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ON SOME ASSUMPTIONS IN THE DOGMATIC STUDY OF TAX LAW

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Abstract

In the paper it is observed that methodology of traditional legal dogmatics omits the philosophical problem known as the "is–ought problem" or "Hume's guillotine" according to which it is not logically possible to derive normative statements from descriptive statements and vice versa. Dogmatic arguments based on interpretation of a fragment of the system of law nevertheless contain comments and recommendations on empirical reality which that fragment of law regulates. It is shown in the paper that in doing so, their authors include enthymemes in their arguments, which are syllogisms with hidden premises. Since law belongs to the wider category of humanities, these enthymemes are of rhetorical kind, and this calls for increased caution in order to avoid theoretical fallacies which may result in misguided changes in the system of law.

Key words

Is–ought problem; enthymematic reasoning; methodology of tax law dogmatics.

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1. Introduction

For every branch of law, core of its surrounding scholarship takes shape of what is called its "dogmatics". Dogmatic (or "doctrinal") study of law is the most popular kind of legal research, being the most practically oriented one, and making up for majority of jurisprudence (Peczenik, 2005: 1-2). It can be concisely characterized as a discipline concerned with the shape and content of a given legal system based on positivist ideals[1]. Dogmatists take interest in legal norms and systems in which they are arranged without their evaluation and from ethically neutral position (Wróblewski, 1986: 23). Since legal norms fall into broader category of directives, it can be stated, that independently from their specific field of studies, "particular" (Peczenik, 2005: 3) legal dogmatics are disciplines which analyze systems of directives. Directives are statements which are neither true or false, rather they are (from the point of view of a legal system) valid or not (Opałek et al, 1969: 46-50). Instead of carrying parts of human knowledge about the world, their role is to mediate in interpersonal communication by enabling people to influence each other with commands of various strength.

2. Characteristics of legal dogmatics

2.1. Subchapter

Since legal norms are (in continental, and especially polish tradition) encoded in statutes, and cognizable through interpretation of written legal language, dominant method of inquiry of legal dogmatics is of linguistic type, with supporting role of logic. Various branches of law are distinguishable, inter alia, by the substance they target, this being important enough part of social relations which law regulates. Differences in substance entail differences in method of regulation, and therefore – in the form of linguistic material from which norms of a given system are decoded. This results in distinctive sets of theoretical concepts coined in particular dogmatic disciplines, which can vary in national traditions (e.g. Kostecki, 1992: 31-42)[2]. But even for things as distant as "premises of criminal responsibility" or "subject of taxation", the dominant method of inquiry consists of interpretation of meaning of the words naming their instances (linguistics)

[1] Hence the dogmatics of various branches of law, "national" dogmatics surrounding particular legal systems and their intersections, e.g. dogmatics of Polish tax law.

[2] Author describes the influence of a western (mainly German) tax theoretical concept of "tax factual state" on Polish tax law theory.

and pointing to their connections with other parts of a given system (logic). This holds true for all branches of legal dogmatics, among them the tax law dogmatics.

Representatives of legal dogmatics are seen as "the" legal scholars from society's perspective. Leading dogmatists participate in public life as experts, indulging not only in discussions surrounding important amendments in branches of law they specialize in, but also addressing topics of cultural, political and of other socially important nature. Reputable lawyers deservedly enjoy respect as authorities regarding their field of expertise, and things are no different in the area of tax law or financial law at large.

Given the fact that the subject of legal dogmatics is the analysis of the content and structure of a given system of law, the main scope of activity of dogmatists should be focused on "translating" sources of law (mainly the texts of statutes) into understandable (for the rest of the society) sets of commands (Wronkowska et al, 2001: 14). Practical effects of this work can be seen in the form of glosses which are published alongside the most important judgements, articles dealing with pressing issues of law application and commentaries on certain acts. These works are focused on clarifying the meaning of particularly vague or ambiguous terms[3], listing rights and obligations of certain entities scattered all over the system of law and comparing sets of these with sets of rights and obligations of other entities, or filling the gaps which were deliberately or accidentally put in legal texts by the legislator e.g. by making use of the reasoning with analogy[4]. Dogmatists also clarify the meaning of concepts used in legal texts, sometimes by pointing at the differences of their understanding in legal science and legal text[5]. They also shape and discuss concepts which belong only to legal scholars language[6], mainly in order to categorize groups of norms as legal institutions (e.g. "tax law system").

