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THE LEGISLATIVE POWERS OF THE KING AND THE SEJM IN RELATION TO ROYAL TOWNS IN POLAND IN THE 14TH–16TH CENTURIES¹

Abstract

Granting a location privilege that ensured townspeople would be subject to a specific law did not mean this was always the case. Although the clauses of German law in the location privileges specified the applicable law – for example *ius Magdeburgense*, *ius Novoforense*, or *ius Culmense* – knowledge of German law in the towns of the Kingdom of Poland was limited in the late Middle Ages. Moreover, the law was often inadequate for local conditions. This inadequacy, as well as the incompleteness of the regulations of Saxon-Magdeburg law, were among the main reasons for its modification, in which the monarch played an important role.

The first part of the article summarises the findings on the role of German law clauses in location privileges. The second part discusses the king's competence to legislate

¹ The article is a translation of an excerpt from a book originally published in Polish: M. Mikula, *Prawodawstwo króla i sejmu dla małopolskich miast królewskich (1386–1572). Studium z dziejów rządów prawa w Polsce* [Royal and Parliamentary Legislation for the Royal Towns of Małopolska (1386–1572): A Study in the History of the Rule of Law in Poland], Kraków 2014). Translation by Andrzej Branny. Translation of this publication has been supported by a grant from the Priority Research Area Heritage under the Strategic Programme Excellence Initiative at the Jagiellonian University.

for cities that developed or modified the law guaranteed in the German law clauses. The main sources used were Saxon-Magdeburg law (a gloss on the Saxon Mirror and a gloss on the Magdeburg Weichbild), which authorized the monarch to introduce regulations that replaced written law. In the Jagiellonian Kingdom of Poland, however, the central legislative authority was not only the monarch, but also the Sejm, which claimed the power to enact laws for towns and townspeople. The third part of the article discusses how this power developed alongside changes in the monarch's legislative role.

Keywords: king, Sejm, Parliament, Polish municipal law, Magdeburg Law, city, town

1. Introduction

The text introduces the origins of *ius municipale Polonicum* (Polish municipal law), which comprised sources of various origins authored by different entities. While it covers the key elements of Polish municipal law, such as the original Saxon-Magdeburg law, which was guaranteed by location privileges, royal legislation, and Sejm legislation, it does not exhaust the full range of origins of municipal law. These include city legislation, city owners' legislation (in the case of royal cities, this was enacted by the king through his officials), customary law, and other normative systems, including Christian teachings, moral principles, and an intuitive sense of justice and fairness.

This article begins with the analysis of clauses of German law in the town charter, which formed the basis for a municipality operating under this law. This ensured its distinctiveness from Polish common law (*ius commune*). The second part outlines the conditions for monarchical law-making as set out in Saxon-Magdeburg law. The monarch's role was significant, and royal legislation excluded the original Saxon-Magdeburg law's provisions. The development of the Polish Sejm then established another central legislative centre alongside the monarch and an attempt to outline the dynamics of the Sejm's legislative powers will constitute a significant, third portion of the text.

2. The *ius teutonicum* clause in town charters and privileges sanctioning the adoption of German law

2.1. The meaning of the term *ius teutonicum*

In the Age of the Jagiellons, a period of Polish history which lasted nearly two hundred years, the legislation for towns and their inhabitants was an amalgam of customary law (*ius commune*)² and *ius singularis*, valid for a particular group or class of people.³ Already in the earliest urban charters and privileges, this division was affirmed

² *Ius commune* means here the law addressed to all subjects of the King of Poland (citizens of the Kingdom of Poland), including political and fiscal legislation and well as judicial law (cf. W. Uruszczak, *Sejm Walny Koronny w latach 1506–1540* [The Polish Crown Sejm in the Years 1506–1540], Warszawa 1981, p. 131). The term *ius commune* in that sense can be traced back to the Statutes of Kazimierz the Great; it also features in the works Jan Ostroróg, Andrzej Frycz Modrzewski, Andrzej Lipski (though he did not exclude using it with reference to Roman Law) and Mikołaj Żalasowski, who contrasted *ius commune* with *lex specialis*, i.e. particular laws such as municipal law (cf. I. Kwiatkowska, *Die Stellung des sächsisch-magdeburgischen Rechts in der Normenhierarchie nach den Anschauungen polnischen Juristen des 16. und 17. Jahrhunderts*, [in:] *Studien zur Geschichte des sächsisch-magdeburgischen Rechts in Deutschland und Polen*, eds. D. von Willoweit, W. Schich, Frankfurt am Main–Bern–Cirencester 1980, pp. 145–149 [“Rechtshistorische Reihe”, Vol. 10]). Multiple cases of *ius commune* being used in the sense of general law opposed to particular law (i.e. privilege) have been listed by Konstanty Grzybowski (e.g. the 1359 Statutes of Bodzanta, various acts of the Sejm, including the *constitutiones* of 1504 and 1505), and the legislation of King Zygmunt the Old. Cf. K. Grzybowski, *Teoria reprezentacji w Polsce epoki odrodzenia* [Theory of Representation in Poland in the Age of the Renaissance], Warszawa 1959, pp. 249, 252, 254 and 258. Of a different view is Anna Sucheni-Grabowska, who, following Oswald Balzer, regards *ius commune* as the “constitutional backbone” of the state (cf. her *Refleksje nad sejmami czasów zygmunto-wskich* [Reflections on the Sejms During the Reigns of Zygmunt I the Old and Zygmunt II August], “Przegląd Historyczny” 1984, Vol. 75, Issue 4, p. 766).

³ For Witold Maisel, who views it from the perspective of criminal law, the concept of municipal law includes the Saxon-Magdeburg Law (presumably also the Kulm and Lubeck Law) supplemented where necessary by imports from other legal regulations (e.g. Roman law, *Constitutio Criminalis Carolina*, Joos de Damhouder’s treatise *Praxis rerum criminalium*), and, “additionally, parliamentary acts, royal mandates as well as statutes adopted by the individual urban authorities, to get a full picture of the mosaic of municipal law in Poland in the 15th–18th centuries” (cf. W. Maisel, *Prawo karne w statutach miast polskich do końca XVIII wieku* [Criminal Law in the Statutes of Polish Towns Until the Late 18th Century], “Czasopismo Prawno-Historyczne” 1974, Vol. 26, Issue 2, pp. 102–103).

by a clause invoking German law, which, in effect, granted a special legal status to the town (settlement) named in a writ of this kind.⁴

As Kazimierz Tymieniecki and Józef Matuszewski have demonstrated the meaning of “German law” was changing over time and need not have been a match of the judicial law from the *Sachsenspiegel* or the Magdeburg *Weichbild*.⁵ Tymieniecki argues that, as a rule, in Polish villages in the Middle Ages *ius Teutonicum* meant *mos Teutonicum*, i.e. custom rather than judicial law. At the same time the phrase always implied *libertas Teutonica* (guarantees of immunity and personal freedom).⁶ Furthermore, taking a different line from Stanisław Kutrzeba, he claims that self-government followed from the creation of the town council and not the other way

⁴ For an exhaustive analysis of the “German law clause” see S. Kuraś, *Przywileje prawa niemieckiego miast i wsi małopolskich XIV–XV wieku* [German Law Privileges of Towns and Villages of Małopolska in the 14th–15th Century], Wrocław–Warszawa–Kraków–Gdańsk 1971, pp. 135–141; J. Matuszewski, *Prawo sądowe na wsi polskiej lokowanej na prawie niemieckim* [Judicial Law in Polish Villages Incorporated Under German Law], “Studia z Dziejów Państwa i Prawa Polskiego” 1995, Vol. 2, pp. 40–75, esp. pp. 54, 57 and 60. Cf. also R. Szczygieł, *Rola przywilejów lokacyjnych w procesie lokacji miast w XV–XVII w. na przykładzie Uchań* [The Role of Incorporation Privileges in the Proces of Town Incorporations in the 15th–17th Centuries: The Case of Uchanie (Hrubieszów County)], “Rocznik Lubelski” 1985/1986, Vol. 27/28, pp. 51–59; J. Matuszewski, *Dzieje wpływów prawa niemieckiego w Polsce* [An Outline of the Impact of German Law in Poland], [in:] *Związki prawa polskiego z prawem niemieckim* [Interrelationships Between Polish Law and German Law], eds. A. Liszewska, K. Skotnicki, Łódź 2006, pp. 7–14 and 20–21.

⁵ K. Tymieniecki, *Prawo niemieckie w rozwoju społecznym wsi polskiej* [German Law and the Social Development of the Polish Village], “Kwartalnik Historyczny” 1923, Vol. 37, pp. 39, 41, 60–71; and idem, *Prawo czy gospodarstwo?* [The Law Or a Single Economic Unit?], “Roczniki Dziejów Społecznych i Gospodarczych” 1946, Vol. 8, pp. 289–291.

⁶ The “transfer” of those values with the spread of the German law is a common theme, especially in German historiography. Cf. Rolf Lieberwirth, *Einführung oder Rezeption? Mittelalterlich deutsches Recht in slawischen Herrschaftsgebieten. Das Beispiel: Polen*, [in:] *Rechts- und Sprachtransfer in Mittel und Osteuropa: Sachsenspiegel und Magdeburger Recht; internationale und interdisziplinäre Konferenz in Leipzig vom 31. Oktober bis 2. November 2003*, eds. E. Eichler, H. Lück, Berlin 2008, p. 169 [IVS Saxonico-Magdeburgense in Oriente, 1]; and F. Ebel, *Rechtse Entstehung und Rechtstransfer im Spiegel der Überlieferung (Magdeburger und Lübecker Recht)*, [in:] *Grundlagen für ein neues Europa. Das Magdeburger und Lübecker Recht in Spätmittelalter und Früher Neuzeit*, eds. H. Lück, M. Puhle, A. Ranft, Köln–Weimar–Wien 2009, pp. 40–42. Cf. also M. Mikuła, *Die Könige und das Reformationsverfahren des Rechts in den polnischen Städten vom 14. bis zum 16. Jahrhundert*, “Beiträge zur Rechtsgeschichte Österreichs”, 2013, Vol. 2, pp. 502–503.

round.⁷ In the ensuing controversy Kutrzeba's position was greatly weakened when his assertion that the hereditary wójt had been a municipal official was found wrong.⁸

Most scholars who joined the debate eventually came down on the side of Tymieniecki, though not without adding new ideas of their own. So Benedykt Zientara insists that the town council need not have had full autonomy by the mere fact of its existence. The evidence from the 13th century shows that in reality, the council functioned as an advisory body to the wójt.⁹ For Józef Matuszewski and Adam Vetulani the terms *ius Polonicum* and *ius Teutonicum* refer to two types of dues and obligations owed by the burghers to their overlord. Moreover, "German law" brings with it the idea of "split ownership" [as in emphyteusis].¹⁰ For Karol Buczek the salient characteristic of the

⁷ K. Tymieniecki, *Recenzja* [A review of three articles in *Studia historyczne ku czci Stanisława Kutrzeby*, vol. 1, 1938, by M. Patkaniowski, J. Krzyżanowski and M. Niwiński], "Rocznik Historyczny" 1938, Vol. 14, Issue 2, pp. 372–378.

