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Studies on the legal culture of the 13th and 14th century

- the Book of Elbląg and the Book of Henryków

1. THE BOOK OF ELBLĄG

The Book of Elbląg – The Oldest Collection of Polish Laws is one of the Slavic oldest relic of law. This monument of law was written over a hundred years before the Statutes of Casimir the Great. *The Book of Elbląg* consists of unnumbered articles which were divided by editors into 29 articles, the last of which is unfinished. Articles 1-3 refer to the judicial organisation, Articles 4-6 to the court proceedings, whereas Articles 7-20, 26 and 27 outline the penal law. Succession law was included in Articles 21 and 22, ordeals (*judicium dei*) in Articles 23-25, while the problems of peasant runaways and their vindication in Article 28, and feudal burdens of peasants in Article 29. What is important for the Author's studies is the information relating to the criminal liability for crimes committed on the territory of an *opole* (Latin: *vicinia*, in Middle Ages the lowest unit of administration), which could shift the responsibility onto a village, and the village in turn, onto a family. Public roads were protected by the royal *mir* (peace). Infringing the ruler's property

was liable to severe penalties. Real sanctions differed from nominal ones, i.e. they were several times lower. As for ordeals, there were the trials by combat, such as duels with swords or with sticks, and trials by ordeal, such as the ordeals of hot iron and cold water¹.

The source does not have its own name, it was firstly disclosed in the form of a photograph of the 15th-century copy. It constitutes a part of the binding (Polish: *klocek*) found in Elbląg called after its discoverer *Codex Neumannianus* containing "Lübeck Law" (pp. 1-100), "Prussian Law" (pp. 100-120), "The Oldest Collection (Polish: *zwód*) of Polish Laws" (pp. 120-168), "German-Prussian Dictionary" (pp. 169-185)². The manuscript was discovered in 1825 by Ferdinand Neumann, an apothecary and history lover, at an auction after the Elbląg merchant Abraham Grübna (1740-1823). Nevertheless, Ferdinand Neumann concealed the information about the manuscript, wanting to study it himself. In 1867 he showed the manuscript to Adam Sierakowski, who made a copy of it and gave it to the historian Antoni Zygmunt Helcel. The original manuscript was

¹ *Najstarszy Zwód Prawa Polskiego*, eds. Józef Matuszewski i Jacek Matuszewski, Łódź 1995; see *Najstarszy Zwód Prawa Polskiego*, ed. Józef Matuszewski, Warszawa 1959.

kept in the Municipal Library in Elbląg from 1868 until World War II, as a result of which it disappeared. It arose enormous interest of scholars who gave it their own names. Antoni Zygmunt Helcel gave it the name *The Book of Common Law of the 13th Century*³, Maksymilian Winawer - *The Oldest Polish Common Law*⁴, Borys Grekow - *Polish Truth*⁵, Adam Vetulani - *The Law of Poles*⁶, Karol Buczek - *The Oldest Collection* (Polish: *spis*) of *Polish Law*⁷, Józef Matuszewski *The Oldest Collection* (Polish: *zwód*) of *Polish Laws*⁸ and the name used by various scholars *The Book of Elbląg*⁹, from the place where it was found. Discussions among scholars are connected both with the hypothetical original form of the source, the place and time of its writing, the origin of its author and the legal norms included in it.

The place of origin of *the Book of Elbląg* was probably the territory of Polish lands of the Teutonic state. This assumption results not only from the place where the manuscript was found but also from the contents of the binding in which it was found. According to Adam

Vetulani, the source originated in Silesia¹⁰. The Book of Elbląg is a record probably made by a scribe of German origin, in German language, to be used by the Teutonic Order under whose rule lived Polish people. The principle of personality of law observed by the Teutonic jurisdiction guaranteed the use of Polish common law for Poles¹¹. However one should mention a separate concept proposed by Witold Maisel, who came forward with the hypothesis that the source is a translation of the original which was executed in the Polish language¹². The editor of *The Oldest Collection of Polish Laws*, Józef Matuszewski, indicated that, despite the anonymity of the author, the content of the source shows that it was an educated man, connected with court practice. Perhaps, for the purpose of court proceedings, he wrote down the common law from Polish informants. It is difficult to determine the time of the source origin. More often than not, the time period between 1226 and 1320 is given. It is caused by the lack of information about the Polish Kingdom, which suggests that the

² J. Matuszewski, *Księga elbląska*, in *Słownik starożytności słowiańskich. Encyklopedyczny zarys kultury Słowian od czasów najdawniejszych do schyłku wieku XII*, eds. W. Kowalenko, G. Labuda, T. Lehr-Spławiński, Vol. 2, z. 2, Wrocław-Warszawa-Kraków 1965, 552-553.