3 E.g. "benefit of the taxpayer", term that appears in numerous rules of Polish Tax Ordinance Act, for the first time in its article 2a which embodies the principle known as *in dubio pro tributario*.

4 Polish Tax Ordinance Act in article 67c enables heirs of paymasters to file for majority of most important tax allowances on debts inherited, but this right is denied to heirs of tax collectors; many dogmatists regard this as a loophole which has to be fixed by reasoning with analogy – see e.g. Etel, 2017: 578.

5 E.g. the definition of "outgoing funds" from article 6 of Public Finance Act of 27th August of 2009 (Dziennik Ustaw of 2017, item 2077). "Outgoing funds" are defined as transfers of financial resources of temporary nature, as opposed to definitive character of expenses (Lipiec-Warzecha, 2011: 66-67.). Article 6 subparagraph 2 of the Act states that one of the categories of financial transfers defined as "outgoing funds" are payments financed from the revenues coming from privatization of state property which are of definitive character.

6 On the distinction between legal and juridical language see Wróblewski 1948.

2.2. Methodological shortcomings of legal dogmatics

All of the activities mentioned above fall into scope of interpretation of a set of rules, and therefore their clarification and classification; they do serve important purposes, making law more understandable and easier to apply and abide by for its addressees. But classification and categorization do not exhaust full range of statements formulated by dogmatics of law. Lawyers, and especially dogmatists among them (thanks to their unique position and number), are frequently being asked questions about possible effects of newly proclaimed legal acts and institutions they introduce. In response they do refer to practical consequences of new rules, possibilities of them successfully performing the functions in accordance to intentions of the legislators, and their impact on social relations at large[7]. In legal academic writings it is a standard practice to explain the content of commented amendments and then, in *resumé*, to judge whether new rules will be "effective" in performing tasks ascribed to them, how will they affect certain areas of law application and – particularly in financial law – what financial burdens may arise from their introduction. In many cases only arguments that support all these statements are derived from the content of the set of rules explained in particular argument; seldom do lawyers reach for other methods of proving their point, e.g. statistical analysis. Closest thing to empirical evidence seen in dogmatic writings are judgements of various courts and other authorities, cited as proof of existence of the same line of thought as presented by the author. These occur only in works dealing with sets of norm that have been already applied. It is not unseen in dogmatic papers to formulate theses referring to empirical reality without any kind of this type of proof at all.

This state of affairs is legitimized by the legal order[8], which demands legislative projects to be drafted, given opinions (in formalized manner) and consulted with experts whose roles are fulfilled by dogmatists believed to the be most prominent

7 "It has to be stated, that – against nineteenth-century positivist *Befriffsjurisprudenz* – modern dogmatics does not confine itself to working out a conceptual apparatus, systematization and description of the system of valid law, its interpretation and application (…), which are its central points of interest." (Lang et al, 1986: 12).

8 E.g. in Polish legal system this role is fulfilled by the Regulation of the Prime Minister on the Principles of Legislative Technique, which in the Annex contain an act regulating their details. §1 of the Annex obliges legislators to determine the expected social, economic, organizational, legal and financial effects of each of the solutions considered. In attempt to ensure that these requirements are carried out, drafts of governmental origin are being by professional lawyers from Governmental Legislation Centre.

in particular areas[9]. They take part in legislative processes on both "sides" by preparing drafts of new legislation and evaluating them before and after their coming into force. Roots of these practices lay in a rational belief that if someone knows how to prepare a proper and effective statute, it must be one of the most prominent lawyers.

