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*The Image of an Attorney as Illustrated in the Works of Polish Poets and Political Writers in the 16th–17th Centuries**

Abstract

The article presents the image of an attorney as characterized in Old Polish literature from the 16th and 17th centuries. It reflected, to some extent, the attitude of the people of the time (primarily the nobility) towards the legal profession. There is no doubt that the perception of attorneys by Old Polish society was unequivocally negative. They were portrayed as greedy, dishonest men, liars with no respect for the law and even instigators of non-compliance with the law. Literary works and political writings broadly condemned such behaviors. However, this stereotype applied only to professional attorneys-at-law. By no means were non-professional agents (attorneys in fact) attacked, nor was the institution of the power of attorney itself criticized. It seems that this sort of critical attitude was not estate-based (many attorneys were noblemen), although it is possible that the low descent of lawyers influenced the virulence of the criticism. The paper attempts to answer the question as to what extent the literary image of an attorney corresponded to reality. It seems that the works comprised objective reflections on the legal profession and the emotional attitudes of individuals (including the authors themselves) or social groups. It is noteworthy that these pieces of literature often regarded the entire Polish legal system of the time as dysfunctional. Nevertheless, the recurrence of motifs such as greediness or dishonesty gives reason to believe that at least some of these allegations were not unfounded. At the same time, it should be noted that this image of a lawyer corresponded with the stereotype present in European and non-European culture from antiquity to contemporary times.

Keywords: attorney, advocate, lawyer, image of lawyer, greediness, dishonesty, literature, political writings, Poland, Polish-Lithuanian Commonwealth

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*The first thing we do, let's kill all the lawyers.*¹

More than two years ago, I published an article in *Cracow Studies of Constitutional and Legal History* which discussed the image of the judge in Old Polish literature.² The present study, regarding another actor within the Old Polish judicial system – the attorney – is a continuation of these considerations.³ The portrait of the plenipotentiary, preceded by a brief characterization of the institution of legal representation in the land law (Latin: *ius terrestre*; Polish: *prawo ziemskie*), is outlined on the basis of Old Polish literature from the 16th and 17th centuries. As in the case of judges, it depicted to some extent the attitude of society at the time (primarily the nobility) towards the legal profession and those who practiced it.

Today, the reception of the profession is moderate. Surveys conducted by Polish Public Opinion Research Center (Centrum Badań Opinii Społecznej) in the last decade present the bar⁴ as enjoying relatively high social respect.⁵ At the same time, Poles do not have the best opinion of the honesty and reliability of representatives of this profession.⁶ The analogy to the profession of a judge is all too apparent.⁷ So, how did it look in Poland during the 16th and 17th centuries?

¹ Shakespeare, *Henry VI*, Part 2, Act IV, Scene 2. I thank Mr. Patrick Lahey for his suggestion concerning the quote.

² Górski, “Wizerunek sędziego.”

³ On the history of advocates (professional attorneys) in Poland before the partitions (i.e., before the dissolution of the Polish-Lithuanian Commonwealth in the end of 18th century), see e.g. Redzik, Kotliński, *Historia adwokatury*, 55–82 (and further literature referred to therein). It is worth pointing to, in particular: Lewin, “Palestra”; Lityński, “O Trybunale Koronnym”; Pauli, “O kształceniu adwokatów.” For legal historical studies on legal representation in Poland, see especially Rafacz, *Zastępcy stron*; Vetulani, “Zastępstwo procesowe.” The picture of attorneys in Old Polish literature used to be a subject of study but was usually based on a small source base. See e.g. Kraushar, “O palestrze”; Balzer, *Geneza Trybunału*, 92–4; Mayer, “Wizerunek Trybunału”, 44–9, 60–1; Estreicher, “Kultura prawnicza”, 64–5; Zarzycki, “Trybunalska palestra”; Milewski, “«Czerpać wiedzę»”, 135–7; Poraziński, “Staropolska palestra”; Pilarczyk, “Doświadczyński przed Trybunałem”, 85–7, 96; Pilarczyk, “Trybunał Koronny”, 65–7; Redzik, Kotliński, *Historia adwokatury*, 67–71. One of the exceptions is an article by Małgorzata Janiszewska-Michalska (“Krytyka adwokatury”), in which the author presented the image of attorneys in the light of literature (including political literature, memoirs or epistolography) from the 18th century. This text is an attempt to supplement these considerations with earlier centuries.

⁴ Although they referred to the profession of barrister, or advocate (Polish: *adwokat*), the nature of the research allows us to assume that both the authors and the respondents had in mind all persons professionally involved in legal representation, and thus legal advisers (Polish: *radca prawny*).

⁵ Cybulska, *Prestiż zawodów*, 2–3, 6; Omyła-Rudzka, *Które zawody poważamy*, 2–3. It cannot be overlooked, however, that although the respect for the legal profession looks good compared to officials, priests or politicians, it is far from the public image of not only teachers, medical doctors or engineers but also farmers, miners and qualified manual workers.

⁶ Boguszewski, *Społeczne oceny uczciwości*, 2, 5. Only 19% of respondents responded positively to the question about the integrity of attorneys (“rather high” – 17; and “very high” – 2); a similar percentage responded negatively (“rather low” – 14; and “very low” – 6). 44% rated their honesty as “medium.” The average grade on a scale of 1–5 was 2.93 and was placed right next to municipal officials, private entrepreneurs, company directors, as well as judges (2.83). Since 1997, this average has slightly decreased (1997 – 3.01; 2000 – 2.88; 2006 – 2.96). See also Łojko, “O roli zawodów prawniczych”, 57–8.

⁷ In 2013, the attitude towards barristers and judges was similar: 63% and 60% of respondents, respectively, declared “great respect.” A 2019 study showed a greater discrepancy with 65% and 58% of the

1. Attorney under the land law

As a rule, a party to the proceedings in the land law courts⁸ had, in principle, the freedom to choose the form of appearance in court.⁹ They were allowed to appear in person (*personaliter*) or to act through a third party. In both cases, an attorney could take part in the procedure, either alongside or in place of the party. The appointment of an attorney, usually referred to as a *procurator* or a *plenipotens*,¹⁰ was the right of each party, regardless of gender or social status (or estate). They were derived from the right of defense, which was already defined in King Casimir the Great's Statute for Lesser Poland as the "natural right" of man.¹¹

The institution of power of attorney was a form of procedural representation. The appointment of an attorney depended on the will of the party (voluntary representation), which distinguished this action from compulsory representation, *i.e.* representation required by law.¹²

responses. At the same time, like in the case of attorneys, the public perception of the conduct of judges was worse (seen, for example, in the assessment of impartiality). Górski, "Wizerunek sędziego", 470 (and the studies cited therein); Cybulska, *Prestiż zawodów*, 2–3; Omyła-Rudzka, *Które zawody poważamy*, 2–3. See also note 6.