³ A. Z. Helcel, *Księga prawa zwyczajowego polskiego z wieku XIII*, in *Starodawne Prawa Polskiego Pomniki*, Vol. 2, 1870, 13-33.

⁴ M. Winawer, *Najdawniejsze prawo zwyczajowe polskie*, Warszawa 1900.

⁵ B. D. Grekow, *Polskaja Prawda. Opyt izuczenija obszczestwiennogo i političeskogo stroja Polszy XIII w. po Polskoj Prawdie*, in *Izbrannyje trudy*, Moskwa 1957.

⁶ A. Vetulani, *Niemiecki spis polskiego prawa zwyczajowego. Uwagi źródłoznawcze*, „Czasopismo Prawno-Historyczne” 5(1953), 180-197; A. Vetulani, *Nowe wydanie niemieckiego zwodu prawa polskiego*, „Czasopismo Prawno-Historyczne” 12(1960), z. 2, 195-232; A. Vetulani, *Prawo Polaków. Niemiecki spis polskiego prawa zwyczajowego*, in *Księga pamiątkowa dla uczczenia pracy naukowej Kazimierza Przybyłowskiego*, Kraków-Warszawa 1964, 399-411. See S. Płaza, *Z badań nad wykładnią Prawa Polaków*, „Czasopismo-Prawno-Historyczne” 14(1962), 83-137.

⁷ K. Buczek, *O najdawniejszym spisie prawa polskiego*, „Kwartalnik Historyczny” 67(1960), z. 1, 161-169.

⁸ *Najstarszy Zwód Prawa Polskiego*, ed. J. Matuszewski, Warszawa 1959; J. Matuszewski, *W sprawie śląskiego pochodzenia najstarszego spisu prawa polskiego*, „Czasopismo Prawno-Historyczne” 5(1953), 198-205; J. Matuszewski, *Normy recypowane i rodzime w Najstarszym Zwodzie prawa polskiego*, „Czasopismo Prawno-Historyczne” 22(1970), z. 2, 187-224.

⁹ W. Maisel, *Rozważania nad Księgą Elbląską*, „Czasopismo Prawno-Historyczne” 40(1988), z. 2, 43.

¹⁰ A. Vetulani, *Prawo Polaków...*, 409-411.

¹¹ See M. Biskup, G. Labuda, *Dzieje zakonu krzyżackiego w Prusach. Gospodarka- społeczeństwo- państwo- ideologia*, Gdańsk 1986.

¹² W. Maisel, *Rozważania nad Księgą Elbląską*, „Czasopismo Prawno-Historyczne” 40(1988), z. 2, 44-49; W. Maisel, *Ze studiów nad prawem polskim w państwie krzyżackim w XIV i XV wieku*, „Czasopismo Prawno-Historyczne” 25(1983), z. 2, 60.

author wrote his work before the coronation of Wladislaus I the Elbow-high (Polish: *Władysław Łokietek*). It is assumed that it could refer to the coronation of Przemysł II in 1295. While Adam Vetulani pointed to the connection between Article 1 of the source and the papal bull promulgated in 1253 by Pope Innocent IV, which allows us to define the chronology of the source for the years 1253-1295.

In this work the Author uses the 1995 edition of the *The Oldest Collection of Polish Laws* by Józef Matuszewski and Jacek Matuszewski, which replaced the 1959 edition by Józef Matuszewski¹³.

The content of *The Book of Elbląg* includes legal norms connected with the organisation of courts and the court proceedings. Generally speaking, the collection includes legal institutions having been in use much earlier than the writing took place. In many cases it had already been archaic: trial by combat (judicial duel), trial by ordeal with the participation of the clergy (forbidden by Pope Innocent III at the Fourth Lateran Council of 1215) or a clearing oath. The author devoted a lot of space to the penal law (Articles 7-19, Article 26), particularly, defining punishments in case of manslaughter, injury, robbery, rape and theft. The main criterion of punishment differentiation was to which estate of the realm the accused belonged. Penal sanctions were casuistic and resulted from the place the punishable act was committed, the person

