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Abstracts

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The role of officials in the arrogation of estates by monarchs in medieval Poland before mid-15th century

Although science has long been aware of the problem set in the title of the work (Władysław Semkowicz, Karol Potkański, Michał Sczaniecki, Franciszek Bujak, Jerzy Luciński), yet it still calls for further research. This essay is only a little step towards elucidation. It concerns the role of officials in taking over estates for the Treasury. Therefore, it disregards the cases where officials used their position to increase their own estates. Nor does it encompass the appropriations that, although increased the assets of the monarch, were performed by right holders acting in such a case as private people. The source base for the article are documents from Wielkopolska and Małopolska reaching as far as mid-15th century.

The analysis of source materials makes the author draw a number of conclusions. In the reign of Casimir the Great (Kazimierz Wielkie), the officials participating in arrogations were Kraków palatines, castellans, and also individuals defined in the sources as *officialis* and *procurator*, therefore presumably administrators of estates that belonged to the royal domain. In later days, these were usually the starosts. The sources show officials primarily as the executors of the monarch's orders. On a royal decree, they would perform sovereign intromission into private estates. Yet they would also act on their own initiative and start border disputes, aiming at taking over neighbouring estates. There also harassed the neighbours, and used violence towards them.

Keywords: arrogation of estates, royal officials, restitution, king's estates

Michał Zbigniew Dankowski
(Gdańsk)

Was Łukasz Opaliński jr a monarchist? The Court Marshal of the Crown's philosophy of the system of the state and attitude towards liberum veto

Łukasz Opaliński, known as younger, represented one of the most powerful magnate clans in Wielkopolska and Poland in the 17th century. Holding a high senatorial office, that of the Court Marshal of the Crown – he made himself known as a writer and philosopher of the political system, and also as a superb politician. Older historiographic works perceived him as a monarchist and adherent of the successive courts. These were only the studies by Władysław Czapliński that portrayed him as a politician who was an apologist of the political system of the Commonwealth of Poland–Lithuania. In fact, Opaliński was a political maverick, and his views – expressed both in his writings and political actions – resulted from the correlation of an attitude of an enlightened magnate of mid-17th century, caring mostly about the interest of his clan, and further – that of the state, certainly proud of the political system of his country, yet perceiving also its erosion.

Opaliński's works in philosophy of state, notably *Rozmowa plebana z ziemianinem*, *Obrona Polski*, and *Coś nowego?*, prove the broad horizon of his thoughts. The dignitary's concepts are innovative, and more importantly in no way unrealistic. The magnate found the system of the

Commonwealth the standard, and considered the "golden liberty" of nobility the most perfect social system, in which he was seconded by other writers of the time. Yet, Opaliński was aware of the shortcomings resulting from the accruing "exorbitancy", and especially from the anarchisation of the Polish parliamentary movement. He perceived the existence of *liberum veto* as a necessity, however proper, yet was afraid that inappropriate people could exploit it, hence he postulated its use only in matters of state importance.

Keywords: Opaliński, Commonwealth of Poland–Lithuania, 17th century, "golden liberty", state philosophy, Court Marshal of the Crown, Wielkopolska, monarchists, *liberum veto*

Tadeusz Maciejewski
(Gdańsk)

Impact of the policy of Polish monarchs on the political system of Gdańsk in 1454–1793

The Polish–Pomeranian sovereignty over Gdańsk continued for 338 years (970–1308) and purely Polish for 339 years (1454–1793), which corresponds to the total of 677 years, while that of the Teutonic Order and Prussia (1308–1454; 1793–1807; 1813–1918) – only to 265 years.