⁸ *Id est* those which applied the land law (*ius terrestre*), or Polish law. These included, *inter alia*, the following courts: land court (*iudicium terrestre*; Polish: *sąd ziemski*), castrensial court (*iudicium castrense*, including official court – *officium castrense*; Polish, respectively: *sąd grodzki* and *urząd grodzki*, *succamerarius'* court (Polish: *sąd podkomorski*), court in *colloquio* (Polish: *sąd wiecowy*), royal courts (both *post curiam* and Sejm court; Polish, respectively: *sąd zadworny* and *sąd sejmowy*), and the Crown Tribunal (established in 1578; Polish: *Trybunał Koronny*).

⁹ The rule was subject to exceptions, *e.g.* in criminal cases, where the personal appearance of the plaintiff was required. The legal basis for this rule was a provision from King Casimir the Great's Statute for Greater Poland. Łysiak, Roman, *Polskie statuty ziemskie*, 112.

¹⁰ *Procurator* and *plenipotens* were the terms most frequently used in judicial practice of the 16th and 17th centuries. Expressions such as *defensor*, *advocatus*, *prolocutor*, *interlocutor* or *patronus* appeared more in legislation and legal writings. For more detail on terminology, see Rafacz, *Zastępcy stron*, 12–23; Lewin, "Palestra", 8–13; Orzechowski, "«Mecenas»"; Redzik, Kotliński, *Historia adwokatury*, 67.

¹¹ *Quia cuilibet sua defensio et tuitio (cum iuris sit naturalis) non est deneganda, ideoque statuimus, quod in iudicijs nostri regni quilibet homo, cuiuscunque sit status et conditionis, potest et debet habere suum aduocatam, procuratorem seu prolocutorem*. Łysiak, Roman, *Polskie statuty ziemskie*, 67. According to Adam Vetulani, the quoted paragraph extended the right of representation to the whole of society. Taking the position that the institution of legal representation was already known in Poland in the 13th century at the latest, he corrected Józef Rafacz's view that Casimir the Great's statute only introduced the institution of legal representation into court proceedings. Vetulani, "Zastępstwo procesowe", 106; cf. Rafacz, *Zastępcy stron*, 5–9.

¹² Representatives of persons with limited procedural capacity (minors, women – maidens or married, subjects) and representatives of legal entities acted as compulsory representatives before the courts. However, deputies could fulfill the requirement of assistance (*assistentia*) by appointing an attorney to attend the trial on their behalf. The division between compulsory and voluntary representation was adopted as referred to in Balzer, *Przewód sądowy polski*, 28–38. Rafacz followed a slightly different scheme, distinguishing between statutory (the same as Balzer's compulsory), elective (voluntary) and judicial representation. Rafacz, *Dawny proces polski*, 95–102; Rafacz, *Zastępcy stron*, 29–37.

The party's representative could be a natural person having full capacity to perform actions in proceedings and the power of attorney (*procuratorium*).¹³ This was not limited by social status (estate).¹⁴ The power of attorney could be oral or written – the latter was introduced as mandatory in 1616 but only in certain cases.¹⁵ In most cases, oral power of attorney was still allowed. The consequence of a defective power of attorney (*malum procuratorium*), apart from being fined,¹⁶ was exposure to the objection of the opposing party to the proceedings.

The representative by choice could be both a professional and a non-professional attorney.¹⁷ The activity of professional attorneys was first regulated in the constitution (or the act) of the Cracow Sejm of 1543, which established as a principle the obligatory pledge of “paid” attorneys (*procuratores mercenarii*), i.e. professional ones.¹⁸ The rules concerning the conduct of attorneys were also governed by the ordinances of 1548 and 1559.¹⁹ The right to practice the profession was limited to noblemen only in the 18th century.²⁰

¹³ Sejm 1511, no. 16 in VC I/1, 246. The constitution set out the activities the attorney was authorized to undertake. For more detail on power of attorney, see Rafacz, *Zastępcy stron*, 52–60.

¹⁴ The exception was the clergy, who were prohibited under the constitution of 1538 to act as a representative in secular courts (*in iudiciis saecularibus*), except in cases where they represented a clergyman (*exceptis causis propriis, aut aliarum spiritualium personarum, in quibus agendis procurandisque liberam habeant ubique facultatem*). Sejm 1538, no. 27 in VC I/2, 173. In 1550, notaries and vicenotaries were also banned from performing the function of attorney before the courts in which they held their positions. Sejm 1550, no. 38 in VC II/1, 26.

¹⁵ In light of the act of 1616, a written power of attorney was required in cases *ad inscriptionem* (*causae ad inscriptionem*), as well as: cases on the division of land estate (*cc. divisionis*), the redemption of land estate (*cc. exemptionis*), the expulsion from land estate (*cc. expulsionis*), and cases concerning hereditary land estates (*quaestiones haereditariae*), as well as within enforcement proceedings (*cc. rei iudicatae sive executionis*). The power of attorney should be registered in person in the books of the land court or castrensial court. Sejm 1616, no. 12 in VC III/1, 196.

¹⁶ *Consuetudines terrae Cracoviensis* (1505), no. 11 in VC I/1, 157. In these *Customs of the land of Cracow*, the penalty amounted to three *grzywna* in the land court or six *skojec* (i.e. twelve *grosz*) in the castrensial court. See also Łysiak, Roman, *Polskie statuty ziemskie*, 72.

¹⁷ The non-professional attorney (or attorney in fact) acted on behalf of a “friend” (*amicus*), a relative (*consanguineus*) or as a servant (*famulus domini sui*). It was essential that he “did not usually appear before court” (*communiter in iure causas dicere*), i.e. he did not deal with legal representation professionally. Professional *procuratores* were also distinguished by charging a fee for the service (*mercede conducti*). Sejm 1543, no. 25 (Polish), 31 (Latin) in VC I/2, 251, 261–2.

