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ENGLISH LAW AND TADEUSZ CZACKI: ANALYSIS OF REFERENCES TO ENGLISH LEGAL SOURCES IN CZACKI'S *OPUS MAGNUM*

Abstract. Tadeusz Czacki was one of the key figures who participated in the great scholarly discussions about the history, sources of development, and the position of Roman law in old Polish law. The discussion initiated by Czacki and Jan Wincenty Bandtkie in the early years of the nineteenth century lasted for many decades. Its consequences are still present today in modern Polish legal history scholarship. Although Czacki was an author of several legal treatises, most of his pivotal concepts regarding the above-mentioned issues were presented by him in his *opus magnum*, i.e. *O litewskich i polskich prawach*, published for the very first time in 1800. Czacki is well known as a self-educated scholar who referred to numerous works, both Polish and foreign. However, the objective of this article is to analyse Czacki's knowledge and the use of English sources. During the Enlightenment, some Polish intellectuals became fascinated by English culture, politics, and the legal system. The impact of English law, however, has never been analysed in the context of Czacki's work. The purpose of this article is to fill that gap.

Keywords: Old Polish law, English law, Legal treaties, Legal History

PRAWO ANGIELSKIE A TADEUSZ CZACKI: ANALIZA ODWOŁAŃ DO ANGIELSKICH ŹRÓDEŁ PRAWA W *OPUS MAGNUM CZACKIEGO*

Streszczenie. Tadeusz Czacki jest jedną z kluczowych postaci, które uczestniczyły w wielkiej naukowej dyskusji poświęconej historii, źródłom rozwoju oraz pozycji prawa rzymskiego w dawnym prawie polskim. Dyskusja rozpoczęta przez Czackiego oraz Jana Wincentego Bandtkiego u początku XIX w. trwała wiele dziesięcioleci. Jej konsekwencje są także dostrzegalne

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we współczesnej nauce historii prawa polskiego. Wprawdzie Czacki był autorem wielu opracowań prawniczych, jednak większość jego zasadniczych idei dotyczących wskazanych powyżej zagadnień została zaprezentowana w jego *opus magnum*, tj. *O litewskich i polskich prawach*, opublikowanym po raz pierwszy w 1800 r. Czacki jest dobrze znany jako samouk-erudyta, który odwoływał się w swych pracach do licznych opracowań polskich oraz zagranicznych. Celem tego artykułu jest przeprowadzenie analizy stanu wiedzy Czackiego oraz wykorzystania przez niego angielskich źródeł. W czasach Oświecenia niektórzy polscy intelektualści zaczęli interesować się angielską kulturą, a także systemami politycznym i prawnym Anglii. Nigdy jednak nie podjęto próby oceny analizy angielskich wpływów na twórczość Czackiego. Zadaniem artykułu jest wypełnienie tej luki.

Słowa kluczowe: dawne prawo polskie, prawo angielskie, traktaty prawnicze, historia prawa

1. TADEUSZ CZACKI – A BIOGRAPHICAL AND PROFESSIONAL OUTLINE

Tadeusz Czacki (bearing the Świnka coat of arms) was born on 28 August 1765 in Poryck, a village in Wołyń. He was a member of a well-connected noble family. His father, Feliks Szczęsny Czacki, was a cupbearer of the Crown. His mother, Katarzyna Małachowska, was a sister of Stanisław Małachowski who performed the duties of Marshal of the Four-Year Sejm. Czacki's father was a participant of the Radom Confederation (1767) which focused on protecting the old constitutional order of the Polish-Lithuanian Commonwealth, including privileges of the nobility. Because of his actions, he was arrested and interned. Meanwhile, Tadeusz Czacki and his brother, Michał, were educated by their uncle, Franciszek. The young men stayed in Gdańsk during this time, and when their father was released from internment, they all returned to Poryck where their education continued under the guidance of the Jesuit and former lecturer at Lviv's College, Faustyn Grodzicki (Kukulski 1914, 4).

