

Roman Law and Legal Education in Congress Poland

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School of Law of the Duchy of Warsaw (1808–16)

We cannot speak about Congress Poland, which emerged at the 1814–15 Congress of Vienna as part of the post-Napoleonic European security system,¹ without a nod to the direct predecessor of this polity, a Napoleonic satellite state: the Grand Duchy of Warsaw. The Duchy was founded by Napoleon in 1807, at the height of his military conquests, assembled from portions of the Polish territory partitioned between Austria and Prussia.² Already in 1808, a modern law school, organised according to the French model of the *école de droit*, was inaugurated in Warsaw with the aim of preparing future Polish judges for the application of the *Code civil* and related French legislation: *le Code de commerce* and *le Code de la procédure civile*. The School of Law was established by Count Feliks Łubieński (1758–1848), the Justice Minister of the Duchy, at his own expense.

A few years later in 1811, the School was extended to comprise also the School of Administrative Sciences.³ The duration of legal studies, which had first and foremost a practical character, was three years. Nevertheless, this still left enough time for the teaching of Roman law as a propaedeutic discipline. It was taught in Latin by Jan Wincenty Bandtkie (1783–1846), Professor of Polish Legal History, who was a Pole by choice and an adherent of Protestantism. In the years 1803 to 1806, he studied at the University of Halle, and in 1814 he was awarded the grade of doctor in Königsberg. Despite these Prussian connections, Bandtkie remained an ardent proponent of the reception of the French *Code civil* into the legal system of the Duchy of Warsaw. It was his conviction that its cultivation in Congress Poland could be coupled with that of the Roman law, which lay at its source.⁴

1 Jarrett, *The Congress of Vienna*, 369 ff.

2 Czubaty, *The Duchy of Warsaw*, 35 f.

3 Ibid., 52; Giaro, *Legal Historians*, 160 f.

4 Sobociński, Jan Wincenty Bandtkie, 157–176; Zarzycka, *Próby zmian prawa rzeczowego*, 175–193.

Bandtkie, who witnessed Poland-Lithuania's passage from the traditional jurisdiction of lay noble judges to the professional administration of justice introduced during the Napoleonic times, was absolutely tireless in stressing the advantages of the latter system.⁵ At the Law School of the Duchy of Warsaw, he taught Roman law to the first year students for 6 hours per week, to the second year for 4 hours weekly, and to the third for 2 hours.⁶ His most remarkable monographs are an introduction to the history of Polish law, *De studio iuris Polonici* (Breslau 1806), an analysis of the significance of Roman law in Europe and particularly in Poland-Lithuania, *Vindiciae iuris Romani Justinianeae* (Breslau 1808), and, finally, a handbook on the institutes of ancient Roman law, *Lineamenta iuris Romani ad ordinem Justiniani imperatoris digesta* (Warsaw 1816).

Bandtkie's works, *De studio iuris Polonici* and *Vindiciae iuris Romani*, which promoted the since discredited idea of Polish law's Roman origins, belonged to the vivid contemporary discussion on the genesis of Polish law,⁷ sparked at the opening of the century by Tadeusz Czacki (1765–1813). In that author's large monograph "On Lithuanian and Polish laws, their spirit, sources, and relation" (*O litewskich i polskich prawach, ich duchu, źródłach i związkach* ..., 2 vols., Warsaw 1800–1801), Czacki appeared rather as amateur erudite than professional legal historian. He simply extended the then popular thesis of the German historian and constitutionalist August Ludwig von Schlözer (1735–1809), the first editor of *Russkaia Pravda* (1767), about the Norman-Scandinavian origin of the Russian state and law, advocating a similar genesis for the medieval law of Poland-Lithuania.

Into these debates entered one of the greatest Polish historians of the 19th century, Joachim Lelewel (1786–1861). It was likely he who, as professor of the University of Vilna, initiated a competition open to the students of the Faculty of Moral and Political Sciences in 1822 under the title "On the Influence of Roman Law upon the Polish and Lithuanian Legislation". In his work on initial Polish civil and criminal legislation down to the Jagellonian era, published in Warsaw in 1828 and soon also in France (*Essai historique sur la législation polonaise civile et criminelle, jusqu'au temps des Jagellons*, Paris 1830) and Italy, Lelewel "searched for the origin of Polish

5 Kodrębski, *Prawo rzymskie* (1993), 25–26.

6 Kodrębski, *Prawo rzymskie w Polsce*, 61.

7 Vetulani, *Dzieje historii prawa*, 10–13; Kodrębski, *Prawo rzymskie w Polsce*, 111–137.

laws in Polish history itself”, as Bandtkie strongly criticised.⁸ The protracted debate extended into the second half of the 19th century, when Bandtkie’s thesis on the subsidiary validity of Roman law in Poland was finally and ultimately discarded.⁹

Both parts of the pre-partition Commonwealth of old Poland-Lithuania are mentioned here separately, since Poland proper, called Polish “Korona” (the Crown), was governed mainly by regional customary law, whereas the law of the Grand Duchy of Lithuania was well codified during the Renaissance time period on three separate occasions. These “Lithuanian Statutes”, promulgated in 1529, 1566, and 1588, demonstrate the considerable influence of Roman law mediated by Byzantine legal collections, particularly in matters of guardianship and testate succession.¹⁰ On the other hand, these excellent pieces of legislation, which situate Lithuania’s efforts in the very front rank of Renaissance codifications, nevertheless consolidated numerous backward legal institutions, such as feudal relations in the countryside, gentry privileges, and serfdom.¹¹

The Royal Alexandrine University (1816–31)

The Kingdom of Poland largely re-emerged as a result of the efforts undertaken by a Polish Prince, Adam George Czartoryski (1770–1861), to resurrect Poland in alliance with Russia.¹² However, what in reality proved to be politically feasible was only a half-resurrected Poland in the form of a semi-autonomous state in unequal personal union with Russia, whose Tsar was automatically the King of Poland. Nonetheless, the Polish constitution of 1815, signed by Tsar Alexander I but drafted by Czartoryski himself, counted among the most liberal of the 19th century.¹³ Czartoryski, who aspired to the post of viceroy, thus played a key role in its creation. Aside from freedom of speech and religious tolerance, the constitution provided for a *Sejm* (parliament) responsible to the king and capable of voting upon