The thirteen-years' war continued from 1454 to 1466. Its result on the one hand was the establishment of Royal Prussia, dependent on Poland, and on the other – the granting of four great privileges (in 1454–1457) by King Casimir the Jagiellon (Kazimierz Jagiellończyk) to Gdańsk. They awarded the city with broad territorial, court and legal, trade and customs, maritime, and minting autonomy, with only limited duties towards the sovereign kings of Poland. In the 16th century, controversies between the governing patriciate and the commons started in Gdańsk around 1517. An end was put to them in 1526 by King Sigismund the Old (Zygmunt Stary), who issued *Constitutiones Sigismundi* that generally brought back the old political system of Gdańsk, albeit altered by the setting up of the Third Order being a representation of the commons. In the 17th century, King John (Jan) III Sobieski interfered with the political system of Gdańsk, issuing two decrees in 1678. They reinforced the rights of the monarch in the city and the position of the Third Order. The political system of Gdańsk was reformed again in mid-18th century, by King August III who in 1750 issued a declaration and a statute expanding the rights of the king in the city, and reinforcing the position of the Third Order and changing the principles of its nomination. Finally, plenty of administrative, organisational, economic, and financial questions were revised.

Keywords: Gdańsk, Royal Prussia, Poland, Baltic sea, Polish Kings (Casimir the Jagiellonian/Kazimierz Jagiellończyk, Sigismund the old/Zygmunt Stary, Steven Bathory/Stefan Batory, Jan/John III Sobieski, August III), burgrave, council, town council (bench), Third Order, maritime policy

Piotr Kitowski
(Gdańsk)

Notarius civitatis *in the municipal chancellery of Nowe nad Wisłą in the 18th century*

The town scribe/notary (*notarius civitatis*) played the leading role in the structure of the chancellery of the mediaeval and modern city, exercising general control and being responsible for its operation, with criminal liability included.

The article focuses on the office of the scribe in the lesser cities of the Royal Prussia in modern age, using the case study of one of them: Nowe nad Wisłą. It discusses the basic principles concerning the conditions of employing an notary, required competencies, remuneration and its relationship to that of other municipal professions, and types of additional benefits that were used as a rule to complement the regular salary. This provides a picture of the general position of the writer in the structure of the chancellery and organs of local authorities of a minor city in Pomerania.

Keywords: city chancellery, court scribe, Royal Prussia, Nowe nad Wisłą, minor cities

Michał Kłos
(SA Łódź)

Indivisum from the Napoleonic Code to the Civil Code

The roots of *indivisum*, currently regulated in Art. 1035 and Art. 1036 of the Civil Code reach Roman law, where it was treated as one of the forms of fractional joint ownership. The tradition of so defined commonality found its expression in the French law, and also in other similar legislations (e.g. Austrian). Its characteristic feature is the shares that the successors hold (jointly) in individual property rights that belong to the body of succession, which they can freely dispose of. In turn, a characteristic feature of Germanic legislations is the shaping of relations between the successors based on the principles of commonality of the indivisum. A constitutive feature of this version is lack of shares in individual constituents of the body of succession. It is a property that is separate from those of the successors until the moment of division of the succession. Governed by the Law on Inheritance and also Civil Code, the commonality of succession property is largely of mixed character. On the one hand, it certainly has the form of fractional joint ownership (Art. 1035 of the code), yet on the other, as far as the successors can freely dispose of their share in the entire body of succession (Art. 1050 of the code), the shares in individual rights to succession they can freely dispose of only with the consent of the remaining successors. Disposing a share of a part of succession performed without the consent of even one of the inheritors is valid, yet in certain circumstances it can be considered ineffective (Art. 1036 of the code). Despite lack of clarity, the regulations of the articles 1035 and 1036 of the Civil Code have earned a plethora of judgements and doctrinal statements, which greatly help their application. Thus, they provide a good argument in support of the claim that a remedy for an imperfect law does not need to be its immediate change.

Keywords: joint ownership, commonality of the indivisum, succession, successors

Julian Smorąg
(Łódź)

Introduction of protection of the lasting nature of the contractual labour relations in private relations in the Kingdom of Poland, after 1815

The economic growth that occurred in the Polish lands under the Russian reign in the 19th century resulted from the profound changes in the social structure of the Kingdom of Poland. Establishment of new industrial plants resulted in the an increase in the population of cities. This in turn resulted in the increase in the number of hired hands, and the development of a new social group – workers. The Napoleonic Code, binding at the time in the Kingdom of Poland would only generally regulate the contractual relations between the parties, and did not include any norms or standards that would regulate the conditions of performing labour by the labourers.