The social position of the Czacki's family shaped his own career in public service. Czacki's first job was as an apprentice in the Warsaw assessorial court in 1781. He secured that position as a consequence of his deep knowledge of legal regulations which made an impression on the king himself. He obtained that knowledge during his education with Grodzicki, who encouraged him to study a semi-official collection of Polish statutory law known as *Volumina Legum* (Langier 1999–2001, 149). While working in court, Czacki also studied the archival collections contained in the Załuski Library, and at the same time he forged professional relationships with historians, Jan Albertrandi and Adam Naruszewicz. Subsequently, King Stanisław August Poniatowski assigned Czacki with the task of organizing the royal private archive and the Crown's *Metryka*, i.e., a book containing entries of the king's chamber office (Oleksiuk 2019, 188). In 1784, Czacki became a member of the Ore Committee (i.e., the royal geological and mining service). Two years later he became a member of the Crown's Treasury Committee (he served as a commissioner until 1792), and a member of the Salt Company. Furthermore, in 1786 Czacki was awarded the Order of Saint Stanislaus

for his public service to the state (Danowska 2006, 17–23). His engagement in public service was once again recognised in 1792 when he was awarded the highest Polish Order, namely, the Order of the White Eagle. This last decoration was in respect of Czacki's participation in preparing the draft of the so-called Constitution of 3 May (ratified in 1791). Amongst other achievements, it should be noted that Czacki was also responsible for creating in 1802 the first Polish navigation society (Kukulski 1914, 7).

Another aspect of Czacki's professional activity concerns his educational achievements. Czacki had been a school inspector, and according to Kukulski: "Soon after, Czacki was appointed, with the consent of the emperor and thanks to the best efforts of Duke A. Czartoryski, to the auxiliary position of school inspector of the Wołyń's governorate" (Kukulski 1914, 13–14). The experience Czacki gained during his work as the school inspector contributed greatly to deciding to establish Wołyń's Gymnasium in Krzemieniec in 1805. Czacki was not only the school's founder, but he also acted as the informal head of the school (Danowska 2006, 11).

In fact, taking care of the development of education in Poland had been on Czacki's mind long before the creation of the gymnasium. In 1800, Czacki, along with Stanisław Sołtyk, Jan Albertandi and Franciszek Dmochowski, founded the Society of Friends of Learning [Towarzystwo Przyjaciół Nauk]. Its aim was to nurture the Polish language and history. The Society looked after Polish schools and provided them with standard textbooks. Eventually, the Society became involved with supervising a project which dealt with writing the history of Poland. This project was initially started by Naruszewicz, but it was not finished before his death in 1796. The Society decided that the project should continue, and Czacki was entrusted with the task of writing the volume devoted to the Jagiellonian period. This decision was no coincidence as Czacki was celebrated as a person with great historical knowledge and he owned an extensive private library. In addition, after the death of Stanisław August Poniatowski, Czacki received the "Naruszewicz's Files" [Teki Naruszewicza], i.e. a gigantic collection of historical documents gathered in the second half of the 18th century by the above-mentioned historian. Czacki's passion for books (he was a collector of numerous books and manuscripts) went hand in hand with his aim of preserving the treasures of Polish culture and preventing their destruction. Czacki did not limit his collection just to books. He was also a collector of coins, maps, orders, as well as other items connected with national history (Langier 1999–2001, 147).

However, the most important of Czacki's fields of activity was his research. He was an extraordinary historian (and he was interested in legal history as well), but he also wrote about law and economics. As an economist, Czacki was mainly interested in political economy. His works concerned such issues as statistics, tithes, and mintage (Oleksiuk 2019, 190).

There is no doubt that Czacki is most well known as a historian and self-proclaimed legal writer. This aspect of his scholarly activity has been researched by many scholars, and in particular by Ireneusz Jakubowski (2000ab, 2001, 2005ab, 2008ab, 2009, 2013, 2016). Among the numerous works that Jakubowski devoted to the scholarly life of Czacki, the one which resonates most with our work is the article “O prawie rzymskim w *opus magnum* Tadeusza Czackiego słów kilka” (Jakubowski 2016). The masterpiece commented upon by Jakubowski is a two-volume work published in 1800 under the title *O litewskich i polskich prawach, o ich duchu, źródłach, związku i o rzeczach zawartych w pierwszym statucie dla Litwy 1529 roku wydanym*. In Jakubowski’s opinion, Czacki’s work is a highly learned commentary on the 1529’s Statute of Lithuania. However, it must be noted that, according to Jan Kodrębski, Czacki’s commentary is rather chaotic in that the work is in the form of historical footnotes to the original text of the Statute (Kodrębski 1990, 113; Jakubowski 2016, 346).