8 Lelewel, *Początkowe prawodawstwo polskie*, 28; Kodrębski, *Prawo rzymskie w Polsce*, 161–162.

9 Kodrębski, *Prawo rzymskie w Polsce*, 137–176; Mecke, *Savignys Programmschrift*, 450–461.

10 Godek, *Elementy prawa rzymskiego*, 199–208.

11 Bardach, *Les Statuts Lituanien*.

12 Kukiel, *Czartoryski and European Unity*, 119 f.

13 Handelsman, *The Polish Kingdom*, 275–276.

laws, an independent army, a national currency, a budget, and a customs boundary separating the Kingdom from Russia.¹⁴

Among these liberal achievements, realised in the aftermath of the Congress of Vienna, can be placed the foundation of a university at Warsaw. Indeed, in 1816 the School of Law and Administration was transformed into a Faculty of the Royal Alexandrine University, founded by Alexander I Romanov as King of Poland, who, however, signed the foundation document on 19th of November 1816 in St. Petersburg. Moreover, he was likewise absent from Warsaw at the faculty's official inauguration on 14th of May 1818.¹⁵ Alexander exercised absolute power and held the formal title of *Autocrat*, but as Polish king he was obliged to abide by the constitution. Instead, he abolished the freedom of the press in 1819 and began the persecution of Polish secret organisations in the 1820s. Particularly notable among the latter was the Freemasonry, which cultivated Poland's patriotic traditions and upon which the sword fell in 1821.

Since Nicholas I, Alexander's successor, continued to curtail Polish constitutional rights, the *Sejm* deposed him as King of Poland in January 1831. In response, Russian troops entered the Kingdom, which, at the end of an eleven-month military campaign, lost its status as a semi-sovereign state. In addition to the closure of Warsaw University, Poles suffered from confiscations, deportations, and other penalties. In 1832 the liberal constitution was displaced by the Organic Statute, and in 1835 the Napoleonic institution of civil death, originally rebutted in the Kingdom, was reinstated as repressive measure.¹⁶ Of lasting significance, however, were changes in the territorial-administrative structure. In fact, by force of the partitions, Polish territories located east of Congress Poland, encompassing Lithuania, Belarussia, and Ukraine, were incorporated directly into the Russian Empire as its western governorates.

On this path of uniformisation and Russification, several legislative and administrative measures bound Congress Poland over the next three decades even more closely to the Empire. Moreover, the initial idea of Russian legislators to codify the old local laws of the western governorates in a *Zapadnyi Svod* (Western Law Collection),¹⁷ employing as source first

14 Maciejewski, *The History of Polish Legal System*, 149–150.

15 Miziołek, *The University of Warsaw*, 24.

16 Lityński, *Die Geschichte des Code Napoléon*, 264.

17 Korobowicz / Witkowski, *Prawo i sądy na zabranych wschodnich ziemiach*, 76–81.

and foremost the Third Lithuanian Statute of 1588,¹⁸ was discarded in 1840 in favour of the uniform *Svod Zakonov* applicable across the whole Empire.¹⁹ After another heavy uprising of the Poles against the Russian authorities, the 1863–64 January Insurrection, any residual legal autonomy of the Congress Kingdom – excepting the continued effectiveness of the three Napoleonic *codes* – was abolished. What had been officially the “Kingdom of Poland” was now renamed *Privislinsky Krai* (Vistula Land).

However, the French *Code civil* survived, although between 1818 and 1836 partially modified, namely in 1818 the regulation of mortgage and in 1825 the whole sector of the law of persons and of the family, which signified the substitution of the complete First Book of the Napoleonic *Code*.²⁰ This Franco-Polish law, christened *Kodeks Cywilny Królestwa Polskiego* (Civil Code of the Polish Kingdom), was modified once more in 1836 by means of the strictly religious Russian marriage law. Despite the Russification measures undertaken after the November Uprising of 1830–31, the modified *Code civil* remained in force at the territory of central Poland. At the end of the 19th century the *Code* represented one of the few distinctive signs of the Polish Kingdom with respect to Russia. Last traces of its effectiveness in Poland were removed only after WW II, during the legal unification of 1945–46.²¹

Returning to the constitutional period of the Polish Kingdom, an academic environment was able to blossom at the Faculty of Law and Administration, for the time being secure within the Royal Alexandrine University of Warsaw. Throughout this period, Bandtkie continued to play first fiddle at the faculty, being repeatedly elected dean from 1814 to 1831. Following the German model of legal education, Bandtkie introduced the tripartite division of Romanistic matters into History of Roman law, Institutions of Roman law, and the Pandects, based on Justinian’s Digest. Each was allocated the same 6 hours weekly, coming to 18 hours in total. However, contrary to the German academic tradition, “Pandects” as taught by Bandtkie and subsequent Polish professors covered not all the current private law effect-

18 Godek, III Statut Litewski, 695–717.

19 Bardach, Les Statuts Litvaniens, 64–65; Giaro, The Wave of Transfers, 43.

20 Sójka-Zielińska, La réception du code Napoléon, 217–18; id., Kodeks Napoleona, 211–223; Lityński, Die Geschichte des Code Napoléon 262–264.

21 Lityński, Die Geschichte des Code Napoléon, 266–268; Mączyński, Wstęp, in Kodeks Napoleona, 12–13.

ive in a given country but rather the whole Roman law in force at Justinian's time.²²

In 1819, on grounds of the University erection decree, Bandtkie obtained the hereditary noble title together with the byname Stężyński. However, his career was not to be capped without some discord, as his friend Lelewel condemned this ennoblement for being undemocratic.²³ The picture of Bandtkie's oeuvre would be left incomplete without mention of his editorial activity. Indeed, his works include an edition of the Kulm Law: *Ius Culmense cum appendice privilegiorum et jurium selectorum municipalium* (Warsaw 1814), and a collection of medieval Polish statutes down to the beginning of the 16th century: *Ius Polonicum, codicibus veteribus manuscriptis et editionibus quibusque collatis* (Warsaw 1831), as well as an edition of Gallus Anonymus' *Chronicon ad fidem codicum, qui servantur in Pulaviensi tabulario* (Warsaw 1824) and Ostroróg's *Monumentum ... pro Reipublicae ordinatione* (Warsaw 1831).²⁴