The work is primarily devoted to the tracing of the initial period in development of legal norms, providing the nucleus of labour law in the Kingdom of Poland after 1815. The original stimulus was the need to analyse and order available knowledge on the subject, and comparison of individual institutions that regulated labour relations. The principles of hiring workers were contained in the decision of the Governor of the Kingdom of Poland, general Józef Zajączek of 24th December 1823, and later in the Act on Rural Community Courts in the Kingdom of Poland of 24th May 1860. These were the first bodies of law to have introduced generally binding regulations concerning specific employee rights and duties, and also norms that served the protection of labour relations. Even though their scope covered only some categories of hired staff, owing to the introduced regulations and the long periods of their validity, they were of fundamental importance for the people employed on their power.

Acts of law ensured only the basic norms for limited social groups. Moreover, they were deeply founded in the feudal relations of the period. It was so, as the regulations introduced retained the remnants of the feudal power of the overlord over an employee. A range of solutions to ensure better control were introduced towards servants and labourers. Moreover, the typically feudal law to apply bodily punishment remained with the overlords. Despite the above, the law emphasised the equality of the parties to the contract that stemmed from the freedom of changing their place of residence and lease. Moreover, the labourers were granted a range of rights, and their legal situation was regulated. These regulations did not, however, provide any ready-made solutions in labour protection. There were only the grounds, the nucleus for shaping later legal norms that more extensively protected employees against overexploitation of their position by the employers. Thus, they were just the beginning of more material changes that were only to come.

Grzegorz Smyk
(Lublin)

The early stages and evolution of basic notions and definitions in European administrative science

The development of modern legal and administrative sciences in the 19th century incurred the need to define their research scope and basic notions. Among the latter, the central questions of the developing administrative science was the definition of the notion of "administration" itself and of "an administering body", with emphasis on the fundamental features and functions, and consequently also the definition of the legal status of civil servants (providers of administration) and judicial control over its activity. Pioneering concepts in the area emerged in the latter half of the 19th century in French and German theory, yet they differed both as to the method and the goal of the research effort made in the field. Characteristic of the French theory were, traditional for the country, pursuits of the practical ordering of knowledge, and its later application as a foundation for theoretical constructs, while the German science took formulation of appropriate definitions and notions connected to the idea of the state of law for the starting point. This led to different approaches in defining the same notions in the realm of administrative science, approached by the French doctrine primarily from the side of the subject, while the German doctrine emphasised the objective and functional approach. Against this background, representatives of the contemporary Polish administrative sciences presented their own original concepts, which remained within the mainstream of development of the European administrative science.

Keywords: administration, administrative science, administrative bodies, administrative pragmatics – administration courts

Dorota Wiśniewska-Jóźwiak
(Łódź)

The origin of notary structures in Łódź

Notary services in Poland had not originated until the days of the Duchy of Warsaw, where they were based on the regulations of the French notary act of 16th March 8003, entitled "Organisation of notary services". The act remained in force in the Kingdom of Poland after the fall of the Duchy of Warsaw, although the system underwent certain changes. It was repealed only on the 1st (13th) July 1876, together with the Russian notary act of 14 April 1866 coming into force.

The beginnings of notary services in Łódź date back to 1841. Until that time, the residents of Łódź had used legal assistance of notaries operating in the nearest city, that is Zgierz. Together with the development of industry and an increasing number of its population, Łódź required also the need to nominate an increasing number of representatives of this legal profession. In turn, Zgierz did not develop as dynamically as Łódź, for which reason the authorities of the Kingdom of Poland decided to move notaries from there to Łódź.

Keywords: history of notaries, Kingdom of Poland, notaries in Łódź, notaries in Zgierz

Joanna Machut-Kowalczyk
(Łódź)

The beginnings of judicature in Łódź

The development of regional political structures and organs of the judiciary did not manage to keep up with the intensive economic and demographic development intensifying in the second half of the 19th century. A breakthrough in the development of judicature came in 1863, with the transfer of the seat of the Justice of Peace of the District of Zgierz to Łódź. The following stages included a gradual increase in the number of justices of peace and setting up an independent region of the Congress of Justices of Peace in Łódź in 1888. Despite their intensity, the efforts to have a commercial court opened for Łódź in the days of Kingdom of Poland failed. The said court was set up as part of the independent judiciary only when Łódź became an independent court district.

