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## *The Text and Textualization of Codex BJ 168: Legal Culture in Transition at the High Court of Magdeburg Law at the Castle of Kraków\**

On 13 July 1398, Andrzej Czarnisza, the advocate of the High Court of Magdeburg Law at the Castle of Kraków from 1392 to 1416, turned to the final pages of a law book belonging to the court and began an inventory of relics that he possessed, but kept at the great church on Kraków's main market square. Just a few lines below where the legal text of the codex in his hands ended, Czarnisza painstakingly began to write: *Nota reliquias in cruce mea quam habeo in ecclesia sancte marie*. Either because Czarnisza was a poor calligrapher or, as other sources suggest, very ill at the time, the lettering is a bit crude, but it is nevertheless quite clear that he was painstakingly attempting an approximation of a fancy book hand<sup>1</sup>. This effort would have been appropriate for an addition to the book before him, which was unlikely to have been chosen for Czarnisza's notation at random. A study of this codex with a focus on the miscellaneous material included in its final folios – which include among other items the aforementioned inventory, excerpts from various laws, a scriptural text, and the formulae for several oaths – reveals that the law book in which the advocate of the High Court was writing was significant in its own right and lay at the very heart of the institution over which he presided.

From 1356 to 1794 the High Court of Magdeburg Law at the Castle of Kraków met in the treasury of the palace on the Wawel hill to resolve disputes and handle a variety of non-contentious legal matters pertaining to the German law jurisdiction of the surrounding region, an endeavor that ultimately resulted in the institutional possession of dozens of books of various kinds. During the court's medieval period of operation, when the archival collection amounted to a handful of registers, these were kept, along with several

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<sup>1</sup> BJ 168, 87v. The hand is a careful, but not well executed *gothica textualis semi-quadrata*. For Czarnisza's possible illness, see *Najstarsza księga sądu najwyższego prawa niemieckiego na zamku krakowskim*, ed. A. Kłodziński [in:] *Archiwum Komisji Prawniczej*, t. 10, PAU, Kraków 1936, p. xxiii.

other books and ceremonial paraphernalia, at the home of the court's current advocate<sup>2</sup>. Among the volumes in his possession were several law books, exemplars of the German law administered by the High Court at Kraków. Although it had originated in oral custom, this law had attained written form in the thirteenth century as the *Sachsenspiegel* and the Magdeburg *Weichbildrecht*, the combination of which was generally called in Latin the *Ius Magdeburgense*, or "Magdeburg law"<sup>3</sup>. Having been captured on parchment, variants of this body of law spread broadly across east-central Europe during the later Middle Ages.

Although the High Court at Kraków ultimately possessed several exemplars of these texts in various forms by the end of its period of operation, the book chosen by Czarnisza for his notation, a codex containing the court's original fourteenth-century exemplars that was donated by Kazimierz the Great (1333–1370) when he founded the court, continued to hold pride of place<sup>4</sup>. Indeed, on the occasion of Stanisław Augustus' confirmation of the court's charter in 1765, this book was handsomely rebound and furnished with a newly printed title page that highlighted the initial foundation and successive royal confirmations down to that day<sup>5</sup>. As a result of this obvious care, the legal historian Antoni Helcel noted in 1856 that the court had preserved this book "as if it were a jewel" until the German law jurisdiction was finally abolished in 1794<sup>6</sup>. There can be no doubt that this book, which is preserved today at the library of the Jagiellonian University as manuscript BJ 168, had a special meaning for the High Court of Magdeburg Law at the Castle of Kraków from its earliest days<sup>7</sup>. Clearly, the royal origin of this codex and, later, its antiquity lent it a certain prestige, but its ultimate significance lay at a deeper level, in the vital symbolic and practical roles that the book played throughout the court's medieval period of operation and beyond. This dual function, it will be argued below, represents a transformation in legal culture that was marked by the coexistence of rather different perspectives in legal consciousness as reflected in attitudes about law books and their contents. This duality points to the complexity of the social and cultural context in

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<sup>2</sup> L. Łysiak, *Ius supremum Maydeburgense castris Cracoviensis, 1356–1794: Organisation, Tätigkeit und Stellung des Krakauer Oberhofs in der Rechtsprechung Altpolens*, *Ius Commune Sonderhefte*, Bd. 49, Vittorio Klostermann, Frankfurt am Main 1990, p. 6, 36; Z. Wenzel-Homecka, *Inwentarz Akt Sądów Wwyższych Prawa Miejskiego w Krakowie*, Naczelna Dyrekcja Archiwów Państwowych, Warszawa 1970, p. 17.

<sup>3</sup> The *Sachsenspiegel* was a collection of the customary territorial and feudal laws of Saxony compiled by Eike von Repgow around 1235. Generally, only the "Landrecht" was included in Polish collections; Polish nobles were under the jurisdiction of Polish customary law. The Magdeburg *Weichbildrecht* was essentially the town law of Magdeburg, the original dated to 1188. Although these texts formed the core of the *Ius Magdeburgense* as a written body of law, it ultimately appeared in a variety of versions that included the addition of material from later town charters, various collections of judicial decisions, and commentary.

<sup>4</sup> For the donation of Kazimierz see Z. Wenzel-Homecka, *Inwentarz...*, p. 21 and F. Bischoff, *Beiträge zur Geschichte des Magdeburgerrechtes*, "Sitzungsberichte der phil.-hist. Classe der kaiserlichen Akademie der Wissenschaften in Wien" 1865, 50, p. 336. The identification of BJ 168 with Kazimierz's donation, though not universally accepted, is crucial to the argument herein.

<sup>5</sup> For the binding see Z. Włodek, et al., *Catalogus Codicum Manuscriptorum Medii Aevi Latinorum qui in Bibliotheca Jagellonica Cracoviae Asservantur*, vol. 1, Polska Akademia Nauk, Wrocław 1980, p. 154–155.

<sup>6</sup> *Starodawne prawa polskiego pomniki*, ed. A.Z. Helcel, vol. 1, Nakładem Księgarni Gustawa Sennewalda, Warszawa 1856, p. 207. "Kodex ten, aż do nowszych czasów przechowywany jak klejnot w Sądzie tymże, dziś jest w Bibliotece Uniwersytetu Jagiellońskiego".

