

TADEUSZ MACIEJEWSKI



The History of Polish Legal System

from the 10th
to the 20th century

The History of Polish Legal System

from the 10th
to the 20th century

TADEUSZ MACIEJEWSKI

The History of Polish Legal System

from the 10th
to the 20th century



Wydawnictwo C.H.Beck
Warszawa 2016

Wydawca: Anna Wieczorek

Tłumaczenie: Sebastian Maciejka we współpracy z Piotrem Kitowskim
i Dawidem Michalskim

Korekta językowa: David Malcolm

Zdjęcie na okładce: „Konstytucja 3 Maja 1791 roku”
Jana Matejki na Zamku Królewskim w Warszawie
Adrian Grycuk/CC BY-SA 3.0-pl/Wikimedia Commons

Translation of this publication has been financed by Dean of the Faculty
of Law and Administration, University of Gdańsk

This publication has been financed by University of Gdańsk,
Powszechna Wyższa Szkoła Humanistyczna „Pomerania” in Chojnice
and Notary Office Piotr Jakub Lis



© Wydawnictwo C.H.Beck 2016

Wydawnictwo C.H.Beck Sp. z o.o.
ul. Bonifraterska 17, 00-203 Warszawa

Skład i łamanie: TiM-Print, Warszawa
Druk i oprawa: Elpil, Siedlce

ISBN 978-83-255-8203-6



ISBN e-book 978-83-255-8204-3

To Students of Legal Studies

Contents

Translator's note	XVII
Foreword	XIX
Chapter I. The state system of old Poland (up to 1795)	1
§ 1. Patrimonial monarchy	1
I. The rise of the Polish state	1
1. The clan-tribe system and its collapse	1
2. The beginnings of Polish statehood	2
3. The patrimonial character of the state	2
II. The political system	3
1. The Monarch	3
2. State administration	4
3. Co-governing bodies	6
III. Judiciary	7
1. State courts	7
2. Ecclesiastical courts	7
3. German town law courts	8
IV. Social system	8
1. Knighthood	8
2. Clergy	9
3. Burgesses	10
4. Peasantry	13
§ 2. Estate monarchy (1320 – 1454)	14
I. The Crown of the Kingdom of Poland	14
II. The structure and rights of the estates	15
1. Nobility	15
2. Clergy	17
3. Burgesses	17
4. Peasantry	17
III. The political system	18
1. Royal power	18
2. Central offices	19
3. Local offices	19
4. The development of estate representation	21
IV. Judiciary	22
1. Royal courts	22
2. Nobles' courts	22
§ 3. The Nobles' republic (1454 – 1764)	23
I. Description of the state system	23

II. Territory and population	24
III. The monarch	25
1. Royal power	25
2. Elections	26
3. <i>Pacta conventa</i> and King Henry's articles	27
IV. The General Sejm	28
1. Structure	28
2. Competence	29
3. Proceedings, voting, resolutions	30
4. Resident senators	31
V. Sejmiks	31
VI. Confederacy and rokosz	32
VII. Central and local offices	33
VIII. Poland and Lithuania's Union of Lublin (1569)	33
IX. Central judiciary	34
1. Royal court	34
2. Crown and Lithuanian Tribunals	34
3. Sejm court	35
4. Assessors' court	35
5. Referral court	35
6. Marshal's court	35
7. Referendary's court	35
§ 4. The beginnings of constitutional monarchy (1764 – 1795)	36
I. Sejm reforms of 1764 – 1766	36
1. Sejm reforms	36
2. Treasury and Military Committees	36
II. The reforms of the delegate sejm of 1767 – 1768	37
III. The reforms of the delegate sejm of 1773 – 1776	38
1. The Permanent Council	38
2. The National Education Commission	39
IV. The Four Years' Sejm Reforms	39
1. Parties	39
2. Preparation and enactment of the Constitution of May 3 rd	40
3. Social system	40
4. Political system	42
V. The Confederacy of Targowica (1792) and Grodno (1793)	46
VI. Kościuszko's insurrection (1794)	47
1. Insurrection authorities	47
2. Peasant reforms	47
3. Judiciary	48
VII. Partitions. Territories and population	48
Chapter II. The law of Old Poland (up to 1795)	49
§ 1. Sources of law in the medieval period	49
I. The concept of a source of law	49
II. Characteristics of the system and sources of medieval law	50
1. Domination of customary law	50
2. Particularism of the law	50
3. The estate character of the law	51

