

MATER FAMILIAS

SCRITTI ROMANISTICI PER MARIA ZABŁOCKA

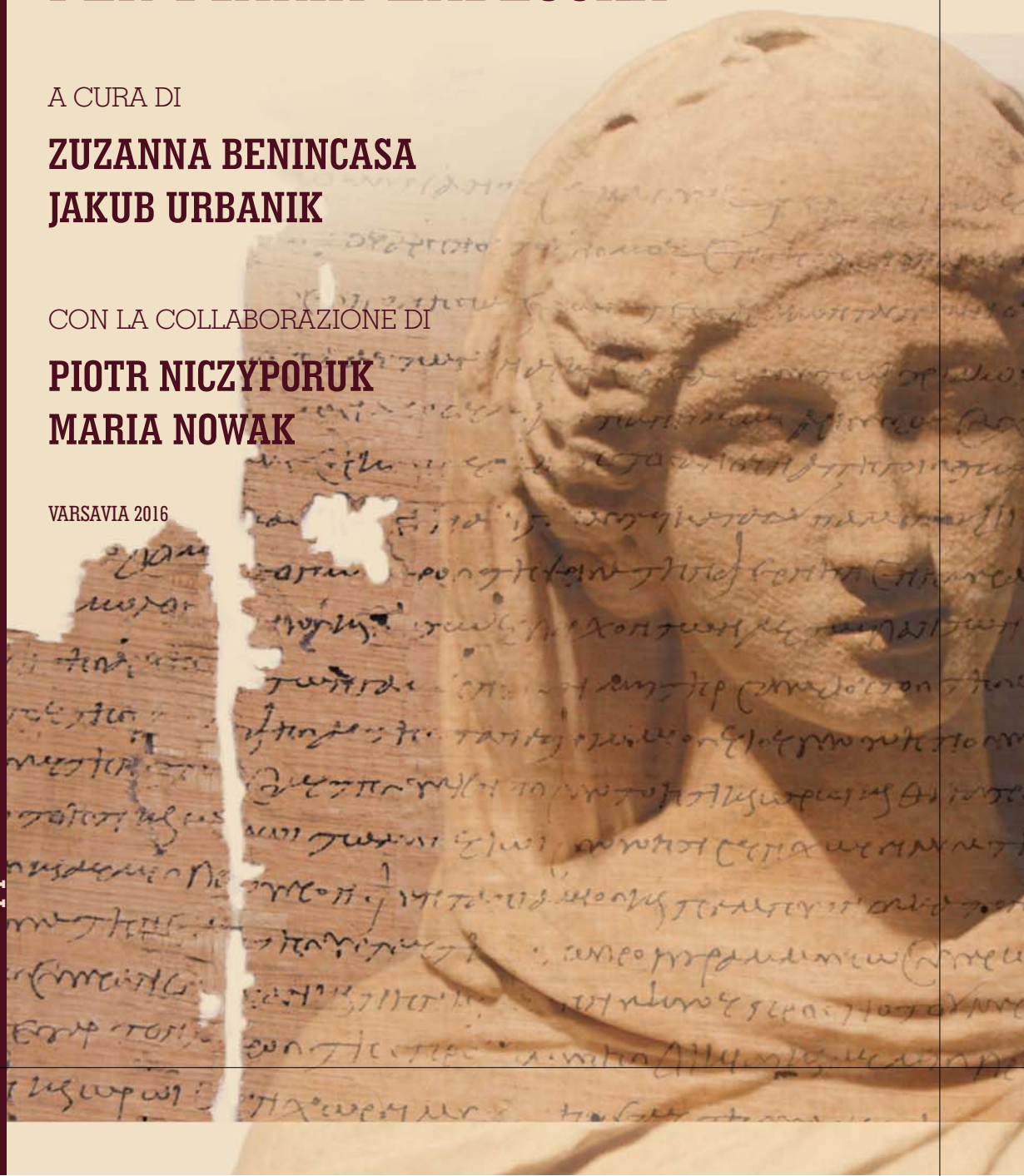
A CURA DI

ZUZANNA BENINCASA
JAKUB URBANIK

CON LA COLLABORAZIONE DI

PIOTR NICZYPORUK
MARIA NOWAK

VARSAVIA 2016



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Mater Familias
Scritti per Maria Zabłocka

INDICE

Zuzanna BENINCASA & Jakub URBANIK	
<i>Prefazione</i>	XIII
<i>Elenco delle opere di Maria Zabłocka</i>	XXIII
José Luis ALONSO	
<i>The Emperor, the ex-prostitute, and the adulteress.</i>	
<i>Suet. Cal. 40 revisited</i>	3
Krzysztof AMIELAŃCZYK	
<i>In search for the origins of the Roman public law offences (crimina)</i>	
<i>in the Archaic period</i>	23
Zuzanna BENINCASA	
<i>Alcune riflessioni sulla libertà di caccia nel diritto romano.</i>	
<i>vivai e riserve di caccia</i>	39
Witold BORYSIAK	
<i>Roman principle</i>	
<i>Nemo pro parte testatus pro parte intestatus decedere potest</i>	
<i>and the reasons of its modern rejection</i>	63
Luigi CAPOGROSSI COLOGNESI	
<i>Un ordinamento giuridico e le sue trasformazioni</i>	85
Cosimo CASCIONE	
<i>Celso lettore di San Paolo?</i>	
<i>Una nota minima in tema di interpretazione</i>	101

Alessandro CORBINO	
<i>Personae in causa mancipii</i>	107
Božena Anna CZECH-JEZIERSKA	
<i>Roman law in Polish People's Republic: Stages of transformation</i>	119
Tomasz DERDA & Maria NOWAK	
<i>Will of [---]is daughter of Pachois from Oxyrhynchos.</i>	
<i>P. Oxy. II 379 descr.</i>	135
Marzena DYJAKOWSKA	
<i>Verba impia et maledicta.</i>	
<i>The influence of Roman law upon the western European doctrine</i>	
<i>of verbal insult of the ruler in the 16–17th centuries</i>	145
András FÖLDI	
<i>Appunti sugli elementi romanistici nel nuovo Codice civile ungherese</i> ..	161
Ewa GAJDA	
<i>Elements of theology in Roman law.</i>	
<i>On Zenon's Henoticon and Justinian's letter (Cf. I.I.8)</i>	191
Luigi GAROFALO	
<i>Roma e i suoi giuristi nel pensiero di Nicolás Gómez Dávila</i>	207
Tomasz GIARO	
<i>L'expérience de l'absurde chez les juristes romains</i>	243
Sławomir GODEK	
<i>Ignacy Daniłowicz on the impact of Roman law</i>	
<i>on the law of the pre-partition Commonwealth</i>	
<i>in the light of his letters to Joachim Lelewel</i>	269
Ireneusz JAKUBOWSKI	
<i>Some remarks about Roman law</i>	
<i>in Tadeusz Czacki's opus magnum</i>	285
Maciej JOŃCA	
<i>Per aspera ad astra.</i>	
<i>Johann Bayer, römisches Recht</i>	
<i>und das Ausbildungsprogramm der jungen Radziwiłłs</i>	295

