

*Kresin, Oleksiy, V. Comparative Law in Warsaw 1800–1835. Clark, New Jersey: Talbot Publishing, 2021 (258 pp, ISBN 978-1616196585)*¹

In 2021, Talbot Publishing in Clark, NJ, published the book *Comparative law in Warsaw 1800–1835*. Its author is Kyiv-based researcher Oleksiy Kresin, who specializes in comparative law and currently works as *chargé de recherche* at the University of Lausanne. The work was originally published in Ukrainian. It was then translated into Russian, and the Russian version became the basis for the English-language edition. The translation was made by a recognised specialist in the field of comparative law, William Elliott Butler, *professor emeritus* of the University of London.

The very fact that a foreign researcher undertakes detailed research on the thought of Polish lawyers of the early 19th century deserves interest. It is even more worth paying attention to this work in the Polish environment.² Our friendly curiosity is also aroused by the fact that, although it concerns relatively detailed issues in the field of Polish thought, it was originally addressed to Eastern readers, and now it is addressed to those in the West.

The content of the book consists primarily of a discussion of the views of selected Polish lawyers of the second half of the 18th and the first half of the 19th century. Kresin's attention was attracted by, among others, Tadeusz Czacki, Ignacy Daniłowicz, Franciszek Ksawery Szaniawski, Jan Wincenty Bandtkie, Antoni Bieńkowski, Romuald Hube, August Heylman, Karol Borromeo Hoffman, Wacław Aleksander Maciejowski, Antoni Wyczechowski, and Cyprian Zaborowski. Kresin mainly analyzed publications written in Polish. Selected literature on the subject (mainly in Polish) was also used. The author used primarily the studies of legal historians. Unfortunately, there are gaps in the use of studies by Polish historians and researchers of other specialties. This is particularly evident in the discussion of the concept of nation in the chapter "Socio-volitional Theory of National Law."³

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² At the time of the review, the catalog of only one Polish library included this item (University in Gdańsk).

³ I have recently collected this literature for the purpose of preparing the article: Pomianowski, "Postulat narodowego charakteru prawa w pracach kodyfikacyjnych doby Królestwa Kongresowego" (The postulate of the national character of law in the codification works during the period of the kingdom of Poland.)

Kresin focuses on those of statements of Warsaw jurists that concern the understanding of jurisprudence as a science and indicate methodological postulates. Of course, he notices foreign influences on the Warsaw legal community (recognizing that German thought had a particularly strong influence on them – among others due to the fact that many Polish jurists were educated in Germany). In the researcher's opinion, the historical school of Friedrich Carl von Savigny and the direction he describes as historical-philosophical, whose most important representative was Eduard Gans, had the greatest influence on the Warsaw lawyers' community. It discusses the attitude of individual authors to the law of nature and legal positivism. He also presents the views of Warsaw jurists in the context of his own theory of law as an expression of the will of the nation. As a supporter of this way of thinking, he considers, among others, Father Franciszek Ksawery Szaniawski. In support of this thesis, he quotes Szaniawski's statement that the human law is the common will of the society, which is declared by the respective power in the society (p. 96).⁴

Kresin strongly argues with the view expressed by me on the achievements of lawyers published in the first series of *Themis Polska*, that

it is difficult to find more serious, original theoretical content in the researched material. Works created in Warsaw were mostly a reflection of ideas initiated in the West, or possibly an attempt to compile them and adapt them to local conditions.⁵

In his opinion, the views of Warsaw jurists deserve to be called original. Although I generally maintain the opposite position, I am glad that an external observer appreciates the originality of the achievements of Polish legal thought more than I do. Statements such as the following quote may please us, but they do not convince us:

Warsaw legal scholars were aware that they were not the first to suggest the singling out of comparative jurisprudence and the comparative history of law, and they presented a survey of the history of this singling out. Prince (sic! – P.Z.P.) Frantisek Szaniawski in 1819 submitted the most comprehensive and systematic and also sole book-length conceptualization of comparative jurisprudence in the world during the first third of the nineteenth century, and Heylman and R. Hube in 1830 became involved in the most heuristic discussion of its time on the disciplinary organization of comparative-legal knowledge.⁶

⁴ Szaniawski, *Wiadomości początkowe w nauce prawa*, 26.

⁵ Pomianowski, *Początki polskiego czasopiśmiennictwa prawniczego*, 131. Kresin quotes my view at p. 31.

⁶ Kresin, *Comparative law*, 200–1.

At the beginning of the work, Kresin draws attention to the complicated fate of law in the Polish lands in the times of partitions, the Napoleonic era and in the times after the Congress of Vienna. It generally represents complex facts accurately. Nevertheless, various terminological errors and inaccuracies crept into the work, which is probably partly related to subsequent translation work through which the text went through. As an example, the Habsburg Monarchy is consistently referred to as Austria-Hungary (e.g., p. 9), and on page 5 there is a suggestion that Galicia became part of the Holy Roman Empire. *Rzeczpospolita* is consistently referred to as the *Rzecz Pospolita* (e.g., p. 5), and the name of Andrzej Horodyski has been distorted to form “Gorodiski” (p. 16). An important editorial shortcoming is that numerous quotes from Polish authors are quoted only in the English version, which, combined with the rather unusual construction of references, often makes it difficult to reach the original record of a given thought.

Bibliography

Kresin, Oleksiy, V. *Comparative law in Warsaw. 1800-1835*. Clark, New Jersey: Talbot Publishing, 2021.

Pomianowski, Piotr Zbigniew. “Postulat narodowego charakteru prawa w pracach kodyfikacyjnych doby Królestwa Kongresowego”. *Czasopismo Prawno-Historyczne* 71/1 (2019): 113–25.

Pomianowski, Piotr Zbigniew. *Początki polskiego czasopiśmiennictwa prawniczego. Seria pierwsza „Themis Polskiej”*. Warszawa: Campidoglio, 2015.

Szaniawski, Franciszek Ksawery. *Wiadomości początkowe w nauce prawa*. Warszawa: Drukarnia J.C.K. Mości Rządowej, 1817.