<sup>7</sup> For a full description of codex BJ 168 see Z. Włodek et al., *Catalogus...*, p. 151–155 and F. Bischoff, *Beiträge...*, p. 335–339.

which later medieval legal development occurred and reminds us that, ultimately, the subject of legal history is the human world.

The early modern title page aside, the book's first folio is a copy of the 1356 charter by which the High Court of Magdeburg Law at the Castle of Kraków was brought into existence by Kazimierz the Great in response to a challenge to royal authority that was inherent to the jurisdictional structure of the kingdom. As was typical of medieval Latin Christendom generally, the legal order of the Polish kingdom was composed of multiple jurisdictions and marked by the coexistence of different legal systems<sup>8</sup>. In particular, the legal structure of early fourteenth-century Poland had been profoundly influenced by a great expansion and reorganization of rural and urban settlement that had been underway for some two centuries. In brief, during the period of territorial fragmentation that marked Poland during the twelfth and thirteenth centuries, various provincial princes and ecclesiastical foundations sought to exploit their lands more effectively by adopting the process of systematic colonization that had been pioneered by German lords between the Elbe and Oder rivers. In Poland, this system of colonization was known as "settlement under German law" from the normative customs that regulated the relationships of the lords, magistrates, and inhabitants of the new communities<sup>9</sup>.

The resultant pattern of rural settlement under German law ultimately produced a legal order with its own jurisdiction that incorporated settlements of Poles as well as immigrants<sup>10</sup>. Beginning in the thirteenth century, Polish lords also granted German municipal law, principally that of Magdeburg or some variant thereof, to existing or newly developed Polish towns<sup>11</sup>. As a result, a sizeable municipal jurisdiction of German law developed in Poland alongside its rural counterpart. By the fourteenth century, German law had largely lost its ethnic connotations and was seen as another variant in the jurisdictional structure of rural and urban lordship in the Polish provinces of Silesia, Wielkopolska, and Małopolska<sup>12</sup>. By the beginning of Kazimierz's reign, the German law jurisdiction of the reconsolidating Polish Kingdom had grown significantly, especially in Małopolska, where, towns aside, the so-called Magdeburg law ordered life on a significant number of noble, ecclesiastical, and royal estates<sup>13</sup>.

Nevertheless, the village and town courts that composed the German law jurisdiction of Małopolska were not organized in any systematic way and there were no clear lines of judicial instance, a situation that was exacerbated by a limited knowledge of this peculiar law among the many Poles who lived under it. As a result, when a point of law was

<sup>8</sup> The situation throughout much of medieval Latin Christendom is explained in some detail by Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, Catholic University of America Press, Washington, DC 1995, p. 78–111.

<sup>9</sup> J. Rogall, *Land der großen Ströme: Von Polen nach Litauen*, Deutsche Geschichte im Osten Europas, Siedler Verlag, Berlin 2002, p. 56–59.

<sup>10</sup> P. Górecki, *Economy, Society, and Lordship in Medieval Poland 1100–1250*, Holmes & Meier, New York 1992, p. 275–281.

<sup>11</sup> S.C. Rowell, *The Central European Kingdoms* [in:] *New Cambridge Medieval History*, vol. 5, Cambridge University Press, Cambridge 1999, p. 774; F. Dvornik, *The Slavs in European History and Civilization*, Rutgers University Press, New Brunswick, NJ 1962, p. 128.

<sup>12</sup> *Ibidem*, p. 277–282.

<sup>13</sup> *Ibidem*, p. 272, 284; L. Lysiak, *Ius supremum...*, p. 18, 77; J. Rogall, *Land der großen Ströme...*, p. 71, notes that settlement under German law entailed the application of municipal law to the rural jurisdiction.

unclear to local judges, or when a litigant wanted to appeal a decision to a higher court, recourse was limited. A castle court at Kraków, which likely had a practical competence limited to the local voivodeship, heard appeals from the German law magistracies on the royal domain, but did not respond to requests for legal information<sup>14</sup>. Soon after his accession, Kazimierz attempted to ameliorate the situation with the foundation of a superior court similar to the castle court at Kraków, and likewise limited, at Sandomierz in 1336<sup>15</sup>. This no doubt improved the situation, but it did not fill the effective vacuum of a higher instance in the German law jurisdiction of Małopolska, a bastion of royal authority, much less the remainder of the realm<sup>16</sup>.

In these circumstances, a request for a ruling on appeal or in response to a question would have been made to a municipal court in one of the larger towns, which might respond on its own authority. Although these courts could be quite competent, there was no guarantee that any given bench was staffed by men fully knowledgeable of the law and the quality of these local rulings no doubt varied widely<sup>17</sup>. Better results might be obtained by referring to a court manned by jurists certain to be skilled in the application of the law, generally to the judicial benches of the towns from which the original law or a variant version had originated. For Małopolska this often meant recourse to the city bench of Magdeburg, which received petitions from throughout east-central Europe and was famed for its authoritative, though expensive, decisions. Likewise, recourse might be had to the courts at Wrocław or Środa in Silesia. Magdeburg, of course, lay outside of Polish borders in imperial territory, as did Silesia after 1348<sup>18</sup>.

The situation in general was summed up nicely in the charter that composes the first folio of the codex under examination:

[B]ecause the [judges] of the banal courts of German law are handing down interlocutory decisions to the litigants who contend in [their] courts and are promulgating equivocal decisions in as many cases, the said contending parties are taking their pleas and appeals beyond the boundaries of our realm [...] to the city of Magdeburg, [...] and to the detriment of our realm and the loss and trouble of our subjects, the aforesaid [judges] of our realm also exact [twelve] Prague *groschen* from these same litigants for the emending of judgments by the magistrates in Magdeburg as well as a certain sum of money for expenses, [...] and what is worse, the said [judges] of the German [law] jurisdiction, although they ought to render a complement of justice among litigants, are themselves making things difficult by referring [matters] to the [councils and judges] of certain cities in our said realm, to whom we have granted no supreme judicial power, [...] nevertheless, from a certain temerity, they compel those contending in their presence to lay out a large sum of money in cases both great and small<sup>19</sup>.

