
Abstracts

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

ABSTRACTS

KRZYSZTOF GOŹDŹ-ROSZKOWSKI
(ŁÓDŹ)

***Ownership of church estates pro melioration
by King Casimir the Great***

The royal tenure on church estates resulted from an initiative of King Casimir the Great (Kazimierz Wielki) or the monastery being their owner. The reason declared officially for setting up the lifelong tenure was the intention to improve the economic condition of the church estates (*melioratio bonorum*). Yet one can also guess other, hidden reasons for setting up such tenures. It is so as in this way the king had a pretext to manifest the royal right of patronage towards monasteries and also derived profit, although the latter was not necessarily obtained at the moment of conducting the improvement of the estates. It is also probable that King Casimir counted on the fact that the monastic endowments he only held in lifelong tenure would remain in the hands of the royalty for ever.

Being the lifelong tenant, the king had limited material rights to the estates held. They consisted of the rights of the owner, yet without the right to dispose of the object of tenure (*ius disponendi*). It was the monastery that remained the owner of the estate that the king held in tenure. With the death of King Casimir, the tenure terminated, and the estates it covered returned to their owners. Perhaps *pro melioratione* tenures played a lesser role in the king's internal policy than what the opinions of some researchers suggest.

Key words: Casimir the Great, royal domain, monastic estates, pro melioratione lifelong tenure, Cistercians from Sulejów, Cistercians from Wąchock, Order of the Holy Sepulchre from Miechów, melioration of church estates, right of patronage

PIOTR KITOWSKI
(GDAŃSK)

***Funerary liabilities of Katarzyna Zawadzka (1682).
An essay in the history of land law and funerary culture
in 17th-century Poland***

One of the most important stages of inheritance proceedings was the inventory of the legacy. When completed, an inventory gave the successors a chance to assess if they were interested in the acquisition of inheritance and to settle testators debts and claims. When an estate was highly indebted relatives had the right to opt out from it. This was the case with the inventory of the legacy of Samuel and Katarzyna Zawadzki from 1682. Their document is unique as it also contains a detailed list of the amounts spent on the funeral – costs of the ceremony, the wake, and ad pias causae. It is not only an example of source

material but also an insight into the spiritual culture of nobility living in Royal Prussia, the more so as such information is not common in other similar inventories from the Middle Ages and the early modern period.

Key words: inventory of inheritance, funerary culture, Royal Prussia, legacy

MARCIN GŁUSZAK
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***Protocols of the Permanent Council from 1775–88
in the AGAD archive collection. Types and features***

Implementation of the wide-ranging rights bestowed on the Permanent Council entailed the need for making detailed documentation, both at the level of the Council's General Chancellery and of the chancelleries of its all five departments. To this day, two basic types of protocols – current (potoczne) that contain lists of all the activities of the Council at the plenary sessions, and of public expedition, which gathered the printed proclamations and copies of resolutions passed by the Council and sent to the interested parties – have been fully preserved in the form of manuscripts and prints in the Central Archives of Historical Records (AGAD) in Warsaw. The latter provided for the publication of a number of volumes in the 1780s: the 'collections of resolutions' covered the statements of the Council concerning the interpretation of the rules of law. Both the manuscripts and prints are a precious source of knowledge on the functioning of the Permanent Council: the first central and collegial organ of executive power in the Polish Lithuanian Commonwealth in history.

Key words: Permanent Council, Central Archives of Historical Records, current protocols, public expedition protocols, resolutions

JUSTYNA BIEDA
(ŁÓDŹ)

***Pregnancy, delivery, and childcare in the prisons of the Kingdom
of Poland (1815–67)***

The origin of contemporary solutions concerning the children of the imprisoned should be sought in the days of the Kingdom of Poland, when the need to regulate the problem of pregnant women, delivery, and living conditions of mothers who remained in penal institutions together with their children, as well as the life of the minors who remained outside the prison during the imprisonment of the parents were regulated.

Early in the 19th century, the condition of Polish prisons did not meet even the contemporary standards. The authorities of the Duchy attempted to introduce reforms, and prison law (literally: 'arrangement of state prisons') was drafted, yet the unstable situation in the country aggravated by the lack of funds did not allow its implementation.