Aldona Rita JUREWICZ	
<i>TPSulp. 48 und actio quod iussu.</i>	
<i>Konnte Prudens adjektivisch belangt werden?</i>	307
Agnieszka KACPRZAK	
<i>Obbligo del lutto e il controllo sociale sulla sessualità di vedove</i>	323
Leszek KAZANA	
<i>Il delitto Matteotti: qualche dubbio sul colpevole</i>	351
Piotr KOŁODKO	
<i>Some comments on the role of the quaestor as a prosecutor</i>	
<i>in criminal proceedings in the times of the Roman Republic</i>	375
Przemysław KUBIAK	
<i>Between emotions and rationality</i>	
<i>Remorse as mitigating circumstance in Roman military law</i>	397
Sławomir KURSA	
<i>Capacity of women to make testamentum parentis inter liberos</i>	415
Marek KURYŁOWICZ	
<i>Ancarenus Nothus und Gaius von Hierapolis</i>	
<i>Miscellanea epigraphica: CIL VI 7193a & IGR IV 743</i>	425
Luigi LABRUNA	
<i>«Necessaria quanto la giustizia ...»</i>	
<i>Etica e tradizione dell'avvocatura</i>	445
Paola LAMBRINI	
<i>Ipotesi in tema di rescissione per lesione enorme</i>	453
Elżbieta LOSKA	
<i>Testamenti factio passiva of actresses in ancient Rome</i>	465
Adam ŁUKASZEWICZ	
<i>Remarks on Mars Ultor, Augustus, and Egypt</i>	487
Rafał MAŃKO	
<i>Roman roots at Plateau du Kirchberg</i>	
<i>Recent examples of explicit references to Roman law</i>	
<i>in the case-law of the Court of Justice of the EU</i>	501

Carla MASI DORIA	
<i>Una questione di «stile»?</i>	
<i>A proposito di una critica di Beseler a Mommsen</i>	527
Rosa MENTXAKA	
<i>Sobre la actividad comercial del clero hispano en los inicios del siglo IV</i>	
<i>a la luz de dos cánones del Concilio de Elvira</i>	535
Joanna MISZTAL-KONECKA	
<i>The non-litigious proceedings in Polish Law</i>	
<i>and Roman iurisdictio voluntaria</i>	569
Józef MÉLÈZE MODRZEJEWSKI	
<i>Modèles classiques des lois ptolémaïques</i>	579
Piotr NICZYPORUK	
<i>La capacità giuridica e la tutela del nascituro nella Roma antica</i>	597
Dobromiła NOWICKA	
<i>Family relations in cases concerning iniuria</i>	619
Tomasz PALMIRSKI	
<i>Some remarks on legal protection of commodans</i>	
<i>prior to the introduction of the praetorian actio commodati</i>	639
Anna PIKULSKA-RADOMSKA	
<i>Über einige Aspekte der Steuerpolitik und Propaganda</i>	
<i>der öffentlichen Macht im römischen Prinzipat</i>	653
Manex RALLA ARREGI	
<i>Sobre una posible relación causal entre regulación canónica</i>	
<i>y legislación imperial en los primeros siglos del monacato</i>	677
Francesca REDUZZI MEROLA	
<i>Schiavitù e dipendenza nel pensiero di Francesco De Martino</i>	693
Władysław ROZWADOWSKI	
<i>Sul trasferimento del credito in diritto romano</i>	705
Francesca SCOTTI	
<i>Actio aquae pluviae arcendae e «piccola bonifica agraria»:</i>	
<i>Un esempio dalle fonti giustinianee</i>	725

Michał SKŘEJPEK	
<i>La pena di morte nel diritto romano: necessità o no?</i>	785
Marek SOBCZYK	
<i>Recovery of performance rendered dotis nomine</i> <i>on account of a future marriage that did not take place</i>	797
Andrzej SOKALA	
<i>Władysław Bojarski Paterfamilias</i>	819
Janusz SONDEL	
<i>Alcune considerazioni sulla storia e sull'insegnamento</i> <i>del diritto romano in Polonia</i>	849
Agnieszka STĘPKOWSKA	
<i>Il ruolo del consenso muliebre</i> <i>nell'amministrazione dei fondi dotali in diritto romano</i>	889
Dorota STOLAREK	
<i>Lenocinium in the Lex Iulia de adulteriis</i>	909
Paulina ŚWIECICKA & Łukasz MARZEC	
<i>From Roman oratores to modern advocates</i> <i>Some remarks on the formative of lawyer's ethics in Antiquity</i>	935
Adam ŚWIEŹŃ	
<i>Superexactiones in the Late Roman Law</i> <i>A short review of the imperial constitutions in the Theodosian Code</i>	965
Renata ŚWIRGOŃ-SKOK	
<i>Family law in the private law systematics</i> <i>from the Roman law until the present day</i>	979
Sebastiano TAFARO	
<i>Il diritto per l'oggi</i>	993
Anna TARWACKA	
<i>Manomissioni di schiavi nelle commedie di Plauto</i>	1025
Jakub URBANIK	
<i>Dissolubility and indissolubility of marriage</i> <i>in the Greek and Roman tradition</i>	1039

Andreas WACKE

- Führte die Unveräußerlichkeit des Mitgiftgrundstücks
im römischen Recht zu relativer Nichtigkeit?
Grenzen vom Verbot des venire contra factum proprium* 1069

Jacek WIEWIÓROWSKI

- Deformed child in the Twelve Tables* 1157

Witold WOŁODKIEWICZ

- Apices iuris non sunt iura* 1177

Karolina WYRWIŃSKA

- Functionality of New Institutional Economics
in research on Roman law* 1187

Jan ZABŁOCKI

- Il concetto di mater familias in caso di arrogazione* 1199

Mater Familias
Scritti per Maria Zabłocka
pp. 269–283

Sławomir Godek

IGNACY DANIŁOWICZ
ON THE IMPACT OF ROMAN LAW
ON THE LAW OF THE PRE-PARTITION COMMONWEALTH
IN THE LIGHT OF HIS LETTERS TO JOACHIM LELEWEL

THE GREAT SCIENTIFIC CONTROVERSY about the role of Roman law in pre-partition Poland, which flared up in the early 19th century, involved a large group of researchers.¹ In the turbulent decades of discus-