⁸ S. Kutrzeba, *Historia ustroju Polski: Korona* [History of the Polish Political System: The Crown], 8th Edition, revised and augmented by Adam Vetulani, Warszawa 1949, pp. 88 and 90.

⁹ B. Zientara, *Das Deutsche Recht (ius Teutonicum) und die Anfänge der städtischen Autonomie*, [in:] *Autonomie, Wirtschaft und Kultur der Hansestädte*, eds. K. Fritze, E. Mueller-Mertens, W. Stark, Weimar 1984, pp. 98 and 100.

¹⁰ Cf. A. Vetulani, *W sprawie prawa chłopskiego w Polsce feudalnej* [The Case of Peasant Law in Feudal Poland], "Państwo i Prawo" 1956, no. 10, pp. 621 and 623; J. Matuszewski, *Prawo sądowe...*, pp. 52–59; idem, *Rodzaje własności gruntu we wsi lokowanej na prawie niemieckim* [Types of Land Ownership in Villages Incorporated Under German Law], [in:] *Parlament, prawo, ludzie. Studia ofiarowane Profesorowi Juliuszowi Bardachowi* [The Parliament, the Law, the People: A Festschrift in Honour of Professor Juliusz Bardach], ed. K. Iwanicka, M. Skowronek, K. Stembrowicz, Warszawa 1996, pp. 158, 160–162, 164; idem, *Ius Teutonicum. Średniowieczna reforma rolna w Polsce* [Ius Teutonicum: A Medieval Land Reform in Poland], [in:] *Zagadnienia prawa konstytucyjnego. Księga pamiątkowa ku czci Tadeusza Szymczaka* [Questions of Constitutional Law: A Festschrift in Honour of Professor Tadeusz Szymczak], ed. M. Domagała, Łódź 1994, pp. 237ff. Cf. also some older studies on obligations owed to the landlord, e.g. K. Kaczmarczyk, *Ciężary ludności wiejskiej i miejskiej na prawie niemieckim w Polsce w XIII i XIV wieku* [The Burdens of Rural and Urban Population Under German Law in Poland], "Przegląd Historyczny" 1911, Vol. 11, pp. 19–30. Zygfryd Rymaszewski points out that split ownership can have place only in a situation of personal dependence on the landlord. He also distinguishes sharply between fief law and feudal law. Cf. Z. Rymaszewski, *Z zagadnień rozwoju miejskiego prawa prywatnego w Polsce* [Some Problems in the History of Municipal Private Law in Poland], "Czasopismo Prawno-Historyczne" 1969, Vol. 21, Issue 2, p. 216.

municipal law imported to Poland from the West was “the freedom to pursue a trade and to sell goods and artisanal products in stalls, butcher shops and inns.”¹¹

It would be hard to disagree with any of these observations, yet there is one more aspect of the distinction between “Polish law” and “German law” that must not be missed. The names refer to two different judicial systems.¹² The option for “German law” implies a guarantee that the Saxon-Magdeburg law could be introduced and its adoption would take place by way of judicial practice. Indeed, the adoption of the Saxon-Magdeburg law proceeded gradually,¹³ and as Marta Załęcka observes “the reception of German law in Poland was selective; those of its institutions that met local demand and could function smoothly in the system of old law were adopted successfully.”¹⁴ The reception and adaptation of German law in Poland was eased

¹¹ K. Buczek, *Targi i miasta na prawie polskim (okres wczesnośredniowieczny)* [*Fairs and Towns Under Polish Law (in the Early Medieval Period)*], Wrocław–Warszawa–Kraków 1964, pp. 73, 117.

¹² R. Czaja, *Miasta i mieszczaństwo na ziemiach polskich na przełomie XIII/XIV w.* [*Towns and Burghers in Poland at the Turn of the 13Th/14Th Century*], [in:] *Polska około roku 1300. Państwo, społeczeństwo, kultura* [*Poland c. 1300: The State, Society and Culture*], ed. W. Fałkowski, Warszawa 2003, p. 63.

¹³ According to Henryk Samsonowicz town courts in the late Middle Ages relied on “a new professional culture... which was the product of practice; it was rooted in generally accepted principles of Christian morality; it was founded on the knowledge of facts verified by the testimony of witnesses and – what is very important – the use of common sense; and, finally – probably to a lesser, if not least, extent – expert knowledge of the written or municipal law (the *Weichbild*) or – in even fewer cases – the laws of the state”, idem, *Kto podejmował decyzje w miastach samorządowych średniowiecznej Polski* [*Who Made Decisions in the Local Government Towns of Medieval Poland?*] [in:] *Miasta, ludzie, instytucje, znaki. Księga jubileuszowa ofiarowana Profesor Bożenie Wyzumskiej w 75. rocznicę urodzin* [*Cities, People, Institutions, Symbols. A Commemorative Book Presented to Professor Bożena Wyzumska on Her 75th Birthday*], ed. Zenon Piech, Kraków 2008, p. 157. In S.M. Zajączkowski’s opinion, “the land reform *iure Teutonico* meant settling peasants, mostly Poles, as subordinate owners. The German judicial law was unnecessary for it. Due to the language barrier not many were familiar with it. Rural courts generally used Polish law because that was the law they knew.” In the landed estates owned the nobility the Magdeburg Law was hardly known at all. Cf. S.M. Zajączkowski, *Lokacje osad wiejskich na prawie niemieckim na obszarze przedrozbiorowego powiatu łęczyckiego do lat siedemdziesiątych XVI wieku* [*Incorporation of Rural Settlements Under German Law in the Historic County of Łęczyca Until the 1570s*], Łódź 2003, pp. 11 and 136.

¹⁴ M. Załęcka, *Wójtostwa dziedziczne w miastach Małopolski w późnym średniowieczu (studium historyczno-prawne)* [*Hereditary Advocatia in the Towns of Lesser Poland in the Late Middle*

by the creation in 1356 of high courts of German law, presided by the court at Wawel.¹⁵ By the early 16th century the process had well advanced, by the next one it was completed, if we are to judge the plain statement in Łaski's introduction to the *Statutes* (1605) that Polish towns were governed by Magdeburg law. But no less interesting is his justification for including in the *Statutes*, alongside the *Weichbild* and the *Speculum Saxonum*, Master Raymundus' manual *Summa legum brevis, levis et utilis*. As it was used in some towns to complement the main sources of Saxon-Magdeburg law, he thought it would be advantageous to encourage others to follow this practice.¹⁶

2.2. Dissemination of knowledge about Saxon-Magdeburg law in the Kingdom of Poland

Access to written law was made much more accessible thanks not only to the publication of Łaski's *Statutes*, but also, in the previous decades, the appearance of printed editions of the *Weichbild*, the *Speculum Saxonum* and Bartłomiej Groicki's manuals of municipal law. As a result, a uniform text began to function alongside

Ages (Historical and Legal Study)], p. 117.

¹⁵ L. Łysiak, *Najstarsza księga dekrétów sądu wyższego prawa niemieckiego na zamku krakowskim* [The Oldest Book of Rulings of the High Court of German Law at Cracow Castle], [in:] *Historia prawa – historia kultury. Liber memorialis Vitoldo Maisel Vitoldo Maisel dedicatus* [History of Law – History of Culture...], eds. Ewa Borkowska-Bagieńska, Henryk Olszewski, Poznań 1994, p. 165; idem, *Sąd wyższy prawa niemieckiego na zamku krakowskim a inne sądy wyższe z terenu Małopolski* [The High Court of German Law at Cracow Castle and Other High Courts in Małopolska], "Śląski Kwartalnik Historyczny Sobótka" 1993, Vol. 48, Issue 2–3, s. 117; J. Matuszewski, J. Wyrozumski, *O Sądzie Najwyższym Prawa Niemieckiego na Zamku Królewskim. Dwugłos w związku z pracą Ludwika Łysiaka *Ius supremum Maydeburgense castri Cracoviensis 1356–1794. Organisation, Tätigkeit und Stellung des Krakauer Oberhofs in der Rechtssprechung Altpolens** [About the Supreme Court of German Law at the Royal Castle. Two Opinions on the Work of Ludwik Łysiak...], "Czasopismo Prawno-Historyczne", 1992, Vol. 44, Issue 1–2, pp. 170ff; and S. Gawlas, *Uwagi o polityce miejskiej Kazimierza Wielkiego*, [in:] *Aetas media, aetas moderna. Studia ofiarowane profesorowi Henrykowi Samsonowiczowi w siedemdziesiątą rocznicę urodzin*, eds. H. Manikowska, A. Bartoszewicz, W. Fałkowski, Warszawa 2000, p. 35.

¹⁶ Cf. J. Reszczyński, „O prawie i różności praw” w częściach wstępnych *Summy legum i Sigismundiny* [in:] *Leges sapere. Studia i prace dedykowane Profesorowi Januszowi Sondlowi w pięćdziesiątą rocznicę pracy naukowej*, eds. W. Uruszczak, P. Święcicka, A. Kremer, Kraków 2008, p. 445.

differing manuscript versions and gradually supersede them.¹⁷ The king took an active role in it by authenticating and recommending Mikołaj Jaskier's book.

The transition marked the end of an epoch but was hardly revolutionary.

The knowledge of the Magdeburg law had not been neglected. There is plenty of evidence showing that town authorities took great care to supply the court clerks with the necessary codices and updates.¹⁸ The new statutes (*wilkierze*) approved

¹⁷ Z. Rymaszewski, *Łacińskie teksty Landrechtu Zwierciadła Saskiego w Polsce. Versio Vratislaviensis, versio Sandomiriensis, Łaski*, Wrocław 1985, pp. 210–215; A. Łosowska, *Kolekcja Liber legum i jej miejsce w kulturze umysłowej późnośredniowiecznego Przemyśla* [*The Liber Legum MS and Its Place in the Intellectual Culture of Late-Medieval Przemyśl*], Warszawa–Przemyśl 2007, pp. 16, 159–165, 203–232, and 308. See also M. Mikuta, *Modyfikacje łacińskich tekstów Weichbildu magdeburskiego a ewolucja prawa w średniowiecznych miastach polskich. Uwagi wstępne* [*Modifications of Latin Texts of the Magdeburg Weichbild and the Evolution of Law in Medieval Polish Towns: An Introduction*], “Acta Historico-Iuridica Pilsnensia” 2009–2010, pp. 141ff.; idem, *Statuty prawa spadkowego w miastach polskich prawa magdeburskiego (do końca XVI wieku)* [*Inheritance Statutes in Polish Towns Under Magdeburg Law (Until the End of the 16th Century)*], “Z Dziejów Prawa” 2014, Vol. 7, pp. 33–63; S.M. Szacherska, *Próba walki o główszczyznę mieszczańską w XV w.* [*An Attempt to Get a Court Ruling Concerning the Burgher Wergeld in the 15th Century*], [in:] *Cultus et cognitio. Studia z dziejów średniowiecznej kultury* [*Cultus Et Cognitio: Studies in the History of Medieval Culture*], eds. A. Gieysztor, S.K. Kuczyński, Warszawa 1976, p. 552.