Keywords: organisation of the judiciary in Łódź, courts in Łódź, justices of peace in Łódź, District Court in Łódź

Grzegorz Kądzielawski
(Kraków)

The right of domicile (Heimathrecht) *as an expression of belonging to a commune*

A characteristic feature of Austrian law was the definition of a citizen's belonging to a commune. It was described as the relationship of domicile (German: *Heimathrecht*, Polish: *swojszczyzna*). The details were regulated by the Act of 3rd December 1863 on the regulation of domicile relations. This law was of exceeding significance as it gave the right to stay in the commune, and claim provisions and aid in poverty.

With the Act on Citizenship of the Polish State coming into force on 20th January 1920, holding the right of domicile (in one of the communes within the Polish State, that was previously a constituent of the Austro-Hungarian State) was one of the premises deciding about the right to citizenship. Another legal act that defined further the question of citizenship was the act on the regulation of the right of choosing Polish citizenship by the citizens of the former Austrian Empire and the former Kingdom of Hungary and the right of choosing foreign citizenship by the former citizens of these states holding Polish citizenship, of 26th September 1922. Two bylaws were published for the said act. The first, issued by the Council of Ministers on 12th December 1922, and the other – the ordinance of the Minister of Internal Affairs of 6th February 1925. It guaranteed the persons who enjoyed the right of domicile in the territories that had belonged to Austro-Hungary and which found themselves within the borders of the Republic of Poland, the optional right to the Polish citizenship. The right of domicile could be compared to the duty of registering residence, and from the act on registration of people and identity cards in contemporary Polish legislation.

The article aims at analysing the legal grounds of the operation of the domicile right against the acts-ensconced obligation of belonging to a commune and the citizenship right. It also contains a description of the practical application of the domicile right.

Keywords: the right of domicile, the right of belonging, the right of citizenship, Galicia, commune, citizenship, domicile, Austro-Hungary

Krzysztof Eichstaedt
(SA Łódź)

The institution of the investigating magistrate in interwar Poland.

The article presents the crowning of the works of the Codification Commission working on a draft of the Criminal Procedure Code between the two world wars. The Code came into force on 1st July 1929, introducing judicial inquiry, and police and prosecution investigation to the Polish model of criminal procedure. The article discusses crucial features of investigation and judicial inquiry, the instances that manage them, and the circumstances in which they were resorted to, at the same time pointing to the role that a investigating magistrate had in a criminal procedure, and the dependence of such a magistrate on the prosecutor. A large part of the work is devoted to the discussion of advantages and disadvantages of the position of investigating magistrate, as functioning in the Polish model of criminal procedure between the world wars.

Keywords: investigating magistrate, the interwar period, model of criminal procedure, judicial inquiry, police and prosecution investigation

Sylwia Przewoźnik
(Kraków)

Procedures for guardianship as set down in the files of the District Court in Kraków of 1949

On the grounds of post-war legislation, guardianship affected people who were not capable of independent management of their own affairs, and care for their own well-being. This first of all concerned persons with psychological conditions, mental deficiency, and ones whose psychological disorders were related to alcohol abuse, and wasteful mismanagement. The practice of guardianship was aimed at helping the people unable to manage their conduct and/or their affairs independently. Protection of personal and property interest of these people sometimes required that their capacity to legal transactions had to be limited, or else that they were entirely bereft of it. Guardianship was applied when, due to the state of their health, a person was not capable of making conscious decisions.

The legislator envisaged two types of guardianship: partial, which meant that a person subjected to it concluded legal actions on his of their own, while to have them valid, a consent of the guardian was necessary. On the other hand, such a person could make decisions concerning minor life affairs on his or her own. In turn, the plenary guardianship bereft one of the possibility of performing legal transactions, and had them represented in all legal matters by the legal guardian appointed by the court.