¹⁸ Sejm 1543, no. 25 (Polish), 31 (Latin) in VC I/2, 251, 262. The professional attorney took an oath before the land court and was required to have a document confirming the fact, “which should be everywhere accepted as certified.” See also Lewin, “Palestra”, 30–2.

¹⁹ They were briefly discussed by Woner, “Pierwsze polskie ordynacje”, 8–11. The ordinance of 1559 was addressed to attorneys appearing before royal courts, including the Sejm court. Its text was reprinted from Michał Bobrzyński by Lewin, “Palestra”, 121–2. The act of 1548 was preserved in the work of Przyłuski, *Leges seu Statuta*, 598.

²⁰ Sejm 1726, no. 77–81 (for the Kingdom of Poland), 37 (for the Grand Duchy of Lithuania) in VL 6, 223, 246. The acts were expressly addressed to the “patrons” of the Tribunals. They were also banned from holding offices or military service. The ban was reassumed in the second half of the 18th century. See the ordinance of the Crown Tribunal of 1768 in VL 7, 327–8, as well as reassumption of 1775, in VL 8, 108. In 1764, the requirement of being a landed (i.e., owning a landed estate) nobleman was extended to the other courts in the Grand Duchy of Lithuania. As for the Crown, there was no such regulation. The problem was remedied four years later. Referring to the act of 1764, the constitution for the Crown and Lithuania allowed

2. Duties of the attorney

Attorneys (especially professional attorneys) were expected to behave properly.²¹ They were expected to conduct their cases with due diligence (*diligenter*)²² and, in particular, to avoid negligence (*negligentia*).²³ They were also obliged to loyalty, which included the prohibition of favoring the litigant's opponent, i.e. collusion, roguery (*praevaricatio, nequitia*)²⁴ and acting to the detriment of the principal, for example by deliberately protracting the proceedings²⁵ or (which often had to do with prolonging the trial) charging excessive fees.²⁶ In addition to duties to the principal, one can find in the law norms of conduct that prohibited acting to the detriment of the justice system.²⁷ One can indicate here, in addition to the above-mentioned prohibition of protraction of proceedings (especially where it was in the interest of the represented party)²⁸ and bribing judges or witnesses²⁹, also the requirement of broadly understood reliability in work³⁰ and more mundane requirements concerning correct behavior in court.³¹ The duties were summed up by the text of the oath statutorily laid down in 1726:

I, N., swear to God Almighty, One in Holy Trinity, that I will serve loyally the party who hired me to represent in their case, I will not charge more than due, and, having been paid the fee, I will not abandon the case, nor will I *quovis colore et praetextu* counsel my clients anything that would delay the holy justice and be against the law to the detriment of the litigant parties. I will not keep in secret, for the avoidance of justice, the documents entrusted to me for the purposes of the case, so help me God, etc.³²

burghers to practice as a patron in all courts, except the Tribunal, land courts and castrensil courts. Sejm 1764, no. 26 in VL 7, 179; Sejm 1768 in VL 7, 353. For more detail, see Lewin, "Palestra", 14–7.

²¹ Duties of attorneys were comprehensively discussed by Lewin, "Palestra", 52–77. See also Rafacz, *Zastępcy stron*, 60–70; Rafacz, *Dawny proces polski*, 99–100. As regards the 18th century, see Janiszewska, "Osiemnastowieczny kodeks etyczny."

²² Lewin, "Palestra", 121 (§ 2 of the ordinance of 1559). Other sources, see also *ibid.*, 53.

²³ Przyłuski, *Leges seu Statuta*, 598 (ordinance of 1548); Lewin, "Palestra", 121 (§ 2 of the ordinance of 1559). In more detail: *ibid.*, 58–61.

²⁴ Przyłuski, *Leges seu Statuta*, 598 (ordinance of 1548). For more detail, see Lewin, "Palestra", 55–8.

²⁵ Sejm 1543, no. 25 (Polish), 31 (Latin) in VC I/2, 251, 262; Lewin, "Palestra", 121, 122 (§§ 2, 4 and 6 of the ordinance of 1559), in more detail: *ibid.*, 61–3.

²⁶ Lewin described this duty as "restraint in the pursuit of material gain." *Ibid.*, 74.

²⁷ Lewin referred to them as duties "in the interest of legal order and professional duties." *Ibid.*, 64.

²⁸ See also note 25.

²⁹ For more detail, see Lewin, "Palestra", 74–5.

³⁰ Sejm 1543, no. 25 (Polish), 31 (Latin) in VC I/2, 251, 262; Przyłuski, *Leges seu Statuta*, 598 (ordinance of 1548); Lewin, "Palestra", 121 (§ 1 of the ordinance of 1559). For more detail, see *ibid.*, 70–4.

³¹ *Ibid.*, 122 (§ 5 of the ordinance of 1559). For more detail, see *ibid.*, 64–70.

³² Sejm 1726, no. 77 in VL 6, 223. The constitution (therefore the text of the oath) applied to attorneys acting before the Tribunal.

3. Traits of the attorney as presented in literature

The opinion on attorneys at law in Polish literature of the 16th and 17th centuries was unequivocally pejorative. Most frequently they were criticized for their greed, dishonesty, mendacity, disrespect for the law and inciting others to disrespect it.

3.1. Greed

Procuratores (attorneys) were often described as self-seeking. Greed was repeatedly associated with the tendency to unnecessary prolong the proceedings.³³

The figure of a greedy lawyer was eagerly used by Mikołaj Rej.³⁴ In his works, the uninhibited pursuit of money entailed harm to the client, who, lured by promises, used to reach deeper and deeper into their pocket. As he wrote in *A Short Conversation Between Three Persons, a Squire, a Bailiff, and a Parson*:

An attorney for two thalers
Stands against fine legal scholars.
Such a band of brilliant minds,
So distinguished, so refined,
Would confuse unwitting herd,
Using foreign language words.
Anyone would be persuaded
With Babel Tower that they made.
So the lawyer, when inquired,
Runs away like burnt by fire.
He says he has work to do,
He must think the question through.
“If it weren’t our friendship, mate
I would say you are too late.
Show it to me, I’ll take a glance,
But quickly, in these circumstances.”
So he reads and shakes his head,
And he laughs at what he’s read.