3. Methodological shortcomings of legal dogmatics from philosophical point of view – the passage between is and ought

To refer to observable consequences of any fragment of a system of law (in terms of its addressees behaviour, and changes in environment caused by it) in any way possible is to formulate statements which concern empirically observable reality. This is a significant overstep of boundaries of standard subject of dogmatic research. This way it expands from "set of commands" to "set of behaviours of agents to whom these commands are directed and their observable consequences". This phenomenon is worth examining closer with reference to philosophical writings on methodology of science[10]. Mode and content of statements formulated in dogmatic jurisprudence is an obvious example of "pretermission" of an old metaethical question known since eighteenth century as "the is–ought problem". It is an argument introduced by David Hume based on distinction between "positive statements" which refer to facts of empirical reality, and "normative statements" which describe how this reality should be shaped according to the speaker's beliefs. Hume pointed out that these modes of speech target entirely different subjects and there is no "obvious" way of inferring one from the other[11]; since publication of his *A Treatise Of Human Nature* (1739) many philosophers tried to overcome this inability, but no one managed to offer a con-

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9 E.g. in Poland Council of Ministers established a body of experts to prepare a project of new Tax Ordinance Act (Regulation of the Council of Ministers on establishment, organization and functioning of Codification Commision of the General Tax Law). See also e.g. opinions on the introduction of article 2a of Tax Ordinance Act – Dębowska-Romanowska 2015, Gomułowicz 2015.

10 These bloomed from intersection of epistemology and ontology (Ajdukiewicz, 1983: 108-109).

11 The argument is commonly linked with famous ending passage of the Book III, Part I, Section I of the Treatise (Hume et al, 1960: 469-470): "In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it."

vincing answer[12]. Thus the problem was dubbed "Hume's Guillotine" (Black 1964: 166). It was one of the founding stones[13] of Kelsen's vision of "pure normative science", jurisprudence that is "clean" in terms of methodology and subject of studies by focusing only on law as a system of norms (Kelsen 2005: 1). With proper modification regarding the subject of studies which changes from "law as such" to "particular system of law", this ideal is the best description of a model applying to all disciplines of legal dogmatics.

Accepting the existence of the gap between "is" and "ought" as indeed impassable depicts jurisprudence in rather unfavourable light, at least when its methodological rigour is regarded. But reality is that dogmatists do formulate statements regarding effects that law brings on social environment regardless of the problem, whether being asked questions about them or not; moreover, it is traditionally and legally expected of them. Puristic crusade pursuing eradication of this practice from their scientific activity under the banner of Hume's guillotine would be a task that even don Quixote would hesitate to undertake. It is also safe to imagine that if dogmatists somehow would be persuaded to purify their writings from all assertions apart from these that explain the content of law as system of norms, organized societies would lose significant part of their ability to effectively regulate their own members behaviour. For these reasons calling for tax law dogmatics to accept boundaries which characterize "pure normative science" would be pointless and possibly harmful. Whether philosophers like it or not, it is in jurisprudence's genome to overstep its own methodological boundaries.

4. Rhetoric as a methodology without the need for empirical proofs

4.1. Rhetoric among scientific methodologies

Because of that it is more fruitful to analyse consequences of this situation instead of trying to change it. Exceeding limits posed by its own methodological boundaries characterizes not only jurisprudence at large; it is common in all disciplines that belong to the "humanities". There are various methods of discerning these from other academic branches of knowledge; the one proposed by James C. Raymond

[12] E.g. see the propositions from Max Black and John Searle discussed by Georg Henrik von Wright (von Wright, 1998: 365-382). The debate is illustrated for example in the volume Hudson, 1969.

[13] "(...) it is incorrect to assert – as is often done – that the statement: <An individual ought> merely means that another individual wills something; that the ought can be reduced to an is. (...) Nobody can assert that from the statement that something is, follows a statement that something ought to be, or vice versa." (Kelsen 2005: 5-6).

is particularly illuminating here. He suggested a threefold (Raymond, 1982: 780)[14] classification of sciences by distinguishing them according to the degree of certainty of typical propositions formulated within them. The first group consists of disciplines which operate only on self-contained symbol systems, that is e.g. logic and mathematics. Here new theorems have to be constructed with the use of deduction, and that makes them absolutely certain. Their results are utilized in empirical sciences, where they serve as the basis of theories which are later subject to experiments; this way empirical sciences rely on induction, and their theories (in line with Popper's ideal) are valid until falsified. No matter how detailed and extensive are the conducted researches, all their originators may count on is the certainty eternally accompanied by "as far as we know".