¹⁸ Probate inventory records from Krosno show that town clerks Mateusz Woydala (1574) and Kasper Hiactinctus (1575) and clerk of the Krosno customs office Wawrzyniec Kotwiński (1593) owned Jan Cervus Tucholczyk's *Farrago actionum civilium iuris Maydeburgensis*. Cf. F. Leśniak, *Książka w inwentarzach mieszczan krośnieńskich (XVI – pierwsza połowa XVII wieku)* [*Books in the Inventories of Krosno Burghers (16th Until Mid-17th Century)*], [in:] *Narodziny Rzeczypospolitej. Studia z dziejów średniowiecza i czasów wczesnonowożytnych (Pamięci Janusza Kurtyki)* [*The Birth of the Polish-Lithuanian Commonwealth: Studies in the History of The Middle Ages and the Early Modern Age (In Memoriam Janusz Kurtyka)*], Vol. II, eds. W. Bukowski, T. Jurek, Kraków 2012, pp. 1174, 1178, 1183). Fourteen inventories of Lublin burghers from the latter 16th century and the first half of the 17th century mention over 100 books of law. Top of the list were manuals of municipal law, primarily Bartłomiej Groicki's *Porządek sądów i spraw miejskich prawa majdeburgskiego* [*The Constitution of Courts and Urban Matters According to the Magdeburg Law*] (seven inventories), Johannes Cervus Tucholiensis' *Farrago actionu[m] civilium iuris Maydeburgensis* (six inventories), *Speculum Saxonum* translated and edited by Paweł Szczerbica (3 inventories), and the authorized text of Mikołaj Jaskier's *Speculum Saxonum* (one inventory). Cf. E. Torój, *Inwentarze księgozbiorów mieszczan lubelskich z lat 1591–1678* [*Inventories of Lublin Burghers, 1591–1678*], Lublin 1998, pp. 23–26, 68, 120, 99 and 139; W. Maisel, M. Kramperowa, *Księgozbiory mieszczan poznańskich z drugiej połowy XVI wieku* [*Lublin Burghers' Book Collections from the Latter 16th Century*], “Studia

by the town owners show that the Magdeburg law was well known and respected as a foundation of the legal status quo.¹⁹ Obviously, there is a long way from the knowledge of the law to its use in practice. Hence the extent to which the law was applied in judicial practice cannot be known for certain without further research.²⁰ The studies done so far indicate that the impact of written Saxon-Magdeburg law and other legacy sources of law differed from place to place. In the judicial practice of the time the provisions of the Saxon-Magdeburg law were usually invoked, but the rulings reflected the local customary norm.²¹ In the court cases at Wojnicz, for example, the provisions of the *Speculum Saxonum* were quoted with astonishing accuracy.²²

In conclusion it may be said that the opening of the door to German law in the charters (*privilegia*) resulted in the proliferation of *leges speciales*. Their scope and effective use changed continually, although the tendency to expand is clear to see in the process of adaptation and modification of the received Saxon-Magdeburg law. The expansion of the *lex specialis* on the ground was spurred further by royal legislation. Meanwhile, customary law reigned supreme in areas like public spending, foreign and domestic trade, or defence.

i Materiały do Dziejów Wielkopolski i Pomorza” 1960, Vol. 6, Issue 1, pp. 257–308; W. Maisel, *Sądownictwo miasta Poznania do końca XVI wieku* [The Judiciary of Poznań Until the End of 16th Century], Poznań 1961, pp. 303–311; and A. Łosowska, op. cit., pp. 135ff.

¹⁹ Cf. M. Mikuła, *O reformie prawa miejskiego w XVI wieku: Cieżykowicka uchwała o prawie miejskim i administracji* [Reforms of Municipal Law in the 16th Century: The Cieżkowice Statute Concerning Municipal Law and Administration], “Krakowskie Studia z Historii Państwa i Prawa” 2014, Vol. 7, Issue 1, p. 238.

²⁰ K. Bukowska, *O recepcji prawa rzymskiego w prawie miejskim w dawnej Polsce* [On the Reception of Roman Law in Municipal Law in Old Poland], “Czasopismo Prawno-Historyczne”, 1968, Vol. 20, Issue 1, pp. 77–78.

²¹ G.M. Kowalski, *Zwyczaj i prawo zwyczajowe w doktrynie prawa i praktyce sądów miejskich karnych w Polsce XVI–XVIII w.*, [Custom and Customary Law in Legal Doctrine and Legal Practice of Municipal Criminal Courts in Poland in the 16th–18th Century], Kraków 2013, pp. 163–165 and 167–168.

²² K. Nabiałek, *Dzieje Wojnicza od XVI do połowy XVII wieku*, [in:] W. Krawczuk, P. Miodunka, K. Nabiałek, *Dzieje Wojnicza od XVI do XVIII wieku* [A History of Wojnicz from the 16th to the 18th Century], Wojnicz 2009, s. 121–122, 226–228.

3. The Saxon-Magdeburg law on the legislative competences of the king

Otto I's privilege attached to the Magdeburg Weichbild contains a clause in which the Emperor is called supreme legislator who can delegate his rights at will, in this case to the Archbishop of Magdeburg. That cleared up the question of competences of the emperor and landlord of the town. However, in exercising his powers he had to abstain from making laws that were tyrannical or face his subjects' disobedience. That stark warning left no room for the ambiguities of *Quod principi placuit legis habet vigorem* (what pleases the prince has the force of law).²³

Commentators of the *Speculum Saxonum* and the *Weichbild* tried to make out where the red lines were and what justified a change of the written law. Having analyzed the *Speculum Saxonum*, Paweł Szczerbic comes to the following conclusion, "You need to keep in mind that the Christian faith was the reason why the law was given to the Saxons, and as long they keep that faith, their laws can neither be altered nor anything undertaken against them."²⁴ A gloss to the *Speculum* states that a change in the law, i.e. a law established by the ruler,²⁵ is possible when the cause which led to its establishment has changed, when it was misapplied, or when new circumstances call for new regulations.²⁶ These comments show that softening the commitment to the ancient principle of the immutability of the law (the old law is the good law) was by no

²³ Cf. S. Brzeziński, *Tyran i tyrania w staropolskim języku politycznym (XVI–XVIII wiek)* [*The Tyrant and Tyranny in Polish Political Language (16Th–18Th Century)*], [in:] *Spółeczeństwo staropolskie [Polish Society until 1795]. Seria nowa, Vol. 1: Spółeczeństwo a polityka [Society and Politics]*, ed. A. Karpiński, Warszawa 2008, pp. 287–391.

²⁴ P. Szczerbic, *Speculum Saxonum, albo prawo saskie i majdeburskie, porządkiem obiecadtła z łacińskich i niemieckich egzemplarzów zebrane. A na polski język z pilnością i wiernie przełożone* [*Speculum Saxonum, Or the Saxon-Magdeburg Law, Compiled from Latin and German Copies in Alphabetical Order, Studiously and Faithfully Translated Into Polish*], ed. G.M. Kowalski, vol. II, Kraków 2016 ["Bibliotheca Iagellonica. Fontes et Studia", Vol. 29], item: "Ustawa". H. Kümper, *Sachsenrecht. Studien zur Geschichte des sächsischen Landrechts in Mittelalter und früher Neuzeit*, Berlin 2009, pp. 500–501.

²⁵ P. Szczerbic, *Ius Municipale, to jest prawo miejskie majdeburskie nowo z łacińskiego i z niemieckiego na polski język z pilnością i wiernie przełożone* [*Ius Municipale, That Is, the Municipal Law of Magdeburg, Newly Translated from Latin and German Into Polish with Diligence and Fidelity*], ed. Grzegorz M. Kowalski, Kraków 2011 ["Bibliotheca Iagellonica. Fontes et Studia", Vol. 20], Article 1, Gloss 22.

²⁶ M. Jaskier, *Iuris Provincialis quod Speculum Saxonum vulgo nuncupatur libri tres...*, Samosci MDCII, Book I, Article 3 Gloss k. 4v.

means easy.²⁷ The treatises appended to the *Speculum* and the *Weichbild* insisted that the law came from God. The king, though, by virtue of his anointment, was said to possess God-given powers including the competence to change the law. However, the divine legitimacy of royal power was not sufficient to override the right of the subjects to oppose a monarch changing their laws.²⁸ The only way to defuse the tension between the two was for the monarch to change the law when petitioned to by the subjects to do so. If the royal competences were devolved on an owner of a town, the latter would make use of them in the incorporation privilege.²⁹

The legislative competences of the seigneur are mentioned several times in the *Weichbild* gloss. It attributes the sources of written law to the emperor, the king and the princes.³⁰ The gloss distinguishes four ways of royal lawmaking: first, the monarch's

²⁷ For Konstanty Grzybowski, "in the pre-Renaissance Middle Ages the cult of the old law is an expression of satisfaction with a relatively changeless reality and helps to sustain and strengthen that satisfaction. In the Renaissance, however, appeals to the old law is an expression of fear of the ongoing changes, a search for protection and a place of refuge from that fear, a return 'home' to the old and familiar..." (K. Grzybowski, op. cit., p. 243).

²⁸ Karol Górski distinguishes three major political ideologies in 15th-century Poland, i.e. the oligarchical (Jan Długosz, Cardinal Zbigniew Oleśnicki), the monarchical (represented among others by *Liber formularum Georgii: castri Cracoviensis notarii*), and the "medieval version of the sovereignty of the people" (K. Górski, *Rządy Kazimierza Jagiellończyka w Koronie* [*The Reign of Kazimierz IV Jagiellon in the Kingdom of Poland*], [in:] M. Biskup, K. Górski, *Kazimierz Jagiellończyk. Zbiór studiów o Polsce drugiej połowy XV wieku* [*Kazimierz IV Jagiellon: A Collection of Studies on Poland in the Latter 15th Century*], Warszawa 1987, pp. 91–93; it was originally published in "Kwartalnik Historyczny" 1959, Vol. 66, pp. 726–759).

²⁹ *SzIM*, Article 59, p. 148, and Gloss 3, p. 209: "Władza królewska też tu masz rozumieć, nie tylko króla samego, ale wszelką zwierzchność, albo urząd od króla postanowiony, którym miecz dany jest ku obronieniu sprawiedliwości, a ku tłumieniu nieprawości. Jako są grabiowie, burgrabiowie, sędziowie, ławnicy i inszy, którzy władzą od króla albo od cesarza mają. A to też od praw rzymskich poszło" [Royal authority should be understood as not only the authority of the king himself, but all other authorities or offices established by the king who wields the sword for the defence of justice and the suppression of iniquity. That includes the counts, burgraves, judges, jurors, and others, whose authority comes from the king or from the emperor. All this is also the legacy of Roman laws.] (M. Jaskier, *Iuris Municipalis Maideburgensis Liber vulgo Weichbild nuncupatus...*, Samosci MDCII, Article 59, k. 45v, hereafter *JIM*).