Following in the footsteps of Bandtkie, there appeared at the Warsaw Law Faculty two younger scholars, each of whom at least partially dedicated their scholarly activity to Roman law: Waclaw Aleksander Maciejowski (1792–1883) and Romuald Hube (1803–1890). In the framework of legal history, both followed Bandtkie, in so far as they combined the teaching of Roman law with that of Polish legal history. Maciejowski was Bandtkie's very talented protégé, who studied with Unterholzner in Breslau (1814–17), with Savigny in Berlin (1817–18), and with Eichhorn and Hugo in Göttingen (1818), where he received his doctoral degree. From 1819 to the closure of the Alexandrine University in 1831, he was occupied there in teaching Roman law in Latin and publishing *Principia Iuris Romani* (Warsaw 1820), a voluminous work embracing the history and institutions of Roman law.²⁵

In 1833, Maciejowski was nominated appellate judge for Mazovia, but he never exercised functions in that post. Instead, from 1837 he taught ancient literature at the *Akademia Duchowna Rzymskokatolicka* (Roman Catholic Spiritual Academy) in Warsaw and from 1840 Polish legal history as an element of the *Kursy Prawne* (Juristic Classes) delivered at the Warsaw

22 Kodrębski, *Prawo rzymskie w Polsce*, 63–66; id., *Prawo rzymskie* (1993), 20–21, 41–42, 45–46.

23 Sobociński, Jan Wincenty Bandtkie, 163–64; Rosner, Jan Wincenty Bandtkie, 69–70.

24 Vetulani, *Dzieje historii prawa*, 14–16; Koredczuk, *Zainteresowania bibliograficzne*, 55.

25 Kodrębski, *Prawo rzymskie w Polsce*, 82 ff; id., *Prawo rzymskie* (1993), 29 ff.

Gubernatorial Gymnasium.²⁶ However, first and foremost he cultivated his private studies on legal Slavistics which made him the first representative of the Slavistic branch of the historical school of law.²⁷ In a certain sense Maciejowski paved the way for the internationally more acknowledged Serbian jurist, anthropologist, and ethnologist, Valtazar Bogišić (1834–1908), drafter of the famous Code of Property for Montenegro,²⁸ who in private correspondence rightly charged Maciejowski with the neglect of customary law.²⁹

In tracing the development of Maciejowski's scholarly profile, his plans upon being elected a member of the Commission for Private Law Reform in Congress Poland in 1820 assume a central position. In the spirit of Eichhorn's Germanist historical school of law, he conceived, while on the Commission, to replace the French *Code civil* with the old law of Poland. Study of the latter led him to a comparative analysis of the legal systems of other Slavic peoples, which culminated in his extensive history of Slavic legislation (*Historia prawodawstw słowiańskich*, in Polish, 4 vols., Warszawa-Leipzig 1832–35). The work appeared also in German translation: *Geschichte der slawischen Rechte* (Leipzig, Stuttgart 1835–39). Already the second Polish edition (Warsaw 1856–65), whose compilation and publication was generously funded by the Russian government,³⁰ numbered a full 6 volumes.

Here, as well as already in another work published in 1839, *Pamiętniki o dziejach, piśmiennictwie i prawodawstwie Słowian* (Memoirs on Slavic History, Literature and Legislation), Maciejowski appeared as a Russophilic Slavophile adjacent to pan-Slavism, which, given the Russian supremacy presupposed by this doctrine, was considered treasonous in Poland.³¹ He traced Poland's historical misfortunes to the reception of Roman Christianity, which implied an alliance with the West and betrayal of one's Slavic brothers. These ideas were promptly assailed by Polish romantic thinkers: not only by Lelewel but also by Adam Mickiewicz (1798–1855) and Edward Dembowski (1822–1846). Even today, Andrzej Walicki (1930–2020) marks

26 Bardach, Waław Aleksander Maciejowski, 150–151.

27 Kodrębski, *Prawo rzymskie w Polsce*, 93–94; Giaro, Maciejowski Waław Aleksander 407.

28 Giaro, *Modernisierung durch Transfer*, 308–309; Meder, Valtazar Bogišić, 517–537.

29 Bardach, Waław Aleksander Maciejowski, 241–242.

30 *Ibid.*, 223–225.

31 Koprowski, *Waław Aleksandra Maciejowskiego spojrzenie*, 173–188.

him out as a “loyalist and Russophile” and a “conservative and loyalist receiving subsidies from the Russian government”.³²

Hube, in his turn, studied in 1818–21 at the Aleksandrine University, where in 1829 he obtained his doctoral degree with a dissertation on theft in Roman law: *De furtis doctrinam ex iure Romano historicae et dogmaticae explicavit ...* (Warsaw 1828). Between 1823 and 1825 Hube additionally studied in Berlin, establishing relationships with German jurists and philosophers. Ultimately, he became a polymath lawyer who taught legal history, criminal law, and canon law in Warsaw (1826–31), whereas in 1841–45 he lectured in Polish on legal history and public law while holding the chair of Polish Criminal and Administrative Law in St. Petersburg.³³ He excelled as an editor of legal sources and author of monographs, in particular *Prawo polskie w wieku XIV. Ustawodawstwo Kazimierza Wielkiego* (Polish Law in the 14th Century. Legislation of Kasimir the Great, Warsaw 1881).³⁴

Hube’s most famous editorial achievement was the 1867 publication of the Salic (Salian) law, known as *Lex Salica*, under the title *Prawo salickie podług textu rękopisu Biblioteki Głównej Warszawskiej*. Additionally, Hube busied himself with the comparative history of Slavic legislation and, among other works, authored *Historia praw karnych słowiańskich. Historia prawa karnego ruskiego* (History of Slavic Criminal Laws. History of Russian Criminal Law), published in Warsaw in two volumes in 1870–72.³⁵ Last but not least, Hube became notorious as a promoter of universal legal history. In this area, he published in Poland a pamphlet on the significance of Roman and Byzantine law among the Slavic peoples (Warsaw 1868) which two decades later appeared also in French translation: *Droit romain et greco-bizantin chez les peuples slaves* (Paris 1889).