The third group to which law belongs is characterized, according to Raymond, by relying on rhetoric next to deduction and induction[15]. That means the theorems proposed in these disciplines contain ways of reasoning based on at least one "enthymeme". These are "lines of reasoning that are merely probable" (Raymond, 1982: 781); they are syllogisms (hence, they are formally based on deduction) which contain hidden premise (of "enthymematic" kind – Ziembiński, 1970: 159-160[16]) which is not worded because of its obviousness. By this definition of enthymemes appear also in exact sciences, enabling the argumentation to be concise and resembling structural definitions[17], but those that are used in humanities consist of specific kind of "obvious" premises which are "generally valid". They are, among others, "probabilities" – links of certain phenomena to another kind of phenomena in a "lawlike" way[18] and "signs" – links of certain occurrences

[14] In fact Raymond distinguishes four „groups on campus", the fourth being representatives of „applied" disciplines, e.g. fine arts and engineers. However he does not ponder over their methodology to such extent as with the first three.

[15] „(…) Their habitual medium is the word, and they often use nonscientific proofs in their discussions: analogies that obviously wimp, striking examples rather than random samples, speculations about chains of causality involving human motives that are inscrutable in any scientific sense or variables more numerous than actuaries can account for. These are not alchemists or necromancers. They are rhetoricians, though they may not know it" (Raymond, 1982: 780).

[16] For convenience, from this point on, by using the term "enthymeme" I refer also to "enthymematic premise".

[17] E.g. 1) Radio burst from a given star travelled to Earth for 25 years, therefore: 2) the star is 25 light years away from Earth. Hidden premises: 3) since radio waves are electromagnetic waves of lower frequency than light, and: 4) light is an electromagnetic wave, 5) the speed of radio waves is the same as the speed of light.

[18] Aristotle, 1962: 523 describes probability as "generally accepted premise; for that which people know to happen or not to happen, or to be or not to be, usually in a particular way".

to other occurrences in causally acceptable way, but derived of "lawlikeness"[19]. Their distinguishable element is that they are unprovable by any ordinary means accessible to a man, but are nonetheless acceptable to any rational and conscious individual. For example, if someone tried to prove that "the wise are good"[20], he would face difficulties impossible to overcome, like the necessity to agree on the meaning of these words among all people, and the necessity of examining all people who are "wise" for determined displays of goodness or vice versa (that is, of course, if one tried to prove that only the *living* wise are good[21]). But it is not impossible to convince someone to accept this statement in discussion, and even to include it in academic paper on philosophy, law or history. Hence, this kind of statements can be "practically proven" (accepted as "valid" premise by the interlocutor), but only through the use of rhetorical arguments.

Decreasing certainty of the premises accepted with a proceeding from deductive to rhetorical disciplines corresponds with the nature of problems they consider. While logic and mathematics can give us full certainty, all they can explain is how to properly reason. They are helpless in describing any of the real world phenomena (including thought processes taking place in actually existing minds); that is the role of physics, which formulates mechanical laws governing the motion of objects[22] or biology. But it is likewise vain effort to try to explain phenomena like crime, tax, obligation or other "humanistic" concepts like love, morality or justice in terms of Newton's laws of motion[23]. This sums up to a claim: the greater

19 "A demonstrative premise which is necessary or generally accepted. That which coexists with something else, or before or after whose happening something else has happened, is a sign of that something's having happened or being" (Aristotle, 1962: 523-525).