“Oh, my poor thing, did you wait?
You have almost missed the date.”
He would put the blame on you:
“This is wrongly written, too.
What I see here needs my skills,
So prepare to paying bills,
There’s a hope to win the case.
Pay the fee, you’ll be amazed.
A nice loophole, deftly found,
makes the problem got around.”
This goes, drags and lingers on,
Pay the costs of court, and more:
Pay the rate, commission, fee...
For whatever that may be.
Pay! A whole gallery here:
Statements, papers and appeals,
And before he is dismissed
Half your wealth does not exist.³⁵

Such practices of attorneys were summed up bluntly by Łukasz Górnicki in an anecdote in his *Dworzanin polski (The Polish courtier)*: And the second one who was assisting his friend in court, when the attorney of the opposing party had said: “Why do you bark so?”, replied: “I have to, because I see a thief.”³⁶

³³ See e.g. Bielski, “Rozmowa nowych proroków”, 52; Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 254; Modrzewski, “O poprawie Rzeczypospolitej”, 289; Goślicki, *O senatorze doskonałym*, 190–3; Orzechowski, “Mowa do szlachty polskiej”, 107; Petrycy of Pilzno, “Przydatki do Polityki Arystotelesowej”, 314; Starowolski, *Reformacja obyczajów*, 171; Ulanowski, *Sposób*, 35, 36.

³⁴ For more detail on Rej’s opinion on lawyers, see Kochan, “«Pamiętnę»”, 74–6.

³⁵ Rej, “Krótka rozprawa”, 53–5 (Polish text). The passage was translated by Janusz Dołęga.

³⁶ Górnicki, *Dworzanin polski*, 227 (Polish text).

All in all, it was better for a party to make a settlement with his litigation opponent – such a moral is contained in the apophthegm *Spokojny a prokurator* (*The Placid Man and the Attorney*) from *Żwierciadło* (*Mirror*), the last piece by M. Rej:

The Placid Man

Good day, Doctor!
My dear protector!
He, who carefully inspects a purse
While making the law its converse.

Attorney

Your settlement, I suppose
Didn't make you prosperous.
Those who settle at the start
Lose the half of the award.

The Placid Man

It is better to let go
Than to see your belly grow
And lose precious time in court.
I don't like it anymore.³⁷

One may also find in literature a figure of an attorney collecting his fees from both parties to the trial, which was rightly considered an unfair practice.³⁸ An example is the following *facetia*:

One poor widow, having a certain case of contractual nature, gave the jurist a cow; her adversary then gave him an ox. At the beginning, he duly defended the widow, but at the end he spoke against her. Seeing this, the widow said: "Sir, the cow is going astray!", so he replied: "because the ox is pulling her."³⁹

Greed and ruthlessness in pursuit of profit were the properties most commonly used in creating the image of the attorney. In light of the primary sources, they were the main driver and the main cause of the other sins of the representatives of this profession.⁴⁰

³⁷ Rej, "Apophthegmata", 88 (Polish text; transl. by J. Dołęga). The poem has not been included in the most recent edition of *Żwierciadło* in *Wybór pism (Oeuvres of Mikołaj Rej)* of 2015. See also an epigram from *Żwierzyniec*: "«Your legal affairs are so dire // that look as a swamp or a quagmire; // but I can devise some clever solution, // to rectify your wretched condition». // The same well-worn story is told to this day // if there is some money that still you can pay; // As he thinks it's simple, as easy as pie, // When there is some coinage that he can come by." Rej, "Żwierzyniec", 320–1 (Polish text; transl. by J. Dołęga).

³⁸ See e.g. Modrzewski, "Przydatek do ksiąg", 622; Petrycy of Pilzno, "Przydatki do Polityki Arystotelesowej", 314.

³⁹ Krzyżanowski, Żukowska-Bilip, *Dawna facecja polska*, 301 (Polish text).

⁴⁰ A similar conclusion regarding the image of the attorney in medieval literature was made by Brundage, *The Medieval Origins*, 215.

3.2. Dishonesty and mendacity

Lawyers were accused of deception, lies and slander.⁴¹ These were most commonly committed to win a case, although in the end, the victim was sometimes the client of such an attorney who was persuaded not to pursue the case or who was unfairly treated by the representative who was also paid by the opposing party (see 3.1).

The figure of a relentless and lying lawyer was referred to in both political writings and other literary works. An anonymous author wrote: “If I had any unfair case to be pursued, I myself would be ashamed to support it, but I would hire an attorney and pay him to lie for me, and he would lie so well, twisting everything round”⁴², and Krzysztof Warszawicki noted bluntly: “attorneys [...] have always cheated and continue to cheat on a large scale.”⁴³ Mendacity was also subject to many jokes. In a 17th-century *facetia*, a former attorney, then a monk, was entrusted with representing his monastic order in a legal dispute. He replied to the criticism from his brethren in the following manner: “*Fratres mei*, I dare no longer lie as I used to do before; hire another one who cares little for God.”⁴⁴

The hope for justice was seen only in the divine court of God, as expressed in the epigram *To the Evil Jurist* by Zbigniew Morsztyn:

With cunning concepts of a scheming mind
and whatever false words you ever can find
I condemned the innocent and rescued the crooks,
And now I myself have been in a death book.
I’m banished forever to atone for my sins,
And this is the day my suffering begins.⁴⁵

3.3. Disrespect for the law

One of the accusations against attorneys was their disregard for the law. They were mainly accused of exploiting legal loopholes to achieve the intended goal of winning a case. They exploited these loopholes without scruple, fully aware of their nature, or simply interpreted legal provisions in a manner that was in line with best interests of the client (and, consequently, to themselves – see 3.1), regardless of the actual purpose of the regulation and the intention of the lawmaker.⁴⁶ The phenomenon was vividly described by Hieronim Powodowski:

⁴¹ Fredro, *Monita politico-moralia*, 236–9; Modrzewski, “O poprawie Rzeczypospolitej”, 289; Goślicki, *O senatorze doskonałym*, 190–3; Krzycki, *Poezje*, 120; Orzechowski, “Mowa do szlachty polskiej”, 107; Warszawicki, “O najlepszym stanie wolności”, 355; Ulanowski, *Sposób*, 36.

⁴² Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 254 (Polish text).

⁴³ Warszawicki, “O najlepszym stanie wolności”, 357 (Polish text).