³⁰ „+Albowiem Papieska i Cesarska wola ućciwa idzie za prawo+” [For the Pope's and the Emperor's honest will is regarded as law] (*SzIM*, Article 1, Gloss 33, p. 22; *JIM*, Article.

answer to a legal question; second, a court decision which furnishes a precedent; third, “when the emperor or the lord decides or orders something. Fourth, when he grants somebody something like what we hold here – the municipal Magdeburg Law which was given to the burghers of Magdeburg by the Emperor who had the powers to do so – granted and approved.”³¹ He, too, authorized – along with the town council – the guild legislation.³² The burghers had the right to make law in the form of statutes (*wilkierze*),³³ as long as they fully respected the written law: “And you should know that a *wilkierz* against written law cannot be adopted unless it refers to a point which the written law does not cover.”³⁴ A gloss to Article 44 of the Weichbild states that if a *wilkierz* is granted or approved by a higher authority, the might of that authority stands behind it: “If the lord grants something to his subjects, be it a *wilkierz*, they should keep it because the lord’s right and proper will is treated as law.”³⁵

So, in fact, in the hierarchy of the sources of law created by these rules the *wilkierz* authorized by the town owner, but at core a local legislative project, ranked higher than written law, including the Saxon-Magdeburg Law. This hierarchy seems to have been accepted both in Magdeburg from the late 15th century (earlier the statutes adopted in various towns had been treated as a form of contract addendum rather than a source

1, k. 3v). The excerpt marked “+” indicates that both Jaskier and Szczerbic follow the redaction which occurs solely in the Germany-based versions of the Saxon-Magdeburg Law.

³¹ SzIM, Article 1, Gloss 30, p. 21; and JIM, Article 1, k. 3v.

³² SzIM, Article 44, Gloss 15, pp. 184–185; and JIM, Article 45, k. 39v–40

³³ Occasionally the right was articulated explicitly in the incorporation charter. So the charter for Stryj issued by Władysław Jagiełło the burghers were granted the right to follow the Lwów standards of weights and measures and the right to adopt their own statutes (*wilkierze*). In response to a petition by Jan Krzysztof Tarnowski, Castellan of Wojnicz and Starost of Sandomierz and Stryj, the privileges of that charter were reaffirmed on 29 January 1563.

³⁴ SzIM, Article 14, Gloss 10, p. 81; and JIM, Article 14, k. 15. Cf. B. Groicki, *Artykuły Prawa Maydeburckiego, które zową Speculum Saxonum. Z Łacińskiego Języka na Polski przełożone, y znowu Drukowane Roku 1560* [Articles of the Magdeburg Law Called Speculum Saxonum: Translated from Latin into Polish and Reprinted in 1560], Kraków 1560, p. 81.

³⁵ SzIM, Article 44, Gloss 13, p. 128; and JIM, Article 45, k. 39v. Interestingly, Groicki’s note on the term *wilkierz* contains the following formula: municipal statutory law is binding on those that approve it and those that enact it. The question of authorizing it by the town owner is added almost as an afterthought; clearly, nothing is as important as the consent of the people that are going to be ruled by it. Cf. B. Groicki, op. cit., p. 81.

of law)³⁶ and in the Kingdom of Poland. The shift in the order of precedence is clearly visible in a 1469 ruling of the High Court of German Law at Wawel Castle. It states that in matters of inheritance the courts should follow Saxon-Magdeburg Law unless the town has adopted other laws sanctioned by its owner.³⁷

4. The development of the Sejm's lawmaking powers in the field of common law (*ius commune*). The king's legislative independence

4.1. The king's legislative power and the rights of the royal council

The extent of the nobility's control of royal towns was closely connected with the growing role of the parliament as it reached out into areas of legislation that had been the preserve of the king or that dealt with new problems. Another factor in this development was the monarch's dependence, in his legislative competences, on the consent, advice or at least formal participation of the royal council in the decision making process. So far there has been no consensus among historians about the constraints on king's legislative activity or the status and role of the royal council. While some believe that the royal council became institutionalized already in the 14th century and exercised a considerable influence on the king's decisions,³⁸ others

³⁶ F. Ebel, *Statutum und ius fori in deutschen Spätmittelalter*, [in:] idem, *Unseren fruntlichen grus zuvor: deutsches Recht des Mittelalters im mittel- und osteuropäischen Raum. Kleine Schriften*, Köln [u.a.] 2004, pp. 48–51; idem, *Des spreke wy von eyn recht...: Versuch über das Recht der Magdeburger Schöppen*, [in:] ibidem, pp. 451–452.

³⁷ *Decreta iuris supremi Magdeburgensis castri Cracoviensis. Die Rechtssprüche des Oberhofs des deutschen Recht auf der Burg zu Krakau 1456–1481*, eds. Ludwik Łysiak, Karin Nehlsen-von Stryk, Frankfurt/M 1995, No. 1037 from 1469. The Poznań Book of German Law does not require the owner's consent for a *wilkierz* that does not contravene written law (W. Maisel, *Poznańskie prawo karne do końca XVI wieku [Poznań Criminal Law until the End of the 16th Century]*, Poznań 1963, p. 28).

³⁸ S. Zachorowski, *Colloquia w Polsce od w. XII do XIV [Colloquia in Poland from the 12th until the 13th Century]*, [in:] idem, *Studia z historii prawa kościelnego i polskiego [Studies in the History of Canon Law and Polish Law]*, Kraków 1917, p. 76. [The term *colloquia* refers to judicial assemblies (*wiece sądowe*) that were convened on a regular basis in the 14th–15th century with the actual or nominal participation of the monarch (*colloquia generalia*).] Juliusz Bardach and Kazimierz Brach believe that councils may have functioned at some princes' courts in the 13th century. Cf. S. Russocki, *Panujący, ich doradcy oraz wiece w Polsce piastowskiej. Horyzonty badawcze 1967–1992 [The Rulers,*

presume the existence of a broader and narrower council,³⁹ or argue that the council's functioning "was to some extent formalized."⁴⁰ Finally, there are those who completely reject the claim that an institutionalized royal council existed at the time of the last Piast⁴¹ (or even in the first half of the 15th century).⁴²

Much of the debate focuses on the meaning of the phrase *de consilio consiliarorum*. While it is conspicuously absent from church documents, the conciliar formula appears only incidentally in the princely documents from the period of the Feudal Fragmentation (12th–13th century).⁴³ Research into the rule of Kazimierz the Great has produced contradictory results on this point. Whereas Jan Wroniszewski warns against

Their Advisors and Popular Assemblies in Poland Under the Piasts, [in:] *Parlamentaryzm w Polsce we współczesnej historiografii* [Poland's Parliamentary Tradition in Contemporary Polish Historiography], ed. J. Bardach in collaboration with W. Sudnik, Warszawa 1995, p. 14.

³⁹ K. Górski, *Kilka uwag o radzie koronnej w Polsce XV* [A Note on the Crown Council in 15th-Century Poland], "Czasopismo Prawno-Historyczne" 1975, Vol. 27, Issue 2, p. 133; and J. Kurtyka, *Odrodzone Królestwo. Monarchia Władysława Łokietka i Kazimierza Wielkiego w świetle nowszych badań* [The Restored Kingdom: The Monarchy of Władysław Łokietek and Kazimierz Wielki. A Reassessment], Kraków 2001, pp. 96–105.

⁴⁰ A. Marzec, *Urzędnicy małopolscy w otoczeniu Władysława Łokietka i Kazimierza Wielkiego (1305–1370)* [Officials from Małoposka in the Inner Circle of Władysław I the Short and Kazimierz the Great (1305–1370)], Kraków 2006, p. 309. In a 2012 article, Marzec writes that the council was "a highly unformalized body" (cf. *Rada królewska w monarchii Kazimierza Wielkiego* [The Royal Council in the Monarchy of Kazimierz the Great], [in:] *Narodziny Rzeczypospolitej...*, pp. 803–830, Esp. Summary, p. 828).

⁴¹ This view is shared by Karol Buczek (cf. S. Russocki, *Panujący...*, pp. 15 and 19) and Jerzy Wyrozumski (cf. *Geneza senatu w Polsce* [Origins of the Senate in Poland], [in:] *Senat w Polsce. Dzieje i teraźniejszość. Sesja naukowa* [The Senate in Poland: History and the Present. Conference Proceedings], Kraków, 26 May 1993, Warszawa 1993, pp. 26–27, 30–32).

⁴² S. Russocki, *Panujący...*, p. 27, Note 58; and W. Fałkowski, *Możnowładztwo polskie wobec króla. Zabiegi i działania polityczne wokół monarchy w XV stuleciu* [Polish High Nobility and the King: Political Schemes and Ploys of the Royal Inner Circle in the 15th Century], [in:] *Kolory i struktury średniowiecza* [Colours and Structures of the Middle Ages], ed. idem, Warszawa 2004, p. 19.

⁴³ S. Russocki, „*Consilium*” i „*consensus*” otoczenia książęcego w dokumentach polskich XIII wieku [‘*Consilium*’ and ‘*Consensus*’ of the Ducal Inner Circle in Polish Documents of the 13th Century], "Społeczeństwo Polski Średniowiecznej" 1992, Vol. 5, pp. 197–198; and idem, *Panujący...*, op. cit., pp. 11–14.

reading too much into the phrase, Krzysztof Ozóg treats its appearance as evidence that councils did participate in legal decision making.⁴⁴

In the Age of the Jagiellons the council was firmly in place. Its membership was fixed and so were its controller competences with regard to royal legislation. However, its real control over the Jagiellon kings depended on multiple factors, not least the actual powers and the character of individual monarchs.

This can be illustrated by two cases, representing the opposite ends of the spectrum, one the writs issued by Władysław III of Varna prior to his accession to the Hungarian throne (1440) and the other by the legislation produced during the reign of Kazimierz IV Jagiellon (1447–1492). Both contain the phrases *de consilio consiliarorum nostrorum* and *cum baronibus nostris*. In the former case, however, they signal the actual influence of the political allies of Bishop Zbigniew Oleśnicki, the grey eminence at the Cracow court and *de facto* regent during Władysław III's minority. In the latter case they were little more than formal phrases as the royal council was staffed by the king himself.⁴⁵ In general, while it was wrong to assume that every time these clauses appear in the text of legislative act, the council guided or limited the king's will, admittedly on many occasions the inner circle of royal advisers must have influenced the decisions of the first Jagiellon kings.⁴⁶ In this case Wojciech Fałkowski's assessment seems more apt:

⁴⁴ Cf. J. Wroniszewski, *Grupy decyzyjne w średniowiecznej Polsce – elita władzy* [Decision-Making Groups in Medieval Poland – the Ruling Elite], [in:] *Genealogia. Polska elita polityczna w wiekach średnich na tle porównawczym* [Genealogy: A Comparative Study of the Polish Political Elite in the Middle Ages], Toruń 1993, pp. 175–182; and K. Ozóg, *Intelektualiści w służbie Królestwa Polskiego w latach 1306–1382* [Intellectuals in the Service of the Kingdom of Poland in 1306–1382], Kraków 1995, p. 67. This discussion is revisited in A. Marzec, *Urzędnicy małopolscy...*, pp. 285–286.