It has been said that Czacki had a sound knowledge of Roman law. He was well acquainted with Roman legal sources, but his ability to examine them in a substantive way is disputable. Jakubowski, however, was emphasizing that Czacki’s knowledge of Roman law was the result of the state of knowledge of contemporary Roman law scholarship (Jakubowski 2016, 347). In the opinion of Jakubowski, Czacki’s works should not be counted as strictly scientific. It would be safer to call Czacki’s writing legacy as “semi-scientific” (Jakubowski 2016, 348). Despite all of this, many scholars consider Czacki to be a founder of Polish legal historical studies (Jakubowski 2008, 96). It is emphasised that the beginning of the scientific approach to the history of Polish law can be traced back to the publication of the first volume of Czacki’s *opus magnum*. Another crucial consequence of publishing the treatise by Czacki was the initiation of the discussion on the position of Roman law in the history of Polish law (Jakubowski 2016, 345). Czacki presented some of his thoughts regarding that problem in an essay *Czy prawo rzymskie było zasadą praw polskich i litewskich i czy z północnymi narodami mieliśmy wiele wspólnych praw i zwyczajów?* This pamphlet was published in Vilnius in 1809. Shortly later, Czacki published another work devoted to the same subject – *O źródłach praw, które miały moc obowiązującą w Polsce i w Litwie*. According to Kodrębski, this last work, published shortly before Czacki’s death, can be seen as a softening of his previous negative attitude towards the *ius Romanum* and simultaneously it is possible to observe Czacki’s acceptance of certain Roman law institutions and their impact on Polish law. At the same time, Czacki no longer stressed the alleged Germanic origins of Polish law (Jakubowski 2008, 97). This work was the last one in which Czacki discussed the impact of Roman law on Polish law. His further research came to an end by his sudden illness, which very quickly led to his premature death. Czacki died at Dubno on 8 February 1813.

2. ENGLISH LAW AND LAWYERS IN CZACKI'S *OPUS MAGNUM*

Czacki and his legal thought are virtually unknown beyond Polish legal scholarship. There is technically only one direct reference in English-language literature to Czacki's role in introducing the discussion on the position of Roman law in Polish history. However, an article written by Vladimir Gsovski is relatively old and since its publication in 1943, many new works on Czacki have been published in Poland (Gsovski 1943).

Czacki's work has been relatively well researched by at least several Polish scholars in recent decades. As already mentioned, Jakubowski was among that group of researchers. He had devoted much of his attention to the problems of Czacki's understanding and use of Roman civil law. Czacki, however, did not stop at Polish and Roman sources. It is rather unexpected that Czacki also referred to English law and English jurists. Polish knowledge of English law at the end of the 18th and in the early 19th century was rather limited. The most important work that gave an intellectual introduction to the phenomenon of English law at the time was the Polish translation of Blackstone's fourth book of *Commentaries*. The translation (based on an earlier French one) was prepared by Teodor Ostrowski under the title *Prawo kryminalne angielskie* [i.e., English Criminal Law] and was published in Warsaw in two volumes in 1786 (Bartel 1987; Zdrójkowski 1956, 175–198). For this reason, finding several direct references to English legal sources and legal treatises in Czacki's work is astonishing and deserves closer attention.

Lawyers and their treatises

Reading the two volumes of *O litewskich i polskich prawach* demonstrates that Czacki referred to numerous works written in many European countries throughout history. Among them it is possible to enumerate some legal works, as well as perhaps even a greater number of historical, philosophic, or theological treatises.

When we talk about English authors and English legal sources, it seems rather surprising that Czacki was aware of a wide range of popular legal authors. For most of his English references, Czacki relied on the authority of William Blackstone and Edward Coke (Czacki 1800, i, 19, 65, 185, 267 and Czacki 1800, ii 15, 55, 83, 229). Among other authors whose works are mentioned more than once (but not as often as in the case of two aforementioned lawyers), it is possible to enumerate, Bracton (Czacki 1800, ii, 8 and 15), Glanvill (Czacki 1800, i, 19 and 267 and Czacki 1800, ii, 15, 83, 145), Matthew Hale (Czacki 1800, i, 19 and 267 and Czacki 1800, ii, 15, 83, 145) and John Selden (Czacki 1800, i, 16 and 19 and Czacki 1800, ii, 213). Finally, there are references to lawyers such as John Fortescue (Czacki 1800, ii, 83), Thomas Littleton (Czacki 1800, ii, 83) and William Prynne (Czacki 1800, i, 61) as well as the treatise known as *Fleta* (Czacki 1800, ii, 8).