of the culprit and the harmed. *The Book of Elbląg* includes information on collective responsibility: "If the neighbourhood cannot shift the responsibility for manslaughter onto anybody, they must, as it was said above, pay were-gild (man price, Polish: *główszczyzna*). If the neighbourhood accuses a village that from there the manslaughter was committed, and the village claims to be innocent, then the accusation is refuted by duel, otherwise the village must pay for the killed. If the village points to the family because of whom [the manslaughter] was committed, and the family claims to be innocent, the family must clear their name in a duel, otherwise they pay for the killed. If the family accuses somebody of manslaughter, and he claims to be innocent, he must take part in a duel or carry the iron. If he is defeated, he must, as it was said above, indemnify". *The Oldest Collection of Polish Laws* is an indispensable source of knowledge about early medieval, private and legal, relations¹⁴.

2. THE BOOK OF HENRYKÓW

Liber foundationis claustris Sanctae Marie in Heinrichow i.e. *The Book of Henryków* was preserved as a work divided into two books and the supplement, the oldest catalogue of bishops of Wrocław. Around 1270 Peter, the third abbot of the Monastery in Henryków, described the history of the foundation of the monastery and its possessions. In its chapters he included the history of each of several

¹³ See W. Uruszczak, *Historia państwa i prawa polskiego. Tom I (966-1795)*, Warszawa 2010, 71-73; L. Krzyżanowski, *Historia ustroju i prawa w Polsce. Repetytorium*, Bielsko-Biała 2013, 24-38; A. Lis., *Recepcja prawa w monarchii piastowskiej do 1202 roku. Zagadnienia wybrane*, „Przegląd Prawno-Ekonomiczny” 16(3/2011), 50-63.

¹⁴ *Najstarszy Zwód Prawa Polskiego*, eds. J. Matuszewski, J. Matuszewski, Łódź 1995. See J. Matuszewski, *Najstarszy zwód prawa polskiego*, Warszawa 1959. J. Matuszewski, *Rzekome rycerstwo niższe w najstarszym zwodzie prawa polskiego*, „Roczniki Historyczne” 23(1957), 137-155; J. Matuszewski, *Dyskusja nad Najstarszym Zwodem Prawa Polskiego*, „Czasopismo Prawno-Historyczne” 12(1960), z. 2, 233-260; J. Matuszewski, *Normy recypowane i rodzime w Najstarszym Zwodzie prawa polskiego: uwagi krytyczno-polemiczne*, „Czasopismo Prawno-Historyczne” 22(1970), z. 2, 187-224.

villages or settlements (Polish: *źreb*) being the property of Henryków. Book II brings us to the end of 1310. The author of the first book did not give his name. It is the continuer of the work who informs the reader that it was Peter who wrote the previous book. Bearing in mind that he had already been a monk in 1227 (mentioned as the third after Henry and Bodo), his date of birth should be moved back to the end of the 12th century. Until 1269 he had been the Abbot of Henryków, which does not mean that he died in that year. Scholars tend to move the date of his death to 1276. According to Roman Grodecki, Peter, the Abbot, came from Silesian settlers from Germany who settled in the area of Lubiąż (Leubus) Abbey. However, this hypothesis seems less probable. The analysis of the work itself convinced Józef Matuszewski that Peter was German. As I mentioned earlier, Peter came to Lubiąż from Henryków in 1227 together with eleven fathers. He acted as the abbot in the years 1259-1269. Peter often represented the interests of the monastery in the ducal court. Undoubtedly, he was an educated person who knew German, Polish and Latin. Stanisław Rospond presumed that he finished the Wrocław Cathedral School. The author of the Book of Henryków indicated that his aim was to record the property of the abbey from the first Abbot Henry (1227-1234), until Abbot Godfrey [Gottfried] (1269-1273). He succeeded in presenting the history of the abbey from its foundation in 1227 until 1259¹⁵. According to Roman Grodecki, he is also the author of "The Catalogue of Wrocław Bishops" (before 1276). The continuer of Peter, the author of Book II, was a monk. My

studies do not include the so-called Henryków sentence recorded in the part on the Brukalice village: "Daj ać ja pobruszę, a ty poczywaj"¹⁶.