4. Case law	51
5. Systematics of the law	51
III. Historical sources	52
IV. Books of endowments	52
V. Documents	53
VI. Polish law – land law	53
1. Collections of customary law	53
2. Statutory law	54
3. Resolutions of Sejms and sejmiks	56
4. Court books	56
VII. Canon law	56
VIII. Town law	57
1. Customary law	57
2. Willkurs	58
3. Legal instructions and urteils	59
4. Town privileges	59
5. Town books (board of aldermen's or council's books)	59
IX. Village law	60
§ 2. Sources of law in modern times	61
I. The Crown's land law	61
1. Statutory law	61
2. Jan Łaski's Statute (1506)	62
3. Codification of law	63
4. The Crown Metrica	65
5. Court books	65
II. Particular law in other areas of the Commonwealth	66
1. The law of Masovia	66
2. The law of Royal Prussia	66
3. The law of Lithuania	67
III. Canon law	68
1. Universal law	68
2. Provincial statutes	68
IV. Town law	68
1. Customary law	68
2. Statutory law	70
3. Legal literature	70
V. Village law	71
VII. Roman law	71
§ 3. Private law	72
I. Personal, marital and family law	72
1. Personal law	72
2. Marital law	76
3. Family law	78
II. Property law	80
1. The concept and classification of property	80
2. Possession and its protection	80
3. Ownership	81
4. Forms of ownership	81
5. Limitations of ownership	83

6. Acquisition of ownership	84
7. Loss of ownership	85
8. Limited real rights	85
III. Inheritance law	87
1. Intestate succession	87
2. Testate succession	89
IV. Law of obligations	90
1. The rise of obligations	90
2. Methods of assertion and strengthening of contracts	91
3. Expiration of obligations	92
4. Liability for obligations	93
5. Types of contracts	93
§ 4. Criminal law	95
I. Crime	95
1. Concept	95
2. Terminology	95
3. Basis for liability	96
4. Types of liability	97
5. Grounds for limiting or barring liability	98
6. Circumstances which limited or barred prosecution	98
7. Forms of participation in a crime	100
8. Classification of crimes	101
9. Types of crimes	102
II. Penalty	104
1. The concept and rationalization of penalty	104
2. The rules of administering a penalty	105
3. Types of penalties	106
§ 5. Court proceedings	111
I. Land trial	111
1. Principles	111
2. Parties at trial and their representatives	112
3. The competence of courts	113
4. Judicial examination	113
5. Enforcement proceedings	120
II. Town trial	121
1. Complaint trial	121
2. Inquisition trial	122
III. Village trial	124
Chapter III. The state system of the partitioned Polish territories (up to 1918)	126
§ 1. Polish territories in the first period of partitions	126
I. Russian partition	126
1. Social system	126
2. Structure of government	126
3. Judiciary	127
II. Prussian partition	127
1. Social system	127
2. Administrative system	127
3. Judiciary	128

III. Austrian partition	129
1. Social system	129
2. Political system	129
3. Judiciary	130
§ 2. The Free City of Gdańsk under Napoleon Bonaparte (1807 – 1813)	130
I. The foundation and dissolution of the Free City of Gdańsk	130
II. Political system	131
1. Principles of the political system and constitution drafts	131
2. The office of governor and agencies under his control	131
3. Central administration	132
4. Local administration	133
III. Judiciary	133
§ 3. The Duchy of Warsaw (1807 – 1815)	134
I. The foundation, territorial expansion and dissolution of the Duchy of Warsaw	134
II. Political system	134
1. Constitution	134
2. Monarch	135
3. Sejm	135
4. Council of State	136
5. Ministers and the Council of Ministers	137
6. Territorial administration and local-government	137
III. Social system	138
IV. Judiciary	139
1. Structure	139
2. Civil judiciary	140
3. Criminal judiciary	140
4. Cassation court	141
5. Administrative judiciary	141
6. Competence judiciary	141
§ 4. The Polish Kingdom (1815 – 1915)	141
I. The rise of the Polish Kingdom and its constitution	141
II. Political system	142
1. King	142
2. Viceroy	143
3. Council of State (General Assembly and Administrative Council)	144
4. Government committees	145
5. Sejm	146
6. Territorial administration. Local-government	147
III. Social system. Limitations on citizens' rights and freedoms	149
IV. Judiciary	150
§ 5. Prussian partition (1815 – 1914)	151
I. The legal status of the Grand Duchy of Poznań. Autonomy of the state system	151
II. The structure of administration	152
1. Administrative division	152
2. Territorial local-government	153
III. Changes in the legal status of the estates	155
IV. Judiciary	156