The works of these lawyers were known to Czacki in two ways. Older treatises were easily accessible to Czacki because they were written in Latin. In the case of newer works, Czacki did not use their original versions written in the English, but rather their French translations. It was true for Blackstone's Commentaries, as well as other 18th century texts such as Edward Gibbon's *Fall and Decline of the Roman Empire*. It is not clear, on the other hand, which work authored by Hale, Czacki had in mind when referring to the authority of seventeenth century jurist.

Most of the books written by the above-mentioned lawyers can be found in the index of sources added at the end of the second volume of Czacki's book. Mostly because of that index, it is possible to check which accounts formed the basis of Czacki's arguments. The importance of that is even greater when we note that the reference in most of the footnotes is to the authors rather than to their treatises. On the other hand, an index is only a partial tool for the research. It was designed only as an inventory of the authors and their books, rather than as a detailed list of works with information about the place and date of their publication. For this reason, it is not clear whether the index is complete or not. Doubts are based, for example, on the fact that Czacki did not mention Littleton or Fortescue's treatises in the index, but he mentioned them in the footnotes.

With respect to legal sources, it is possible to make several additional observations. Czacki mentioned on several occasion English statutes. They represent a varied chronological spectrum. There are references to the Statute of Merton, 1235 (Czacki 1800, i, 61) the legislation of Edward I (Czacki 1800, i, 69, 198), as well as Tudor (Czacki 1800, i, 189, 198, 238) and Stuart legislations (Czacki 1800, i, 198; ii, 162); however, Czacki did not elaborate as to the source of his knowledge about the statutes. Most likely, he was simply referring to the descriptions of the statutes about which he read in Blackstone's or Coke's works. When speaking of English legislation, mention should also be made of Czacki's several references to *Magna Carta Libertatum* (Czacki 1800, i, 60; ii, 8 and 229). For example, he devoted a relatively large passage to the famous clause 39 of the Charter establishing a set of fundamental rights that cannot be breached without a lawful judgment of the court (Halberda 2000, 83–85).

While discussing international relations between the English monarchy and other kingdoms, Czacki was, in fact, using a collection of international treatises assembled in the late seventeenth century and early decades of the eighteenth century by Thomas Rymer. The Rymer's collection was designed as an authority-based set of all conventions to which England was a party (Sherbo 2013). Czacki referred directly to Rymer's collection only once (Czacki 1800, i, 69), but he mentioned English international treatises several times in his book (Czacki 1800, i, 60; 300). There is no doubt that it was based on Rymer's collection as well. Like the work of Rymer, was the multivolume collection known as *Monasticom Anglicanum*, which was developed in the second half of the seventeenth century by William Dugdale. Although the collection was primarily aimed at the history

of English abbeys, it contained much information regarding grants and privileges obtained by the different monastic orders through the ages (Parry 2009). In that context, Czacki used the work twice (Czacki 1800, i, 313; ii, 72).

Referring to English law

Numerous references to legal sources and literature led to the obvious observation that Czacki was not limiting these 'English' mentions to a particular area of law but was freely citing English law in different contexts. However, they can be grouped into several general substantive sections.

As in the case of the old Polish law, Czacki was also interested in the position of Roman civil law in English history. He admitted that the discussion of this issue was present in English legal literature. He even enumerated the authors who supposedly were involved in the dispute – Glanvill, Coke, Selden, and Blackstone (Czacki 1800, i, 19). This information is not precise. In the case of Glanvill, it is possible to observe some level of acquaintance with Roman law featured by the author(s). However, there are no actual discussions in the text of Glanvill on the influence of Roman civil law in England. In modern literature, it is emphasized how the author or authors of Glanvill acquired rudimentary knowledge of Roman law (Turner 1990, 105–107). In the case of the remaining jurists, their participation in the abovementioned discussion is well attested. Coke was an enemy of Roman civil law in England, with Selden being an admirer of the law of ancient Romans, and Blackstone being a detractor, who most probably was a tacit admirer of the ancient legal order. In general, however, Roman law was by many common lawyers considered hazardous, and they were openly hostile toward it. This was also confirmed by Czacki in his *opus magnum* (Czacki 1800, i, 186. See also Czacki 1800, i, 16).