20 Aristotle's example – Aristotle, 1962: 525.

21 Sometimes merely stating a method of inquiry for such an artificial experiment suffices for a convincing theory – like the definition of "truth" proposed by Jürgen Habermas: "I may predicate something of an object, if and only if every individual who *could* enter into conversation with me *would* predicate the same thing of the named object. In order to distinguish true from false statements, I refer to the judgement of others – indeed to the judgement of all others with whom I might ever engage in conversation (here I include, counterfactually, all speech-partners whom I might encounter if my life-history were co-extensive with that of humankind). The condition of truth of the statements is the potential agreement of *everyone* else" (quoted after Alexy, 1989: 102). Appeal to imagination is one of the rhetorically acceptable methods of argumentation.

22 Which are valid "as far as we know", that is "in the light of all experiments conducted to this point in recorded history of human knowledge".

23 That doesn't mean efforts to construe this kind of language hasn't been made; examples can be found in the works of representatives of the Vienna Circle, e.g. Otto Neurath's idea of "protocol sentences", according to which all valid theorems ultimately have to boil down to peculiarities like this: "Otto's protocol at 3:17 o'clock: [At 3:16 o'clock Otto said to himself: (at 3:15 o'clock there was a table in the room perceived by Otto)]" (Neurath, 1959: 202). This idea was part of a larger intellectual movement based on specific interpretation of Ludwig Wittgenstein's

the complexity of problems considered, the lesser is the achievable certitude of our knowledge about them, and vice versa (Raymond, 1982: 781-782).

4.2. Rhetoric in tax law dogmatics

Legal dogmatics, as every humanistic discipline, is crowded with enthymemes and nothing is alarming in this fact. Without them it wouldn't be able to fulfil its socially prescribed role. If dogmatists would stick, as Kelsen wanted, only to the statutes and write only about what citizens, according to their content, should do and what they shouldn't, they would lose their ability to address important problems. Among the enthymemes used in dogmatic theorems, at least one has to negate the inability stemming from Hume's guillotine; in reality, there are entire complexes of enthymemes to be found in every developed argument about empirical effects of a part of law system (like "people generally do pay taxes" or "people are able to comprehend the rules about the deadlines to pay taxes or at least are able to find some reliable enough source of information to obtain the necessary knowledge and pay taxes in time").

It can be shown on an example of the passage from the substantiation for one of the acts amending Polish Tax Ordinance Act: "The project introduces solutions which aim to promote the behaviour of taxpayers consisting of them self-dependently correcting the errors in tax declarations if these lead to understatement of the tax obligation, without waiting for the tax authority to act. This will be done by reducing the reduced rate of default interest to 50% of the basic rate" (Substantiation 3462: 2). The reasoning here can be elaborated in a following way:

1. Taxpayers do want to reduce their tax burden as much as possible,
2. Some taxpayers deliberately undervalue their tax obligations stemming from submitted declarations,
3. Some of these taxpayers count on the possibility of tax authorities overlooking the flaws in their declarations, risking to face the consequences of eventual discovery of their action (e.g. the possible duty to return the underpaid tax with higher interest rate, or even fiscal penal liability),
4. Tax authorities are not able to control all declarations submitted,

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Tractatus Logico-Philosophicus, that is of logical empiricism (also "logical positivism", or "verificationism"), according to which everything that we call "knowledge" should consist only of empirically provable sentences.

5. But they do control given number of declarations, and
6. Taxpayers do not know if theirs will be examined or not,
7. Some taxpayers prefer to “give in” instead of risking to face the consequences of the discovery of their actions by the tax authorities,
8. This possibly existing intention of some of the taxpayers who are wilful to “give in” will be reassured by providing them with additional financial encouragement,
9. The reduced interest rate introduced by the amendment will be financially attractive enough to convince some of the taxpayers to correct their declarations without the need for the tax authorities to intervene.

The premises listed above concern only the statements about the change in the system of law; model variations could be made for statements about the actual content of the system of law abstract from the situation of its amendment. Typically the arguments in legal dogmatics target causal connections between norms and real world occurrences (“norm N is/is not the cause for the occurrence O”), and evaluate their ability to induce these occurrences (“norm N is/is not a proper way to achieve the target T, target T being a state of affairs in which occurrences O appear at desirable frequency”). Both of these can be analysed de lege lata and de lege ferenda.