⁴⁵ K. Górski, *Rządy Kazimierza Jagiellończyka...*, p. 117; W. Fałkowski, *Elita władzy w Polsce za panowania Kazimierza Jagiellończyka (1447–1492)* [The Ruling Elite in Poland in the Reign of Kazimierz IV Jagiellon (1447–1492)], Warszawa 1992, *passim*; and idem, *Idea monarchii w Polsce za pierwszych Jagiellonów* [The Idea of the Monarchy in the Early Jagiellon Period], [in:] *Polska około roku 1400. Państwo, społeczeństwo, kultura* [Poland in c. 1400: State, Society, Culture], ed. idem, Warszawa 2001, p. 212.

⁴⁶ J. Wroniszewski, *op. cit.*, pp. 175–182; J. Bardach, *O stawaniu się sejmu polskiego we współczesnej historiografii* [Contemporary Historiography on the Rise of the Polish Sejm], [in:] *Parlamentaryzm w Polsce we współczesnej historiografii* [Poland's Parliamentary Tradition in Contemporary Polish Historiography], ed. J. Bardach in collaboration with W. Sudnik, Warszawa 1995, pp. 40–42; P. Węcowski, *Działalność publiczna możnowładztwa*

“the royal council was an organ whose decisions were determined by a combination of three factors, the established customary law, the monarch’s will and the balance of power between the nobles.”⁴⁷

Interpreting of the documents of the reign of Zygmunt I the Old (1506–1548) is hardly easier, though for a different reason. It was a time when the royal council was morphing into the upper house of parliament, the Senate.⁴⁸ In the first decades of his rule acts concerning royal towns with similar content and produced one after another were issued both with the advice of the senators and without it (see below). Moreover, the king’s legal acts were checked by the chancellor for their legal validity. This mechanism indicates that the Jagiellons were concerned about raising the standards of the rule of law in their kingdom, although, despite all those controls, some acts still contained contradictory elements.

małopolskiego w późnym średniowieczu. Itineraria kasztelanów i wojewodów krakowskich w czasach panowania Władysława Jagiełły (1386–1434) [*Public Life of the Małopolska Nobility in the Late Middle Ages: Itineraria of the Cracow Castellans and Voivods in the Reign of Władysław Jagiełło (1386–1434)*], Warszawa 1998, pp. 76–78. Cf. I. Sułkowska-Kurasiowa, *Doradcy Władysława Jagiełły* [*Advisers to Władysław Jagiełło*], “Społeczeństwo Polski Średniowiecznej” 1982, Vol. 2, pp. 208–209; G. Klimecka, *Czy rzeczywiście „doradcy Władysława Jagiełły”* [*Were They Really “Władysław Jagiełło’s Advisers”*], “Społeczeństwo Polski Średniowiecznej” 1990, Vol. 4, pp. 228–230; K. Ożóg, op. cit., p. 97; W. Fałkowski, *Rok trzech sejmów [1459]* [*The Year of Four Sejms (1459)*], [in:] *Aetas media, aetas moderna. Studia ofiarowane profesorowi Henrykowi Samsonowiczowi w siedemdziesiątą rocznicę urodzin*, eds. H. Manikowska, A. Bartoszewicz, W. Fałkowski, Warszawa 2000, pp. 428–429. In the 16th century, the council had a hierarchical structure, cf. W. Uruszczak, *Respublica bene constituta. Ustrojowy kształt polskiej monarchii Jagiellonów* [*Respublica Bene Constituta: The Constitutional Model of the Polish Monarchy of the Jagiellons*], [in:] *Historia vero testis temporum. Księga jubileuszowa poświęcona Profesorowi Krzysztofowi Baczkowskiemu w 70. rocznicę urodzin* [*Historia Vero Testis Temporum: A Festschrift Dedicated to Professor Krzysztof Baczkowski on the 70th Anniversary of His Birthday*], eds. J. Smołucha, A. Waśko, T. Graff, P.F. Nowakowski, Kraków 2008, p. 140.

⁴⁷ W. Fałkowski, *Idea monarchii...*, p. 197.

⁴⁸ The cooperation of the king and the senators in 1506–1535 is discussed by Jacek Brzozowski in *Zygmunt I a senat koronny w latach 1506–1535* [*Zygmunt I and (Poland’s) Senate in 1506–1535*], “Białostockie Teki Historyczne” 2011, Vol. 9, pp. 11–39. He comes to the conclusion – which goes against the view expressed by Konstanty Grzybowski – that the Senate did not just listen to what the king had to say, but was actively involved in the decision making (p. 15). Yet, if we take into account the substantive and cogent argument on that point advanced by W. Uruszczak in *Sejm Walny Koronny* (passim), Grzybowski was hardly wrong, certainly about period 1506–1535.

4.2. The king's legislative power, the rights of the nobility and the origins of the Polish Sejm

Not in the same category is the mention of councillors, “barons”, knights and other notable persons in acts issued at popular assemblies. This phenomenon should be seen in connection with the growing legal competence of the sejms and in the case of Kazimierz the Great's reign it was a symptom of the constraint faced by the king in the field of judicial law. Roman Grodecki is right in saying (in which he upholds the view of Stanisław Zachorowski) that at least *ius commune* legislation, and especially judicial law, required the participation of advisers representing the nobility.⁴⁹ Any amendments of judicial law, or, more generally, any codification of customary law could not be made without the consent of the greater and lesser nobles.

A case in point is the failure of Kazimierz the Great's 1338 codification statute, which undercut customary private law. Quite possibly he came to the conclusion that highhandedness does not pay, and when the project was revived, he took care to secure the good will of the nobility of Wielkopolska, represented by powerful families of the region, and acquiesced to the drafting of two separate statutes, one for Małopolska and the other for Wielkopolska. Another element in the situation is that in the 15th century regulations concerning judicial law were usually enacted by the nobility in popular assemblies where the king's presence was not mandatory.⁵⁰

⁴⁹ S. Zachorowski, op. cit., pp. 59–63. Zachorowski also claims that the king was the actual lawmaker, while the nobility could, at best, come up with advice or suggest legislative changes. Michał Bobrzyński, too, insisted that “the King, issuing the statutes, declared explicitly that he follows the council and even the consent and will (*consilio, assensu, voluntate*) of the prelates and the secular lords gathered at an assembly; yet he did not do so to acknowledge the role of the council as an organ restraining his powers but rather to give more weight to his decisions and to convince the general public that these acts had been deliberated on and well prepared” (M. Bobrzyński, *Sejmy polskie za Olbrachta i Aleksandra* [*Polish Sejms Under (Jan I) Olbracht and Aleksander (Jagiellon)*], [in:] idem, *Szkice i studia historyczne* [*Historical Essays and Studies*], Vol. 1, Kraków 1922, p. 188). However, that is not convincing enough if our focus is on judicial law.

⁵⁰ For example, the 1412 Kalisz *laudum* determining the penalty for an arbitraty detention of a nobleman and a commoner. Cf. *Wybór zapisek sądowych kaliskich z lat 1409–1416* [*A Selection of the Judicial Records of Kalisz from 1409–1416*], ed. B. Ulanowski, “Archiwum Komisji Historycznej” 1886, Vol. 3, No. 163 (*Scriptores rerum Polonicarum*, Vol. 9, pp. 153–270). For a list of legislative assemblies unattended by the monarch, see F. Piekosiński, *Wiece, sejmiki, sejmy i przywileje ziemskie w Polsce wieków średnich* [*Popular Assemblies,*

At the same time the principle *quod omnes tangit ab omnibus tractari et approbari debet* (what touches all must be approved by all), enshrined in canon law, was gradually and unfalteringly gaining more ground,⁵¹ even if in the mid-14th century “all” still meant the elite which represented the most influential families and family networks. Kazimierz the Great was no doubt a strong monarch with multiple competences and ready to demonstrate his might in concrete actions, yet his legislative competences were not unlimited, least of all in the sphere of judicial land law.⁵²

Sejmiks and Land Privileges in Medieval Poland], Kraków 1900 (offprint “Rozprawy Akademii Umiejętności Wydział Historyczno-Filozoficzny” 1900, Vol. 39, pp. 171–251), and also P. Węcowski, *Krakowskie wiece sądowe i ich rola w życiu politycznym w czasach panowania Władysława Jagiełły* [*The Cracow Judicial Assemblies and Their Political Role During the Reign of Władysław Jagiełło*], “Kwartalnik Historyczny” 1998, Vol. 105, Issue 3, p. 37.

⁵¹ W. Uruszczak, *Zasada quod omnes tangit debet ab omnibus approbari dawnego prawa kanonicznego i jej znaczenie* [*The Rule Quod Omnes Tangit Debit Ab Omnibus Approbari of the Old Canon Law and its Significance*], [in:] *Servabo legem tuam in toto corde meo. Księga Pamiątkowa dedykowana Księdzu Profesorowi Józefowi Krzywdzie CM, Dyrektorowi Instytutu Prawa Kanonicznego UPJPII z okazji 70. rocznicy urodzin* [*Servabo Legem Tuam in Toto Corde Meo: A Festschrift Dedicated to Professor Józef Krzywda, Head of the Institute of Canon Law at the Pontifical John Paul II University, on the 70th Anniversary of His Birthday*], eds. A. Zakręta and A. Sosnowski, Kraków 2013, pp. 556–559.

⁵² In particular the *de facto* weakening of the council by forcing members of the political elite to submit to a strong mechanism of rotation, while the support of the incorporation movement, better management of the royal domain and of the various *jura regalia*, especially in the economic sphere (e.g. the staple right, road tolls, market and fair rights, milling rights, etc.) as well as exemptions from local law (especially tax burdens). Cf. A. Marzec, *Urzędnicy małopolscy...*, pp. 298, 308–309; idem, *Rada królewska...*, pp. 803–830 (esp. Summary, pp. 828–839); S. Gawlas, *O kształt zjednoczonego Królestwa. Niemieckie władztwo terytorialne a geneza społeczno-ustrojowej odrębności Polski* [(*The Struggle for the Shape of a United Kingdom (of Poland): German Territorial Sovereignty and the Origins of Poland's Distinct Sociopolitical Identity*), 2nd Edition, Warszawa 2000, p. 16ff; idem, *Polska Kazimierza Wielkiego a inne monarchie Europy Środkowej – możliwości i granice modernizacji władzy* [*Kazimierz the Great's Poland and other monarchies of Central Europe*], [in:] *Modernizacja struktur władzy w warunkach opóźnienia. Europa Środkowa i Wschodnia na przełomie średniowiecza i czasów nowożytnych* [*Modernization of the Political Power Structures in Conditions of Underdevelopment: Central and Eastern Europe at the Turn of the Middle Ages and the Early Modern Period*], eds. M. Dygo, S. Gawlas, H. Grała, Warszawa 1999, esp. pp. 23–34; idem, *Monarchia Kazimierza Wielkiego a społeczeństwo* [*The Monarchy of Kazimierz the Great and Society*], [in:] *Genealogia. Władza i społeczeństwo w Polsce średniowiecznej*, eds. A. Radziwiński, J. Wroniszewski, Toruń 1999, pp. 200–202, 204–205, and 209–235; J. Wroniszewski, op. cit., esp. pp. 177–180; and J. Kurtyka, *Odrodzone Królestwo...*, passim.