Interest in the historical development of English law is also visible in many references to the Anglo-Saxon laws (Czacki 1800, i, 18–19; ii, 15, 45, 51, 70, 157). As in many other cases, Czacki's arguments based on these citations were definitely aimed at being an intellectual show-off. It is possible to perceive certain similarities with his deliberations on old Polish law. Czacki was trying to understand the origins of the laws of European states and the relations between them in the early medieval period. Focusing on Anglo-Saxon laws which were part of a larger Germanic tradition, could play some importance in Czacki's scholarly deliberations and his search for the origins of Polish law in Germanic tradition.

It should not be surprising that many references to English law concern issues of property law. As to the land law *per se*, Czacki referred only twice while explaining the concept of the medieval English fief (Czacki 1800, i, 65) and the feudal socage tenure (Czacki 1800, i, 273). He mentioned also the right to alienate the land by referring to the 1290 statute *Quia Emptores* (Czacki 1800, i, 198). Also, problems relating to the royal lands (hunting on them) as well as the queen's

property were briefly mentioned by Czacki (Czacki 1800, ii, 47, 72, 256). Classic English property law also includes inheritance issues. Among them, the problem of the specific inheritance system of the *gavelkind* (partible inheritance being an exception from the general rule of primogeniture in English law) caught Czacki's attention (Czacki 1800, i, 60–61; ii, 70), as well as the legal status of illegitimates (Czacki 1800, i, 267).

Furthermore, some references expose Czacki's interest in the subject of English criminal law. Besides general references to the criminal law (Czacki 1800, ii, 122), including the concept of the jury (Czacki 1800, i, 29), Czacki also mentioned more specific problems of English criminal law. He compared, for example, the legal regulations of different countries, including England, related to particular offences such as treason (Czacki 1800, i, 186), witchcraft (Czacki 1800, ii, 97), and falsifying coins (Czacki 1800, i, 185). In addition, he briefly discussed the problem of duels (Czacki 1800, ii, 145–146) as well as imposing the death penalty on a pregnant woman (Czacki 1800, ii, 131).

The final group of English legal references concerns the legal status of the Jewish community living in England. The issue itself is interesting because for more than three and a half centuries (1290–1656) Jews were banned from living in England and were not allowed to enter the British Isles (Brand 2000; Samuel 1988–1990). However, Czacki's references were not substantial. Once he referred to the right of possessing cemeteries by Jewish communities of 12th century England (Czacki 1800, i, 94–95). Elsewhere, he mentioned persecutions of Jews accepted by English kings in the 13th century (Czacki 1800, i, 103).

Besides these thematical references, Czacki mentioned English law occasionally in some other contexts. Among them, the most interesting seems to be the suggestion that English law differed in various parts of England and Wales (Czacki 1800, i, 189). This statement was made by Czacki without any context. For this reason, it may seem disputable at first, especially since the core idea of the common law was to unify the varied customs of the Anglo-Saxon heritage (Milsom 1981, 11–13). Czacki emphasised, however, that the difference he had in mind regarded York and Canterbury. In such a situation, he was not referring to the common law, but rather to the different canon law jurisdictions of the ecclesiastical provinces within England (Donahue 1974). Because of the comparisons he made with continental countries, it might be suggested that Czacki was not aware that his example applied to canon law jurisdiction. In the case of France, for example, he clearly spoke about northern and southern jurisdictions, i.e. the one based on the customary law and another under the Roman law influence (Czacki 1800, i, 189).

3. CONCLUSIONS

There is no doubt that Czacki was a great scholar, who quite easily navigated through different legal systems and traditions. Simultaneously, it is necessary to admit that, as in the case of Roman law, as in the case of English law, Czacki's knowledge was superficial. He had access to various sources and works related to English law, but ultimately the references did not lead to in-depth analysis.

Although it may be tempting to call his attempts to compare different legal systems comparative, closer investigation reveals that Czacki was not comparing anything, but rather enumerating different solutions. There is no attempt to explain the reasons for the differences or similarities.

On the other hand, Czacki's efforts cannot be ignored. The size of the two volumes shows how much time Czacki devoted to prepare *O litewskich i polskich prawach*. Referring to English law must have been particularly difficult. Language barriers, incongruous systems, and the lack of a larger number of sources were actual obstacles in arranging the footnotes. For this reason, Czacki's reference to English law must be appreciated, but at the same time, it is impossible to recreate the condition of knowledge about English law in the early nineteenth century Poland.

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