In this pamphlet Hube stressed that, “wherever and whenever political power took on the stage of history a stronger and more autonomous shape, we see a tribute paid to Roman law and people devoted to its care; and vice versa, where adversaries of a higher protective power hold the upper hand, there the significance of Roman law grows weaker”.³⁶ Some decades later, in 1911, another Roman lawyer of Polish nationality, Ignacy Koschem-

32 Walicki, Problem religii, 28; id., „Filozofia narodowa”, 38.

33 Kodrębski, Prawo rzymskie (1993), 34–38; Bardach, Studia prawa polskiego, 239–240.

34 Uruszcza, Hube, 307.

35 Vetulani, Dzieje historii prawa, 18–20.

36 Hube, O znaczeniu prawa rzymskiego, 69 (my translation); Kodrębski, Prawo rzymskie w Polsce, 174; Giaro, La Polonia nella cultura, 43.

bahr-Lyskowski (1864–1945), professor at the University of Lemberg, went yet further in the same direction. For him Poland's partitions of 1772–95, which erased the country from the map of Europe, could be attributed directly to the failed reception of Roman law.³⁷ According to Koschembahr, it was the reception that could have strengthened the royal power and reduced political anarchy.

However, we must not forget that there was both a young and an old Hube. The former co-founded in 1828 the first Polish legal journal *Themis Polska*, which ceased publication only with the debacle of the 1830–31 uprising.³⁸ The latter had a brilliant bureaucratic career in the Russian imperial administration. Starting from the modest position of public prosecutor at a Warsaw court, he subsequently attained the high standing of senator of the Empire, President of the Codification Commission for the Polish Kingdom, Director of the Governmental Commission of Religious Denominations and Public Education in Warsaw, honorary member of the St. Petersburg Academy of Sciences, and finally, in 1878, member of the Russian Council of State. In this way, Hube proved able to combine the features of an outstanding Polish historian and a servile tsarist dignitary.³⁹

Szkoła Główna (1862–69)

The next institution of higher education with a separate law faculty and programme of instruction in Polish was the *Szkoła Główna* (Main School).⁴⁰ This university in all but name, located on the premises of the Alexandrine University, was founded under the care of the conservative pro-Russian reformer Count Aleksander Wielopolski (1803–77), who had been appointed head of civil administration for the Polish Kingdom in 1861. Given his bad relationship with Wielopolski, Hube – considered a collaborator with the Russian Empire and traitor despite his 1861 return to Warsaw from St. Petersburg – was not invited to join the teaching staff. The same was true for another unpopular scholar, Wacław Aleksander Maciejowski,

37 Koschembahr, *Zur Stellung des römischen Rechtes*, 293; Giaro, *Modernisierung durch Transfer*, 288.

38 Witkowski, *Themis Polska*, 160 ff.; Mecke, *Savignys Programmschrift*, 440–449.

39 Kodrebski, *Prawo rzymskie w Polsce*, 96–97; Bardach, *Nauka historii*, 269; Witkowski, *Romuald Hube*, 359.

40 Sobociński, *Wydział Prawa*, 123 ff.; Paszkowska, *Walenty Miklaszewski 1839–1924*, 57 ff.

even though he was on better terms with Wielopolski, participated actively in the organisation of the *Szkoła Główna*, and had probably expected the nomination.⁴¹

In consequence, the Chair for the Legal History of the Slavic Nations, planned probably by Waclaw Aleksander Maciejowski himself, remained vacant right down to the closure of the *Szkoła Główna*. Meanwhile, the history of Polish law was taught by Walenty Dutkiewicz, who was a dogmatically oriented specialist in private law. Hence, similarly to the study programme followed at the Royal Alexandrine University of Warsaw, the chief object of instruction at the Main School was Roman law, divided traditionally into three components: Institutions, History, and Pandects. In the first year, students were lectured on the Institutions of Roman law for 3 hours weekly. Also in the first year of study, 2 or 3 hours weekly were devoted to lectures on the History of Roman Law. Finally, Pandects were taught in the second year from 4 (in 1863–64) to 6 (in 1868–69) hours a week.

Besides this traditional triad of Romanistic disciplines, already in place in Bandtkie's time and well established at the Royal Alexandrine University, there were two supplementary courses: "Roman Law of the Family and Succession" taught in the second year of study for 3 hours weekly and, in the third year, "Roman Civil Procedure" taught from 3 (in 1864–65) to 4 (in 1865–66) hours weekly. In sum, within the framework of five autonomous lectures, a total of between 15 and 16 hours weekly were dedicated to Roman law at the *Szkoła Główna*, which exceeded the time that had been allocated to its study at the Alexandrine University. At the same time, contemporary civil law at the *Szkoła Główna* had to content itself with an allocation of only 11 hours a week, administrative law with 5, and each of criminal and constitutional law with 4.⁴²

Small wonder that critical voices invoking the "abnormal supremacy of Roman law" were to be heard at the *Szkoła Główna*.⁴³ However, the explanation for such outright supremacy⁴⁴ was not to be found in straight enthusiasm for positioning legal historical studies in general as the indispensable cornerstone of a properly constituted programme of legal study;

41 Bardach, Waclaw Aleksander Maciejowski, 239–240; Kodrębski, *Prawo rzymskie w Polsce*, 183.

42 Kodrębski, *Prawo rzymskie w Polsce*, 185 f.; id., *Prawo rzymskie* (1993), 44; Wrzyszc, *Die Juristenausbildung*, 215.

43 Kraushar, *Siedmioletnie Szkoły Głównej*, 199–200.

44 Kodrębski, *Prawo rzymskie w Polsce*, 185–186; Paszkowska, *Wydział Prawa*, 70–71.

rather the reason was the practical difficulty of hiring a sufficient number of professors for positive law. The historical nature of Romanistic teaching in Warsaw was accentuated by the circumstance that the study of the Pandects was conceived in Poland – as distinguished from Germany – as constituting a purely historical discipline without any reference to legal practice. However that may have been, the inaugural lecture at the Law Faculty on 26 November 1862, delivered by Franciszek Maciejowski (1798–1873), a nephew of the famous Wacław Aleksander, concerned fundamental legal concepts of the modern legal order of Poland as corollaries of Roman legal principles.