The authors of *the Book of Henryków* used the information coming from their own experience, the data they had witnessed themselves (e.g. land and Cienkowiec ownership exchange, granting the rights to a part of Skalice, visitation of Bishop Thomas in Henryków). They recorded the information from eyewitnesses or well-informed people. The first of Peter's informants were bishops: Wawrzyniec of Wrocław, Paul of Poznań and Wawrzyniec of Lebus (Lubusz). Peter knew the monastery founder, Nicolas, the notary, and the other notary Konrad of Drzeniów, as well as his predecessors, Henry and Bodo. He knew the dukes of Silesia: Henry I the Bearded, Henry II the Pious, Bolesław II the Horned (Polish: Rogatka), Ladislaus of Salzburg (of Wrocław) and many other noblemen and knights. The evidence of Peter's numerous contacts can be found in his talks with a simple peasant, Kwiecik. Besides, they used the documents kept in the monastery archives. Cistercian Peter had such documents at his disposal which are priceless old Polish sources of legal knowledge. The scribe cited directly the text of 13 privileges and, undoubtedly, he had many more at hand. Perhaps the whole monastery archives were under his care. These documents are the source of information, with which the content of the book narration can be verified with facts certified in diplomas. An example may be the 1239 privilege of Henry the Bearded, according to which the four heirs of Bobolice sold their property to

¹⁵ J. Matuszewski, *Najstarsze polskie zdanie prozaiczne: zdanie henrykowskie i jego tło historyczne*, Wrocław-Łódź 1981, 23.

¹⁶ T. Michałowska, *Średniowiecze*, Warszawa 2003, 266-268.

the Cistercians for 19 grzywnas¹⁷. From the description of Cistercian Peter we may learn much more, that brothers of Bobolice were villains. They were found guilty as a result of a duel and were either to be put to death or pay the ransom, which is exactly what they did, selling their property to the monastery¹⁸.

The purpose of writing *the Book of Henryków* was to make a description of the property together with the information on legal relations which led to the endowment, as well as the preparation for effective defence of monastery property rights (against the right to retract). That right entitled all the relatives of the first land owner to retract-repurchase or even retract-seizure. *The Book of Henryków* is a kind of chronicle, a narrative work describing the events which took place. It is a source of knowledge of the old law of the Piast Poland. It is not a record of laws but gives a description of its functioning, besides a thorough and precise presentation of the monastic property and its development. It provides information on the right to the land of particular groups of its holders and describes the fate of villages, settlements (Polish: *żrebia*), forests, fields and people connected with them. Generally, the book has a chronological structure, more often than not modified objectively. The work is a source of information about the so-called right of relationship (*Ius propinquitatis*) and allows clarifying the differences between

patrimonium and the land acquired through purchase or endowment. The source on which Abbot Peter, as well as his follower in Book II, based his work is the information from experience, eyewitnesses and well-informed people. The documents found in the monastery archive are important sources used by the author.

The Book of Henryków contains important information about Polish medieval law. As Józef Mitkowski¹⁹ and Stanisław Rospond²⁰ indicate, it is a work of inestimable value. Whereas, Władysław Semkowicz classified it as one of the most valuable medieval historical sources, particularly for the internal history²¹. As indicated by Roman Grodecki²² "the data referring to the old law of the ownership of property is equally important, being the basis of the whole agrarian system. Laconic and, hence, not clear enough subject terminology, included in many documents of those times, is here precisely described and characterised, and illustrated with clear examples. In their light, it becomes certain that peasants, pompously referred to as "heirs" – *haeredes*, did not hold the right of land ownership but only a frail hereditary right of its use. How meaningful and convincing here is the fact relating the recovery by the Piroszowic peasant family of the Głębowic Wood from the monastery of Henryków after the duke acknowledged their hereditary rights to the succession after their

¹⁷ *Księga henrykowska*, ed. R. Grodecki, Wrocław 2004, 41.

¹⁸ See W. Uruszczak, *Władza książęca, wiece sądowe i prawo własności na Śląsku w XIII w. w świetle Księgi henrykowskiej*, „Czasopismo Prawno-Historyczne” 54(2002), z. 1, 83-103; J. Falenciak, *Studia nad prawem rzymsko-kanonicznym w „Księdze Henrykowskiej”*, Wrocław 1966.

¹⁹ J. Mitkowski, *Początki klasztoru cystersów w Sulejowie*, Poznań 1949, 4; T. Silnicki, *Dzieje i ustrój kościoła na Śląsku do końca XIV*, in *Historia Śląska*, Vol. 2, z. 1, Kraków 1939, 356.

²⁰ S. Rospond, *Dzieje języka polskiego na Śląsku*, Wrocław 1948, 10.

