Polanowska-Sygulska, Beata, (in Polish) *Value Pluralism and Its Implications for Legal Philosophy* (Kraków, 2008: Ksiegarnia Akademicka)

English summary by the author

This is the first Polish book on value pluralism, a dynamically developing and widely discussed position in ethics that bears on political and legal philosophy. My reconstruction and critical analysis of this position are based on three versions of it that are recognised as central, namely those of Isaiah Berlin, Joseph Raz and John Gray. A panoramic survey of other standpoints, including those of George Crowder, William A. Galston, Stuart Hampshire, John Kekes, Steven Lukes, Thomas Nagel, James Griffin and Michael Stocker, is also provided. Different schools and currents within the pluralistic approach are briefly presented – 'tragic' and 'benign' pluralism (singled out by Jonathan Riley), 'strong' and 'weak' variants (distinguished by John Gray), and 'liberal' and 'anti-liberal' versions (discussed by George Crowder).

My reconstruction of the main tenets of value pluralism provides the background to an attempt to resolve several controversial issues that have generated heated discussion. The first problem I tackle is the question whether value pluralism is defensible, and in particular whether and how it differs from ethical relativism. Secondly, I examine the widely disputed issue of the objectivity of the values in question. Thirdly, with regard to the ambitious attempt made by George Crowder to do this, I discuss the possibility of constructing a normative pluralist system. Fourthly, I carefully examine the hotly contested problem of the relation between value pluralism and liberalism. And finally, with reference to the still emerging literature on the topic, I analyse the theoretical consequences of value pluralism for legal philosophy.

Chapters I to IV offer a reconstruction and critical analysis of the theory of value pluralism, based on the views of the thinkers mentioned above. I compare in detail the contributions to value pluralism made by Berlin, Raz and Gray. This approach allows me to highlight the different aspects of pluralism developed by its three central adherents. In the final part of Chapter II, devoted to Berlin's thought, I examine the intellectual sources of value pluralism. Apart from the forerunners of pluralism identified by Berlin himself, namely Machiavelli, Vico and Herder, I scrutinise the contribution and influence on Berlin of David Hume, Max Weber, William James, Sterling Lamprecht and A. P. Brogan.

I argue that Berlin's version of value pluralism suffers from a serious drawback, namely a breach of Hume's law. The other two pluralists in question avoid this trap in two ways – Raz by adopting a particularist strategy, and simultaneously accepting a number of limiting assumptions, and Gray by espousing a sort of universalist, though very thin, ethical perspective derived from his rigorously naturalist conception of human nature. However, both solutions result in an impoverishment of Berlin's rich account of human moral experience.

Chapter V is my own contribution to the discussion of value pluralism. First, extensive investigations reveal that value pluralism is without any doubt different from ethical relativism, and that it constitutes a view sufficiently well

justified to be the subject of careful consideration. Pluralism should be recognised as a distinct position on the map of ethical theories; moreover, it seems to provide the most adequate account of moral life, in that it neither ignores nor tries to neutralise the moral conflict that forms a profoundly important part of human experience. As Bernard Williams says, pluralism reflects an 'absolute and fundamental truth' about values that includes their plurality, complexity and incommensurability.

Secondly, I investigate the controversial question of the objective character of plural values. I argue that objectivist and subjectivist positions in ethics mark the two extremes of a continuum of standpoints, and that pluralism is closer to the objectivist than to the subjectivist extreme.

Thirdly, a detailed investigation into Crowder's project to build a normative pluralist system reaches a negative conclusion. I point out that Crowder did not succeed in grounding the empiricist thesis of pluralism in a conception of man that, for him, constitutes a proper basis for his system of normative principles and his catalogue of virtues, simultaneously protecting the whole construction from breaching Hume's law. The problem is that Crowder does not in fact present such a vision of man, but merely refers to Martha Nussbaum's 'thick and vague' empiricist conception – a conception, incidentally, that he recognises as too strong for his own purposes. Yet even Nussbaum's 'too strong' approach proves too weak to support Crowder's normative edifice. After all, Nussbaum's conception is open and in no way claims a normative status. Moreover, in an email to Henry Hardy, reproduced in *Unfinished Dialogue*, Crowder refers not only to Nussbaum but to Aristotle and natural law theory as the intellectual tradition that throws light on his understanding of universal ends.[1] This loose remark reveals Crowder's own doubt about the possibility of grounding his normative theory in a purely empiricist conception of man. If one takes into account the fact that this theory is both universalist and pluralist, and assumes the existence of a common, rational human nature, Crowder's system seems to be doomed to failure.

Fourthly, a detailed analysis of the highly controversial issue of the relation between pluralism and liberalism leads to the conclusion that the two concepts are neither logically connected, nor mutually exclusive, but overlapping. In consequence, though it is possible, and, for psychological reasons, probable, that one will be simultaneously a pluralist and a liberal, this is not necessary; one may be – like John Locke – a liberal but not a pluralist, or – like Carl Schmitt – a pluralist but not a liberal. Such a conclusion is consistent with Isaiah Berlin's final thesis, shared by Michael Walzer, William A. Galston and Graeme Garrard, of a loose, *de facto* connection between pluralism and liberalism.

The last two chapters are mainly devoted to investigations – inspired to a considerable extent by John Gray, Scott Veitch and Cass Sunstein – into the theoretical implications of value pluralism for legal philosophy. The following conclusions are reached. First, confronting ethical pluralism with general reflection on law has consequences that are often negative, though not exclusively so. In particular, the incommensurability thesis undermines a whole constellation of contemporary liberal doctrines informed by the Kantian–Lockean tradition that conform to the legal paradigm. Another destructive

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[1] Isaiah Berlin and Beata Polanowska-Sygulska, *Unfinished Dialogue* (Amherst, NY: Prometheus Books, 2006), 298.

result is an open challenge posed by the belief in the incommensurability of values to the legitimisation of the liberal legal order. It is argued, contra Veitch, that this issue presents itself differently in relation to two images of law's social environment – the model of *community* and the model of *imperium*. The former model is openly contradictory of the main tenets of value pluralism. The alleged clash between the latter model and value pluralism is much more problematical. I challenge Veitch's distinctive diagnosis of this problem by invoking the example of Joseph Raz, who is a rigorous adherent both of the *imperium* model and of value pluralism, and whose position in jurisprudence Veitch hardly ever refers to. Finally, I briefly compare the approaches of Veitch and Sunstein. I argue that Veitch's analysis, courageously taking into account value pluralism's destructive consequences for legal philosophy, goes deeper than that of Sunstein, whose application of value pluralism as an interpretive key merely throws light on certain legal disputes.