⁴⁴ Brückner, *Facetye polskie*, 101–2 (Polish text).

⁴⁵ Morsztyn, *W Wybór wierszy*, 93–4 (Polish text; transl. by J. Dołęga).

⁴⁶ See e.g. Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 397; Bielski, “Rozmowa nowych proroków”, 52; Fredro, *Monita politico-moralia*, 236–9; Górnicki, “Rozmowa Polaka z Włochem”, 398, 400, 413, 416; Kochanowski, *Satyr*, B2; Ulanowski, *Sposób*, 35, 38–9; Wolan, *De libertate politica*, 248–51; Zawisza z Kroczoza, *Wskroczenie prawnego procesu*, 19.

So, our attorneys bend the law, especially the new constitutions, for the purposes of opposing lawsuits; and every now and then, and sometimes differently depending on particular courts, devise new legal tricks or bypasses: and they would complicate clear and simple things to such an extent that the trials go up to the highest instances. And what's worse, judges, despite seeing these abuses, are helping in that with their decrees.⁴⁷

As a result, cases used to be won not by truthfulness or fairness of the claims but owing to an effective legal professional. As Marcin Bielski stated directly: "if you do not have an attorney, you will win nothing",⁴⁸ while Mateusz Bembus summed up the problem as follows: "and the more artful⁴⁹ and cunning the attorney is, the better chance to prevail in the trial."⁵⁰

Stanisław Orzechowski saw more serious consequences in the conduct of lawyers. In his *Mowa do szlachty polskiej* (*An Address to the Polish Nobility*), he fiercely spoke against the "loudmouths" whom he blamed for intentional complication, "obscuring" the law in order to make the nobility dependent upon them.⁵¹ The Papist, who appeared in his *Dyjalóg* (*A Dialogue*), described them as "mere forgers of the common law" who "learn from the statute how to cheat, not how to do Godly justice."⁵² The motif was also used during the Sandomierz rebellion (1606–1608). One author bluntly noted: "nowadays, brute force and legal trickery are the law in Poland."⁵³

Arguments of incompetence are somewhat paradoxical in view of the above, but these can also be found in literature. The ignorance of lawyers was pointed out, among others, by Ł. Górnicki in an anecdote contained in *Dworzanin polski* (*The Polish courtier*):

A nobleman once asked the court for a lawyer, saying that he could not hire one for money, and since the dispute was of a considerable value, he did not want to proceed by himself. That court as-

⁴⁷ Powodowski, *Proposicja*, 64 (Polish text).

⁴⁸ Bielski, "Rozmowa nowych proroków", 52 (Polish text).

⁴⁹ Id est the one knowing more legal tricks.

⁵⁰ Bembus, *Kometa*, 75 (Polish text). Presumably borrowed by Starowolski, *Wady staropolskie*, 147. A similar motif in: Bielski, "Rozmowa nowych proroków", 52; Górnicki, "Rozmowa Polaka z Włochem", 403; Ulanowski, *Sposób*, 38–9. On the authorship of "Robak", see Wiśniowski, "Sprawa autorstwa", 199–208.

⁵¹ "They [attorneys – KG] cause, with great slander and lies, that the law, which by its nature was established by our ancestors for the good of the Commonwealth, by the tricks of these individuals acts to the detriment of the very Commonwealth. All their plots, their deceptions, and their treacheries against you and your prosperity have stripped your laws of all clarity to allow them to act in secret, and to cover all your laws with a dense layer of darkness. [...] Likewise, in order to profit more freely from the justice system, they obscured our laws with hideous darkness. [...] They began, in the face of so great a light of your laws, to persistently introduce some secrets into them, so that it would seem that you could do nothing without their efforts. With their loquacity and wordiness, they blurred everything that had previously been enacted [...]. Because of this, all that the law had so well integrated into our common mindset, has already been changed and spoiled by the ideas and deceptions of the lawyers. [...] They [...] were the ones who, by means of deceitful and imaginary things, stripped the law of all light and splendor, and left darkness and a kind of fear, so that they alone would seem to be able to know and apply the law so turned inside out. [...] And – which is unbearable – you who want to surpass all other nations in terms of freedom, you serve at home these very dishonest people, become addicted to them, become their companions and even supporters [...]." Orzechowski, "Mowa do szlachty polskiej", 107–10 (Polish text).

⁵² Orzechowski, "Dyjalóg", 334, 335 (Polish text).

⁵³ Ulanowski, *Sposób*, 19 (Polish text). See also *ibid.*, 24–5, 38–9.

signed a certain attorney whose legal ignorance was very well known to the nobleman so the latter said to the judges: “Please, gentlemen, give this attorney to my opponents, and give me another one, otherwise I’d rather prefer to proceed on my own”⁵⁴.

3.4. Inciting to disobey the law

Some authors saw lawyers as a negative role model for noblemen. The Protestant and the Papist in S. Orzechowski’s *Dyjalóg* jointly argued that attorneys “extinguished all love between us and through strange tricks stirred up each against the other and showed each to the other in a slanderous way.”⁵⁵ K. Warszawicki believed that thanks to their attorneys, the nobility “learned ways to grab other people’s property, to deceive their neighbors.” In his opinion, attorneys were “drivers of disputes and quarrels between the citizens.”⁵⁶ Kasper Siemek, on the other hand, stated that it was the attorneys who “teach that disputes should begin with violence and infringement of the law.”⁵⁷

Another example of the literary representation of the reprehensible conduct of a lawyer can be an anecdote put by S. Orzechowski into the mouth of the Protestant taking part in *Dyjalóg*, who recalled:

[...] I was consulting an attorney, how could I evade the lawsuit filed by my neighbor who had sued me for vulneration; then he advised me to make bruises on my body with lead and to report them officially, and then sue my adversary.⁵⁸

In the end, he did not follow the attorney’s advice because “decency prevented” him from doing this.⁵⁹ However, such advice could have turned against the attorneys themselves, as described by the following *facetia*:

When Marshal Opaliński held the office, a certain attorney in Poznań, unable to relieve his client from the banishment and criminal trials, advised him to pretend to be mentally retarded who could only utter “ble.” The client was examined in various ways during a hearing, and he kept answering “ble”, so the trial was invalidated by that general⁶⁰ as conducted *sine curatoribus super illum mente captum*. Once granted a favorable judgment, and after remaining in this imaginary foolishness for a few days to keep up the appearance, he was visited privately by the attorney, who argued that advice that had brought such a great benefit needed to be appropriately rewarded but the client an-

⁵⁴ Górnicki, *Dworzanin polski*, 253 (Polish text). In another section, an Italian discussing with a Pole says that in Poland attorneys write lawsuits in “Polish legal Latin, which has nothing to do with actual Latin language.” Górnicki, “Rozmowa Polaka z Włochem”, 402 (Polish text).