<sup>14</sup> Z. Kaczmarczyk, *Kazimierz Wielki*, Wydawnictwo S. Arcta, Warszawa 1948, p. 184.

<sup>15</sup> *Ibidem*. Similar courts were also founded at Nowy Sącz in 1356 and Biecz in 1363, by which time they composed, the author believes, part of a larger systematic attempt to rationalize the German law jurisdiction of Małopolska, cf. Z. Kaczmarczyk, *Kazimierz Wielki...*, p. 236.

<sup>16</sup> C. Michaud, *The Kingdoms of Central Europe in the Fourteenth Century* [in:] *New Cambridge Medieval History*, vol. 6, Cambridge University Press, Cambridge 2000, p. 745.

<sup>17</sup> Z. Kaczmarczyk, *Kazimierz Wielki...*, p. 184.

<sup>18</sup> By the provisions of the Treaty of Trenčín (1335), Kazimierz renounced suzerainty over Silesia in exchange for John of Luxemburg's renunciation of claims to the Polish throne. The province was fully incorporated into the lands of the Bohemian crown in 1348. See *inter alia* C. Michaud, *The Kingdoms...*, p. 747.

<sup>19</sup> BJ 168, 1r: “[...] *quod cum aduocati, scolteti, scabini, iurati iudiciorum bannitorum iuris Theutunici dant litigantibus, in iudiciis eorum bannitis contententibus, sententias interlocutorias et diffinitivas in causis quam pluribus promulgant, dicti contententes ad partes remotas Rynenses in Maydeburg ciuitatem, cui*

The quest for authoritative decisions at local venues not sanctioned by the king or beyond the kingdom's borders challenged royal authority because it suggested that the king could not guarantee justice and that the nascent monarchical state, the *Corona Regni Poloniae*, was not fully sovereign<sup>20</sup>. As such, the German law jurisdiction of Małopolska presented the king with a great challenge – as well as an opportunity for the extension of royal power if the lands of the church and nobility that were settled under German law could be brought into the ambit of royal legal administration. In short, the assertion of royal sovereignty, internal and external, called for the institutionalization of justice in the German law jurisdiction under the auspices of royal government. In this context, Kazimierz and his advisors planned and executed the establishment of a sort of supreme court of German law at the royal castle of Kraków. Thus, in the year 1356, the royal chancery of the Kingdom of Poland published an enactment of the king that began, at least, to establish the unique tribunal later known as the “High Court of Magdeburg Law at the Castle of Kraków”<sup>21</sup>.

The new foundation went hand in hand with the creation and development of the Polish state and its monarchy in the fourteenth century – the High Court at Kraków was to be an instrument and symbol of the king's justice, royal political power, and the kingdom's territorial integrity. As a manifestation of the legal reforms for which Kazimierz the Great is well known, the court's foundation charter was a reflection of the king's vision of the state, a vision firmly grounded in a contemporary legal and political culture that mixed traditional notions with newer academic ideas and cultural developments<sup>22</sup>. The charter's arenga, though formulaic, made a very pointed, and traditional, statement about the relationship between the king and the law:

Since the yoke of self-control is contrary to the human condition and because men are most unwilling to renounce license, the Divine Mind bestowed kings upon the people and consigned subjects

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*nullo iure subsumt, et ultra fines regni nostri appellaciones et prouocaciones interponunt, nostre maiestatis proprio solio et tribunali necnon proprii principis et domini iure et iurisdictione obmissis et contemptis, et in detrimentum regni nostri, dampnum et regnicolarum nostrorum grauamen, aduocati quoque, scolteti, scabini, iurati predicti nostri regni a contententibus eisdem pro emendis sentenciis a scoltetis in Maydeburg per nouem fertones latorum grossorum Pragensium et nonnullas summas pecuniarum pro expensis exigant et extra regnum nostrum in Maydeburg pro predictis sentenciis emendis transmittunt, per que honori, decori, iurisdictioni, solio, tribunali illibatis nostris predictis detrahatur et turpitudini reseruetur; et quod deterius est, dicti aduocati, scolteti, scabini, iurati iurisdictionum Theutunicalium, cum inter litigantes iusticie reddere deberent complementum, difficiles se in hoc reddentes, ad ciuitatum nonnullarum dicti nostri regni consules, aduocatos, scabinos, iuratos, quibus nulla a nobis super iure supremo et dandis sentenciis iuris Maydeburgensis a nostra maiestate regali nulla prorsus fuit uel est eis specialis ad talia loca ipsorum, extra eorum loca constituta, ultra terminos iurisdictionis eorum attributa potestas ad vendendum ius supremum, nostro solio et tribunali de iure duntaxat annexum, et sentencias aliquas dandum extra fines eorum iurisdictionis ad alias ciuitates, villas et loca, nulla eis a nostra regia maiestate auctoritas est concessa, sed ex quadam temeritate contententes coram eis in causis tam magnis quam paruis pecunias ponere compulerunt non paucas [...]”* (The author has emended the translation with the material in square brackets for the sake of brevity and clarity.)

<sup>20</sup> For the development of the national monarchy in Poland under the later Piasts see P. Knoll, *The Rise of the Polish Monarchy: Piast Poland in East Central Europe, 1320–1370*, University of Chicago Press, Chicago 1972, p. 40–41, 170.

<sup>21</sup> The date of the foundation is disputed. See Z. Kaczmarczyk, *Polska Czasów Kazimierz Wielkiego*, Uniwersytet Jagielloński, Kraków 1964, p. 84–85 and L. Łysiak, *Ius supremum...*, p. 23–24.

<sup>22</sup> For Kazimierz's patronage of scholars and schools, see generally, P. Knoll, *Learning in Late Piast Poland*, “Proceedings of the American Philosophical Society” 120 (April 1976), p. 138–149.

to their lords in order that vices left unpunished would not result in a catastrophic deluge of wickedness. Thus, communities were subjected to the judgment and dominion of kings by the necessity of justice, and these very kings supply justice and weigh all impartially with balance, beam and pan<sup>23</sup>.