As far as the language of instruction is concerned, while at the Royal Alexandrine University Roman law was taught in Latin and thus preserved as an exception to the rule that all classes were taught in Polish, at the *Szkoła Główna* Polish became the language of instruction even for the Romanistic classes. This event coincided with the era in which Polish legal terminology was being formed and was steadily supplanting Latin in that domain. In this context, it is worth recalling Franciszek Maciejowski's lengthy review of more than 70 pages, examining the Polish translation of the Institutes of Justinian that had been published in 1850 in Cracow by Jagellonian University's Professor Aleksander Cukrowicz.⁴⁵ Scholarly opinion has credited this review with making a significant contribution to the formation of Polish private law terminology.⁴⁶

The typical Polish view of Roman law situates it as an autonomous discipline constituting part of the scholarship of ancient culture.⁴⁷ Accordingly, Roman Law chairs in Poland were usually separated from those of private (civil) law, and rarely did the same faculty members teach in both fields. Some professors, such as Romuald Hube, who not only wrote on criminal law but also worked on its codification,⁴⁸ lectured on both Roman and criminal law. Among the *Szkoła Główna* faculty, this was also accomplished by Walenty Miklaszewski and Franciszek Maciejowski. Besides some criminal law monographs, the latter wrote an extensive two-volume work on the principles of Roman law, *Zasady prawa rzymskiego pospolitego podług instytucji justyniańskich wraz z krótkim wywodem dziejowego rozwoju prawodawstwa rzymskiego* (Warsaw 1865).

45 Maciejowski, *Ocena dzieła*.

46 Kodrębski, *Prawo rzymskie w Polsce*, 196–197; id., *Prawo rzymskie* (1993), 51–52.

47 Giaro, *Modernisierung durch Transfer*, 293; id., 'Provisionally dead', 669.

48 Koredczuk, *Działalność kodyfikacyjna*, 57 ff.

The same purely historical approach can be seen in the work of Teodor Dydyński (1836–1921), who studied at first classical philology and history in Breslau. Only in 1858 did he change to legal studies, studying first at the University of Berlin, where he attended classes in Roman law, probably those of Baron or Degenkolb. Later, he studied with Vangerow in Heidelberg, where in 1864 he attained his doctoral degree on the basis of a dissertation on Roman servitudes that was never published in print. He taught at the *Szkoła Główna* from 1865. In the following year, he habilitated with his work on the difference between the pledge and the mortgage in Roman law, *Rzecz o różnicy między zastawem a hipoteką według prawa rzymskiego* (Warsaw 1866). Besides Roman law, Dydyński also taught the law of the Baltic provinces.⁴⁹

His contemporary Władysław Okęcki (1840–1918) delivered in 1865 his inaugural lecture at the Main School: *O wyborze metody do wykładu prawa rzymskiego* (On the Choice of Method for a Course of Roman law). As anticipated by Hube in his article *O stanie nauki prawa w naszych czasach* (On the Condition of Legal Scholarship in Our Times),⁵⁰ Okęcki distinguished between the French and German approaches, which he respectively described as analytic and synthetic. The German legal method of the time implied a more or less direct application of ancient law to the modern world, generating futile scholarly disputes that were completely alien to Roman legal sources.⁵¹ In passing judgment, Okęcki, who discarded even the subsidiary validity of Roman law, rejected this applicative method with an emphatic exclamation: “Let’s leave those infantile deviations (*dziecinne zboczenia*) to the Germans!”⁵²

Okęcki acquired, undoubtedly, substantial personal experience of German legal method, having studied private law at the University of Heidelberg, where he attained his doctoral degree. Indeed, after the November Uprising led to the closure of the Alexandrine Warsaw University, this particular higher education experience came to be shared by a further five of its law professors.⁵³ At the *Szkoła Główna*, Okęcki authored an 1866 monograph on Roman marriage law: *Prawo familijne u Rzymian*, Vol I: *Prawo małżeńskie*. But the Russification of the *Szkoła Główna* was now in

49 Wołodkiewicz, Teodor Dydyński 1836–1921, 75.

50 Hube, O stanie nauki prawa, 1–17.

51 Kodrebski, Prawo rzymskie (1993), 15–16; Giaro, ‘Lasciamo queste devianze’, 136–37.

52 Okęcki, O wyborze metody, 16, 30, 32; cf. Giaro, ‘Provisionally dead’, 669.

53 Kodrebski, Prawo rzymskie (1993), 84 n. 400.

train, and the School was replaced from the academic year 1869–70 by the Russian Imperial University. In contrast to his Romanist colleague Teodor Dydyński, who was accustomed to displaying a rather loyalist attitude, the dissenter Okęcki quitted his service, settled in the countryside outside Warsaw, and dedicated himself to translations of Tacitus.⁵⁴

The Russian Imperial University (1869–1915)

The Imperial University of Warsaw, born through the forceful transformation of the *Szkoła Główna*, was merely a provincial university at the western border of the Tsar's Empire with a greatly reduced number of enrolled students. The teaching language was Russian, save courses in which the Polish language itself was the object of study and the courses on Polish civil law, which remained in place as part of the autonomous private law system of Central Poland which since Napoleonic times had been based on the French *Code civil*. Only during WW I, after the retreat of the Russians, Warsaw University again was formally reactivated by the German authorities in its fully Polish incarnation. According to the much-cited aphorism of the first Rector of this reborn university, medicine professor Józef Brudziński (1874–1917), in the period between 1869 and 1915 “the University was quasi non-existing”,⁵⁵

The Law Faculty of the Imperial University counted eleven chairs, initially entrusted mostly to Polish professors of the predecessor institution, the *Szkoła Główna*. The Chair of Roman Law went to Teodor Dydyński, who taught also the law of the Baltics. In 1873, the Chair of Slavic Legal History, the only one in the whole Empire, was assigned to the Russian scholar Fiodor Fiodorowicz Zigel (1845–1921), who was twice elected dean: in 1900–1905 and 1911–15. He followed the tradition of comparative legal history, promoted by Waław Aleksander Maciejowski, proponent of the Slavic Historical School of Law and author of the extensive six-volume “History of Slavic legislation”,⁵⁶ and, most notably, by Joachim Lelewel.