⁵⁵ Orzechowski, “Dyjalóg”, 334 (Polish text).

⁵⁶ Warszawicki, “O najlepszym stanie wolności”, 354–5, 374 (Polish text).

⁵⁷ When asked: “What should be decided about such wicked attorneys?”, he used to answer: “This definitely should be punished with the highest penalty possible.” Siemek, *Dobry obywatel*, 268–9 (Polish text).

⁵⁸ Orzechowski, “Dyjalóg”, 334 (Polish text).

⁵⁹ *Ibid.* (Polish text).

⁶⁰ *Id est*, captain-general of Greater Poland. Captain (Latin: *capitaneus*; Polish: *starosta*) was a royal official responsible for, *inter alia*, presiding castrensis court. The judge mentioned in this passage is presumably Andrzej Opaliński (1540–1593). He held the office of captain-general of Greater Poland in the years 1578–†1593. Bieniaszewski, Gąsiorowski, *Urzędnicy wielkopolscy XVI–XVIII wieku*, 165.

swered nothing but “ble” and paid him nothing. [...] So the attorney disclosed the secret in revenge for his harm and client’s ingratitude: “*Malum consilium consultori pessimum*.”⁶¹

It is worth noting that literary works rarely accused attorneys directly of corruption. But there are allegations of encouraging bribery.⁶²

3.5. Invectives

The most offensive insults were used to describe attorneys in literature. Andrzej Krzycki called them “hypocrites and traitors” (*bilingues et praevaricatores*),⁶³ Andrzej Wolan and Wawrzyniec Goślicki named them court “barkers” or “loudmouths” (*[forenses] rabulae*),⁶⁴ Ł. Górnicki referred to them as “crooks” and “thieves”,⁶⁵ and an anonymous author – “hired liars”, “fraudsters” infecting the Commonwealth (*pestilentialis virus*).⁶⁶ Jan Żabczyc in his satire *Leksykon dworski* (*Courteous Lexicon*) considered the word *praeuaricator* to be the best equivalent of the word “attorney.”⁶⁷ Of the strongest opinions was that of S. Orzechowski, who in his *Policyja Królestwa Polskiego* (*Politics of the Kingdom of Poland*) equated the profession of attorney at law with the professions of “dog catcher, executioner, prostitute”,⁶⁸ as “trades that do not require virtue.”⁶⁹ In particular, he considered the latter to be “very similar to that of the attorney, since a prostitute earns money with her indecent body, and an attorney earns money with his indecent mouth, selling his tongue to everyone, like πόρνη [*pórnē* – KG] sells her body.”⁷⁰

⁶¹ Krzyżanowski, Żukowska-Bilip, *Dawna facecja polska*, 255–6 (Polish text). It may be said following the publishers that it is “a very popular idea, known in European facetious literature since the Middle Ages.” For a similar joke, see *ibid.*, 394–5.

⁶² See e.g. “O trybunałach i sądach” in Opaliński, *Satyry*, 153–4 (as cited in Górski, “Wizerunek sędziego”, 478).

⁶³ Krzycki, *Carmina*, 295; Krzycki, *Poezje*, 120.

⁶⁴ Wolan, *De libertate politica*, 248–51; Goślicki, *O senatorze doskonałym*, 190–1.

⁶⁵ Górnicki, “Rozmowa Polaka z Włochem”, 400; Górnicki, *Dworzanin polski*, 227.

⁶⁶ Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 254. See also Ulanowski, *Sposób*, 24, 39.

⁶⁷ Żabczyc, *Praktyka Dworskie*, D4.

⁶⁸ According to the editor, the very word *zantuz* (literally “brothel”) originally used by S. Orzechowski means someone involved in prostitution, and the whole context points rather to a prostitute than a procurer.

⁶⁹ Andrzej Tomaszek regarded S. Orzechowski’s comparison as “the most insulting assessment of the Polish Bar in its entire history.” He saw the reason for this in S. Orzechowski’s personal experience. Tomaszek, “Stanisław Orzechowski”, 30, 33–4.

⁷⁰ Orzechowski, *Policyja Królestwa Polskiego*, 30 (Polish text). S. Orzechowski thus developed a subject discussed several years earlier. See Orzechowski, “Mowa do szlachty polskiej”, 107ff. See also a similar approach in Starowolski, *Reformacja obyczajów*, 171 (see note 78). Of course, the author understood *pórnē* as a woman of pleasure, but it is worth noting that in ancient Greece this term was used to refer to prostitutes working on the street or in a brothel, often as slaves. Higher in the social hierarchy were *hetairai*, whose range of services was broader. For prostitution in ancient Greece see, for example, Cohen, *Athenian Prostitution*, especially 25–38. Lawyers were also compared to prostitutes in medieval literature. Surprisingly similar to Orzechowski are the words of the French 13th-century poet Mathieu of Boulogne (Matheolus): “What can I tell you about a lawyer? // He ought to be called something like a filthy whore; // Really, he’s even nastier: a whore just rents out her ass, // But he sells his tongue, which is even more demeaning, // Because the tongue is a member more exquisite than the ass.” Brundage, “Vultures”, 70 (as translated therein). Other translation in Yunck, “The Venal Tongue”, 269.

4. Remedies

The authors of some political treatises have included in their deliberations proposals which, as they believed, could solve the problems discussed above. One of the ways of restricting the impertinence of attorneys was a comprehensive amendment (or correction) of the law.

In his *Address to the Polish nobility*, S. Orzechowski praised Jakub Przyłuski for his attempt to write, organize and print the law, which, in his opinion, would make the nobility independent of attorneys.⁷¹ There were also less far-reaching solutions: introducing the sworn character of the legal profession,⁷² maximum fees,⁷³ or compulsory written powers of attorney (inscribed into court records).⁷⁴ In addition to this, Andrzej Frycz Modrzewski wanted to ban long court speeches.⁷⁵ Apart from the postulate of a comprehensive amendment to the law, which was difficult to implement (which, however, by increasing the role of written statutory law, could indeed significantly limit the scope for manipulation), it seems doubtful that the other proposals could realistically help solve the problems.