The language of the charter made it very clear that the king was the source of stability and order in the realm by divine provision and that he was indeed acting to fulfill his responsibility to provide justice<sup>24</sup>.

After acknowledging the existing disorder of the kingdom's German law jurisdiction and the abuses it occasioned, the king inaugurated the solution:

Wishing to remove injuries, burdens, vexations, and costs from our aforesaid subjects, having set out both to increase advantage to them in our realm and also to increase the honor and distinction of the royal majesty, we have appointed books of Magdeburg law and deposited them in our treasury at the castle of Kraków, and in our same Cracovian castle we have established the Supreme Provincial German Law, in place and position of the Magdeburg Law of these same books [that we have deposited] in order that judgments and rights might be pronounced by our advocate and seven town or village magistrates experienced in the said provincial law of the aforesaid law [who will serve as assessors]<sup>25</sup>.

This, of course, is the passage that is generally pointed to as the foundation of the High Court at Kraków, and, with the addition of sections detailing the constitution and competence of the venue, as well as discussion of the duties, obligations, and benefits of the court's personnel, the foundation charter clearly established a concrete institution. The new court was an advocate-assessor type of bench that was typical of courts of German law throughout central Europe<sup>26</sup>. As chairman, the court's advocate facilitated its business, ran its sessions, and formally pronounced the decisions that had been arrived at by the deliberation of the court's bench. In litigation, the seven assessors determined what judgment was appropriate in a given case by deciding, on the basis of the law, which party's position should be proved by oath<sup>27</sup>.

Yet, the court's foundation charter never directly spoke of the "Provincial High Court of German Law" that it in fact established. Rather, the above passage announced the

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<sup>23</sup> BJ 168, 1r.: "*In nomine Domini amen. Quoniam humana condicio dominantis sibi iugo libenter caruisset et homines libertatum minime abdicassent, si non in punita vicia gravi pernicie scelerum redundassent, ideo diuina sententia dati sunt reges populo et domini subiectis, ut necessario iusticie et iudicio ac imperio regum subessent uniuersi, quilibet equo libramine statera lance appensa, ipsi reges iusticiam ministrarent*".

<sup>24</sup> Though arengae are often taken as mere rhetorical flourishes they often reflected the real concerns of the party that produced the document. See L.E. Boyle, *Diplomatics* [in:] *Medieval Studies: An Introduction*, 2nd ed., ed. J.M. Powell, Syracuse University Press, Syracuse, NY 1992, p. 90–91.

<sup>25</sup> BJ 168, 1r.: "*Volentesque predictis nostris regnicolis dampna, grauamina, fatigas et sumptus remouere, profectum quoque et utilitatem eis nostro quoque regno et regie maiestatis honorem et decorem ampliare, libros iuris Maydeburgensis ordinauimus et in thezauro nostro castri Cracouiensis deposuimus, in eodemque castro nostro Cracouiensi constituimus Ius supremum Theutunicalie prouinciale, vice et loco Iuris Maydeburgensis de libris eisdem promulgari debere sentencias et iura per aduocatum nostrum et septem scoltetos seu aduocatos, dicti iuris prouincialis peritos iuris predicti*" (The author has added the material in square brackets to the translation for the sake of clarity).

<sup>26</sup> The term "assessor" is used for the German law *scabinus* (*Schöffe* [Ger.], *lawnik* [Pol.]) and should not be confused with the *assessor* who served as a functionary in church courts.

<sup>27</sup> Cf. C. Schott, *Der Sachsenspiegel als mittelalterliches Rechtsbuch* [in:] R. Schmidt-Wiegand *Die Wolfenbütteler Bilderhandschrift des Sachsenspiegels: Aufsätze und Untersuchungen*, Akademie Verlag, Berlin 1993, p. 41.

establishment of a *Ius supremum Theutunicale provinciale*, not a *Iudicium supremum Theutunicale provinciale*. In literal terms, the foundation charter established a supreme body of law, not a supreme tribunal. Although the term *ius*, in the proper context, sometimes referred to a “court” in medieval Latin, this was always a transferred meaning, as the context of the above passage indicates. That *ius* was meant in the sense of “law” in the court’s foundation document is further indicated by a 1399 charter of Władysław Jagiełło which clearly distinguishes the possible meanings of the word by referring to the High Court at Kraków as the *iudicium iuris theutonici castris Cracoviensis*<sup>28</sup>. It seems likely enough, however, that the dual implication was not lost on the composer of the foundation charter since the existence of a court competent to handle litigation and hand down advisory statements as a consequence of the charter’s promulgation was taken for granted. In sum, the court as an institution was very closely identified with the body of law that it would administer<sup>29</sup>.

In turn, that law was clearly closely associated with the very books the king originally deposited in the treasury of the Wawel castle. The court’s foundation charter, which highlighted the deposit of those books, amounted to a sweeping legislative act that brought a complete royal law into existence all at once. Kazimierz confected no new statutory statements beyond the foundation charter to create the new body of law that would supplant the *Ius Magdeburgense*. Rather, the *Ius supremum Theutunicale provinciale* was basically composed of the same substance as “the Magdeburg Law of these same books”. With respect to its norms, what would be known as the *Ius supremum Magdeburgense castris Cracoviensis* by the end of the century, the “Supreme Magdeburg Law of the Castle of Kraków, was essentially, as the term *provinciale* in the original name perhaps indicates, identical to the customary German law already in use in Małopolska – or at least to the books that represented it<sup>30</sup>.

Clearly, the foundation charter’s significance lay in the creation of an institution that was competent to act as the highest judicial instance of the German law jurisdiction of Małopolska and in the effective provision of justice under the auspices of the Polish crown without recourse to entities either not sanctioned by the crown or located outside of the kingdom<sup>31</sup>. In the developing legal and political culture of later medieval Poland,

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<sup>28</sup> *Kodeks Dyplomatyczny Miasta Krakowa*, ed. F. Piekosiński, part 1 [in:] *Monumenta Medii Aevi Historica*, vol. 5, Nakładem Akademii Umiejętności Krakowskiej, Kraków 1879, p. 122–124, (no. 91): “[...] liceat eidem [...] ad Advocatum et Scabinos supremi Iuris theotonici Maydebugensis, quod et Provinciale dicitur, Castris nostri Cracoviensis a predictos Advocato et Scabinis civitatis Cracoviensis et ab eorum sententia libere appellare. Quod et si aliqua partium earundem litigancium sive sit actor sive reus, ibidem in prefato Iudicio Iuris theotonici Castris Cracoviensis per ipsius Iudicii Advocatum et Scabinos se viderit aggravatum, extunc ad nostram regiam presenciam velud ad supremum iudicem [...] appellandi [...] plenam habeat facultatem”.