¹ W. A. MACIEJOWSKI, *Historia Juris Romani* 1. *Principiorum Juris Romani*, Varsaviae 1825, pp. 231–246; A. KRAUSHAR, *Uwagi nad historią prawa* [Comments on the history of law], Warszawa 1868, pp. 118–133; J. BIELIŃSKI, *Uniwersytet Wileński (1579–1831)* [University of Vilnius (1579–1831)] 11, Kraków 1899–1900, pp. 496–503; A. SULIGOWSKI, *Bibliografia prawnicza polska XIX i XX wieku* [Polish legal bibliography of the 19th and 20th centuries], Warszawa 1911, pp. XL–XLI; A. VETULANI, *Dzieje historii prawa w Polsce* [The story of legal history in Poland], Kraków 1948, pp. 10–13; J. SONDEL, *Ze studiów nad prawem rzymskim w Polsce piastowskiej* [Studies on Roman law in Piast Poland], [= *Zeszyty Naukowe Uniwersytetu Jagiellońskiego, Prace Prawnicze* 82], Warszawa 1978, pp. 14–24; J. KODRĘBSKI, *Prawo rzymskie w Polsce XIX w.* [Roman Law in the 19th-cent. Poland], Łódź 1990, pp. 109–176; M. KURYŁOWICZ, ‘Polityczne aspekty dyskusji wokół prawa rzymskiego w Polsce w XIX i początkach XX wieku’ [Political aspects of the debate on Roman law in Poland in the 19th and early 20th centuries], *Annales Universitatis Mariae Curie-Skłodowska* 6 (1999), sectio K, pp. 51–58; S. GODEK, ‘Spór o znaczenie prawa rzymskiego w dawnej Rzeczypospolitej’ [The dispute about the meaning of Roman law in the Old Poland], *Czasopismo Prawno-Historyczne* 54.1 (2002), pp. 105–141; IDEM, ‘Prawo rzymskie w Polsce przedrozbiorowej w świetle aktualnych badań’ [Roman law in pre-partition Poland in the light of present research], *Zeszyty Prawnicze* 13.3 (2013), pp. 39–64.

sion, both young students of law and scholars with established academic authority participated. Among the latter in the 1820s and 30s was Ignacy Daniłowicz – professor at the Universities of Vilnius, Kharkiv, Kiev and Moscow, a prominent expert in Polish-Lithuanian and Russian law, translator and publisher of sources, and tireless codifier of the local laws of the Polish governorate of the Russian Empire.²

There is no doubt that Roman law was not foreign to Daniłowicz. Perhaps he met it while still at the Piarist school in Łomża or at the gymnasium in Białystok. Certainly he became acquainted with it while studying at the University of Vilnius, where as a law student he attended the lectures of Alojzy Ludwik Capelli. Many years later Daniłowicz warmly recalled this controversial professor spoke about his lectures in superlatives. Other later famous historians of law such as Ignacy Abdon Ołdakowski or Ignacy Żegota Onacewicz also gained the basics of legal knowledge with Capelli.³ It should be noted that the level of education in

² A. JANULAITIS, *Ignas Danilavičius, Lietuvos ir jos teisės istorikas I. Gyvenimas ir darbai* [=Vytauto Didžiojo Universiteto Teisių Fakulteto Darbai 6, 15], Kaunas 1932; Katarzyna BŁACHOWSKA, *Wiele historii jednego państwa. Obraz dziejów Wielkiego Księstwa Litewskiego do 1569 roku w ujęciu historyków polskich, rosyjskich, ukraińskich, litewskich i białoruskich w XIX wieku* [Many histories of one state. The history of the Grand Duchy of Lithuania to 1569 as presented by Polish, Russian, Ukrainian and Belarusian historians in the 19th century], Warszawa 2009, pp. 30; 32; 34; 36–37; 41; S. GODEK, *III Statut litewski w dobie porozbiorowej* [The Third Lithuanian Statute in the post-Partition Era], Warszawa 2012, pp. 88–94; 111–118; 124–136; 140–144; 148–152; 180–186; 220–221; 245–253; IDEM, ‘O zaginionej spuściźnie naukowej Ignacego Daniłowicza’ [The lost academic legacy of Ignacy Daniłowicz], *Zeszyty Prawnicze* 14.4 (2014), pp. 43–78.

³ BIELIŃSKI, *Uniwersytet Wileński* II (cit. n. 1), pp. 478–487; IDEM, *Uniwersytet Wileński (1579–1831)* [University of Vilnius (1579–1831)] III, Kraków 1899–1900, pp. 149–150; L. JANOWSKI, *W promieniach Wilna i Krzemienia* [In the Radii of Vilnius and Krzemieniec], Wilno 1923, p. 104; IDEM, *Słownik bio-bibliograficzny dawnego Uniwersytetu Wileńskiego* [Bio-bibliographical dictionary of the former University of Vilnius], ed. by R. MIENICKI, Wilno 1939, pp. 57–59; JANULAITIS, *Ignas Danilavičius* (cit. n. 2), pp. 639–643; KODREBSKI, *Prawo rzymskie* (cit. n. 1), pp. 37–48; Aldona PRAŠMANTAITĖ, ‘Posiedzenia publiczne Uniwersytetu Wileńskiego (1803–1832) – formą popularyzacji wiedzy naukowej wśród społeczeństwa ziem byłego Wielkiego Księstwa Litewskiego’ [Public meetings of the University of Vilnius (1803–1832) – a form of popularization of scientific knowledge among the public of the lands of the former Grand Duchy of Lithuania], *Echa Przeszłości* 5 (2005), pp. 79; 82–84; D. BEAUVOIS, *Wilno – polska stolica kulturalna zaboru rosyjskiego 1803–1832* [Vilnius – Polish cultural capital of the Russian annexation 1803–1832], Wrocław 2010, pp. 239–241.

Roman law in Vilnius was good to say the least. Jan Kodrębski drawing an image of the teaching and research presence of Roman law at the University of Vilnius a quarter of a century before held that the discipline was an important component of academic life in this community. Roman law played a major role there in the education of lawyers, and lectures and academic publications in the field were of no lesser quality than those of good European universities. Vilnius, like other leading universities in Europe of this period, remained under the influence of the German school of historical law.⁴ Kodrębski's conclusions seem to confirm the content published several years earlier by Urszula and Sławomir Kalembka of the interesting memorial of 1810–1812, and discovered in the collections of manuscripts at the University of Vilnius. This anonymous document was devoted to the programme and methods of teaching law at the University of Vilnius. It is characteristic that the journal places clear emphasis on the teaching of Roman law, which the author saw as the foundation of proper legal thinking.⁵

It seems that the knowledge Daniłowicz, famous for his diligence, acquired at Vilnius University was supplemented through individual exploration. His great knowledge of Latin and German, which he mastered as well as his native language, and French, were certainly conducive to reading the sources and studying the Romanistic literature. The materials must have been provided by constant penetration of university, monastery, court, and public libraries and archives in the search for ever more sources (for which Daniłowicz was famous),⁶ but also observation of the current academic circle. It was Joachim Lelewel and Ignacy Daniłowicz who, in the winter of 1823, were the first to receive, via Jan Wincenty

⁴ KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 55–56.