The list of enthymemes could be further expanded[24], e.g. by adding the premises about the taxpayers and authorities’ knowledge about the change of the system of law (proper promulgation, awareness of the taxpayers and their advisers, proper interpretation of the new rules by the taxpayers and authorities alike and so on), or the taxpayers beliefs and choices of the courses of action (their conviction that they cannot avoid taxation in any other cost-effective way, and more basic one

[24] The boundaries of elaboration depend on views of the investigator. One of the important issues is his ontological stance – e.g. one may adopt the view which Tadeusz Kotarbiński described as “reism”, according to which only things that exist are individuals and objects which are “extensive in terms of space and time”. What follows, each sentence about existence of any other things (which happen to be the subjects of studies of humanities) should be seen as a metaphor, and the speaker should be ready to translate it at any time into a statement about individuals or objects (Kotarbiński, 1993: 149-159, Kotarbiński, 1993: 159-169). Bearing resemblance to logical positivism (see ft. 37 above) this stance combined with Kelsen’s assertion that one of the defining characteristics of law is such that it should be able to regulate behaviour of its addressees (Kelsen, 2005: 12-15) enables to propose a boundary condition for enthymemes used in “legal” (scientific or pragmatic) argumentation: they should be translatable into reistically acceptable directives of behaviour.

– that they are rationally guided self-minding individuals). Majority of possible additions to the list would also be of enthymematic kind[25]. In standard circumstances careful scrutiny of the assertions used as the premises in the reasoning about lowering the interest rates is unnecessary and even irrational, because they point to well-known facts which we are able to accept from our personal experience – they are Aristotle's "probabilities"[26].

According to Hume, passage from "is" to "ought" (or from "ought" to "is" in case of legal dogmatics) is often "imperceptible" in work of a given author; it is safe to assume that not much has changed since publication of the *Treatise*, as the abovementioned example shows. This corresponds with Raymond's remark that rhetoricians "may not know" about their own membership in this particular community. Imperceptibility for the reader may follow from unawareness of the author, which in the field of dogmatics of law is an unawareness of the fact that one uses enthymemes in his own reasoning, or at least does not comprehend the scope of this usage. The cause may lay in the language typically used in dogmatics. At first glance it is not always obvious if it is describing empirical reality or only the content of directives, because directives operate on notions used to describe the empirical reality[27]. The problem usually appears along with divergence from description of the content of norms to their evaluation and prediction of their addressees behaviours. Dogmatic mode of speech in which the speaker describes only the content of the given fragment of the system of law, then freely proceeds to comment how it should be amended or what effects are caused by its validity is widespread. In most cases insights formulated in this way are accurate, but there is always a risk of including some doubtful enthymemes somewhere along the way. And if this is the case, the whole argument may easily be toppled by bringing them to light.

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[25] Even the first one is merely a probability, albeit grounded so firmly, that no one in the right frame of mind would question it. But there are taxpayers who enjoy paying taxes, e.g. for the patriotic motives.

[26] See ft. 18.

[27] In any given handbook on national tax law there can be found entire passages like: "the tax authority has to send the files of the case to the revocatory instance within 14 days, otherwise interest on the tax arrears in question won't be charged", or "the taxpayer must send the appeal through the postal operator of any EU member state, or it will be dismissed due to failure in complying with the term". These examples only appear to describe real course of events; in fact they are mere formulations of the norms encoded in Polish Tax Ordinance Act. This, combined with the fact that normally we do not try to examine our thought process in search of every enthymeme disguised in it, may be the reason for the fact that sometimes unawareness of their usage results in adopting premises which are not so easily acceptable without, at least, more elaborate explanation.