<sup>29</sup> As is clear from later sources as well. See, for example, a letter of 1415 from the municipal court of Kraków to the High Court that addressed the judges *des oebirstin deuschin rechtes czu Cracov off dem hausz* [in:] *Najstarsza księga...*, p. 467 (no. 3769).

<sup>30</sup> F. Bischoff, *Beiträge...*, p. 368, reaches a similar conclusion by noting that the exemplar of the *Weichbildrecht* from which the text of BJ 168 originated was already in use in Kraków. Terminology similar to *Ius supremum Magdeburgense castris Cracoviensis* was in use by at least 1399, see Władysław Jagiełło’s charter of that year, note 28 above.

<sup>31</sup> The foundation charter also provided for appeal from the decisions of the High Court to a Commissary Court of the Six Cities, so called because its members were called on an ad hoc basis from six of the major

however, this foundation seems necessarily to have presupposed a new body of law, a law unequivocally associated with the king and divorced by royal edict from any other jurisdictional authority. In this respect, the High Court's foundation charter, a legislative act, was also a declaration of the sovereignty of the Polish crown. This sophisticated reasoning was quite likely the product of the university-trained minds with which Kazimierz surrounded himself<sup>32</sup>.

In any event, given the close association of this new law with the books mentioned in the charter, the existence of the High Court at Kraków as the highest instance of this jurisdiction was, in a legal consciousness formed within the framework of textualization (as will be explained below), bound closely to the exemplars of the *Sachsenspiegel* and Magdeburg *Weichbildrecht*, the "books of Magdeburg law" with which it was endowed at its foundation. Defining, as they did, the court's competence and jurisdiction, these legal texts lay at its heart as the substance of the law it would administer. Thus, codex BJ 168, the origin of which signified royal authority, and in which the German law texts were bound together, lay at the court's core as a physical object that embodied an identification of law and institution as the *Ius supremum Magdeburgense castris Cracoviensis*<sup>33</sup>. The symbolic significance of the codex to the court from its inception is inescapable.

The physical location of the court and codex at the royal complex on the Wawel hill in Kraków was obviously significant as well. The Wawel was the preeminent symbol of kingdom and crown in late medieval Poland. Besides its place in royal mythology as the site where Krak, the legendary first king of Poland, slew a dragon, the Wawel was the location of the coronations of Władysław Łokietek and Kazimierz the Great in lieu of the previous coronation site at Gniezno. Father and son expressly selected the cathedral on the Wawel because Kraków had become the focus of the idea of Polish unity within a *regnum*<sup>34</sup>. As such, the location of the court left no doubt that its rulings were backed by royal authority.

In intent, the establishment of what was later called the High Court of Magdeburg Law at the Castle of Kraków enhanced royal control over legal administration, remedied a default of royal justice by making it accessible, and eliminated the threat to territorial sovereignty posed by external lines of judicial recourse. With a competence that extended over Małopolska and sometimes beyond, the court ultimately made thousands of decisions that claimed a substantive basis in the body of law that was the *Ius supremum Magdeburgense castris Cracoviensis*. Kazimierz and his advisors may well have envisaged the High Court at the castle of Kraków as the linch-pin of a unified German law jurisdiction that would ultimately embrace the whole of the Kingdom of Poland, but this was not to be<sup>35</sup>. The court's activities were largely limited to Małopolska, where, from its foundation until the early decades of the sixteenth century, it functioned in several

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towns of Małopolska. This venue was rarely used and its existence does not, in theory, detract from the supremacy of the High Court at Kraków in the German law jurisdiction since it was tantamount to an appeal to the king himself. This appeal "*ad tribunal et solium nostre maiestatis*" seems to have been conceived of as beyond the scope of ordinary jurisdiction. Decisions of the Court of Six Cities were absolutely final. See here L. Łysiak, *Ius supremum*..., p. 20.

<sup>32</sup> P. Knoll, *Learning*..., p. 138–140, 147–148.

<sup>33</sup> BJ 168, 2r-87v.

<sup>34</sup> P. Knoll, *Rise of the Polish Monarchy*..., p. 16, 39.

<sup>35</sup> Z. Kaczmarczyk, *Kazimierz Wielki*..., p. 184–185; cf. L. Łysiak, *Ius supremum*..., p. 75.



capacities. In the first instance, the court heard cases that concerned the German law magistracies pertaining to royal estates, towns, several important monasteries, and possibly a few local noble estates<sup>36</sup>. On a broader basis, it also heard appeals and answered queries from a variety of rural and municipal courts of German law, sometimes from places as distant as Lwów<sup>37</sup>.

The court's jurisdiction was inexorably circumscribed from the sixteenth century on, and ultimately its activities were largely limited to the region in the immediate environs of Kraków<sup>38</sup>. Nevertheless, the High Court functioned without interruption until the year 1791, when it was closed as the result of reforms occasioned by the Constitution of the Third of May. The court was reactivated in the period of reaction in 1792, but was finally abolished in 1794 during the Kościuszko uprising<sup>39</sup>. Although the court may not have fulfilled original royal expectations, it was arguably a successful and long-lived venue for dispute resolution.