⁵ Urszula & S. KALEMBKOWIE, 'Memoriał z początku XIX wieku o zadaniach kształcących Akademii i studiach prawniczych (wyciąg ze zbioru rękopisów Uniwersytetu Wileńskiego)' [Memorial of the early 19th century, on the tasks of educating the Academy and law school (extract from the collection of manuscripts at the University of Vilnius)], [in:] Ewa GAJDA & A. SOKAŁA (eds.), *Honeste vivere... Księga pamiątkowa ku czci Profesora Władysława Bojarskiego*, Toruń 2001, pp. 505–514.

⁶ BIELIŃSKI, *Uniwersytet Wileński* III (cit. n. 3), pp. 153–156.

Bandkie, copies of the newly issued Institutions of Gaius discovered a few years earlier by Bartold Georg Niebuhr.⁷ Already, Daniłowicz's hearing, the object of which was to compare the Napoleonic Code Napoleon with the Polish and Lithuanian law written at the beginning of his academic career, reflects well on the preparation of the young academic in the field of Roman law.⁸

Of great importance for the development of Daniłowicz's research interests was his perennial friendship with Ignacy Ołdakowski, started while still at school – a doctor of law, lecturer in Polish-Lithuanian the Roman law at the famous Lyceum in Krzemieniec, and then the laws of nature at the University of Vilnius.⁹ After the untimely death of his

⁷ Z. KOLANKOWSKI, 'Nieznana polemika Joachima Lelewela z Wacławem Aleksandrem Maciejowskim' [The unknown polemic of Joachim Lelewel with Wacław Aleksander Maciejowski], *Kwartalnik Historii Nauki i Techniki* 1.4 (1956), pp. 780–781; J. BARDACH, *Wacław Aleksander Maciejowski i jego współcześni* [Wacław Aleksander Maciejowski and his Contemporaries], Wrocław 1971, pp. 76–78; J. KODRĘBSKI, 'Joachim Lelewel o roli prawa rzymskiego w Polsce' [Joachim Lelewel on the role of Roman law in Poland], *Czasopismo Prawno-Historyczne* 40.2 (1988), p. 281; IDEM, *Prawo rzymskie* (cit. n. 1), p. 154.

⁸ I. DANIŁOWICZ, *Kodeks Napoleona w porównaniu z prawami polskimi i litewskimi* [The Napoleonic Code in comparison with Polish and Lithuanian Laws], A. KRAUSHAR (ed.), Warszawa 1905. Cf. JANULAITIS, *Ignas Danilavičius* (cit. n. 2), pp. 664–668; 675–677; 727–739; W. WITKOWSKI, 'Kodeks Napoleona w ocenie wileńskiego prawnika Ignacego Daniłowicza z 1818 r.' [The Napoleonic Code in the assessment of the Vilna lawyer Ignacy Daniłowicz of 1818], [in:] A. LITYŃSKI (ed.), *Państwo, prawo, społeczeństwo w dziejach Europy środkowej. Księga jubileuszowa dedykowana Profesorowi Józefowi Ciągwie w siedemdziesięciolecie urodzin*, Katowice 2009, pp. 819–826.

⁹ A. SŁOWIKOWSKI, *Liceum Wołyńskie. Szkoła Krzemieniecka. Nauki dawane i wykład ich* [The Volyn Lyceum. The Krzemieniec School. Courses Given and Their Exposition], ms. IV 7799, Biblioteka Narodowa (Warszawa), pp. 107, 114–115; 129–132; J. SIDOROWICZ (ed.), *Skarbiec dyplomatów papieskich, cesarskich, królewskich, książęcych, uchwał narodowych, postanowień różnych władz i urzędów posługujących do krytycznego wyjaśnienia dziejów Litwy, Rusi litewskiej i ościennych im krajów, zebrał i w treści opisał Ignacy DANIŁOWICZ* [A Treasury of Diplomats Papal, Imperial, Royal, Princely, National Resolutions, the Provisions of the Various Authorities and Offices of Ministers to critically explain the history of Lithuania, Lithuanian Rus, and the Neighbouring Countries, Gathered and Described by Ignacy Daniłowicz] 1, Wilno 1860, pp. I–VII; M. ROLLE, *Ateny Wołyńskie. Szkic z dziejów oświaty w Polsce* [Volyn Athens. A Sketch of the History of Education in Poland], Lwów 1923, pp. 70, 76; JANULAITIS, *Ignas Danilavičius* (cit. n. 2), pp. 634–637; 642; 651–660; W. SOBOCIŃSKI, s.v. 'Ołdakowski Ignacy Abdon Onufry', *Polski Słownik Biograficzny* XXIV,

friend, Daniłowicz published an article in which he drew a profile of the researcher and his academic achievements. Ołdakowski's manuscript legacy were his sexterns on Roman law, which Daniłowicz briefly characterised and evaluated.¹⁰

Daniłowicz's knowledge of Roman law is mainly shown by the very large preserved manuscripts of his academic lectures, recorded by students.¹¹ These are filled with references to that ancient law. Roman law plays a diverse role in them. Most often, it is an important element of discourse on the evolution of these legal institutions. They were most often presented by Daniłowicz in a wide comparative perspective, taking into account the differences that the solutions adopted in the various countries of Western Europe bore. Sometimes the standards of Roman law were presented by Daniłowicz as a kind of proxy for the explanation of the structure of individual legal institutions. This happened when the researcher ascertained that the local law had not native made sufficiently developed principles in a given area, or were largely incomplete or unclear. Then the variant of the Roman solution provided a certain model of the institution, which gave the audience a general idea of its character.

Daniłowicz wrote several times in journals about the importance of Roman law in old Poland.¹² The scholar was of the opinion that the Poles

(1979), pp. 54–55; KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 48–51; GODEK, *III Statut litewski* (cit. n. 2), pp. 164–169.

¹⁰ I. DANIŁOWICZ, 'Wiadomość o życiu i pracach uczonych ś.p. Ignacego Ołdakowskiego' [The life and scholarly work of the late Ignacy Ołdakowski], *Dziennik Wileński* 1 (1822), pp. 10–31; 182–197. Cf. GODEK, *III Statut litewski* (cit. n. 2), pp. 165–169.

¹¹ A. ŁĘSKI, *Prawo krajowe dawane przez Ignacego Daniłowicza* [National Law Imparted by Ignacy Daniłowicz], ms. f. 9–3149, Lietuvos mokslų akademijos Vrublevskių biblioteka, Rankraščių skyrius (Vilnius) [LMAVB RS]; *Prawo cywilne krajowe* [National Civil Law], ms. f. 29–581, LMAVB RS, pp. 1–22; *Prawo cywilne rosyjskie* [Russian Civil Law], ms. f. 9–180, LMAVB RS; K. ANTOSZEWSKI, *Prawo cywilne polsko-litewskie dawane w Uniwersytecie Wileńskim [w] roku 1822* [Polish-Lithuanian civil law imparted at the University of Vilnius [in] 1822], ms. II 9540 (II), Biblioteka Narodowa (Warszawa), pp. 95–148; *Prawo polsko-litewskie* [Polish-Lithuanian law], ms. 5355/1, Львівська національна наукова бібліотека України імені В. Стефаника. Cf. GODEK, *III Statut litewski* (cit. n. 2), pp. 142–144; 148–152.