1. Common judiciary	156
2. Administrative judiciary	156
§ 6. The Free City of Cracow (1815 – 1846)	157
I. The rise and fall of the Republic of Cracow	157
II. Political system	157
1. Supreme authorities	157
2. Territorial administration	158
III. Judiciary	159
§ 7. Austrian partition (1809 – 1914)	159
I. The state system of Galicia in the years 1809 – 1861	159
II. The autonomy of Galicia (from 1861). Political system	160
1. Domestic authorities	160
2. Territorial self-government	161
3. Governmental authorities	161
4. The administration of the school system	162
III. Judiciary	162
Chapter IV. The law in the partitioned Polish territories (up to 1918)	164
§ 1. Sources of law	164
I. Civil law	164
1. Prussian partition	164
2. Austrian partition	165
3. The Duchy of Warsaw	166
4. The Polish Kingdom	166
II. Commercial law	167
1. Prussian partition	167
2. Austrian partition	167
3. The Duchy of Warsaw and the Polish Kingdom	168
III. Labour law	168
1. Prussian partition	168
2. Austrian partition	168
3. The Polish Kingdom	168
IV. Criminal law	169
1. Prussian partition	169
2. Austrian partition	169
3. The Duchy of Warsaw and the Polish Kingdom	169
V. Civil procedure	171
1. Prussian partition	171
2. Austrian partition	171
3. The Duchy of Warsaw and the Polish Kingdom	171
VI. Criminal procedure	172
1. Prussian partition	172
2. Austrian partition	172
3. The Duchy of Warsaw and the Polish Kingdom	173
§ 2. Civil law	173
I. Personal, marital, family and custody law	173
1. Personal law	173
2. Marital law	175
3. Family law	176

4. Custody	177
II. Real rights	178
1. Ownership	178
2. Mortgage law	178
III. Inheritance law	180
1. General issues	180
2. Testate succession	180
3. Statutory succession	182
4. Contractual succession	183
IV. Law of obligations	183
1. Sources of obligations. Contracts	183
2. Civil liability	184
V. The areas of law distinguished from civil law	184
1. Commercial law	184
2. Labour law	186
§ 3. Criminal law	188
I. The doctrines of criminal law	188
1. Humanitarianism	188
2. The classical school	189
3. Positivist schools	190
II. General issues. The effectiveness of a criminal statute	190
III. Crime	191
1. The concept of crime	191
2. Classification of crimes	191
3. Liability	192
IV. Penalty	194
1. Definition and classification of penalties	194
2. Types of penalty	194
§ 4. Court proceedings	196
I. Civil trial	196
1. Common civil trial	196
2. Contemporary civil trial	198
II. Criminal trial	199
1. Inquisitorial trial	199
2. Mixed trial	200

Chapter V. The state system of the Second Republic, and during the Second World War	202
§ 1. The Second Republic (1918 – 1939)	202
I. The political system in the years 1918 – 1921	202
1. Establishment of a central state government	202
2. The Small Constitution (February 20 th , 1919)	203
3. Territory and population	204
II. The political system in the years 1921 – 1926	204
1. The March Constitution (March 17 th , 1921)	204
2. The functioning of the political system	208
III. The political system in the years 1926 – 1935	208
IV. The political system in the years 1935 – 1939	210
1. The April Constitution (April 23 rd 1935)	210