The core German law texts, the *Sachsenspiegel* and the Magdeburg *Weichbildrecht*, comprise eighty-five of BJ 168's eighty-eight folios and are its primary *raison d'être*, though, as was indicated above and will be further argued below, the book was much more than a reference work. To the extent that there was a normative written law, these legal texts were at the heart of the law practiced in the German law jurisdiction of Małopolska. Both the texts in BJ 168 were written in a medium quality Gothic book hand and provided with extensive rubrication<sup>40</sup>. Three historiated initials are displayed in the prefatory material and correspond with the Magdeburg *Weltchronik* (folio 9v), Eike von Repgow's Rhymed Preface (15v), and his First Prologue (16r). So, although one might expect more from a royal donation, this was a manuscript of only better than middling quality, perhaps because it was intended for use. The two texts originated from the same hand and, from the construction of the codex, were clearly meant to be paired as the *Ius Magdeburgense*, as was typical in Poland<sup>41</sup>. The scribe may well have copied the text directly from a manuscript that belonged to the municipality of Kraków which in turn rested on a Silesian exemplar<sup>42</sup>.

<sup>36</sup> L. Łysiak, *Ius supremum...*, p. 81–82, 94–100. For the High Court's records pertaining to this area of competence through the middle of the sixteenth century, see the *Acta iudiciaria* series of registers housed at the Archiwum Państwowe in Kraków (SWPM I-7-13, 16). Abdon Kłodziński published the first of these as *Najstarsza księga...* ut supra note 1.

<sup>37</sup> L. Łysiak, *Ius supremum...*, p. 100–104. For the High Court's records pertaining to this area of competence, see the *Acta decretorum* (SWPM I-20-24), two volumes of which have been published by Ludwik Łysiak and Karin Nehlsen-von Stryk as *Decreta iuris supremi Magdeburgensis castri Cracoviensis: Die Rechtssprüche des Oberhofs des deutschen Rechts auf der Burg zu Krakau, 1456–1481*, *Ius Commune Sonderhefte*, Bd. 68, Klostermann, Frankfurt am Main 1995 and *Decreta iuris supremi Magdeburgensis castri Cracoviensis: Die Rechtssprüche des Oberhofs des deutschen Rechts auf der Burg zu Krakau, 1481–1511*, *Ius Commune Sonderhefte*, Bd. 104, Klostermann, Frankfurt am Main 1997.

<sup>38</sup> *Ibidem*, p. 76–77, 82, 88–89, 135–136.

<sup>39</sup> Z. Wenzel-Homecka, *Inwentarz...*, p. 12.

<sup>40</sup> The script might be more closely identified as a *gothica textualis rotunda*. The curving points of the upper quadrangles mark the regional style prevalent in Poland, Silesia, and Bohemia in the fourteenth and fifteenth centuries. See B. Bischoff, *Latin Palaeography: Antiquity and the Middle Ages*, trans. D.Ó Cróinín, D. Ganz, Cambridge University Press, Cambridge 1990, p. 133–134.

<sup>41</sup> J. Rogall, *Land der großen Ströme...*, p. 59, 61.

<sup>42</sup> F. Bischoff, *Beiträge...*, p. 334, 341, 345, 357–359. The municipal exemplar is thought by Bischoff to be that found in manuscript BJ 169. In the manuscript tradition he employs, the version of the *Weichbildrecht*

While the book in this original form – a new law handed down by the king and identified with the court as an institution – clearly had great symbolic significance, the codex would achieve a yet greater importance in the decades following Kazimierz’s donation with the addition of several brief, but unique, texts. Carefully appended to the front of the codex as its first folio is a copy of Kazimierz the Great’s charter of foundation dated to 5 October 1356, though it is certainly a later copy and likely dates to 1365<sup>43</sup>. Clearly, then, the charter was not part of the original codex, but affixed sometime later. As the source of the High Court’s legitimacy and authority, as well as a schematization of the basic organization and operation of the court as well as the rights and responsibilities of its members, the charter was obviously a significant constitutional document that required protection.

While the beginning of the codex was no doubt a convenient place to preserve a very important loose document, the attachment of this royal decree that explained and authenticated the book’s importance was not accidental and ultimately composed an important constitutive element of the codex as a textualized artifact composed of several layers of meaning<sup>44</sup>. The charter could have been attached at any time after 1365, when the copy was produced, and before 1421, when Władysław Jagiełło renewed and confirmed the High Court’s privileges on the basis of a copy derived from *certis codicibus dictorum Judicum*, by which he likely meant BJ 168<sup>45</sup>. It may well have been attached at the request of advocate Andrzej Czarnisza, whose abovementioned 1398 entry in the final pages of the codex combined with the fact that the court’s first extant record book (SWPM I-7) dates from the period of his tenure suggest that he took an interest in the various uses to which books might be put.

Whoever arranged for the attachment, whether Czarnisza or another, would have understood that, with the appended charter, the book as codex (i.e. as a textualized object), was a powerful talisman that would represent to future generations a judicial legitimacy derived from royal and therefore, ultimately, divine authority – as the charter’s arena suggested. Indeed, a few folios later, Eike von Repgow’s First and Second Prologues to the *Sachsenspiegel* (folio 16r–16v) similarly stressed the divine and royal origins of law.

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in BJ 169 is designated Cr, that in BJ 168 as C. On this stemma, Cr was derived, perhaps directly, from the version of Konrad of Opole, ca. 1306 (*versio Vratislaviensis*).

<sup>43</sup> L. Łysiak, *Ius supremum...*, p. 171; U.-D. Oppitz, *Deutsche Rechtsbücher des Mittelalters*, vol. 2, *Beschreibung der Handschriften*, Böhlau, Cologne 1990, p. 612–613. *Starodawne prawa polskiego pomniki*, vol. I, p. 211–212, note 59, made the original argument for the date of the copy of the charter.

<sup>44</sup> By “textualized artifact” or “textualized object,” the author means, simply, a man-made object that incorporates text into its design. A textualized artifact could be a wax seal with writing on it or an inscribed lintel. While it may seem quite obvious that a book is a textualized object of a different type since the object primarily serves the text, the point here is to distinguish between the linguistic meaning/intellectual content of the text and the material existence of the codex’s multiple texts as constitutive parts of the book. The physical relationship of book boards, parchment folios, and ink in the form of writing necessarily manufactured any symbolic significance that can be attributed to the codex. Further, one can conceive of each of the individual texts in codex BJ 168 (*vide infra*) as composing a physical (as well as linguistic) “semantic enclave.” As a textualized object, then, the codex communicates meaning in a way that is distinct from, though connected to, the linguistic content of its texts. Cf. R. Harris, *The Semiology of Textualization*, “Language Sciences” 6 (October 1984), p. 278–279, 285.