¹² I. DANIŁOWICZ, *Historischer Blick auf das litthauische Statut, und den Einfluß des römischen Rechts auf das polnische und litthauische* (Aus den Dorpater Jahrbüchern besonders abgedruckt), Dorpat 1834, pp. 1–28; IDEM, 'Rzut oka historyczny na prawodawstwo litewskie' [A his-

learned about them in the Middle Ages while studying at French and Italian universities, and sometimes at home at the Academy of Kraków. The researcher noticed the clear Roman influence in the annals of Wincenty Kadłubek and Jan Długosz. He believed that many Polish lawyers drew from Roman law in the 16th and 17th centuries, as reflected in the terminology, taxonomy of the legal material, and numerous detailed solutions. Daniłowicz also identified normalisation constructed on the Roman model in the parliamentary legislation of this period. He saw Romanist elements in the laws governing testamentary inheritance, limitation, the crime of treason, and others. In addition, he pointed out that under the clear influence of Roman law remained the codification projects and sets of laws arising in the 16th century – according to the scholar – the century heyday of Roman law in the Commonwealth. Daniłowicz's conviction was that the sets of laws by Maciej Śliwnicki, Jan Herburt, Jakub Przyłuski, and Mikołaj Taszycki had managed to absorb Roman elements. Daniłowicz devoted special attention to demonstrating the Roman influence on Lithuanian legislation, especially the Lithuanian Statutes of the years 1566 and 1588. In his view, the Roman elements came to the Lithuanian codification not directly from Justinian sources, because these were rare in the Commonwealth, but through German law, namely the gloss of the *Sachsenspiegel* and Magdeburg law (a view that was later corrected by the research of Rafał Taubenschlag, Ivan Ivanovich Lappo, and Juliusz Bardach, who showed the direct impact on individual sections of Lithuanian law of the Justinian codification).¹³ Daniłowicz thought these statutory provisions, which concerned limitations, wills, disinheritance, patricide, treason, incest, the *peculium castrense*, dowries, prohibition of the sale of

torical glance at Lithuanian legislation], *Pamiętnik Naukowy* 1.2 (1837), pp. 235–267; IDEM, 'Historyczny rzut oka na prawodawstwo narodu litewskiego' [A historical glance at the legislation of the Lithuanian nation], *Wizerunki i Roztrząsania Naukowe. Poczet Nowy* 13 (1837), pp. 81–134. Cf. BIELIŃSKI, *Uniwersytet Wileński* II (cit. n. 1), s. 448–449; 491–496; JANULAITIS, *Ignas Danilavičius* (cit. n. 2), pp. 808–809; KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 168–171; GODEK, 'Spór' (cit. n. 1), pp. 121–122.

¹³ S. GODEK, 'Prawo rzymskie w dawnej Rzeczypospolitej. Przegląd stanu badań' [Roman law in the former Commonwealth. An overview of the state of research], *Czasopismo Prawno-Historyczne* 53.2 (2001), pp. 50–51.

the estate, some of the rules of court proceedings, and some of the punishments had been formed under Roman influence. In the scholar's opinion of Roman provenance were a number of fundamental legal principles assimilated by Lithuanian law.¹⁴ In general, according to Daniłowicz, Roman law positively influenced the improvement process of domestic legislation, but no law allowed reference to them as in force, nor did it receive the rank of the law in Poland as an alternative force in relations among the nobility.

It seems that the image of Daniłowicz's views in the light of his publication in the latter 1830s, and here recalled synthetically, may be supplemented in many details by still other sources. Of assistance here may be the aforementioned preserved texts the Vilnius professor's lectures, but also his correspondence. Especially this last source attracts the attention of the researcher because of its specificity. The form of a letter is obviously not the most appropriate to conduct a thorough academic argument, but it certainly gives rise to bolder, more direct expression of views, which would require more careful wording and a more restrained convention in an academic journal. This is why the researcher's correspondence is a commentary on the current issues covered by academia that is invaluable, and extremely interesting because it is often seasoned with a very personal and emotional charge. This value indubitably lies in the long-term, though perhaps not too intense, exchange of letters between Ignacy Daniłowicz and Joachim Lelewel. The more important issues of the history and the science and current practice of law in the second and third decades of the 19th century are reflected in the correspondence as in a mirror.¹⁵

¹⁴ Cf. J. BARDACH, *Statuty litewskie a prawo rzymskie* [The Lithuanian Statutes and Roman Law], Warszawa 1999; S. GODEK, 'Prawo rzymskie w dawnej Rzeczypospolitej' (cit. n. 13), pp. 48–50; IDEM, *Elementy prawa rzymskiego w III Statucie litewskim (1588)* [Elements of Roman Law in the Third Statute of Lithuania (1588)], Warszawa 2004; IDEM, 'Prawo rzymskie w Polsce przedrozbiorowej w świetle' (cit. n. 1), pp. 55–57; A. B. ZAKRZEWSKI, *Wielkie Księstwo Litewskie. Prawo – ustroj – społeczeństwo* [The Grand Duchy of Lithuania. Law – Constitution – Society], Warszawa 2013, pp. 10; 25; 45–48; 51–52; 217; 222.

¹⁵ *Listy do Joachima Lelewela od Ignacego Daniłowicza. 1819–1830* [Letters to Joachim Lelewel from Ignacy Daniłowicz. 1819–1830], ms. 1266, Biblioteka PAU-PAN (Kraków);

In the course Daniłowicz's correspondence with Lelewel, there had to be reference to the then lively discussion on the importance of Roman law in old Poland. Lelewel repeatedly and much earlier than his friend gave voice to it publicly, indeed showing an excellent orientation in this regard.¹⁶ One of Lelewel's works actually became the object of extensive and in-depth reviews by Daniłowicz, in which the author did not omit topics related to the issue of the scope of the Romanization of former Polish law.¹⁷ Both researchers also inspired others to work on this problem. In 1822 Daniłowicz and Lelewel together suggested that the announced theme of a competition among the students of the Faculty of Moral and Political Science at Vilnius University would be the question *What could be the impact of Roman law on Polish and Lithuanian legislation?* The award-winning papers by Aleksander Mickiewicz and Franciszek Morze, with published with comments by Lelewel, contributed significantly to the introduction of academic discourse in new directions.¹⁸

Odpisy listów Ignacego Daniłowicza do Joachima Lelewela z lat 1824–1830 [Copies of Ignacy Daniłowicz's Letters to Joachim Lelewel from the Years 1824–1830], ms. III 7885, Biblioteka Narodowa (Warszawa). Cf. Leokadia SADOWSKA, 'Z listów do Joachima Lelewela o statucie litewskim (1815–1830)' [From letters to Joachim Lelewel on the Statute of Lithuania (1815–1830)], *Ateneum Wileńskie* 6 (1929), pp. 610–634; GODEK, *III Statut litewski* (cit. n. 2), pp. 115–116; 118; 132–136.