Keywords: capacity to legal transactions, guardianship, non-contentious proceedings, District Court

Marcin Łysko
(Białystok)

Political circumstances of criminal and administrative judicature in the People's Republic of Poland

In December 1951, the reform of the system of criminal and administrative judicature introduced the magistrate model of resolving cases of misconduct involving the social factor. Magistrate courts penalised transgressions of order, yet were also used for the repression of political opponents of Communist authorities. The practice of adjudicating prison sentences and high pecuniary penalties exchanged for detention was characteristic of the operation of the magistrate courts in the capacity of an instrument for combating political opposition until the end of the People's Republic of Poland.

Keywords: administrative/criminal colleges of court, People's Republic of Poland, obligatory supplies, events of March 1968

Jan Meler
(Toruń)

Operation of execution squads in the People's Republic of Poland

The article is devoted to an analysis of the organisation and operation of the system of death penalty execution in post-second-world-war Poland, and the dependence of the solutions applied by the NKVD. The investigation moves from the questions of legal grounds, via the organisation of execution squads, their equipment and uniforms, to the technical questions of the actual administration of death penalty.

Keywords: execution teams, administration of death penalty, executioners, death penalty instruction

Andrzej Szymański
(Opole)

Activity of the Department for Religious Congregations in Płock viz. the Catholic Church in 1950–1989, in the light of documents in the State Archives in Płocku

The actual scope of operation of the Office for Religious Matters – besides its statutory tasks that included the managing of statistics related to denominations, coordination of religious questions with those of other sectors, and preparation of draft legislative acts regulating the attitude of the state to individual religious communities – was defined by the anti-religious and anti-church policy of the governing Communist party, which aimed at the quickest possible atheisation of the country. In the case of the Mazowsze Płockie subregion, with passage of time

the local religious administration became a permanent element of the para-religious life. Beginning with the early 1980s, a regression in the operation of the religious authorities in the country was observed. The state-and-party authorities resigned from a strongly confrontative attitude to the Catholic Church in Poland. This reduced the role of the local departments for religious congregations, which began to drown in the red-tape lethargy. Worth mentioning is the fact that the operation of the apparatus for controlling religious activity in Płock subregion received a one-sided treatment, namely from the perspective of the documents of local religious administration gathered in the State Archive in Płock.

Keywords: Płock, communism, religion, discrimination, Department for Religious Affairs (WdSW)

Jacek Matuszewski
(Łódź)

Jan Adamus's path to scientific oblivion

The article presents the complicated history of the works and achievements of the founder of Medieval Studies Centre at the Faculty of Law of the University of Łódź, Jan Adamus. The eminent researcher of bygone judicial law criticised the political system of the state of the kings of the House of Piast approved by the Polish historiography by the authority of Oswald Balzer. The text quotes ways of avoiding references to the claims of Jan Adamus or glossing them over resorted to by historians, and literature containing material assessment of his achievements, to point finally at some of the reasons that resulted in near absolute avoidance of including the criticism of his predecessors flung by the Łódź-based medievalist.

Keywords: Jan Adamus, methodology of history, monarchy of the Anonymous Gaul, patrimonial monarchy, Piast monarchy, monarchism and republicanism, Polish medieval studies, clan theory, Oswald Balzer

Maciej Rakowski
(Łódź)

Literature and court judgements from between the two world wars in contemporary course books of criminal law and commentaries to the criminal code

The author of the article seeks an answer to the question whether the works published in the recent years make reference to the achievements of the Polish criminal law science from the time between the two world wars. The study focuses on the most common publications, that is academic course books (designed for students) and commentaries on the code (addressed to practitioners). They contain fairly numerous references to the works of criminal lawyers active in the Second Republic of Poland (usually Juliusz Makarewicz, Wacław Makowski, Leon Peiper, Stefan Glaser, and Aleksander Mogilnicki). The course books in criminal law present basic questions and therefore the rulings of the courts (also contemporary) are hardly ever quoted in such

publications. References to the judgements of the Supreme Court of the Second Republic of Poland, also from the pre-code period, are in turn present in the contemporary commentaries to the criminal code.

The materials gathered allow the statement that various contemporary authors, also co-authors of collective works, make use of the achievements of the criminal lawyers of the Second Republic to a different degree. It is worth noting that if a recently published work contains references to pre-war literature on the subject and court judgements, it usually draws conclusions different from those of other authors. Such a status quo proves that bygone literature and judgements are still useful for the interpretation of the binding regulations of criminal law.