Some of the authors called for limiting access of the attorneys to public offices and functions. W. Goślicki did not allow for a senator to perform this profession,⁷⁶ while an anonymous author postulated that attorneys could not take part in the legislative process. He also criticized their role as a deputy in the Sejm and as a Tribunal judge.⁷⁷ The most radical authors even denied them nobility, “because it is a trade that *mere plebeis personis competit*.”⁷⁸

⁷¹ Orzechowski, “Mowa do szlachty polskiej”, 110–4.

⁷² Modrzewski, “O poprawie Rzeczypospolitej”, 289; Turowski, *Naprawa Rzeczypospolitej*, 24; Czubek, *Pisma polityczne*, 207. The sworn character of professional attorneys was introduced by the act of Sejm in 1543, so these demands, at least in the normative sphere, were already in force at the time of the creation of the works. See also the issue of the lack of oath of attorneys in: Petrycy of Pilzno, “Przydatki do Polityki Arystotelesowej”, 314.

⁷³ Modrzewski, “O poprawie Rzeczypospolitej”, 289.

⁷⁴ Górnicki, “Rozmowa Polaka z Włochem”, 450; Suski, *Korrektura prawa*, 9–10. This postulate was implemented in part in 1616 (see note 15).

⁷⁵ Modrzewski, “O poprawie Rzeczypospolitej”, 285–6.

⁷⁶ “[...] however, we do not want the senator to be an attorney, litigious man or a loudmouth. For they are wicked people, they sell themselves for profit, they defend falsehood and injustice, and their tongues and souls serve this. It is hard to believe that one who sold his tongue is a lover of justice and truth.” Goślicki, *O senatorze doskonałym*, 190–3 (Polish text).

⁷⁷ Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 400–1; Ulanowski, *Sposób*, 24–5, 27.

⁷⁸ Ulanowski, *Sposób*, 36 (Polish text). As in the case of S. Orzechowski and W. Goślicki, a motif of the attorney who “sold his tongue for money” appeared there. The author, in his postulate to limit the profession to plebeians, saw a way to reduce the salaries of lawyers and, as a result, increase the availability of their services. Another 17th-century author, Szymon Starowolski, listed among the activities and behaviors incompatible with the virtues of the nobility (*artes illicitae*), alongside procuring, deceit, flattery, robbery, theft, commerce and usury, also “legal tricks and slander.” Starowolski, *Reformacja obyczajów*, 171. Cf. a different position of Aron Olizarowski who wrote: *Quisquis advocatus est, is et in honore constitutus dici potest*. Jarra, “Aron Aleksander Olizarowski”, 60.

5. Conclusion

There is no doubt that the literary image of the attorney in the 16th and 17th centuries was unequivocally negative.⁷⁹ In light of these works, there is an image of a greedy, dishonest liar, disrespectful to the law, often inciting others to disrespect it.⁸⁰ Literature also dispraises the actions aimed against the client, as well as those which, according to the author, adversely affected the judiciary and, according to some authors, were even one of the reasons for “spoiling” the law of the Commonwealth.⁸¹ However, it should be made clear that this negative stereotype related only to professional attorneys. In fact, non-professional agents were not attacked at all, nor was the institution itself criticized. On the contrary, there have been, for example, calls for the establishment of an institution of court-appointed *procuratores* for poor people.⁸²

Literature of 16th–17th centuries perceived attorneys as those who threatened the interests of the nobles and were responsible for the wrongs done to them. The landowner could only live an idyllic life if, as Wespazjan Kochowski wrote, “he does not need jurists as *porte-paroles*” and “does not attend the courtroom.”⁸³ However, the sources of this “conflict” should not be sought in the very estate of professional attorneys. Many of them were, after all, noblemen, too.⁸⁴ However, it is possible that their social status (they

⁷⁹ An exception is a paragraph from the work of K. Warszewicki, who, when describing the ideal court, stated that “only noble and skilled men should speak there, those who avoid trickery, deception and false accusations, and who, finally, not so much out of fear as out of respect for the law, shy away from artifice, lies and deceitfulness.” The positive portrayal of the attorney was therefore within the convention of the work. Warszewicki, “O najlepszym stanie wolności”, 355 (Polish text). Thus, it was rightly stated by Jarosław Porazinski that attorneys used to be depicted either negatively or not referred to at all. Porazinski, “Staropolska palestra”, 889. As regards the figure of judge, cf. Górski, “Wizerunek sędziego”, 471–3.

⁸⁰ See a similar conclusion in Porazinski, “Staropolska palestra”, 896.

⁸¹ It was a particularly noticeable motif in S. Orzechowski’s works. See, for example, Orzechowski, “Dyjalóg”, 334–5; Orzechowski, “Mowa do szlachty polskiej”, 107–10 (see note 51). More detail in Koehler, *Stanisław Orzechowski*, 309, 311–3, 453, and Lichtensztul, *Poglądy filozoficzno-prawne*, 113–4; Ślaski, “Polskie dialogi polityczne”, 78. A similar motif also in: Czubek, *Pisma polityczne z czasów rokoszu*, vol. 2, 254; Ulanowski, *Sposób*, 19, 38–9.

⁸² Modrzewski, “O poprawie Rzeczypospolitej”, 288. See also Starowolski, *Wady staropolskie*, 144. A similar conclusion for the 18th century was made by Janiszewska-Michalska, “Krytyka adwokatury”, 242. It is worth noting at this point that the very institution of a court-appointed representative (i.e. the assignment of an attorney at the request of a party by the judge) was present in the land law as early as in the 15th century. Lewin, “Palestra”, 49–51.

⁸³ Kochowski, “Niepróżnujące próżnowanie”, 18, 48 (Polish text).