2. The functioning of the system	213
V. The administration of the 2 nd Republic of Poland	214
1. Central administration	214
2. General (consolidated) administration	215
3. Special (non-consolidated) administration	217
4. Local-government	217
5. Administrative judiciary	218
VI. The structure of justice	219
1. Basic principles of the judiciary	219
2. Common courts	219
3. Special courts	220
§ 2. The Free City of Gdańsk under the Treaty of Versailles (1920 – 1939)	220
I. Origins, territory and population	220
II. The political system of the Free City of Gdańsk	221
1. Constitution	221
2. Legislative power. People's Assembly	221
3. Executive power. The Senate	221
III. Judiciary	222
IV. The rights of Poland in the Free City of Gdańsk	222
V. The prerogatives of the League of Nations and its High Commissioner	223
§ 3. The state system of the Polish state during the Second World War (1939 – 1945)	224
I. The state system of the occupied territories	224
1. The <i>Ribbentrop-Molotov</i> pact and its consequences	224
2. Polish territories under German occupation	224
3. Polish territories under Soviet occupation (up to 1941)	226
4. The structure of the judiciary of the occupying states	226
II. The Polish government-in-exile	227
III. The Polish Underground State	229
Chapter VI. The law of the Second Republic of Poland and during the Second World War	232
§ 1. Sources of law	232
I. Sources of law in the 2 nd Republic period	232
1. The legal situation after gaining independence	232
2. Codification Committee	233
3. Codification of civil law, commercial law and law of civil procedure	234
4. Codification of material criminal law and criminal procedure	236
II. Sources of law in the Polish territories during the Second World War ..	237
1. Sources of law in the territories under German occupation	237
2. Sources of law in the territory under Soviet occupation	238
3. Sources of law applied in the special judiciary of the Polish Under- ground State	238
§ 2. Civil law and civil procedure	238
I. General issues	238
II. Personal, family and marital law	239
III. Real rights	240
IV. Inheritance law	240

V. Law of obligations	240
VI. Commercial law	241
VII. Litigious civil procedure	241
§ 3. Material criminal law and criminal procedure	242
I. Material criminal law	242
1. General principles	242
2. Felony	243
3. Penalty	243
II. Criminal procedure	244
§ 4. Labour law	245
I. Employment of a person	245
II. Tariff agreements and labour regulations	245
III. Legal protection of employees	245
IV. Employee associations	246
V. Control of compliance with the provisions of labour law	246
VI. Social insurance	247
Chapter VII. The state system under the people's government (1944 – 1989)	248
§ 1. People's Poland (1944 – 1952)	248
I. The political system during the take-over of power by communists (1944 – 1947)	248
1. The establishment of a communist government	248
2. The Polish Committee of National Liberation (PKWN)	249
3. The Interim Government (RT) and the Interim Government of National Unity (TRJN)	250
4. Elections to the Legislative Sejm (1947)	250
5. Borders, territory and population	251
II. The political system under the Small Constitution (February 19 th , 1947)	251
1. The enactment of the Small Constitution	251
2. The Legislative Sejm	251
3. The President of the Republic of Poland	252
4. The Council of State	252
5. The Council of Ministers	253
6. Territorial administration	253
7. Judiciary	253
8. Citizens' rights and obligations	254
§ 2. The People's Republic of Poland (1952 – 1989)	254
I. The constitution of July 22 nd , 1952, its amendments and principles	254
II. Supreme state authorities	255
1. The Sejm	255
2. The Council of State	256
III. The High Chamber of Inspection (NIK). Other forms of administrative control	257
IV. Supreme administrative authorities. The Council of Ministers	258
V. Local authorities and state administration	259
VI. Judiciary	260
1. Common courts	260
2. Special courts	261
VII. Citizens' rights, freedoms and obligations	262

Chapter VIII. The law under the people's government (after 1944)	263
§ 1. Sources of law	263
I. General issues	263
II. Civil law and civil procedure	263
1. Change in ownership relations	263
2. Consolidation of civil law	264
3. Codification of civil law	265
III. Material criminal law and criminal proceedings	266
1. Criminal regulations on responsibility for the effects of the war and the struggle against political opposition	266
2. Criminal regulations to protect the people's government	266
3. Criminal regulations to protect the new socio-economic relations	266
4. Codification of material criminal law and criminal procedure	267
IV. Labour law	267
§ 2. Basic changes in the law	268
I. Civil law and civil procedure	268
1. Marital and family law	268
2. Real rights	269
3. Inheritance law	269
4. Law of obligations	270
5. Civil procedure	270
II. Material criminal law and criminal procedure	270
1. Material criminal law	270
2. Criminal procedure	271
III. Labour law	272

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*, *wyderka*. 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