9.1. Example of an unsound rhetorical argument in dogmatics of tax law

The most common example of such fallacy occurs when someone unwillingly replaces Aristotelian "probability" with a mere "sign", which is only a (rhetorical) proof of singular occurrence, but not of a process. This was exactly the kind of premise which lay at the roots of introduction of Article 24d (Act on Reduction of Some of the Administrative Burdens in Business, Art. 3/3) to polish Personal Income Tax Act (together with its analogon in Corporate Income Tax Act, Article 15b). It contained mechanism which disallowed taxpayers to deduce the unpaid obligations due for longer than 30 days from tax deductible expenses. The declared aim of this regulation was to "reduce the payment gridlocks" (Substantiation 833: 9-11), and the enthymeme lying behind was that "possibility of higher income tax burdens resulting from possible lower deductible expenses will be a significant motivation for taxpayers to regulate liabilities on an on-going basis". As it turned out, the unreliable debtors were not moved by the regulations and continued to stay in delay; the creditors however, had to monitor the dates of payments more closely and were forced to restructure their bookkeeping systems, which generated more costs for them. It might have been true that some of the debtors were motivated to regulate their liabilities because they did not want to lose the right to lower expenses in income taxes; but this was not a connection which could be described as "lawlike" in society at large. The dogmatists who appeared in this case in the role of legislators mistook the abovementioned for a "probability", while all it could have counted for was a "sign". Therefore, existence of articles 24d and 15b was short-lived; they were both revoked on 1st January of 2016 (The Act on Amending the Tax Ordinance Act and other selected acts, Art. 2, 3).

Conclusion

Use of enthymemes in jurisprudence proves that it belongs to a larger group of sciences which could not exist without them. In legal dogmatics they serve an important purpose by enabling scholars to address practical issues which arise from application of the branches of law they study – making the escape from the blade of Hume's guillotine possible. This, however, calls for extreme caution – because of the supposed "obviousness" (which is subjective) that causes their use to be an unconscious habit, dubious enthymemes sometimes tend to slip into otherwise perfectly well-reasoned arguments and may deal them serious harm, especially if they are later practically implemented. To avoid such perturbations, it is advisable to once again turn to Hume, who ended his passage about the gap

between “is” and “ought” in these words: “(…) as authors do not commonly use this precaution, I shall presume to recommend it to the readers” (Hume et al, 1960: 469).

References

Ajdukiewicz, K.: Zagadnienia i kierunki filozofii. Teoria poznania, metafizyka (Issues and Tendencies of Philosophy. Epistemology, Metaphysics), Czytelnik: Warszawa 1983.

Alexy, R.: A Theory of Legal Argumentation. The Theory of Rational Discourse as Theory of Legal Justification, tr. Adler R., MacCormick N., Oxford University Press: Oxford 1989.

Aristotle: The Categories, On Interpretation, Prior Analytics (tr./ed. Cook, H.P., Tredennick, H.), William Heinmann: London 1962.

Black, M., The Gap Between “Is” and “Should, The Philosophical Review no. 73, vol. 2 (1964).

Dębowska-Romanowska, T.: Opinia na temat przedstwionego przez Prezydenta RP projektu ustawy o zmianie ustawy – Ordynacja podatkowa oraz niektórych innych ustaw (Opinion of the presented presidential project of the Act on amendment of Tax Ordinance Act and other acts), Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu (Juridicial Journal of the Bureau of Research of Chancellery of the Sejm) 2015, no. 2.

Etel L., Ordynacja podatkowa. Komentarz (Commentary on the Tax Ordinance Act), Warszawa: Wolters Kluwer, 2017.

Gomułowicz, A.: Ekspertyza na temat przedstawionego przez Prezydenta RP projektu ustawy o zmianie ustawy – Ordynacja podatkowa w zakresie propozycji ujęcia art. 2a (Expertise on presidential project of Act amending the Tax Ordinance Act in reference to the proposition of wording of article 2a), Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu (Juridicial Journal of the Bureau of Research of Chancellery of the Sejm) 2015, no. 2;

Hudson, W.D. (ed.): The Is/Ought Question. A Collection of Papers on the Central Problem in Moral Philosophy, London: Macmillan, 1969.

Hume, D. et al: A Treatise Of Human Nature. Reprinted from the Original Edition in Three Volumes and Edited with an Analytical Index, London: Oxford University Press, 1960.

Kelsen, H., The Pure Theory of Law, Clark: The Lawbook Exchange, 2005.