⁸⁴ In light of the material collected during the preparation of the doctoral dissertation by the author hereof, it can be concluded that the vast majority of attorneys (professional and non-professional) appearing before the Cracow castrensis court and office in the period 1585–1620 belonged to the nobility. Of course, conclusions based on the practice of one institution over several decades should not be extrapolated to other courts and the entire period of early modern Poland; however, the relatively strong proportion of nobility in the profession is evidenced by the aforementioned opinions about the inability to combine this profession with one’s noble status. The issue of the affiliation of paid attorneys deserves a separate study based on sources of judicial practice.

often came from the lower layers of the nobility or plebeians) influenced the virulence of criticism.⁸⁵

Few postulates proposed in literature included specific solutions, such as mandatory written powers of attorney or the establishment of maximum fees.⁸⁶ Unlike in the case of judges,⁸⁷ nobody hoped to “improving the morals” of attorneys. If anyone could become better, they would be nobles. As an anonymous author wrote: “It could help if there were more worthy people in the Crown, because if these promoted peace among the people, the litigants would stand in court on their own, and these swindlers would soon become cheaper.”⁸⁸

The question is, to what extent did the literary image of the attorney correspond to reality? It seems that, as in the case of judges, these pieces combined reasonable and objective reflections on the practice of that profession with the emotions of individuals and social groups, which often refer to the (dys)function of the entire legal system of the Commonwealth. Of course, the whole thing was heavily flavored with appropriate literary means.⁸⁹ In some texts, the attorney was even a typical “scapegoat” responsible for all the flaws of the entire judicial system.⁹⁰ Moreover, in the practice of Cracow’s castrensial court and office at the turn of the 17th century, as researched by the author, there was no evidence of any critical attitude of the public towards paid attorneys. Formally raised objections usually related to flawed powers of attorney, and even in that case, it is difficult to determine to what extent they were justified and to what extent they were raised to prolong the trial.

This does not mean, however, that the criticism against attorneys was groundless. The repeated motifs (especially of greed and dishonesty in the broad sense) makes us think the opposite.⁹¹ It should be noted, however, that such attitude to the professional attorney was not typical only of the Polish-Lithuanian Commonwealth, on the contrary, it was in line with the stereotype present in European and world cultures since antiquity.⁹²

⁸⁵ This assumption regarding the image of lawyers in medieval European literature was expressed by James Brundage. Attorneys, as educated and ambitious “new men”, were seen as threatening the position of the elites of that time (both secular and ecclesiastical). Brundage, “Vultures”, 82–3; Brundage, *The Medieval Origins*, 216–7, 485–7. See also Yunck, “The Venal Tongue”, 270.

⁸⁶ Little changed in the 18th century. As M. Janiszewska-Michalska writes, “criticism of the attorneys was common in the literature of the second half of the 18th century, but only one of the pamphlets presented a complete and realistic project for the reform of the Bar organization, while the other boiled down to minor adjustments within the existing organizational connection between the Bar and the courts.” Janiszewska-Michalska, “Krytyka adwokatury”, 259. See also *ibid.*, 249–50.

⁸⁷ Cf. Górski, “Wizerunek sędziego”, 481–4.

⁸⁸ Czubek, *Pisma polityczne z czasów rokoszki*, vol. 2, 254 (Polish text).

⁸⁹ Cf. Górski, “Wizerunek sędziego”, 483–4.

⁹⁰ A similar conclusion was reached by Lityński, “O Trybunale Koronnym”, 25; Tomaszek, “Stanisław Orzechowski”, 31–2; Janiszewska-Michalska, “Krytyka adwokatury”, 260 (regarding 18th century). See also Brundage, “Vultures”, 86–7.

⁹¹ Moreover, the nature of some of them (e.g. greed) made it difficult to find them in court books.

⁹² As J. Brundage commented, “[...] in every society that has had an identifiable legal profession, people have routinely uttered and written hostile, often ugly, remarks about the profession’s members.” Brundage, “Vultures”, 57. Cf. also Hazard, Dondi, *Legal Ethics*, 60–2. The authors have demonstrated the dissemination in various periods and cultures of the following motifs concerning the conduct of lawyers: abuse of litigation, preparation of false documentation, deceiving clients and other persons, procrastination in dealings with clients, charging excessive fees. As can be seen, the list of wrongdoings largely corresponded

Suffice it to say that the above-quoted anecdotes were borrowed by Ł. Górnicki from Baldassare Castiglione and Cicero,⁹³ and the epitaph of St. Yves Hélyory, the patron saint of lawyers, was as follows:

St. Yvo was a Breton,
A Lawyer, but no thief,
An astonishing thing to believe.⁹⁴

Is the perception of the profession different today? Undoubtedly, the attitude to the profession itself has improved.⁹⁵ However, there are still accusations against attorneys similar to those found in literary works from four or five hundred years ago.⁹⁶ One gets the impression that although the social standing of attorneys has increased, this is not necessarily a consequence of change in the assessment of the conduct of representatives of this profession. This is probably due to other reasons, such as high financial standing or the ability to influence many structures of social life.

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to the allegations presented in 16th–17th-century Polish literature. For more detail, see also Yunc, “The Venal Tongue”, 268–70; Brundage, “Vultures”, 61–4, 68–87; Brundage, *The Medieval Origins*, 33–4, 215–7, 315, 328–9, 477–87; Marzec, Świącicka, “From Roman Oratores”, 947–8; 961–2.

⁹³ Castiglione, *Il Cortegiano*, 199 (II, LX); Górnicki, *Dworzanin polski*, 253, note 928 (Cic., *De oratore*, II 280 – as cited by the editor).

⁹⁴ Originally: “Sanctus Ivo erat Brito, // Advocatus et non latro, // Res Miranda populo.” For other translations see Gibson, *Law, Justice and Mediation*, 69.

⁹⁵ According to Jerzy Michalski, this happened as early as in the 18th century, but a literature analysis of the second half of the century conducted by M. Janiszewska-Michalska makes us think the opposite. All the above accusations were also raised in the 18th century. See Michalski, *Studia nad reformą*, 25–6, 67–9; cf. Janiszewska-Michalska, “Krytyka adwokatury”; cf. also Rymarz, “Kajetan Koźmian”, 40–3.

⁹⁶ Similar values are also referred to in the catalog of ethical principles and duties of legal professions, included in the so-called codes of professional ethics, where one can find, among other things, trust (loyalty) in lawyer-client relations, independence (also against the opponent), diligence, as well as obligations to comply with the law, proper conduct towards courts and offices, or truthfulness. For more detail regarding Polish context, see e.g. Izdebski, Skuczyński, *Etyka*, 98–130, 176–7.

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