54 Kodrębski, *Prawo rzymskie w Polsce*, 190 ff.; id., *Prawo rzymskie* (1993), 49–50.

55 Bosiacki, *O dziejach Wydziału Prawa*, 21; id., *Wydział Prawa Cesarskiego Uniwersytetu*, 93 f.

56 Kodrębski, *Prawo rzymskie w Polsce*, 82 ff.; Giaro, *Maciejowski Waław Aleksander*, 407.

Moreover, in 1901 and again in 1905, Zigel unsuccessfully proposed to the authorities the foundation of a chair of Polish Legal History.⁵⁷

Teodor Dydyński was primarily interested in the socio-economic history of Rome, to which he dedicated his most important publications: *O prawie rolnym w starożytnym Rzymie* (On Agrarian Law in Ancient Rome, Warsaw 1881) and *Cesarz Hadrian. Studium historyczno-prawne* (Emperor Hadrian. A Study in Legal History, Warsaw 1899), both known also in their Russian translations. However, his main juristic work was an analysis of 298 manuscripts of Justinian's Institutions (*Beiträge zur handschriftlichen Überlieferung der Justinianischen Rechtsquellen. Institutiones*, Berlin 1891). Dydyński introduced seminars as a new form of academic legal education, distinct from the usual lecture, for which he prepared a selection of Roman legal sources, a Latin-Polish vocabulary, and a Polish translation of the *Institutiones* of Gaius.⁵⁸

In 1865, Walenty Miklaszewski (1839–1924) began his academic career in the fields of substantive and procedural criminal law at the *Szkoła Główna* and later continued his teaching in the same disciplines, as well as in penitentiary law and similar matters, at the Russian Imperial University of Warsaw. Moreover, as already mentioned, his interests extended with equal vigour to Roman law, which ultimately gave rise to the publication of his “Lectures on Roman Civil Procedure” (*Wykład postępowania cywilnego rzymskiego*, Warsaw 1885), itself based on the popular handbook of a Swiss pupil of Savigny's, Friedrich Ludwig von Keller. In the 1880s, the latter's *Der römische Civilprozess und die Aktionen in summarischer Darstellung* reached its 6th edition (Leipzig 1883).⁵⁹ However, its allegedly unsatisfactory scholarly level was criticised by Dydyński.⁶⁰

Despite the Russian respect for German legal scholarship and the fact that most of the Imperial University's Polish professors had received their doctorates from German universities, in addition to those they had already obtained at the *Szkoła Główna*, they were nonetheless expected to confirm their titles through a Russian law faculty within three years. In this way, some of them gathered a harvest of no less than three doctoral titles: Teodor Dydyński from the University of Heidelberg, the *Szkoła Główna* at Warsaw, and from St. Petersburg Imperial University, while the inter-

57 Bosiacki, Wydział Prawa Cesarskiego Uniwersytetu, 110–112, 123–124.

58 Kodrębski, Prawo rzymskie (1993), 56 ff.

59 Ibid., 47 f.; Paszkowska, Walenty Miklaszewski 1839–1924, 77 ff.

60 Dydyński, Review of Miklaszewski, 312.

nationally acknowledged specialist in administrative law, Antoni Okolski (1838–1897), garnered his from the University of Jena, the *Szkoła Główna*, and St. Petersburg.⁶¹ To give a further example, to his doctorates from Heidelberg and the *Szkoła Główna*, Walenty Miklaszewski added one from the University of Moscow.⁶²

From 1887 on, all the deans of the Warsaw Law Faculty were Russians. In 1892, there were still five Poles among the 14 professors of the faculty. But by 1909, after Dydyński left his chair, there remained not a single Polish professor at the faculty, which was considered strongly Russified and hostile to Poles. This Russification of the scholarly community went hand in hand with the Russification of the judiciary, which was a process that became considerably intensified after the January Uprising of 1863–64. In 1876, this led to the sweeping away of the old Napoleonic era judicial organisation, which had until then been preserved in the Polish Kingdom. There was imposed in its place the same court system that had in 1864 been implemented in the core of the Russian Empire through the so-called “judicial reforms” introduced by the “Tsar Reformer”, Aleksander II (1855–81).⁶³

The reorganisation of 1876 also affected the French Code of Civil Procedure of 1806 (*Code de procédure civile*), introduced into the Duchy of Warsaw along with the *Code civil*. The 1806 code had to that date been preserved in the Kingdom of Poland despite the promulgation of the Russian Civil Judicial Proceedings Act (CJPA) of 1864. Thus it was only in 1876 that there took place the definitive substitution of the French code by the Russian one, which itself was not free of French inspirations.⁶⁴ Although the influence of the Russian CJPA on the subsequent development of Polish civil procedure was inferior to that exercised by the German *Zivilprozessordnung* of 1877 and the identically named Austrian act of 1895, the transfer of some Russian procedural institutions into the legal system of the Kingdom of Poland proved to be not only effective but also durable.

As regards the situation of the various legal professions on the territory of the old Kingdom of Poland (now called *Privislinsky Krai* or Vistula Land),⁶⁵

61 Paszkowska, *Z dziejów Wydziału Prawa Cesarskiego Uniwersytetu*, 157, 159.

62 Paszkowska, Walenty Miklaszewski 1839–1924, 77–78; Kodrębski, *Prawo rzymskie w Polsce*, 200.

63 Avenarius, *Rezeption des römischen Rechts*, 311–323; Kirmse, *The Lawful Empire*, 4–14.

64 Rylski, Weitz, *The Impact of the Russian Civil Judicial Proceedings Act*, 80–82.

65 Wandycz, *The Lands*, 195; Bosiacki, *Wydział Prawa Cesarskiego Uniwersytetu Warszawskiego*, 96.

in general advocates and notaries remained without exception Poles, while in contrast judicial and public prosecutorial posts were increasingly filled with Russians. The office of court president was even *de iure* reserved for Russian nationals, and the language of judicial proceedings was changed to Russian.⁶⁶ Indeed, from 1886 on Poles were *de facto* excluded from all judicial nominations. But despite this, the Polish Kingdom's system of general courts – composed of 10 district courts (*sądy okręgowe*) and the Judicial Chamber (*Izba Sądowa*) as the sole court of appeal – never became, even on the eve of the First World War, wholly Russified from the ethnic point of view.⁶⁷