¹⁶ KODRĘBSKI, 'Joachim Lelewel' (cit. n. 7), pp. 277–297; GODEK, 'Spór' (cit. n. 1), pp. 116–120; J. SONDEL, 'Aleksander Mickiewicz i jego poglądy na tle sporu z początków XIX wieku na temat roli prawa rzymskiego w dawnej Polsce' [Aleksander Mickiewicz and his views on the backdrop of the dispute in the early 19th century over the role of Roman law in old Poland], [in:] W. URUSZCZAK & Dorota MALEC (ed.), *Krakowskie Studia z Historii Państwa i Prawa*, Kraków 2004, pp. 13–14.

¹⁷ I. DANIŁOWICZ, 'Rozbiór dzieła Początkowe prawodawstwo polskie cywilne i kryminalne do czasów jagiellońskich' [An analysis of the works of Initial Polish civil and criminal legislation to the Jagiellonian Times], *Dziennik Warszawski* 18.53 (1829), pp. 160–240. Cf. KODRĘBSKI, 'Joachim Lelewel', pp. 290–291; IDEM, *Prawo rzymskie* (cit. n. 1), pp. 162–163; GODEK, 'Spór' (cit. n. 1), pp. 118–119.

¹⁸ J. LELEWEL, 'Przygody w poszukiwaniach i badaniu rzeczy narodowych polskich' [Adventures in the search and study of Polish national subjects], [in:] *Dzieła* [Works], M. H. SEREJSKI (eds.), 1: *Materiały autobiograficzne* [Autobiographical materials], H. WIĘCKOWSKA (ed.), Warszawa 1957, pp. 64, 72; BARDACH, *Wacław Aleksander Maciejowski* (cit. n. 7), pp. 93–94; KODRĘBSKI, 'Joachim Lelewel' (cit. n. 7), p. 292; IDEM, *Prawo rzymskie* (cit. n. 1), pp. 143–148; 158–159, 164; GODEK, 'Spór' (cit. n. 1), pp. 112–116; 118; IDEM, 'Prawo

Let us, therefore, briefly review several letters from Daniłowicz to his friend. In a letter dated 11 December, 1826 from Kharkiv, Daniłowicz referred to Jan Wincenty Bandtkie's views on the scope of Romanization of Polish law in an interesting way, albeit seasoned with a considerable portion of irony.¹⁹ Recall that it was Bandtkie's polemic on the view propounded by Tadeusz Czacki that Polish law was formed under the influence of the law of the northern peoples, which gave rise to a great academic dispute about the importance of Roman law in Poland. Bandtkie, unlike Czacki, was of the opinion that the Polish legislature drew from Roman law and this had subsidiary force here.²⁰ It seems that Daniłowicz thought this view much exaggerated. The scholar predicted that Bandtkie, lifted by his polemical fervour, and searching for ever new arguments to prove knowledge of Roman law in old Poland, and seeing pure Roman law in everything that was referred to in the sources as *ius civile* ('only weaker from hunger' as Daniłowicz ironically put it) will he would sooner or later have to justify his standpoint. Daniłowicz thought, moreover, that Bandtkie, in overestimating the role of Roman law in Poland, did so not so much out of inner conviction, but in the hope that his thesis would stimulate academic discussion and contribute to the knowledge of the truth. This does not mean, of course, that Daniłowicz shared similar views to Bandtkie's main adversary in the person of Tadeusz Czacki. A few years earlier, writing to Lelewel (from Vilnius on 15 August 1821), Daniłowicz clearly expressed the belief that the origins of Polish law must be sought in Germany, 'however much Czacki would grimace at it'.²¹ It seems that this was a conviction he shared with

rzymskie w Polsce przedrozbiorowej w świetle' (cit. n. 1), pp. 47–48; SONDEL, 'Aleksander Mickiewicz' (cit. n. 16), pp. 14–21. Cf. S. GODEK, 'O roli prawa rzymskiego w dawnej Rzeczypospolitej w świetle Kursu prawa cywilnego Aleksandra Mickiewicza z 1829 roku' [Roman law in Poland-Lithuania in the light of Aleksander Mickiewicz's 1829 lecture on Polish civil law], *Zeszyty Prawnicze* 15.2 (2015), pp. 161–190.

¹⁹ *Listy do Joachima Lelewela* (cit. n. 15), pp. 61–62; *Odpisy listów Ignacego Daniłowicza* (cit. n. 15), pp. 264–275.

²⁰ KODREBSKI, *Prawo rzymskie* (cit. n. 1), pp. 74–77; 117–123; GODEK, 'Spór' (cit. n. 1), pp. 105–111; IDEM, 'Prawo rzymskie w Polsce przedrozbiorowej w świetle' (cit. n. 1), p. 46.

²¹ *Listy do Joachima Lelewela* (cit. n. 15), pp. 32–33.

Oldakowski, who came to similar conclusions, which he was undoubtedly helped to by studies in Germany.²²

In a letter of December 1826 also noteworthy is Daniłowicz's general reflection on the sense of academic exploration of Roman law. This is also lined with irony and a certain distance towards Bandtkie's attempts. Namely, Daniłowicz put the question of whether even if Bandtkie in his wrath proved that Cujacius came from Czersk or Warka, that the staff of the lower courts in Poland could memorize the *Pandectae*, that Cracovian peddlers argued on a par with those of Göttingen using terms borrowed from Ulpian, while Polish Jews were able to appreciate Tribonian's parchments, would all that be sufficient reason to believe that the Roman law in Poland should still have been the subject of academic research? The scholar doubted whether such arguments would suffice. He pointed to the need to seek justification in a completely different area. According to Daniłowicz, most important was to show its internal, permanent, and universal values, as 'Maciejowski bravely said'. The only question was, which Maciejowski Daniłowicz had in mind – the known Romanist Wacław Aleksander or his cousin Ignacy, who published a paper on the objectives of teaching Roman law.²³

Referring once again to the ongoing research on the influence of Roman law on old Polish law, Daniłowicz drew attention to the high resistance this ancient law aroused among the Polish nobility.²⁴ The scholar noted that the nobles feared the introduction in the Commonwealth of a Code based on Roman law, and not knowing that ancient law well, preferred to play safe and overthrow successively introduced projects rather than dispel their doubts in any other way.

