entry into force of the March Constitution in „Archiwum Towarzystwa Naukowego we Lwowie” (1921) („The Archives of the Scientific Society in Lvov”). In this work, among other

things, Starzyński criticized the expression „the supreme power belongs to the Nation” (because it should be that it comes from the Nation) and marginalization of the Senate. He also appreciated the fact of adoption of the constitution.

A twenty-nine-page brochure which appeared for the first time in 1924 in Krakow, and for the second time in a more comprehensive version, containing more than 130 pages, in 1926, entitled *Pozwojenny ustroj państw europejskich* [*The Post-war System of European Countries*] (Kraków 1926). The textbook is an excellent source of knowledge of systems of European countries in the early twenties. Prof. Ernest Till wrote about the book: „Those who want to have a colourful image of a system caused by a world war, will find all relevant moments outlined in the treatise” (PPiA 1925, p. 173). Starzyński divided the second edition of the book into seven substantive chapters, three of which (II–IV) he devoted to kinds of states; he distinguished: „the states which ceased to exist due to war or became independent or were freshly or newly created” (Chapter II), „states of serious internal transformations, but without changing the form of government” (Chapter III) and „the states which changed the form of government” (Chapter IV). A separate chapter discusses Russia's political system (VI), whereas general issues were moved to Chapter V. He included Iceland, Ireland, Finland, Estonia, Latvia, Lithuania with Klaipeda, Czechoslovakia, Yugoslavia, and outside Europe, Egypt and India, in the group of countries which had become independent or freshly or newly formed. Much space is devoted to the status of Gdańsk, finally acknowledging, like Bohdan Winiarski, that Gdańsk is a state, though not sovereign, and added that the term „small state” is more appropriate rather than „free city” since „the size of a territorial area does not have any impact on the legal nature of the legal-political organism”.

The book entitled *Współczesny ustroj prawno-polityczny Polski i innych państw słowiańskich* (*The Contemporary Legal and Political Systems of Poland and other Slavic Countries*) was the last study of a textbook type, published in Lvov in 1928. This is the most comprehensive methodological study on the Second Polish Republic by Starzyński. Let us add that the study was warmly received. A young Cracow constitutionalist, Maciej Starzewski wrote about the work by Prof. Starzyński, among other things: *It takes a first-rate expertness, an extraordinary mastery of the subject, to be able to give a full picture of the contemporary legal and political system of Poland in 159 pages. And that is what Prof. Starzyński accomplished. Nothing important was omitted, all legislation has been exploited until recent times [...], the practice of creating the Polish legal-political custom was taken into account to a large extent [...]* („Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1928, p. 577). In turn, Edward Dubanowicz, remarked: *The accuracy, brevity and clarity of the lecture, objectivity, independence of the conscience and judgment of the author, known so well in today's Polish legal world which, in large part, went through Professor Starzyński's school at the university, agrees in an extremely successful and harmonious whole with the moderation, sobriety and perseverance of judgments and conclusions expressed there* (PPiA 1929, pp. 212–213). This book was published in 2010 as a reprint by the Sejm Publishing House.

In addition to studies in the field of constitutional law Stanisław Starzyński also published several important historical works as well as works on legal history. A special place is occupied by an extensive study written on the occasion of the hundredth anniversary of the Constitution of the 3 May entitled *Konstytucja Trzeciego Maja na tle współczesnego ustroju państw europejskich* [*Third of May Constitution on the Background of the Contemporary System of the European States*, part I] (część I, Lwów 1892). In this unfinished work, Starzyński undertook a comparative study of the paramount achievement of Polish legal culture and national pride. Noteworthy are also the work on the first Austrian constitution (*O pierwszej konstytucji austriackiej: jej geneza i ocena* [*On the First Austrian Constitution: its Origin and Evaluation*], Kraków 1889) and an innovative study of a little-known Galician draft constitution written in the years 1790–1791, known as *Charta Leopoldina* (*Projekt galicyjskiej konstytucji 1790/1 (Charta Leopoldina)* [*Draft Galician Constitution 1790/1 (Charta Leopoldina)*], Lwów 1893). In 1906 he published an article based on Bronisław Łoziński's book *Galicyjski sejm stanowy (1817–1845)* [*The Galician State Parlia-*

ment (1817–1845] and entitled it *Kilka uwag o Stanach galicyjskich* [Some Remarks about the Galician States] (Lwów 1905).

On the threshold of national independence, in the years 1920–1921 Starzyński published comprehensive, valuable in terms of sources *Materyały do sprawy polskiej na Kongresie Wiedeńskim 1814/5 i w latach bezpośrednio go poprzedzających* [Materials to the Polish Issue at the Congress of Vienna 1814/5 and in the years immediately preceding it] („Przewodnik Naukowy i Literacki” 1920 i 1921). It is also worthwhile to mention the course book of 1921 entitled *Historia ustroju Polski porozbiorowej*, p. 48 (*History of the Political System of Post-partition Poland. Based on University Lectures Revised by the author*) which was a continuation of the course book by Oswald Balzer entitled „*Historia ustroju polski*” (*The History of Polish Political System*) and was a kind of prelude to the lecture on Polish political law in the period of the Second Republic.

Stanisław Starzyński was also a co-author of a work entitled *Historia Uniwersytetu Lwowskiego* [The History of the University of Lvov] (Lwów 1894), which he wrote together with Ludwik Finkel. Today it is a basic piece of literature for the learning of the history of the University of Lvov. He worked out the second part covering the years 1869–1894. Later he returned several times to the research of the history of JKU in articles, but a thorough comparative work entitled *Udział rektorów lub reprezentantów Uniwersytetów: Jagiellońskiego i Lwowskiego w Sejmach porozbiorowych* [Participation of the Rectors or Representatives of Universities: Jagiellonian and Lvov in the Post-partition Parliaments] (1900) merits special attention. Noteworthy is also the involvement of the Lvov scholar in the struggle for scientific and academic freedom.

In 1936, Waclaw Komarnicki wrote about Prof. Starzyński: in all (...) works [Starzyński] expresses a uniform, crystallized doctrine of the state. Thanks to this (...) even works relating to (...) Austrian law (...) are still of great theoretical importance. „This is mainly because Starzyński always occupied the position of an ‘independent thinker’”. [...]

The work of the life of the late Starzyński and his life per se will be a lever to the legal and ethical development of our institutions and customs. No dust of oblivion falls on figures like him, but further action in life, although he has departed from it. In the perspective of time the late Stanisław Starzyński will grow and the understanding of the meaning of his works and pains will become mighty (Ś.p. Stanisław Starzyński, „Rocznik Prawniczy Wileński” 1936, p. VIII, X).

The post-war years were not conducive to perpetuating or even keeping in mind the scholarly output of the conservative-minded Lvov scholar, utterly alien to the communist government. For several decades he was forgotten. Only in the years 2005–2010 were the first studies on his subject published. The old volumes were dusted off and studied. This made it possible to verify the existing establishments, such as the Polish theory of civil rights, a call for the introduction of the Constitutional Court, or a major reform of the Austro–Hungarian system in 1907–1909.

The author hopes that this book, devoted to the life, socio-political activity, and scholarly output of the outstanding scholar will contribute a little to the fulfilment of the above quoted words by Waclaw Komarnicki that „No dust of oblivion falls on figures like Him”. This „crystallized doctrine of the state” by Lvov scholar still retains a great deal of valuable content and is certainly an excellent basis for reflection on constitutional law.