<sup>45</sup> F. Bischoff, *Beiträge...*, p. 336; *Starodawne prawa polskiego pomniki*, vol. I, p. 207; Z. Wenzel-Homecka, *Inwentarz...*, p. 30, no. 2.

The prestige of the written word in a society yet mostly illiterate and the sacred, perhaps almost magical, quality of the codex-form produced a textualized item that was representative of enduring authority in a very traditional way and was quite representative of an earlier medieval mentality that perceived books as items that served for the edification of posterity as symbolic objects<sup>46</sup>.

If the book as a textualized object was a powerful representation of the mentality that underlay the court's legal culture, so too was the book as linguistic text. The *Sachsenspiegel* and Magdeburg *Weichbildrecht*, bound together as "the Magdeburg Law" become the *Ius supremum*, was the nucleus of the normative substance employed by the High Court, an aspect that had both a symbolic and a practical function. To begin with, the texts had a symbolic nature as *ius scriptum*, as written law, but this was a symbolism (and a form of textualization) qualitatively different than that of the codex as a textualized object that existed as an enduring representation of a judicial legitimacy and authority sanctioned by God and king<sup>47</sup>. By the fourteenth century, written law, perhaps as a combination of the physical and ideational, promised contemporaries a new way to achieve justice, the notion of legality, the idea that disputes could be "prevented, avoided, or resolved and settled *per legem*", by law, by the ruler's law<sup>48</sup>. This notion, which was deeply impressed upon the general legal culture of the later Middle Ages, was expressed very clearly in the High Court's *Acta* which noted, at the end of many of the decisions recorded, that such had been reached *de forma iuris scripti*, in accordance with the written law<sup>49</sup>.

Symbolic importance aside, these formulaic notations in the court's record books indicate the importance of the text of BJ 168 as linguistic meaning/intellectual content since the law book potentially served as a ready reference to the written form of the customary law that the court applied in practice. Although it is unlikely, given the customary law context, that the advocate and assessors of the High Court found it either necessary or desirable to consult a law book before making each and every ruling, they no doubt had to do so sometimes. In this regard, one might note the glosses that were added to the margins of the book's German law texts in at least one fifteenth-century hand. While these are few in number (only a couple dozen not counting mere *nota bene* notations and pointing hands) and brief (around five to ten words each) they do indicate that codex BJ 168 was from time to time used as a reference in the court's practice.

The final folios of BJ 168, blank leaves in the codex as originally constructed, contain a mélange of various brief items in different, mostly fifteenth-century, hands. Briefly, folios 87v through 88v comprise an inventory of relics that pertained to the court, the translation of a couple of German law terms into Latin, a papal decretal, a fragment of German law, an excerpt from Roman law, a standard of land measurement, a scriptural

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<sup>46</sup> Cf. M.T. Clanchy, *From Memory to Written Record: England, 1066–1307*, Harvard University Press, Cambridge, MA 1979, p. 116–122. Clanchy's comments on Domesday Book (p. 121–122) are particularly revealing in this respect.

<sup>47</sup> Textualization here simply refers to a qualitative distinction between the oral and the written, what Clausdieter Schott refers to as *Verschriftlichung* in his description of the trend towards the production of written collections of customary law in the thirteenth century, "Sachsenspiegel als mittelalterliches Rechtsbuch" (*Der Sachsenspiegel*, p. 27–28).

<sup>48</sup> M. Bellomo, *The Common Legal Past...*, p. 156.

<sup>49</sup> See, for example, virtually any judgment in L. Łysiak and K. Nehlsen-v. Stryk, *Decreta iuris supremi...*, 1456–1481.

passage, and the formulae for three oaths. Although the various items are generally unrelated to each other in terms of content, their inclusion at the end of this very important manuscript was neither haphazard nor accidental. These texts were important, in one way or another, to the operation of the court and align with both the practical and symbolic purposes of the codex.

The Magdeburg *Weichbildrecht* comes to an end just a few lines into the first column of folio 87v and is immediately followed by the abovementioned *Nota reliquias* of advocate Andrzej Czarnisza, who was apparently the first to utilize the blank folios at the end of the codex for the entry of miscellaneous notes (See Figure 1)<sup>50</sup>. Czarnisza's inventory is dated 13 July 1398, and one can presume that the material added afterward spatially was also added later chronologically, though the scriptural text on folio 88v may be an exception for reasons that will be noted below. Nevertheless, most of the appended material was added in the fifteenth, and in one case the sixteenth, century. Regardless of their exact dates, the texts are indicative of developments in the culture of the court.

Immediately following Czarnisza's inventory of relics is a very brief and carefully executed cursive note that defines a couple of German law terms, *sune* and *orvede*, in Latin as *compositio* and *vindicta abrenunciatio* or "oath of reconciliation" and "oath of truce". The passage must refer to *Sachsenspiegel* xxiv in BJ 168, which states that, "An oath of reconciliation or oath of truce made before the court requires the witness of the judge and two other men. If it occurs outside of the court, then it requires the witness of six men present when the oath of reconciliation or truce was sworn"<sup>51</sup>. There is no further explanation and the reason for the Latin translation is unclear, unless there was some need or desire to equate the German law terminology with similar concepts in Roman law<sup>52</sup>. The procedural rule is clear enough, so perhaps members of the court needed to make sense of what was at stake in the context of the venue in which they operated: If the procedure pertained to preempting feud or personal vengeance in the original context, what did the rule refer to in the kinds of civil matters they adjudicated? The simple act of defining the issues in Latin connected the court to the thought world of Roman law in which *compositio* had a connotation of reaching concord through compromise and *vindicta abrenunciatio* could be construed not so much as a renunciation of vengeance, but as an agreement to seek no further remedy through litigation. In short, the process of translation entailed a subtle shift of legal consciousness that pervaded the *Ius supremum*, about which more below.