²² DANIŁOWICZ, 'Wiadomość' (cit. n. 10), pp. 185–186; JANULAITIS, *Ignas Danilavičius* (cit. n. 2), pp. 656–657.

²³ KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 82–94; 107–108; P. Z. POMIANOWSKI, *Początki polskiego czasopiśmiennictwa prawniczego. Seria pierwsza 'Themis Polskiej'* [The Origins of Polish Legal Periodicals. The First Series of *Themis Polska*], Warszawa 2015, pp. 137–139.

²⁴ A. VETULANI, 'Opory wobec prawa rzymskiego w dawnej Polsce' [Resistance to Roman law in old Poland], *Analecta Cracoviensia* 1 (1969), pp. 372–387; GODEK, 'Prawo rzymskie w dawnej Rzeczypospolitej' (cit. n. 13), pp. 41–45.

In the same letter Daniłowicz referred briefly to the already mentioned above paper by Franciszek Morze. The scholar lamented that Morze could not cite any names of doctors of law at the University of Vilnius from the time when it was a Jesuit Academy, while those legal treatises had been preserved. Among the Vilnius jurists of this period Daniłowicz mentioned the name of Benedict de Soxo, noting that this lawyer was famous as a lecturer and author of basic works on Roman law as shown by comparison with Polish law.

Piotr Niczyporuk claims that the rector of the Academy Benedict de Soxo never taught Roman law in Vilnius, but it is not impossible that he taught canon law there. The work by de Soxo to which Daniłowicz alluded was probably the *Claves juris Accademicis Vilnensibus... porrectae* intended for young people studying law and published in 1648. This introduced students of law to the basic concepts, structure and sources of Roman, canon, and Polish law.²⁵

There is one more reference to the ongoing dispute over the role of Roman law in Poland – we find in an interesting letter from Daniłowicz to Lelewel from Kharkiv dated 15 April, 1828.²⁶ In addition to comments on the roots of the Lithuanian Statutes and several other issues, Daniłowicz again referred to the views of Bandtkie. This time, he acted as his defender, though the tone is far from complete seriousness. Daniłowicz primarily expressed regret that the ‘most noble’ Bandtkie had met with such fierce criticism of his views and that he must face many opponents who fought with him using all available methods and arguments. Mean-

²⁵ P. NICZYPORUK, ‘Nauczanie prawa rzymskiego w Akademii Wileńskiej’ [The teaching of Roman law at the University of Vilnius], [in:] A. LITYŃSKI & P. FIEDORCZYK (eds.), *Wielokulturowość polskiego pogranicza. Ludzie – idee – prawo. Materiały ze Zjazdu Katedr Historycznoprawnych, Augustów 15–18 września 2002 roku*, Białystok 2003, pp. 153–154. Cf. also П. НИЧИПОРУК, ‘Преподавание римского права в Вильнюсской Академии’, *Зборник радова (Recueil des Travaux)* 38.1.1 (2004), (IX колоквијум романиста Централне и Истчне Европе и Азије, Нову Сад, 24–26 октобра 2002), pp. 203–210; IDEM, ‘Promocje doktorskie obojga praw w Akademii Wileńskiej’ [Utriusque juris doctorate promotions in Vilna Academy], *Miscellanea Historico-Iuridica*, 2 (2004), pp. 17–31; ГОДЕК, ‘Право рzymskie w Polsce przedrozbirowej w świetle’ (cit. n. 1), p. 52.

²⁶ *Listy do Joachima Lelewela* (cit. n. 15), p. 77–78; *Odpisy listów Ignacego Daniłowicza* (cit. n. 15), pp. 177–183; JANULAITIS, *Ignas Danilavičius* (cit. n. 2), p. 702.

while, according to Daniłowicz, Bandtkie's assumptions were largely correct, though still not sufficiently proven. Daniłowicz believed Bandtkie's statement accurate that in mediaeval Poland, as in other European countries, the intellectual elite knew and appreciated Roman law, and knew how to use it. Knowledge in this field was shown by the content of scholars' papers emerging in this period. Roman law was also used in public affairs, even more before publishing the Statutes of Casimir the Great than later, and this knowledge paved the way to office and dignity. Daniłowicz estimated that there was already serious evidence of much truth of these assertions, and that much more would be 'unearthed'.

Daniłowicz also devoted a word of commentary to Bandtkie's noble intentions. Namely, he noted that this tireless researcher by all means tried to demonstrate knowledge of Roman law in Poland, because he sought in that way to 'maintain the fame of the Polish name' and show that the country was not as barbaric as some would think. These noble intentions do not protect him from attacks of virulent criticism, however, mercilessly using all the deficiencies and gaps in the evidence. At one point Daniłowicz firmly and without hesitation took the side of Bandtkie's opponents, that he did not share the opinion of that investigator as to the subsidiary role of Roman law with regard to Polish law.

It should be noted that several years previously, Jan Kodrębski discussing Bandtkie's academic work, pointed out that its purpose was primarily a reminder and examination of the Polish national tradition. This is why Bandtkie departed from his initial interest in Roman law to the field of study of Polish history. Bandtkie's first academic treatise (*De studio juris Polonici*) was in response to emerging unfair claims about the poverty of the Polish legal tradition.²⁷

Returning to the content of the Daniłowicz's letter, notice that he, as if out of contrariness, declared to Lelewel that he would try to support the Bandtkie's argumentation and provide him with relevant evidence to show that even the Zaporozhian Cossacks knew and respected Roman law, and that they could take advantage of elements of it in their own legislation, and no worse than the Poles. Daniłowicz then informed Lelewel

²⁷ KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 72–73.

that he had recently discovered a mysterious foliant, with over four hundred pages, which included thirty chapters of draft law for Little Russia written in Russian (it was a project from 1743 known as *Права, по которым судится малороссийский народ* that never entered into force. The manuscript of this is held by the Jagiellonian University Library).²⁸ On preliminary examination, the researcher concluded that the source of the project was the Lithuanian Statute, German law in its various forms (Saxon, Magdeburg, Chelmno), but was mainly from Roman law drawn – he assumed – some Latin study cited in the project as *Kniga Porjadok Prava Cesarskogo*. Daniłowicz then explained to Lelewel that, initially, it had seemed to him that the *Kniga* was simply a list of excerpts from the works of Bartłomiej Groicki.²⁹ This supposition, however, he quickly