²¹ W. Semkowicz, *Paleografia łacińska*, Kraków 2009, 387-388; W. Korta, *Średniowieczna annalistyka Śląska*, Wrocław 1966, 344.

²² *Księga henrykowska*, ed. R. Grodecki, Wrocław 2004, XLVI-XLVII.

grandfather's brother: all their contemporaries understood that it was proven that the wood ownership belongs to the duke, and not to those peasants; therefore, directly afterwards, the duke unscrupulously granted the wood ownership to his knight Stefan and removed those "heirs" from the land allocated to them. The book describes other, similar cases. Also the land ownership belonging to knights and clergy is explained in more detail in this historic relic than in documents treating the matter in a terse style. The attitude of various classes of the society towards the duke, arch-human ways of assuring his favour and benevolence, functions of various authorities and state offices, ways of holding public gatherings (Polish: *wiec*) or public trials (Polish: *sądy wiecowe*) and many other social customs and traditions of community life are the areas which, without *the Book of Henryków*, would have remained totally unknown to us because in other historical sources of that epoch, and in documents in particular, they did not come to light, while here, in a free and easy narration, they found excellent description"²³.

SŁOWA KLUCZOWE

Księga elbląska, Księga henrykowska, Najstarszy Zwód Prawa Polskiego, prawo zwyczajowe, historia prawa, monarchia Piastowska

STRESZCZENIE

Źródłem poznania dawnego prawa Polski piastowskiej jest „Księga Henrykowska” i „Księga Elbląska”. Pierwsza z nich zachowa-

ła się jako dzieło podzielone na dwie księgi oraz dodatek, będący najstarszym katalogiem biskupów wrocławskich. Księga pierwsza spisana została około 1269-1273, przez trzeciego z kolei opata klasztoru w Henrykowie – Piotra; zaś księga II której autorem był również zakonnik została doprowadzona do końca 1310 roku. „Księga Henrykowska” nie jest spisem prawa lecz daje opis jego funkcjonowania, oprócz dokładnego przedstawienia rozwoju majątku klasztornego, przekazuje informacje o ówczesnym prawie do ziemi poszczególnych grup jej dzierżycieli. Dzieło to jest źródłem wiadomości o tzw. prawie bliższości oraz pozwala wyjaśnić różnice pomiędzy patrimonium a ziemią uzyskaną drogą kupna czy nadania. Źródła na jakich oparł się opat Piotr, jak i jego kontynuator w księdze II, to informacje pochodzące z autopsji, od naocznych świadków lub osób dobrze poinformowanych (np. notariusz Konrad, rezydent klasztoru - chłop Kwieciak). Ważnym rodzajem źródeł wykorzystanych przez autora są dokumenty znajdujące się w klasztornym archiwum.

„Księga Elbląska” – „Najstarszy Zwód Prawa Polskiego” jest spisem prywatnym dokonanym przez nieznanego pisarza, w języku niemieckim na potrzeby zakonu krzyżackiego, pod którego władzą mieszkała ludność polska. Zasada osobowości prawa przestrzegana przez krzyżacki wymiar sprawiedliwości gwarantowała Polakom stosowanie w praktyce własnego prawa zwyczajowego. Zwód prawa powstał najpewniej około 1253-1320 roku. Najnowsze wydanie źródła z 1995 roku Józefa Matuszewskiego i Jacka Matuszewskiego opar-

²³ J. S. Matuszewski, *Władza książęca na Śląsku w XIII wieku czy studia nas stosunkami gospodarczymi, społecznymi i politycznym Śląska XIII stulecia?* „Sobótka” 40(1985), z. 4, 541-558; J. S. Matuszewski, „*Per eum*” czy „*ab eo*”? relacja „Księgi henrykowskiej” o Głębowicach źródłem do XIII-wiecznych stosunków społecznych, „Sobótka” 44(1989), z. 2, 185-210.

te jest na fotokopii fragmentu manuskryptu Holczwesschera. „Najstarszy Zwód Prawa Polskiego” składa się z 29 nienumerowanych artykułów. Pierwsze artykuły przedstawiają organizację sądową (art. 1-3) postępowanie

sądowe (art. 4-6), prawo karne (art. 7-20, 26-27), prawo spadkowe (art. 21-22), sądy boże „ordalia” (art. 23-25), problemy związane ze zbiegostwem chłopów (art. 28), ciężary feudalne chłopów (art. 29).

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