The emergence and consolidation of a political elite made up of powerful nobles with an interest in deciding on matters of state was made possible by a combination of circumstances, in particular a string of interregna.⁵³ Although the succession was formally settled after Kazimierz the Great's death in 1370, the country went into a long and confused regency period. The Hungarian king, too busy elsewhere, had no time to reside in Poland.⁵⁴ An interregnum after his death in 1384 came to an end two years later with the coronation of Jadwiga, but as the queen was a minor, the regency *de facto* continued until her marriage in 1386. The arrival of Władysław Jagiełło, a newcomer both to the country and to the faith, could not but accentuate the tensions between the king and the Polish elites. Jagiełło's policy of placating and suppressing the unsupportive nobles was successful in so far as he secured the succession of his

⁵³ J. Bardach, *O stawaniu się sejmu polskiego...*, pp. 30–31; W. Sobociński, *Historia rządów opiekuńczych w Polsce [A History of Regency Governments in Poland]*, "Czasopismo Prawno-Historyczne" 1949, Vol. 2, pp. 285–293; K. Górski, *Kilka uwag o radzie koronnej...*, pp. 136–137; J. Kurtyka, *Tęczyńscy. Studium z dziejów polskiej elity możnowładców w średniowieczu [The House of Tęczyński: A Study in the History of the Polish Noble Elite in the Middle Ages]*, Kraków 1997, especially pp. 197–249 and 293–338; J. Nikodem, *Problemy legitymizacji władzy Władysława Jagiełły w 1399 r. [Problems of Legitimization of the Royal Rule of Władysław Jagiełło in 1399]*, [in:] *Nihil superfluum esse. Prace z dziejów średniowiecza ofiarowane Profesor Jadwidze Krzyżaniakowej [Nihil Superfluum Esse. A Festschrift in Honour of Professor Jadwiga Krzyżaniakowa]*, eds. J. Strzelczyk, J. Dobosz, in collaboration with Z. Górczak, P. Pokora, K. Ratajczak and M. Zwierzykowski, Poznań 2000, pp. 393–401; W. Fałkowski, *Możnowładztwo polskie...*, pp. 14–16; J. Sperka, *Biskup krakowski Zbigniew Oleśnicki a ugrupowanie dworskie w okresie panowania Władysława Jagiełły i w pierwszych latach Władysława III [Bishop of Cracow Zbigniew Oleśnicki and the Courtly Faction in the Reign of Władysław III of Varna]*, [in:] *Zbigniew Oleśnicki – książę Kościoła i mąż stanu. Materiały z konferencji, Sandomierz 20–21 maja 2005 roku [Zbigniew Oleśnicki – Prince of the Church and Statesman. Conference Proceedings, Sandomierz, 20–21 May 2001]*, eds. F. Kiryk, Z. Noga, Kraków 2006, pp. 120–122; W. Fałkowski, *Król i biskup. Spór o rację stanu Królestwa Polskiego w latach 1424–1426 [King and Bishop: A Controversy Over the Kingdom Poland's Raison D'état in 1424–1426]*, [in:] *Zbigniew Oleśnicki – książę Kościoła...*, p. 141.

⁵⁴ However, J.S. Matuszewski argues that the reign of Ludwik the Hungarian (Louis the Anjou) must not be characterized unequivocally as a period of disintegration and loss of control. Among the upsides, which were were by no means insignificant, was the 1374 Statute of Koszyce (Košice) with its tax reform. It was welcomed by the nobility and the clergy (who became the beneficiaries of Privilege in 1381) and it stabilized the position of the king. In return for a commitment not to raise new ("extraordinary") taxes, the monarch could now expect a steady flow of revenue. See J.S. Matuszewski, *Przywileje i polityka podatkowa Ludwika Węgierskiego w Polsce [The Privileges and Tax Policies of Ludwik the Hungarian]*, Łódź 1983, pp. 180–183 and 245–250.

son Władysław, but on the other hand, it made the traditional political elite more confident and self-assured. At court they soon moved into a position of strength during Władysław Jagiellon's minority.

Meanwhile, in the country at large the nobles put a new spirit into institutions of local government, from judicial assemblies to sejmiks,⁵⁵ provincial popular assemblies, and general assemblies, which came to be seen as general sejms, attended by delegates of towns and cathedral chapters (regarded as legal persons).⁵⁶ The increasing importance of these *conventiones*, as they were usually called in Latin, was connected with their competence to decide on extraordinary taxation.⁵⁷ That, of course, was not the only reasonable, but absolutely essential.⁵⁸ We should also bear in mind Wojciech Fałkowski's thesis that the flourishing of popular assemblies in 1444–1447 spurred the growth of Polish parliamentarism. Certainly, by the mid-15th century the practice of convening sejms without the king's presence to discuss and vote on issues of governance that used to require royal consent became the norm.

One of the milestones on the road to ensure parliamentary control over the monarchy was the decision of the 1444 General Assembly (Sejm) of Piotrków that a regulation may not be repealed unless it is done in the same way it was adopted.⁵⁹ The next

⁵⁵ For inspiring insights into the origins of Polish parliamentarism see Piotr Węcowski's study *Krakowskie wiece sądowe...*, pp. 26, 31–35, 42, and 44–46.

⁵⁶ Cf. S. Russocki, *Monarchia i stany w Polsce późnego średniowiecza* [*The Monarchy and the Estates in Late Medieval Poland*], "Przegląd Humanistyczny" 1993, Vol. 37, Issue 2, pp. 8–9; idem, *Od roków monarszych do zgromadzeń stanowych*, [in:] *Cultus et cognitio. Studia z dziejów średniowiecznej kultury*, eds. A. Gieysztor, S.K. Kuczyński, Warszawa 1976, pp. 495–496.

⁵⁷ This claim that was first set forth by M. Bobrzyński. Cf. J. Bardach, *O genezie sejmu polskiego* [*The Origins of the Polish Sejm*], [in:] *Pamiętnik VIII Zjazdu Historyków Polskich w Krakowie* [*Proceedings of the 8th Congress of Polish Historians in Cracow*], Warszawa 1959, p. 522. In his paper *O stawianiu się sejmu polskiego...* (op. cit., pp. 30, 36–39), J. Bardach refutes T. Szulc's claim that Kazimierz IV Jagiellon was able to impose taxes without the consent of the nobility (T. Szulc, *Uchwały podatkowe ze szlacheckich dóbr ziemskich za pierwszych Jagiellonów* [*Land Tax Legislation under the First Jagiellons*], Łódź 1991, s. 48–49).

⁵⁸ J. Bardach, *O genezie sejmu polskiego*, pp. 525–533.

⁵⁹ W. Fałkowski, *Sejmy bez króla (1440–1446)* [*Sejms Rege Absente (1440–1446)*], [in:] *Historia vero testis temporum*, pp. 246–247, 249 and 253. It was a sejm which took a number of decisions concerning individual towns, i.e. the collection of customs duties in toll houses in Poznań, Kalisz and Wieluń; and, with reference to Cracow, an express ban on brewing beer in houses of the nobility and by other unauthorized persons in contravention to the

step in strengthening the legislative preeminence of parliament was the guarantee that the king would issue no new statutes nor declare a general mobilization without the consent of the nobles. Those requirements were enshrined in the Privileges of Nieszawa (1454).⁶⁰ The 1468 General Assembly of Piotrków, at which convened in 1468, with two delegates *ex omnibus districtibus* (from each county) marks the end of the early phase of Polish parliamentarism.⁶¹

In the history of Polish parliamentarism there are three major turning points. They are, first, a steep rise in participation at the “senatorial assemblies” (to use Franciszek Piekosiński’s term⁶²) in the 1360s (as demonstrated by Juliusz Bardach⁶³); second, the increasing importance of the popular assemblies as a representative institution, beginning with the period 1444–1446 (cf. Wojciech Fałkowski⁶⁴); and, third, the broad adoption of the principle of delegate representation in 1468 (cf. Witold Knoppek and Wacław Uruszczak⁶⁵). However, it must not be forgotten that until at least the middle of the 15th century the Sejm (or, as it usually called, the general assembly, or in Latin *comitia generalia*) was not the only representative organ with legislative competences. There were still the *sejmiki* (regional assemblies), but their importance

town’s old privileges. Cf. *Codex epistolaris saeculi decimi quinti*, vol. 1, pars 2: 1444–1492, eds. A. Sokołowski, J. Szujski, Kraków 1876, No. 9.II.

⁶⁰ S. Roman, *Przywileje nieszawskie* [*The Privileges of Nieszawa*], Wrocław 1957, p. 175.

⁶¹ Until recently, historians saw the 1493 Sejm as a kind of watershed. However, the latest research suggests that 1493 merely marks the earliest point of the extant continuous legislative records (apart from tax statutes).

⁶² F. Piekosiński, op. cit., passim.

⁶³ J. Bardach, *Początki sejmu* [*The Beginnings of the Sejm*], [in:] *Historia sejmu polskiego* [*A History of the Polish Sejm*], ed. J. Michalski, Warszawa 1984, passim.

⁶⁴ The tug of war between the king, the council and the nobility entered its next stage during The Year of Three Sejms. According to Wojciech Fałkowski, the three sessions of 1459 were the high point of the battle between the king and the nobility for the division of competences and the battle between king and council for the power to summon parliament (*Rok trzech sejmów* [1459], pp. 432–433).

⁶⁵ W. Knoppek, *Zmiany w układzie sił politycznych w Polsce w drugiej połowie XV w. i ich związek z genezą dwuizbowego sejmu* [*Changes in the Balance of Political Forces in Poland in the Latter 15Th Century and the Emergence of the Bicameral Sejm*], “Czasopismo Prawno-Historyczne” 1955, Vol. 7, Issue 2, pp. 89–90; W. Uruszczak, *Najstarszy sejm walny koronny „dwuizbowy” w Piotrkowie w 1468 roku* [*The Earliest “Bicameral” General Sejm of the Kingdom of Poland at Piotrków in 1468*], [in:] *Narodziny Rzeczypospolitej...*, pp. 1033–1056. This view is shared, with no additional points made, by J. Wyrozumski (*Geneza senatu...*, pp. 29–30) and W. Fałkowski (*Idea monarchii...*, p. 216).

was undercut by a shift of interest towards the general assembly that was convened with increasing frequency.⁶⁶

In the 15th century the mandatory requirement to obtain the consent of the nobles for the promulgation of new judicial laws, which had come into force under Kazimierz the Great, was extended to *ius commune*. Any new regulations in that sphere had to be worked out jointly by the king, the political elite and the nobility.⁶⁷ The nobility also gained the right of legislative initiative and made use of not only in the case of the Statutes/Privileges of Nieszawa⁶⁸ but also, thirty years earlier, in pushing through the Statute of Warka and other 15th century bills.⁶⁹ In the light of all that evidence, it is

⁶⁶ Cf. J. Bardach, *O genezie sejmu polskiego*, p. 529. As K. Górski rightly notes “The General Sejm was a general assembly of the nobles dominated by the royal council; it made decisions about taxation or mobilization (*pospolite ruszenie*, *levée en masse*), but each decision had to be approved by regional assemblies (*sejmiki*). This was a manifestation of the medieval duality of the sources of political power, i.e. it originated with the king (with his council) and, at the same time, the *communitas* was the source of law” (K. Górski, *Rządy Kazimierza Jagiellończyka...*, p. 113).