²⁸ Ms. 6148 III. Cf. А. Ф. Кистяковский, 'Очерк исторических сведений о своде законов действовавших в Малороссии, под заглавием: Права, по которым судится малороссийский народ', *Университетская Известия* (Киев) 11 (1878 – ноябр), pp. 801–857; 12 (1878 – декабр), pp. 961–1027; IDEM, Права, по которым судится малороссийский народ, Киев 1879; А. Э. Нольде, *Очерки по истории кодификации местных гражданских законов при графе Сперанскомъ*, выпуск 1: *Попытка кодификации литовско-польского права*, С.-Петербургъ 1906, pp. 255–259; А. ЯКОВЛИВ, *Das deutsche Recht in der Ukraine und seine Einflüsse auf das ukrainische Recht in 16.–18. Jahrhundert*, Leipzig 1942, pp. 177–208; А. П. ТКАЧ, *История кодификації дореволюційного права України*, Київ 1968, pp. 7; 79–91; Л. ПАУЛИ, 'Из исследований источников украинской кодификации права 1743 г.', *Archivum Iuridicum Cracoviense* 2 (1969), pp. 185–198; М. П. ВАСИЛЕНКО, 'Права, по которым судится малороссийский народ', як джерело до історії державного права України XVIII віку', [in:] Ю. С. ШЕМПУЧЕНКО, І. Б. УСЕНКО (eds.), *Вибрані твори у трьох томах* 11: *Юридичні праці*, Київ 2006, pp. 372–378; М. КОВУЛЕЦЬКИЙ, 'Prawo magdeburskie jako źródło kodyfikacji prawa ukraińskiego (XVIII–początek XIX w.)' [Magdeburg law as a source of codification of Ukrainian law (18th–beginning of 19th centuries)], *Wrocławsko-Lwowskie Zeszyty Prawnicze* 2 (2011), pp. 280–284; ГОДЕК, III *Statut litewski* (cit. n. 2), pp. 225–228; 289.

²⁹ Cf. А. HALBAN, *Zur Geschichte des deutschen Rechtes in Podolien, Wolhynien und der Ukraine*, Berlin 1896, pp. 71–73; IDEM, *Zur Geschichte des deutschen Rechtes in den Gebieten von Tschernigow und Poltawa (Archivalischer Reisebericht)*, Weimar 1898, pp. 9–10; Ф. В. ТАРАНОВСКИЙ, 'Обзор памятников магдебургского права западно-русских городов литовской эпохи. Историко-юридическое исследование', *Варшавская Университетская Известия* 7 (1897), pp. 1–40; 8 (1897), pp. 41–120; 9 (1897), pp. 121–201; ЯКОВЛИВ, *Das deutsche Recht* (cit. n. 28), pp. 33–42; М. PATKANOWSKI, 'Na marginesie nowego wydania dzieł Bartłomieja Groickiego' [On the margins of the new editions of the works of Bartłomiej Groicki], *Państwo i Prawo* 11.1 (1956), pp. 143–149; ГОДЕК, 'Prawo rzymskie w dawnej Rzeczypospolitej' (cit. n. 13), pp. 58–60.

rejected, persuaded that the *Kniga* contained material much richer than that contained in Groicki's works. Daniłowicz stressed that the scheme and layout of the legal matters in the project had been prepared with considerable knowledge of the facts. The scholar announced the results of his research on the project with regard to the role played in the codification work by Roman law ('the proof of how much the 'Khokhol' without an academy knew Roman law, as they drew support and definitions from it, and then did not miss the matter of the most urgently needed practices').³⁰

In a letter from Kharkiv dated 25 January, 1829 Daniłowicz once again referred to the academic dispute on the importance of Roman law in old Poland.³¹ The object of his criticisms this time were the investigations of Jan Nepomucen Janowski on the impact of Roman law on the chronicle of Wincenty Kadłubek.³² This problem is, moreover, to the present day of interest to scholars.³³ Janowski, under the influence of Bandtkie's views, tried to show that Kadłubek's work is imbued with elements of Roman law and that that law was in old Poland in force as the system used as a subsidiary. Daniłowicz rated Janowski views as superficial and partly inept ('clumsy concept'). He questioned whether they deserved 'such an erudite response' from Lelewel, which appeared in the pages of *Themis Polska*.³⁴

³⁰ Cf. GODEK, *III Statut litewski* (cit. n. 2), pp. 225–228. Cf. A. ФЕДУШАК-ПАСЛАВСЬКА, 'До питання про реценцію римського приватного права в Україні', *Вісник Львівського Університету. Серія юридична* 37 (2002), pp. 149–155.

³¹ *Listy do Lelewela* (cit. n. 15), pp. 81–82; *Odpisy listów Daniłowicza* (cit. n. 15), pp. 197–198.

³² J. N. JANOWSKI, *Investigentur omnes sententiae et loci Iuris Romani quotquot in Cadlubcone occurant et indicentur fontes eorum*, Varsaviae 1827.

³³ J. SONDEL, *Wincenty zw. Kadłubkiem jako apologeta prawa rzymskiego* [Wincenty Called Kadłubek as a Defender of Roman law], [in:] A. DĄBRÓWKA & W. WOJTOWICZ (eds.), *Onus Athlanteum. Studia nad Kroniką biskupa Wincentego* [Onus Athlanteum. The study of the Chronicle of Bishop Wincenty], Łódź 2009, pp. 91–109; IDEM, 'Rola Kroniki Wincentego zwanego Kadłubkiem w upowszechnianiu prawa rzymskiego w średniowiecznej Polsce' [Wincenty's called Kadłubek Chronicle's part in spreading Roman law in medieval Poland], *Zeszyty Prawnicze* 11.1 (2011), pp. 39–68; GODEK, 'Prawo rzymskie w Polsce przedrozbiorowej w świetle' (cit. n. 1), pp. 48–49.

³⁴ BARDACH, *Wacław Aleksander Maciejowski* (cit. n. 7), p. 94; KODRĘBSKI, *Prawo rzymskie* (cit. n. 1), pp. 104–105, 151–156; GODEK, 'Spór' (cit. n. 1), pp. 116–117; P. Z. POMIANOWSKI, 'Początki polskiego czasopiśmiennictwa' (cit. n. 23), pp. 139–144.

Daniłowicz, however, appreciated Janowski's effort, involving gathering references to the law in Kadłubek's work, but believed that they were largely far-fetched. The scholar was being ironic when he stated that Kadłubek was probably not always thinking about the Pandectae when he wrote his chronicle. Paradoxically, however, Daniłowicz prophesied that Janowski's views would have a career, especially abroad. Soberly, and somewhat perversely he pointed out to Lelewel that the advantage of Janowski's argument lay in the fact that it was presented in Latin, and not in Polish language, as his adversaries published.

The excerpts from Daniłowicz's correspondence with Lelewel reveal a small portion of the behind-the-scenes events of the great academic dispute about the meaning of Roman law in former Poland. It seems, however, that the findings presented constitute further evidence that the problem of Daniłowicz's Romanistic formation and the issue of the role of Roman law in his lecture on Polish-Lithuanian law deserves closer attention from researchers and should be addressed.

Sławomir Godek

Chair of History of Polish Law and Constitution
Faculty of Law and Administration
University Cardinal Stefan Wyszyński
ul. Wóycickiego 1/3, bud. 17
01-938 Warsaw
POLAND
e-mail: s.godek@uksw.edu.pl