Keywords: criminal law, Second Republic of Poland, legal literature, judgements of the Supreme Court of the Second Republic of Poland, teaching criminal law in the Second Republic of Poland

Wacław Uruszczak
(Kraków)

From the experience of a historian of law in the capacity of an expert witness before the court

The judiciary construed as the operation of courts is based on the principle known from its Latin expression as *iura novit curia,* which means that "the court knows the law", which originated with the authors of mediaeval glosses. The rule means that courts should have the fullest possible, even if not complete, knowledge of the law that they are bound to apply in reference to the facts (events) determined in the basic court procedure, understood as events taking place in the external world. History of law is a field of legal sciences. A historian of law has certain specialist knowledge. In the article, the author discusses the court cases in which he was appointed as an expert witness historian of law. For example, he participated in trial before the Regional Court in Wieliczka by the Roman Catholic Parish in Niepołomice vs the District State Forest Authority. The task was to define the legal character of a benefit resulting from the charter of King Casimir the Great (Kazimierz Wielki) of 4th October 1358.

Expert witnesses are summoned to ascertain facts. In the case of an expert witness historian of law, the question, however, looks differently. In this case, the opinion refers not to the realm of pure facts but rather to the legal assessment of these facts in the light of the law binding on the date of the event, construed not only through the letter of the law, but also with the acknowledgement of the contemporary adjudication and the legal doctrine of the time. An expert witness historian of law ascertains the facts against the background and in relation to law. Law, as a rule, defines the essence of a given fact in the light of law. The object of opinion of an expert witness historian of law is thus not only the contents of law that was binding in the past, but rather the practice of its application in a given time and space. Law of the past, especially distant, lies within the notional scope of foreign law, as mentioned in Art. 1143 § 3 of the Civil Procedure Code.

Keywords: judicial proceeding, civil proceeding, evidence in trial, expert witness, expert witness in history of law, history of law, Roman Catholic Parish in Niepołomice

Anna Moszyńska, Zbigniew Naworski
(Toruń)

Utility of history of law for contemporary justice

The article discusses two aspects of utility of subjects that investigate history of law for students of law. At the same time, it is a particular answer to the concepts supported by the Ministry of Higher Education, which found the "occupationalisation" of master degree studies the main goal of the revolutionary reforms introduced in higher education, which is to be accompanied by marginalisation of all the subjects that do not lie within the scope of the concept, and therefore also subjects related to the history of law.

The first of the discussed aspects is of a general nature and concerns the use of the subjects in question for the general education of a graduate of any course, and especially courses concerning social studies and humanities. Lawyers have always been, and (still) are the intellectual elite of the country. With the inadequacy of secondary education and its poor level, lack of knowledge of history of law in future lawyers will certainly be a symptom of a falling level of culture in this occupational group. The authors juxtapose here the Anglo-Saxon model of education to the Continental one, strongly favouring the first.

The other aspect concerns the presentation of specific examples of judgements by contemporary courts, where the knowledge from the realm of history of law is necessary for appropriate judgement. The first of examples concerns a mass phenomenon of reactivation of pre-war companies, not to have them resume their activity, but to acquire damages for their assets, nationalised in the days of the People's Republic of Poland. A flagship example is the company operating under the name S.A. Giesche in Katowice. Adjudication of such disputes without the knowledge of pre-war acts of law and decrees from the early post-war years, is impossible. The second case concerns a broadly publicised question of the State Treasury purchasing the right to abandoned estates on the grounds of the Napoleonic Code (a case in which the Supreme Court has already ruled no fewer than three times). The third case is related to a recent judgement of the Supreme Court, which finally adjudicated a long dispute concerning which regulation from the Civil Code actually regulates the question of flooding the flats of a neighbour on the floor below; where the court provided extensive historical justification, while pointing to the argument supporting its decision. In the fourth case, in its ruling, the court quoted the German BGB of 1896, and in the fifth – the 10th volume of the First Collection of Laws for the Russian Empire.

Keywords: historical legal sciences, lawyers, reform of higher education, court rulings, court practice, historical sources of law