⁶⁷ The role of representatives of towns and ecclesiastical authorities is not clear, although the participation of the municipal dignitaries in state events and ceremonies prior to mid-15th century may indicate that towns did enjoy these rights. Cf. S. Russocki, *Monarchia i stany...*, p. 11. Nonetheless, the relative position of the nobility and burghers vis-à-vis the ruling elite in that period could hardly be of any significance. For example, in the middle of the 15th century the council reviewed nominations to high offices of state (chancellor, subchancellor). Cf. K. Ożóg, *op. cit.*, p. 95; P. Węcowski, *Krakowskie wiece sądowe...*, p. 38; J. Krzyżaniakowa, J. Ochmański, *Władysław II Jagiełło*, Wrocław 1990, s. 330. Appointments to the highest offices should have been made in accordance with the 1504 Bill during the Sejm, on the advice of the Senate. (W. Uruszczak, *Sejm walny...*, p. 139). For more information on the formation of the political faction by Kazimierz the Jagiellon, see: W. Fałkowski, *Elita władzy...*, *passim*; and *idem*, *Idea monarchii...*, p. 212.

⁶⁸ For a discussion of the language of these statutes, see S. Roman, *Przywileje nieszawskie*, *op. cit.*, pp. 9–10.

⁶⁹ W. Uruszczak, *Z badań nad Statutem Warckim z 1423 roku* [*Studies in the 1423 Statute of Wiślica*], [in:] *Parlamentaryzm i prawodawstwo przez wieki. Prace dedykowane prof. Stanisławowi Płazie w siedemdziesiątą rocznicę urodzin* [*Parliamentarism and Legislation over the Centuries: A Festschrift Dedicated to Professor Stanisław Płaza on the 70th Anniversary of His Birthday*], eds. J. Malec and W. Uruszczak, Kraków 1999, pp. 145–147. S. Roman, *Konflikt prawno-polityczny 1425–1430 r. a przywilej brzeski* [*The Political Conflict 1425–1430 and the Brześć Privilege*], “*Czasopismo Prawno-Historyczne*” 1962, Vol. 14, Issue 2, p. 64. Drawing on Aleksander Świeżawski, Piotr Węcowski claims that the processing of new judicial laws in popular assemblies could not go ahead solely with the votes of the office holders: “the dignitaries had to take into account the opinions of nobles who did not hold any

hard to agree with Karol Górski's description of the reign of Kazimierz IV Jagiellon – who admittedly was a strong ruler – as “protoabsolutism”.⁷⁰

4.3. The King and the legislative power of the Polish Sejm

Since the late 18th century (Joachim Lelewel) the Articles of the Privilege of Mielnik (1501) and the Nihil Novi Act (1506) have been regarded as the watershed in the constitutional history of the Kingdom. According to the dominant view, the latter introduced the principle of the supremacy of the nobles over the council, which gained a stronger role in the Privilege of Mielnik. However, the latest research justifies a change of perspective.⁷¹ In his studies, Waław Uruszczak rejects the entrenched assumption

office” (P. Węcowski, *Krakowskie wiece sądowe...*, pp. 34 and 37; and A. Świeżawski, *Wiec, rada książęca i sejm na Mazowszu* [The Popular Assembly, the Ducal Council and the Sejm in Masovia], “Przegląd Historyczny” 1970, Vol. 61, Issue 3, p. 494).

⁷⁰ J. Bardach, *O stawianiu się sejmowi polskiego...*, pp. 32–35; K. Górski, *Rządy Kazimierza Jagiellończyka...*, p. 124; idem, *The Origins of the Polish Sejm*, [in:] idem, *Communitas – Princeps – Corona Regni. Studia selecta*, Warszawa–Poznań–Toruń 1976, p. 72. W. Fałkowski, *Rok trzech sejmów*, p. 436, Note 37. It would be hard to disagree with Fałkowski's view that “the Middle Ages did not know autocratic rule, exercised against the will of the elite or as if it could be ignored” (idem, *Idea monarchii...*, p. 195).

⁷¹ W. Uruszczak, *Sejm Walny Koronny...*, pp. 128–135. See also, idem, „Sejm walny wszystkich państw naszych”. *Sejm w Radomiu z 1505 roku i konstytucja Nihil novi* [“The General Sejm of All Our Nations”: The 1505 Sejm of Radom and the Nihil Novi Constitution], “Czasopismo Prawno-Historyczne” 2005, Vol. 57, Issue 1, pp. 11–25; idem, *Swoistość systemów prawno-ustrojowych państw Europy Środkowo-Wschodniej w XV–XVI wieku* [The Identity of Legal and Constitutional Systems of Central and Eastern European Nations in the 15th–16th Century], [in:] *Europa Środkowo-Wschodnia od X do XVIII wieku – jedność czy różnorodność?* [Central and Eastern Europe in the 10th–18th Centuries], eds. K. Baczkowski, J. Smółucha, Kraków 2005, pp. 45–61; idem, *In Polonia lex est rex. 500-lecie Konstytucji Sejmu Walnego w Radomiu o stanowieniu ustaw przez sejmy i obowiązkowej promulgacji* [In Polonia Lex Est Rex: The 500Th Anniversary of the General Sejm Constitution on the Adoption of Statutes in Parliament and Their Mandatory Promulgation], [in:] *W kręgu historii i współczesności polskiego prawa. Księga jubileuszowa dedykowana profesorowi Arturowi Korobowiczowi* [Polish Law in a Historical and Contemporary Perspective: A Festschrift in Honour of Professor Artur Korobowicz], ed. W. Witkowski, Lublin 2008, pp. 286–288; P. Tafiłowski, *Spory o konstytucję „Nihil novi” w historiografii XIX i XX wieku* [Controversy over the Nihil Novi Act in 19th and 20th Century Historiography], “Biuletyn Biblioteki Jagiellońskiej” 2005, Vol. 55, pp. 227–235; L. Sobolewski, W. Uruszczak, *Artykuły mielnickie z roku 1501* [The Articles of the 1501 Privilege of Mielnik], “Czasopismo Prawno-Historyczne” 1990, Vol. 42 [published in 1991, Issue 1–2, pp. 52–53, and 79; and L. Sobolewski, *Wpływ artykułów mielnickich z 1501 r. na rozwój prawa polskiego w XVI w.* [The Articles of the 1501 Privilege of Mielnik

that the Nihil Novi Act transferred all legislative competences to the Sejm.⁷² In fact, however, “the Nihil Novi constitution was an expression of the principle of separation of powers. The king did not exercise the legislative function by himself, but shared it with the parliamentary chambers that is the representation of the political nation. In this way the Nihil novi constitution consolidated the parliamentary constitution of the Kingdom.”⁷³

This reappraisal substantially changed the perception of the constitutional division of competences between king and parliament in the late Jagiellon period.⁷⁴ According

and the Evolution of Polish Law in the 16th Century], “Czasopismo Prawno-Historyczne” 1994, Vol. 46, Issue 1–2, pp. 31–35, and 57–58.

⁷² W. Uruszczak, *Suum cuique tribuere. Dwa stulecia badań nad sejmem polskim za panowania ostatnich Jagiellonów (1506–1572)* [*Suum Cuique Tribuere: Two Centuries of Research Into the Polish Sejm Under the Last Jagiellons (1506–1572)*], [in:] *Parlamentaryzm w Polsce we współczesnej historiografii...*, p. 67.

⁷³ W. Uruszczak, *In Polonia lex est rex...*, p. 287; and W. Kaczorowski, *Udział polskiego monarchy w procesie legislacyjnym w latach 1493–1652* [*The Participation of the Polish Monarch in the Legislative Process in 1493–1652*], “Przegląd Humanistyczny” 2002, Vol. 46, Issue 5, p. 24.

⁷⁴ The constitutional position of the king, the Senate and the nobility during the reigns of Zygmunt the Old and Zygmunt August was the subject of in-depth research in the post-war decades by a number of scholars, among them Konstanty Grzybowski, Anna Sucheni-Grabowska, Stanisław Grodziski, Wacław Uruszczak, Tadeusz Szulc and Włodzimierz Kaczorowski. Cf. K. Grzybowski, op. cit.; A. Sucheni-Grabowska, *W sprawie podejmowania uchwał na sejmach za Zygmunta Augusta* [*On passing legislation by sejms under Zygmunt August*], [in:] *Uchwalanie konstytucji na sejmach w XVI do XVII w* [*The Adoption of Statutes by Sejms in the 16th–17th Century*], ed. S. Ochmann, Wrocław 1979, pp. 9–19 [“Acta Universitatis Wratislaviensis” 1979, no. 31]; eadem, *Sejm w latach 1540–1568* [*The Sejm in 1540–1568*], [in:] *Historia sejmu polskiego, T. I: Do schyłku szlacheckiej Rzeczypospolitej* [*Until the Decline of the Commonwealth of the Nobles*], ed. Jerzy Michalski, Warszawa 1984, p. 149ff; eadem, *Kilka uwag o miejscu króla w sejmach „złotego wieku”* [*A Note on the King’s Position in the Sejms of the Golden Age*], “Acta Universitatis Wratislaviensis” 1988, no. 66, pp. 75–83; eadem, *Kształtowanie się koncepcji Senatu XVI w.* [*The Consolidation of the Idea of the Senate in the 16th Century*], [in:] *Senat w Polsce. Dzieje i teraźniejszość. Sesja naukowa* [*The Senate in Poland: History and the Present. Conference Proceedings*], Kraków, 26 May 1993, Warszawa 1994, pp. 35–53; eadem, *Obowiązki i prawa królów w opiniach pisarzy epoki odrodzenia* [*Renaissance Writers on the Duties and Rights of Kings*], [in:] *Między monarchią a demokracją. Studia z dziejów Polski XV–XVIII wieku* [*A Mix of Monarchy and Democracy: Studies in Polish History in the 15th–18th Centuries*], ed. A. Sucheni-Grabowska, M. Żaryn, Warszawa 1994, pp. 54–115; S. Salmonowicz, S. Grodziski, *Uwagi o królewskim ustawodawstwie* [*Royal Legislation: Some Comments*], [in:] *Parlamentaryzm*

to the traditional view (which can be traced back to Oswald Balcer's critical review of Stanisław Kutrzeba's textbook⁷⁵), *ius commune* legislation under the last Jagiellons was in the hands of the Sejm. Meanwhile, the king's competences concerning royal towns, peasants in royal estates, the Jewish communities, foreigners and fiefs remained unaffected.⁷⁶ Recently this old view was reaffirmed by Włodzimierz Kaczorowski. Without adding anything of substance to the debate, he delineates more sharply the constitutional role of the king by highlighting the promulgation clause "in the name of the king" in the parliamentary *constitutiones*.⁷⁷ However, this claim is not supported by the sources.