At Warsaw's university, this Russification tendency was accompanied by the restriction of classes in Roman law and the abolition of classes dedicated to the legal institutions of Western European countries. The reduction of the former discipline was significant, since out of 16 weekly hours of Roman law at the *Szkoła Główna* in the 1860s only 4 hours remained during the 1870s and 80s at the Imperial University.⁶⁸ The abolition of the latter discipline was painful, since in the beginnings of the Imperial University those Polish professors less proficient in Russian law and language had to base their teaching upon Western scholarship. Even if the discipline continued to be taught at Russian law faculties in the Empire's core area,⁶⁹ in Warsaw the rigid requirement was only the historical study of Russia and its law, conceived in a Slavophilic and pan-Slavic spirit.⁷⁰

In summary, it seems that the Russian higher education authorities attempted to cut off the Warsaw university's law faculty not only from the legal, political, and constitutional achievements of Western Europe but also from academic exchange – even at the limited level of scholarly contacts – with the Tsarist Empire's leading law faculties, which were traditionally located in the Imperial Universities of Saint Petersburg and Moscow. After all, Warsaw was the third biggest city of the Russian Empire, and, as evidenced by its 237 enrolments in the academic year 1880–81, Warsaw's Law Faculty continued to be the third biggest law school of the Empire by student numbers. Indeed, it was not until the academic year 1897–98 that the law

66 Giaro, *La Polonia nella cultura*, 45; Korobowicz, *Ostatni sędziowie Polacy*, 119–20.

67 Korobowicz, *Sądownictwo Królestwa Polskiego*, 96–100; id., *Warszawska Izba Sądowa*, 453–471.

68 Kodrębski, *Prawo rzymskie* (1993), 55 f.

69 Bosiacki, *Wydział Prawa Cesarskiego Uniwersytetu*, 109.

70 Suslov et al. (eds.), *Pan-Slavism and Slavophilia*.

school of Warsaw was overtaken in this respect by that of Saint Vladimir Imperial University of Kiev.⁷¹

Whereas the short-lived *Szkoła Główna* (1862–69) had been a Polish university in all but name, its successor institution, the Imperial University of Warsaw, was nothing more than the product of its Russification. It was a typical Russian establishment of higher learning. It represented Russian scholarship and Russian state power in Congress Poland, which after the strangulation of the 1863–64 January Uprising had been stamped with the name Vistula Land. The stress put by the imperial authorities on the Russianness of the university had its aim both in the humiliation of the Poles for their recent rebellion and in their integration into the Russian centre. This tendency grew during and after the 1905–1906 revolution in reaction to the patriotic movements of Polish students, which occasioned the temporary closure of the University from 1905 to 1908, as previous tensions had done in 1899 and 1901.⁷²

However, after reopening its doors in 1908, the Imperial University of Warsaw fatally remained at the centre of Russo-Polish conflict. In fact, professors of the Russian Imperial University were expected to disseminate not only the products of their scholarship as such but also the Russian imperial ideology. Their status was that of *de facto* state officials, and as such they were part and parcel of the bureaucratic machinery of the Russian Empire. Therefore, despite its location in unfriendly Polish environs, the Imperial University of Warsaw became in time a bastion of Russian nationalism, elegantly cloaked in Slavophile and pan-Slavic ideology. Nobody was crying in Warsaw when, in the summer of 1915, together with the expelled Russian troops the university was evacuated to its new location in the distant city of Rostov-on-Don.

A look over the borders

Extending our sightlines to the position held by Roman law in other countries of East Central Europe during the second half of the 19th century, in private law we encounter almost everywhere the dominating phenomenon

71 Rudokvas / Kartsov, *Der Rechtsunterricht*, 289, 294.

72 Kiepuska, *Uniwersytet Warszawski*, 498–524; Rolf, *Imperial Russian Rule*, 198–199, 210, 215.

of Romanisation or Pandecticisation.⁷³ All the national legal systems of the continent, whether codified or not, came under this influence. Its effects were felt first and foremost in Prussian case law on the *Allgemeines Landrecht* of 1794,⁷⁴ but also – in close temporal proximity – in Austrian scholarship on the General Civil Code (ABGB), in force from 1811.⁷⁵ Subsequently, wherever in East Central Europe the ABGB was imposed, particularly in southern Polish Galicia, in Bohemia and Croatia, it was invariably adapted to the German Pandectist model in the course of the second half of the 19th century.⁷⁶

In the Danubian Monarchy, Pandecticisation found its vehicle of transmission in the university reforms implemented by the conservative minister of religion and education, Leo, Graf von Thun und Hohenstein (1811–1888). These were crowned by two developments: the 1850 introduction of a new programme of legal studies (*Juristische Studienordnung*) and the 1855 Ordinance of Study and Final Examinations (*Juristische Studien- und Staatsprüfungsordnung*). The reforms, imposed during the so-called Neo-Absolutism or Bach's era following the revolution of 1848, brought the age of natural law's domination within Austrian legal scholarship to a close. As had earlier been the case in Germany, this discipline was now replaced within the Habsburg Realm's legal education by Roman law and legal history,⁷⁷ cultivated according to the standards of the German Pandect-scholarship.⁷⁸

The Thun-Hohenstein reforms doubtlessly improved the position of Roman law in the Kingdom of Galicia and Lodomeria, situated in southern Poland, in terms of its quantitative scholarly influence. For instance, at the Law Faculty of Lemberg University before the reform there had been only 9 hours of Roman law per week, but afterwards this rose as high as 16 to 18 hours.⁷⁹ However, we must not forget that the main tendency of Thun's reforms – praised as introducing (limited) teaching and learning freedom

73 Wieacker, *A History of Private Law*, 350 f.; Giaro, *Europa*, 339 f.; Zimmermann, *Roman Law*, 4–5.

74 Wollschläger, *Praktische Theorie*, XLV; Eckert, *Gesetzesbegriff und Rechtsanwendung*, 571–590.

75 Ogris, *Die Universitätsreform*, 474–496; Hausmaninger, *The Austrian Legal System*, 315.

76 Giaro, *Diritto romano attuale*, 139–140.

77 Lentze, *Die Einführung*, 59 ff.; Simon, *Die Thun-Hohensteinsche Universitätsreform* (2007), 25–29.

78 Lentze, *Die Eingliederung*, 301 ff.; Simon, *Die Thun-Hohensteinsche Universitätsreform* (2017), 1–12.

79 Kodrebski, *Prawo rzymskie w Polsce*, 249.

(*Lehr- und Lernfreiheit*)⁸⁰ – was to exert upon the provincial universities an autocratic, centralizing, and Germanising impact. Hence, the Faculty of Law and Political Sciences of the Jagellonian University at Cracow, with its notorious “separatism”, became the target of aggressive denunciations launched in 1849–50 by the minister plenipotentiary, Dr. Joseph Reiner.