A breakthrough in the penal system in the Kingdom of Poland came with the visitation of some prisons in the capital city by Tsar Alexander I in 1818. The monarch's dissatisfaction resulted in the intensive activity of central authorities aimed at reforming the conditions of serving the sentences. The changes encompassed the situation of imprisoned mothers and also their children in direct custody of a parent, and also those living outside the prison.

Initially, a prisoner in pregnancy and childbirth was deprived of specific assistance, yet the custom of having midwives participating in deliveries developed in the 1830s, even though legal regulations concerning the question date back to as late as the 1850s.

The improvement of the horrible sanitary conditions in newborn care had not taken place in Warsaw prison until the 1830s, while the first administrative rules ensuring breast-feeding women with better alimentation were issued a decade later.

Key words: child in prison, penal system in the 19th century, pregnancy in prison, woman in prison, imprisonment, penitentiary policy

JOANNA MACHUT-KOWALCZYK
(ŁÓDŹ)

Legal requirements and claims concerning qualification of justices of peace in the light of practice, expressed opinions, and discussion in 19th-century press

The office of the justice of peace was introduced into the Polish court system together with the French law. Legal education was not required from the candidates. Attention was paid to age, experience, authority and social trust, and to wealth. The first justices of peace seem to have met the criteria. They were wealthy people at an appropriate age, with experience in public functions, sometimes even in the court.

In the period of the Kingdom of Poland, the number of people ready to play these functions was drastically diminishing. It only increased late in the 19th century, when the authorities nominated to these posts mostly people of Russian nationality. These were in many cases, people who had no appropriate education, experience in holding functions in the judiciary, and unfamiliar with the social relations customary in the place where they held their office. Such a status quo resulted in a drop of trust to the judiciary, the more so as practical cases of incompetence and ignorance of duties by the justices of peace are known. Moreover, instead of opinions about their just and prudent actions, we read about playing cards, participation in hunts, etc. An array of claims concerning education, manner of appointment, and supervision over justices of peace are present in 19th-century legal magazines. The authors frequently quote statistical data concerning the education of people holding these functions.

Key words: justice of peace, education of justices of peace, qualifications of justices of peace, arbitrary proceedings, abuse by civil servants in the Kingdom of Poland

DOROTA WIŚNIEWSKA-JÓŹWIAK
(ŁÓDŹ)

***Absolute incapacitation procedure in the light of the Civil Code
of the Kingdom of Poland***

The rules contained in the Civil Code of the Kingdom of Poland concerning incapacitation were based on Napoleonic law. Reservation of the court procedure for the application of this institution of law and limitation of the role of the family council solely to the function of an opinion provider aimed at the protection of personal and property interests of the person to be incapacitated. Moreover, it also protected the interests of the closest kin of such a person.

Making it possible to resort to this institution in the case of the emancipated and non-emancipated minors in the Civil Code, in the opposition to the principles of the Napoleonic Code, seems by all means justified. The good of not only an incapacitated emancipated person but also of a non-emancipated person affected with disability requires protection, which incapacitation served.

Key words: incapacitation, absolute incapacitation, court practice in the Kingdom of Poland, Civil Code of the Kingdom of Poland, Napoleonic Code, family council

TOMASZ KRUSZEWSKI
(WROCLAW)

***An academic in the face of the Third Reich. Hans-Albrecht Fischer –
Professor of Roman and German civil law at the University of Wrocław***

Hans-Albrecht Fischer was a professor of philosophy, Roman law, and German civil law. He had the luck and opportunity to meet the most eminent academics of his days on the path of his life. Some, including Karl Larenz and Julius Binder, destroyed their reputation after 1933 as partisans of the new system. Fischer did not follow that road, nor did he emigrate after 1933, thus choosing the most difficult of the potential roads, that of the so-called internal exile, like one of the most eminent writers of the time, Ernst Wichert. The years of the Third Reich were the time of avoiding and generalising. Ever more intensely suspected by the Nazis, Hans-Albrecht Fischer kept his employment for quite a simple reason, namely, all experts in the field left Germany in the beginning of the Third Reich, and there was no one to lecture civil law (as Roman had been stricken from the curriculum). Fischer made history with his short *Contribution to the knowledge of the impossible*, in which, being a master wordsmith, he proved the difference between ‘inability’ and ‘impossibility’ to the readers. The two works he wrote in the Third Reich provided the grounds to

portray his heroic fight against censorship, which finally haunted the author to the point of contributing to his premature death.

