

TADEUSZ MACIEJEWSKI



The History of Polish Legal System

from the 10th
to the 20th century



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To Students of Legal Studies

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Translator's note

With its sheer size and staggering variety of historical and legal terms, spanning no fewer than ten centuries, this work will definitely remain in the present writers' memory for a long time as a particularly demanding language test and one of their most challenging tasks so far. Generally speaking, the language used by lawyers is an occupation-specific terminology inextricably connected with the legal system which it describes. Depending on the country, it also tends to have certain culture-specific foibles such as extreme verbosity (Polish) or quaint archaisms (English). Despite problems with finding the appropriate vocabulary, we have still made our best efforts to produce a good translation. That is why we hope that *The History of polish legal system*, in its English version, will please English-speaking readers as much as it did Polish ones and contribute to a better knowledge of our legal system abroad.

In this brief note, we would like to explain the strategies and decisions which we have made in the course of our work on this book as translators. Firstly, most of the historical vocabulary has been drawn from Norman Davies' *"God's Playground,"* a magnificent history of our country written in English, and *"The Cambridge History of Poland,"* edited by Oskar Halecki. Most legal terms have been supplied by Ewa Kucharska's English translation of the Polish Civil Code and *"Dictionary of Law Terms"* by Ewa Myrczak-Kadłubicka, both of them an invaluable aid to a translator. When it comes to proper names (cities, countries, regions, people, political organizations), we have taken a three-pronged approach:

1. All place names (e.g. names of cities) are given in the language version of that country, to which they now belong, with all typographic marks included (e.g. *Łódź*, *Piotrków*, *Orava*, etc.), except in the case of those well-known place names which have a well-established English designation (e.g. *Warsaw*, *Silesia*, *Vilnius*, *Cracow*).
2. Those proper names which may be broken down into separately meaningful units have been translated (e.g. *Wielkopolska* as Greater Poland; *Małopolska* as Lesser Poland).
3. As the book mentions scores of different offices, functions, types of laws and documents in old Poland and then goes on to compare and contrast them with others, we have found it necessary, for reasons of clarity, to be as faithful to the original as possible and use approximate translations only when the context

permitted (e.g. *województwo* as 'voivodship' rather than 'province' or 'region,' as the latter two serve to translate the Polish words *provincia* and *region*, which the text clearly distinguishes from *województwo*). This might be considered a little awkward by some, but it enables us to avoid terminological confusion and has the benefit of bringing the foreign reader closer to Polish reality.

There is also the problem of culture-specific terms which seem to have no English counterpart at all, e.g. *wilkierz*, *wyderkaf*. These have been given in the German version (*Willkür*, *Wiederkauf*) because German words are more easily adaptable in English.

Sebastian Macieja
in cooperation with Piotr Kitowski and
Dawid Michalski,
August 4th, 2015

Foreword

This textbook is an attempt to present the history of Poland's state system and law from the earliest times up to the present. The material has been periodized in the traditional manner. In so doing, the basic criterion of division, which has been adopted, are the transformations of the form of the state. These would, as a matter of course, lead to transformations in the substance of court law. The greatest challenge for the scholar is to periodize the state system and the law in old Poland (up to 1795). The basis for the periodization of the state system was provided by *Stanisław Kutrzeba* in his "The History of the State System in Poland (1905)", and elaborated by *Juliusz Bardach* in "The History of the State and Law of Poland" (1957). It is as follows:

- a) the rise of tribal states and, subsequently, of the Polish state (8th century – mid-10th century);
- b) patrimonial monarchy (mid-10th century – 1320), whereby that period may be further divided into early-feudal monarchy, up to 1138, and fragmentation;
- c) estate monarchy (1320 – 1454); and
- d) the nobles' republic (1454 – 1795), divided into subperiods of noblemen's democracy (1454 – 1652), magnate oligarchy (1652 – 1764) and the beginnings of constitutional monarchy (1764 – 1795).

Recently, *Wacław Uruszczak* has proposed a new periodization by dividing the history of the law and the state system in Poland into three periods: Piast Monarchy (966–1370), Kingdom of the Angevin and the Jagiellons (1370 – 1572) and the Commonwealth of Two Nations (1572 – 1795).

The starting point and time-span of some of these periods have stirred controversy to date. This is as a result of different evaluations of processes related to the state system and the law, even despite the adoption of similar criteria of systematization. It is far easier to systematize the history of the law in the old Polish period. The basis for that was created by *Michał Bobrzyński*, the author of "The History of Poland in Outline" (1877), who proposed the division of his native history into three periods:

- a) primeval (up to 1241);
- b) medieval (1241 – 1505), and
- c) modern (1505 – 1795).

On that basis, *Józef Rafacz* created a division of the history of old Poland's law into the following periods: medieval (up till the late 15th century, rightly assuming that sources concerning the history of the law up to the 13th century are extremely scanty) and modern (16th - 18th centuries). To do justice to the differing periodizations