Kostecki A., Teoria podatkowego stanu faktycznego (A Theory of Tax Factual State), Acta Universitatis Lodziensis. Folia Iuridicia no. 54 (1992)

Kotarbiński, T.: Humanistyka bez hipostaz (Humanities without Hypostases), in: Kotarbiński, T.: Ontologia, teoria poznania i metodologia nauk (Ontology, Epistemology and Methodology of Sciences), Wrocław-Warszawa-Kraków: Zakład Narodowy imienia Ossolińskich – Wydawnictwo Polskiej Akademii Nauk, 1993.

Kotarbiński, T.: O postawie reistycznej, czyli konkretystycznej (About Attitude Concretivistic, that is Reistic), in: Kotarbiński, T.: Ontologia, teoria poznania i metodologia nauk (Ontology, Epistemology and Methodology of Sciences), Wrocław-Warszawa-Kraków: Zakład Narodowy imienia Ossolińskich – Wydawnictwo Polskiej Akademii Nauk, 1993.

Lang W. et al.: Teoria państwa i prawa (A Theory of Law and State), Warszawa: Polskie Wydawnictwo Naukowe, 1986.

Lipiec-Warzecha L., Ustawa o finansach publicznych. Komentarz (Commentary on the Public Finance Act), Warszawa: Wolters Kluwer 2011.

Neurath, O.: Protocol Sentences, in: Ayer, A. J. (ed.): Logical Positivism, New York: The Free Press, 1959.

Opałek K. et al.: Zagadnienia teorii prawa (The Issues of Legal Theory), Warszawa: Państwowe Wydawnictwo Naukowe, 1969.

Peczenik, A: Scientia Juris. Legal Doctrine as Knowledge of Law and as a Source of Law, vol. 4 in: Pattaro, E. (ed.): A Treatise of Legal Philosophy and General Jurisprudence, Dordrecht: Springer, 2005.

Raymond, J. C.: Rhetoric: The Methodology of the Humanities, College English no. 44, vol. 8 (1982).

von Wright, G. H.: Is and Ought, in: Paulson S. L., et al (eds.): Normativity and Norms. Critical Perspectives on Kelsenian Themes, Oxford: Clarendon Press, 1998.

Wróblewski, B.: Język prawny i prawniczy (Legal and Juridical Language), Kraków: Polska Akademia Umiejętności, 1948.

Wróblewski, J.: Obowiązywanie systemowe i granice dogmatycznego podejścia do systemu prawa (Systemic Validity and the Limits of Dogmatic Approach to the System of Law), Studia Prawno-Ekonomiczne (Legal and Economial Studies) no. 36 (1986).

Wronkowska S. et al: Zarys teorii prawa (An outline of the Theory of Law), Poznań: Ars Boni et aequi. Przedsiębiorstwo Wydawnicze, 2001.

Ziembiński, Z.: Logika praktyczna (Practical Logic), Warszawa: Państwowe Wydawnictwo Naukowe, 1970.

Legislation:

Act no. 1342/2012 Dz. U., on Reduction of Some of the Administrative Burdens in Business

Act no. 1471/2014 Dz. U., Regulation of the Council of Ministers on establishment, organization and functioning of Codification Commission of the General Tax Law.

Act no. 2343/2015 Dz. U., on Amending the Tax Ordinance Act and other selected acts.

Act no. 283/2016 Dz. U., Regulation of the Prime Minister on the Principles of Legislative Technique, as amended.

Act no. 201/2017 Dz. U., Tax Ordinance Act, as amended.

Act no. 2077/2017 Dz. U., on Public Finance, as amended.

Act no. 2343/2017. Dz. U., on Corporate Income Tax, as amended.

Act no. 200/2018 Dz. U., on Personal Income Tax, as amended.

List of documents:

Substantiation no. 833, Sejm paper of VIIth term – for the governmental project of the Act on Reduction of Some of the Administrative Burdens in Business.

Substantiation no. 3462, Sejm paper of VIIth term – for the governmental project of the Act Amending the Tax Ordinance Act and other selected acts.