Key words: legal education in the Third Reich, philosophy of law, Roman law, civil law, concepts of 'inability' and 'impossibility', the University of Wrocław

MATEUSZ RODAK
(WARSZAWA)

***The crime of rape and its perpetrators in the Second Republic of Poland.
An attempt at preliminary characteristic***

The crime of rape, and especially its reasons and results, was among the numerous social issues that remained covered with a particular taboo in the Second Republic of Poland. At the time, there was no environment that would undertake to initiate a discussion whose subjects would include among others the exceedingly unclear legal situation of victims of rape. Even with the fairly harsh penal sanctions that the perpetrators of the crime were threatened with, the raped women had to prove before the court that they did not provoke the man with their behaviour, and that while being raped they resisted physically. It was so as lack of resistance was considered a particular concession for a sexual intercourse.

All criminal codes binding in 1932 envisaged relatively harsh penalties for perpetrators of rape. The new criminal code also continued the practice. Nevertheless, it introduced certain significant changes which included the unification of terminology (introduction of the term *czyn nierządny* (literally: 'an indecent act') in the place of the previously binding *czyn lubieżny* (literally 'a lascivious act') and *zgwałcenie* ('raping')), persecution *ex officio* in the case of crimes perpetrated against people under 15, and recognition of the fact that both women and men could be victims and perpetrators of rape.

Nevertheless, as the contemporary statistics prove, perpetrators of the crime in the Second Republic were solely men, and predominantly residents of rural areas. The highly incomplete calculations point, however, to the fact that the largest number of men sentenced for rape came from the areas where modernisation processes, not only concerning economy but also related to the question of emancipation and self-awareness of women, were much quicker, i.e. in the western voivodeships. At the same time, the number of people sentenced for rape remained exceptionally low in the eastern regions. This seems to be primarily the result of the exceedingly introverted, highly traditional character of the local rural environments, where the level of trust for the Polish administration remained exceptionally low at the same time.

Thus, a statistical perpetrator of rape in the Second Republic was a male, poorly educated as a rule, young (below 30), and in most cases living in the country yet being a casual labourer in the city. Even with the Polish society being multid denominational at the time,

most of the perpetrators were Christian, and – although this depended on the region – predominantly a member of the Roman Catholic Church.

Key words: rape in the Second Republic of Poland, rape terminology, indecent sexual act, the attitude of the raped, rape perpetrator, Criminal Code 1932, criminal law before unification

PRZEMYSŁAW MARCIN ŻUKOWSKI
(KRAKÓW)

***The history of the Second Chair of Administration Law
and Administration Science at the Faculty of Law and Economics
of the University of Poznań in 1919–39***

From the moment of its institution, the University of Poznań envisaged studies in law and economics within a single faculty. This required separate classes in a single subject for the legal section on the one hand, and for the economic and political one on the other. The issue covered the lectures in administrative law and administration science, therefore two different chairs were set up to cover the educational needs. The first of them, lecturing for the legal section, was efficiently entrusted to Professor Stanisław Kasznica. In turn, no appropriate person was found among the faculty for the Second Chair, which operated since 1933. The opinion poll conducted in 1920/21 among the professors did not bring positive results, as B. Wasiutyński employed in its wake moved to Warsaw in 1925. Faced with the lack of appropriate candidates, the chair with no permanent holder was finally liquidated by a decision of the ministry, even though the education envisaged for unit was provided by the staff of the Chair of Administrative Law working for the legal section. The attempts to bring the Second Chair back came to fruition in 1938, yet M. Zimmermann was employed to hold the post only in the spring of 1939.

Key words: Faculty of Law and Economics of the University of Poznań, Chair of Administration Law and Administration Science in Poznań, Stanisław Kasznica, M. Zimmermann, organisation of legal studies.