In his comprehensive reports to the Imperial Austrian authorities, inspector Reiner questioned many practices followed at the Cracow Law Faculty: Polish as the language of instruction as well as the teaching of classes in Roman and Polish law. The former he considered too extensive; the latter, completely superfluous. Given that ascribing scholarly importance to comparative law was still pie in the sky, Dr. Reiner also took issue with the teaching of the French *Code civil*. This specific teaching focus could indeed be regarded as a peculiarity in East-Central Europe, once accounted for by virtue of its being a remnant of the times when Cracow was part of the Grand Duchy of Warsaw (1809–15) and also of its legal system in its subsequent incarnation as the Free City of Cracow (1815–46).⁸¹ In consequence of this supervision, diligently exercised by Dr. Reiner, several German professors found the way open to positions at Cracow’s law faculty, displacing their Polish peers in the process.⁸²

In the structuring of academic legal education, the lands of the various partitioned parts of Poland often followed different paths. In the Prussian partition, called initially the Grand Duchy of Posen and subsequently the Province of Posen, there was no university at all; a state of affairs that persisted right up until the end of the First World War. During the 19th century, repeated attempts by local civil society to found a university at Posen, the capital city of Greater Poland (*Wielkopolska*), were frustrated first by the Prussian and subsequently the German authorities. The nearest available universities were the German ones in Berlin and Breslau. Only in May 1919, after the withdrawal of the German troops and authorities at the end of the First World War, the reborn Polish state could finally proceed to establish the university at Posen, now called again *Poznań*.⁸³

80 Ogris, *Die Universitätsreform*, 15–16; Simon, *Die Thun-Hohensteinsche Universitätsreform* (2007), 7–14.

81 Pauli, *Die fremden und eigenen Quellen*, 175–187; Uruszczak, *Prawo francuskie*, 91–100; Malec, *Wpływ Code civil*, 69–86.

82 Patkaniowski, *Dzieje Wydziału Prawa*, 228 ff.; Wrzyszczy, *Die Juristenausbildung*, 235 f.; Stinia, *The Jagiellonian University*, 164 f.

83 Giaro, *Europa*, 136; id., ‘Provisionally dead’, 699.

In 1867, as the Habsburg Empire became the dual Monarchy of Austria-Hungary, Galicia was granted provincial autonomy. Contemporaneously, a quite different fate befell the Kingdom of Poland. Its total incorporation into the Russian Empire was in train, and separate public Polish institutions there were being wound down. However, the growth of scholarly output at both Galician universities of Cracow and Lemberg, enjoying their academic autonomy, could not change the simple fact that until the 20th century Warsaw remained the third biggest city of the Tsar's Empire. From the second half of the 19th century the Kingdom of Poland dynamically developed; in 1901 it contributed 26 % of property tax revenue and 10 % of industry and trade tax revenue of the Empire.⁸⁴ No wonder that economic and intellectual life in Warsaw was more intense than at the sleepy universities of Galicia and Lodomeria.

Consequently, the capital city of the Kingdom of Poland, Warsaw, sustained also its lead in private law. Warsaw cared most about the Polish legal terminology which was being forged at this time. The formation of national legal terminology influenced the development of modern national language and modern national spirit. This chain of success was possible thanks to the short but fecund seven-year season of the *Szkoła Główna*: “we are all of this Polish school”, declared in 1913 Stanisław Posner (1868–1930), the jurist and economist who could graduate only in 1893 from the Law Faculty of the Russian Imperial University.⁸⁵ In this context, the lack of commentary to the Franco-Polish civil code of the Kingdom, which was never produced in Warsaw even if it was planned for the 100th anniversary of the promulgation of the *code civil*, fades into the background.⁸⁶

In 1884, thirty years after the Austrian reforms of Thun-Hohenstein, it was the Russian Empire's turn to receive its own new Programme of Legal Studies. The benefactor in this instance was Tsar Aleksander III (1881–1894), and the new programme was quickly followed in 1885 by a new Ordinance of Final Examinations.⁸⁷ Both were also based on Roman law, given its position as the underpinning of the general theory and introduction to Russian private law.⁸⁸ However, these regulations did not apply to the Law Faculties of the Universities of Helsinki and Warsaw, which enjoyed

84 Ślusarska, *Udział Królestwa Polskiego*, 33.

85 Posner, *Themis Polska*, II; cf. Sobociński, *Wydział Prawa*, 144–147.

86 Dunin, *Stuletnia rocznica*, 35.

87 Kolbinger, *Im Schleppeil Europas?*, 11–19; Avenarius, *Fremde Traditionen*, 325–330.

88 Avenarius, *Fremde Traditionen*, 350–354; Giaro, *Russia and Roman Law*, 311–312.

special status. Moreover, during the preparation of these reforms in Russia's core area, there is absolutely nothing to be heard of Count von Thun und Hohenstein. Indeed, all the textbooks of Roman law adopted at that time in Russia were translations from German works, or mere imitations of the German originals.⁸⁹

Last but not least, we must take into consideration the renowned story of the Russian Imperial Government seeking in Western Europe an appropriate establishment of legal education to host the best graduates of the law faculties of the Tsar's Empire, expected in due course to become their professors. Ultimately, the government opted to inaugurate in 1886 a Russian Institute (or Seminar) of Roman Law not in Vienna but at the *Friedrich-Wilhelms-Universität* of Berlin.⁹⁰ In consequence, the reception of the German Pandect-scholarship in Russia – already in progress for decades via the routes of academic legal dogmatics and the case law of the Governing Senate – was decisively strengthened. However, this process was apparently completed without any Austrian agency or participation but in a direct line from Wilhelmine Germany.

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89 Rudokvas / Kartsov, *Der Rechtsunterricht*, 296 ff.; Avenarius, *Fremde Traditionen*, 381–386.

90 Rudokvas / Kartsov, *Der Rechtsunterricht*, 313 ff.; Kartsov, *Das Russische Seminar*, 317 ff.

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