We would rather agree on this point with Wacław Uruszczak's sum-up, "In the light of the Nihil novi Act parliamentary competences boiled down to the passing of bills, which resulted either in the invalidation of a *ius commune* norm or its amendment,

i prawodawstwo przez wieki: prace dedykowane prof. Stanisławowi Płazie w siedemdziesiątą rocznicę urodzin, red. W. Uruszczak, J. Malec, Kraków 1999, pp. 149–160; W. Uruszczak, *Sejm Walny Koronny...*, esp. pp. 12–22; and idem, *System władzy w Polsce ostatnich Jagiellonów (1506–1572)* [*The System of Government in Poland Under the Last Jagiellons (1506–1572)*], "Czasopismo Historyczno-Prawne" 1986, Vol. 38, Issue 2, p. 41–62; T. Szulc, *Stanowisko króla w Rzeczypospolitej na podstawie listów ostatniego Jagiellona do Radziwiłłów* [*The King's Position in the Commonwealth: Letters of the Last Jagiellon to the Radziwiłłs*], "Studia z Dziejów Państwa i Prawa Polskiego" 2002, Vol. 7, pp. 143–171; W. Kaczorowski, *Udział polskiego monarchy...*, pp. 23–31 (a slightly revised version of this article was published under the title, *Udział króla w stanowieniu prawa na sejmach od końca XV wieku do pierwszej połowy XVII w. (w 500. rocznicę uchwalenia konstytucji Nihil novi)*, [in:] *Historia prawa w służbie sprawiedliwości. Materiały I Opolskiego Colloquium Prawno-Historycznego* [*Legal History in the Service of Justice: Proceedings of the First Legal-Historical Colloquium in Opole*], eds. P. Sadowski, A. Szymański, Opole 2006, pp. 13–28). For a review survey which takes into account the latest research, see D. Kupisz, *Sejm koronny w czasach dwóch ostatnich Jagiellonów* [*The Kingdom of Poland's Sejm Under the Two Last Jagiellons*], [in:] *Między konstytucją Nihil novi a ustawodawstwem nowoczesnej demokracji. Parlamentaryzm Polski w XVI–XX wieku. Materiały ogólnopolskiej konferencji naukowej odbytej w Radomiu w dniach 12–13 października 2005 roku* [*Between the nihil Novi Act and the Legislation of Modern Democracy: Polish Parliamentarism in the 16th–20th Centuries. Conference Proceedings, Radom, 12–13 October 2005*], eds. H. Gmiterek, S. Piątkowski, J. Wrona, Radom 2005, pp. 9–21.

⁷⁵ O. Balzer, *Z powodu nowego Zarysu Historii Ustroju Polski* [*Concerning a new outline of the constitutional history of Poland*], "Kwartalnik Historyczny" 1906, Vol. 20, pp. 44 and 47ff.

⁷⁶ W. Kaczorowski, *Udział króla w stanowieniu...*, pp. 16–17.

⁷⁷ Ibidem, pp. 28–30.

but in no case the sanctioning of *nova*.”⁷⁸ Focusing on the political culture of the Sejm during the reign of the last Jagiellons and taking as a criterion the real impact of the nobility on the legislative process, Waław Uruszczak worked out a three-stage model of the transition.⁷⁹ Stage One, until 1519, or the traditional phase – managed democracy controlled by the king and the Senate;⁸⁰ Stage Two, 1519–1548, or semi-guided democracy, in which the king had to seek the consent of the nobility for his measures;⁸¹ and Stage Three, the reign of king Zygmunt II August (1548–1572), when the “executionist” movement took off the ground and nobility were able to act relatively freely.⁸² The movement’s rallying cry was “egzekucja praw”, i.e. beefing up the existing old laws (*ius commune*), and, by implication, the demand to curb the proliferation of *leges spe ciales*, of which the king and his inner circle had become excessively fond.⁸³

⁷⁸ W. Uruszczak, *Sejm Walny Koronny...*, p. 132. Thirty years later he supplemented this analysis of the Nihil novi Act (which guaranteed the traditional rights of the Lithuanian boyars at a time when the union between Poland and Lithuania came up for a major overhaul) with a handful of new insights into the circumstances of it being made into law.

⁷⁹ W. Uruszczak, *Kultura polityczna i prawna w sejmie polskim czasów odrodzenia* [*The Political and Legal Culture of the Polish Sejm in the Renaissance Period*], “Czasopismo Historyczno-Prawne” 1980, Vol. 32, Issue 2, pp. 47–61.

⁸⁰ Ibidem, p. 49.

⁸¹ Various initiatives to gain the nobility’s ear and support at the level of sejmiks prior to the general session were undertaken among others by Subchancellor Piotr Tomicki (A. Odrzywolska-Kidawa, *Prace kancelaryjne podkanclerzego Piotra Tomickiego 1515–1535*, [in:] *Polska kancelaria królewska czasów nowożytnych II*, eds. W. Chorążyczewski, W. Krawczuk, Kraków 2006, p. 160).

⁸² Konstanty Grzybowski’s studies suggest that during the reign of Zygmunt August it was assumed that the king was not bound by the opinion of the majority of the senators. He could side with that party he believed was right. Cf. K. Grzybowski, op. cit., pp. 182–183).

⁸³ W. Uruszczak, *Kultura polityczna i prawna...*, p. 52; K. Grzybowski, op. cit., p. 254. Opposition against the policies of Zygmunt I and his reform plans was expressed fairly often, e.g. by nobles gathered in Lwów after the call for a general levy in 1524. Cf. R. Marciniak, *Sejm piotrkowski 26 XII 1524– 23 II 1525. (Próba analizy problematyki obrad)* [*The Sejm of Piotrków, 26 December 1524– 23 February 1525 (Analysis of the Agenda)*], “Czasopismo Historyczno-Prawne” 1974, Vol. 26, Issue 1, p. 199). The failure of the reform plans was also due to the opposition of the (Wielkopolska) nobility to the idea of reforming judicial law (all they would agree to was the “execution” of the existing laws). Cf. W. Uruszczak’s monograph dedicated to this subject, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* [*An Attempt at the Codification of Polish Law in the Early 16th Century: Correctura Iurium (1532)*], Warszawa 1979. On the other hand, Stanisław Zaborowski, an advocate of a strong monarchy,

The strengthening and extension of the legislative competences of the Sejm – a backlash after the strongman rule of Stefan Batory – was finally enshrined in a raft of statutes during the reign of Zygmunt III Vasa.⁸⁴

5. Conclusion

The article aimed to emphasize the roles of the king and the Polish Sejm in creating the municipal law. The first stage was the foundation of the town on the Magdeburg model, which was the exclusive competence of the king. Royal founding charters were analyzed as marking the legal existence of the town, as well as guaranteeing that the burghers' *ius singulare*, as opposed to the so-called Polish *ius commune*, would be observed. Following an extensive debate within Polish historiography concerning the significance of the German law clause in location privileges, it was determined that its interpretation evolved alongside growing awareness of Magdeburg law. This led to the necessity of adapting, modifying, and supplementing it in accordance with the demands of the era and location.

The glosses to the Saxon and Magdeburg laws set out in detail the circumstances in which kings and princes could modify written municipal law. Due to the time and region in which it was written (14th-century Germany), the Glossa could only provide a general reference point for the law-making process in the Kingdom of Poland. The king had to respect the current political situation and the role of the royal council (and, after that, the Senate), as well as the growing significance of the Sejm, which had an important influence on royal legislative competence. This primarily concerned the Polish *ius commune*, which included the *ius terrestris* for the nobility and general

defended the royal prerogative to issue privileges that were in breach of *ius commune* (S. Salmonowicz, S. Grodziski, op. cit., p. 88). For a comparison of the Polish “executionist” movement and the 1495–1512 reform movement in the German Empire, see H.-J. Bömelburg, *Ständische Reformen in mitteleuropäischen Staatsverbänden im Vergleich: Die Reichsreformbewegung und die Exekutionsbewegung in Polen (1410–1580)*, [in:] *Modernizacja struktur władzy...*, pp. 35–57.

⁸⁴ For a comprehensive analysis of the competences of the General Sejm in the Age of the Vasas see I. Lewandowska-Malec, *Sejm walny koronny Rzeczypospolitej Obojga Narodów i jego dorobek ustawodawczy (1587–1632)* [Poland's General Sejm of the Polish-Lithuanian Commonwealth and Its Legislative Legacy (1587–1632)], Kraków 2009, esp. Summary, pp. 393–400.

rules observed by all inhabitants of the kingdom, including burghers, with regard to taxes and military duties, for example.

However, the range of interests of the Polish Sejm gradually broadened to include *leges speciales* for townsmen. This is evident in Sejm bills from the end of the Jagiellon era, such as the one concerning the captains' control over the municipal budget in royal cities (1565). Undoubtedly, by the end of the 16th century, Polish municipal law (a term coined by Bartłomiej Groicki) was a complex system of legal sources, among which Magdeburg and Saxon law played a significant, though not exclusive, role. This situation was created, among other things, by the significant role of royal and parliamentary legislation.

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► SUMMARY

**The Legislative Powers of the King and the Sejm
in Relation to Royal Towns in Poland in the 14th–16th Centuries**

Grounding privileges made it possible to apply Magdeburg law in Polish towns. As knowledge of this law improved and was consolidated in the 16th century through the writings of Mikołaj Jaskier and the Polish translations of Bartłomiej Groicki and Paweł Szczerbic, it became necessary to adapt it to local requirements. The gloss on Saxon-Magdeburg law explicitly identified the king as the authority responsible for amending the original Magdeburg law. However, as it was created in Germany in the 14th century, the general guidelines in the gloss could only serve as a reference point for royal legislation in Poland. The extent of the king's independence fluctuated and gradually diminished due to the growing influence of the royal council and, above all, the Sejm.

The issue of the emergence of Polish municipal law, to use Bartłomiej Groicki's words, is therefore intertwined with the evolution of the political system of the Kingdom of Poland and the establishment of a legislative Sejm. Ultimately, the Sejm also gained influence over the law applied in cities, extending beyond the area of Polish *ius commune* (to which townspeople were subject in matters such as taxes, foreign trade and defence) to include *ius singulare* matters concerning townspeople exclusively. To conclude, although the significance of Saxon-Magdeburg law was formally guaranteed by a clause of German law, due to the royal and parliamentary legislation, Magdeburg law was just one source of Polish municipal law.