ANDRZEJ MARIAN ŚWIĄTKOWSKI
(KRAKÓW)

***Employment law during the Second Polish Republic (1918–1939):
The Case of legal symbiosis of employment – and civil-type of work
(Introduction to the most current legal dispute between subordinated
and independent type of work)***

Traditionally (as it was regulated in the Roman law) employees sell their labour while the workers and self-employed sell a product which they manufactured. Therefore an employees has been qualified by labour lawyers as those who perform their subordinated type work under the contract of employment while independent work performed personally by producers of any work or services and self-employed is qualified as carried under the contract for services. Between the Great Wars Polish entrepreneurs and workers enjoy a freedom to chose between employment which was categorized by the state legislator as “subordinated” or “independent”. Presidential regulations, two of 1928 on white collar- and blue collar type of employment contracts were used on equal footing with the third regulation entitled The Code of obligations introduced into the national civil law system in 1933. The stage of legal symbiosis of employment- and civil-type of work existed until new amendments to the Labour Code of 1974 were gradually introduced in 1996 and 2002. That stage of full freedom of choice of a legal source for legal relationship within it boundaries any kind of depend work might be carried on was compromised by the both, the state legislator and the judiciary, which looked for a single factor instead taking into consideration the principle of mutuality commitment and promises of future performance which provides the most distinguished arrangement of employment relationship – to maintain legal ties for longer period of time, not just for singular act of service in return for wages. The current policy of trade unions advocating an idea of end up with work performed on the legal bases of civil type of contracts for services and guarantee all employees stable contracts of open end employment is contradicting the UE concept flexicurity based on both flexible and reliable contractual arrangements.

Key words: freedom of work, liberty to choose legal source of obligation to perform work, employment contract, civil type of contract, regulations of the President of Second Polish Republic related to: white color type of contracts, blue collar contracts of employment and the Code of obligations to perform work for services.

ANNA MARCINIAK-SIKORA
(ŁÓDŹ)

***Notarial deeds of Warsaw notaries operating
during the second world war, and their use
in the contemporary conduct of legal transactions***

During the second world war, the occupying power allowed Polish notaries to run individual notary public offices and perform notarial deeds therein under the supervision of occupying authorities, on the grounds of prewar Polish legislation, on the Polish territory incorporated into the General Government. Moreover, the notaries were obliged to draft deeds coherent with the legislation introduced by the occupant in the General Government. The number of the normative acts that made a brunt on the contemporary notary practice certainly includes the decision of the General Governor of 27 March 1940 on transactions in real estate in the General Government. Cases of deeds by notaries from the Warsaw Notary Chamber were used to portray the strategies of coping with the requirements imposed by the occupant.

Little has been written about the history of post-war notarial deeds concluded by Warsaw notaries during the second world war. Yet it should be recognised that, with respect to both the form and content of the rules of law, they can provide grounds for contemporary conduct of legal transactions, notably entries into mortgage books. It must, however, be remembered that there have been numerous dishonest and corrupt practices based on such altered or forged documents, for which reason far-going caution is advised.

Key words: Nazi occupation, General Government, notarial deed, notary public, Warsaw, validity and consequence of a notarial deed, notarial practice

JACEK MATUSZEWSKI
(ŁÓDŹ)

Kudrycisation – maltreatment of science by bureaucracy

The tendencies to reform science in Poland have intensified in the recent years, which has led to the domination of science by bureaucracy of various levels. The intended Americanisation of organisation and financing of science greatly encumbered researchers with administrative tasks, deprived them of financial stabilisation of research forcing to become involved, at the cost of research, into seeking financial means designed for academic teaching and scientific research. The transformations taking place do not protect even to a smallest degree against the practising of pseudo-science, and the mechanisms for assessment of academic staff instigate taking steps that ensure satisfaction of bureaucratic expectations in the place of scientific activity. The system being introduced leads to the wasting

of funds designed for scientific research, at the same time depriving the academic world of the opportunity of resorting to its legally guaranteed research autonomy. Creation of an illusion of progress achieved thanks to the use of the English language and introduction of ever more numerous obstacles, and formal and legal limits do not provide for a prospect of realistic developments of Polish science.

Key words: reform of education, academic bureaucracy, scientific review, financing science, pseudo-science, pseudo-scientists, parameterisation of science, academic evaluation.

WACŁAW URUSZCZAK
(Kraków)

***One cannot agree to such a manner of practising science.
Infringing authorship rights in historic and legal papers***

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Key words: plagiarism, principles governing references to somebody else's text, paraphrase of copyrighted text, unfair paraphrase.