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<sup>50</sup> BJ 168, 87v.: "*Nota reliquias in cruce mea quam habeo in ecclesia sancte marie. Primo lignum sancte crucis Bartolomey Nicolay Symonis et Jude Barbire Margarethe Katerine Procopi Leonardi Pancracy Ewstachy martyrum et confessorum xi milia martirum indulencie sunt in toto xxvii anni omnibus confessis et contritis. Scripta hec sunt per manus Andree Czarnisse advocati supremi juris theutunici Castri Cracoviensis in die sancte Margarete anno domini m<sup>o</sup> ccc<sup>o</sup> xcviij<sup>o</sup>*". Although it is possible that the relics were personal possessions, it seems more likely that Czarnisza possessed such an extensive collection ex officio, perhaps for use in the swearing of oaths by litigants.

<sup>51</sup> BJ 168, 19r.: "*Sune und orvede di der man vor gerichte tut, geczugit man mit deme richter und czuen mannen. Geschit is abir ane gerichte, her mus is geczugin salb sebinde der leute, di dem manne di sune odir di orvede tatin*".

<sup>52</sup> See M. Bellomo, *The Common Legal Past...*, p. 152–153.

At the bottom of folio 88 recto a short note in a careful cursive hand defined the extent of a *mansus franconicus* in verse (See Figure 2)<sup>53</sup>. The Franconian manse (or *laneus*) was the standard land measurement of the German law jurisdiction in southern Poland and its dimensions were often defined by similar aide-mémoire in the empty spaces of Silesian exemplars of the Magdeburg law<sup>54</sup>. If, as one suspects, this measurement set the standard for the resolution of cases before the court, it is quasi-prescriptive in this text, and thus a part of the *Ius supremum* broadly defined.

Three more substantial texts, excerpts from German, canon, and Roman law that apparently handled issues not dealt with by the present German law texts or that needed clarification, can be described as auxiliary law. The German law text of folio 87v, inscribed in a careful book hand, deals with the procedure for the denial or acknowledgement of an obligation (See Figure 1)<sup>55</sup>. With its addition to codex BJ 168, the text, which probably originated from a collection of decisions from the assessors' bench at Magdeburg, essentially became a part of the High Court's *Ius supremum*<sup>56</sup>.

It is well known that the *ius commune*, as medieval jurists referred to the amalgam of canon and Roman civil law concepts and principles as they were interpreted and expounded on in the universities, greatly influenced the development of secular law in Latin Christendom from the thirteenth century onward. Notably, the forms of romano-canonical procedure developed in this context had a profound impact on the development of secular procedure. It is also well established that the *ius commune* was employed as subsidiary or auxiliary law in situations where the established local law, what the scholars of the time called a *ius proprium*, had a gap or was not clear<sup>57</sup>. The final folios of BJ 168 provide a very concrete example of the use of the substantive elements of the *ius commune* in this very way. Indeed the codex provides here a textbook example of the reception of both canon and civil law prescriptions into a *ius proprium*, in this case the *Ius supremum Magdeburgense castris Cracoviensis*.

The second column of folio 87v contains a cursive excerpt from an authoritative canon law decretal collection, the *Liber Extra*. Specifically, the text (X 3.50.2) is a decretal of Pope Eugenius III that forbade priests and other clergy from appearing as proctors in the cases of laymen (See Figure 1). This issue, on which the German law available was presumably silent, must have pertained to the practice of the High Court in some way and the decretal consequently served as auxiliary law with respect to this matter. Indeed,

<sup>53</sup> BJ 168, 88r.: “Nota de latitudine ac longitudine mansi franconici per hos versus: Ulnis bisseptem fac virgam iungito pugnum, Bissenis latus ex hiis fiet tibi mansus, Bis centum longus ac virgis septuaginta. Franconicus mansus perfectus sit tibi sensus et cetera”. This is an abbreviation of the full verse of ten hexameters.

<sup>54</sup> F. Bischoff, *Beiträge...*, p. 339. Two examples appear in codex BJ 170b at 127v.

<sup>55</sup> BJ 168, 87v.: “Eyn yczlicher mag yngesegil um yckliche zache dy vor gehegetem dinge nicht vorvestet ist czu ym czyn mit seynis eynes hant, unde der zache dy do undir beschrebin stet leuken adir bekennen. Ist is auch ab ymant briue hat von gerichtis halten umme schult und der beschuldige sprichet her habe ym dy schult vorgulden her brichet den brif salb dritte. Is ensey denne dis dy zache alzo beschrebin zey das man dy schult andirzvo nicht gelden sulde wen vor gerichte”. The text is inscribed in *gothica textualis rotunda*.

<sup>56</sup> *Sammlung deutscher Rechtsquellen*, ed. H. Wasserschleben, vol. 1, Ernst Heineman, Giessen 1860, p. xiv–xv, 87.

<sup>57</sup> *Dictionary of the Middle Ages*, ed. J.R. Strayer, Charles Scribner's Sons, New York 1986) s.v. “Law, Procedure” by Kenneth Pennington; M. Bellomo, *The Common Legal Past...*, p. 151.

it was absorbed into the body of the *Ius supremum* in very literal way by being inscribed in the very book holding its substance.

Folio 88r displays, in a Gothic hybrid script, an excerpt from the Roman law of the *Corpus iuris civilis*, the authoritative basis for the study of civil law at medieval universities (See Figure 2). Specifically, the text is a part of Justinian's Code that discusses the right of a widow to claim her dowry from her husband's estate prior to the claims of all other creditors (Cod. 8.17.12). Again, this no doubt refers to an issue of concern on which the German law was either silent or unclear, at least in the context in which the High Court operated. Again, an element of the *ius commune* was literally received into the *Ius supremum* as auxiliary law.

While the inclusion of these texts in a prominent spot in a book that represented a distinct body of law and the court as an institution indicates that they were in and of themselves significant, the adoption of these specific prescriptions of Roman and canon law as auxiliary law is only the most obvious – and least influential – manifestation of the reception of the *ius commune* in the jurisdiction of the High Court at Kraków. Far more profound was the clarification or redefinition of issues pertinent to the court in terms of concepts linked to the *ius commune* that is implied by the inclusion of several of the texts at the end of codex BJ 168. In the broader scheme of legal development in medieval western Christendom, the use of the terminology of the *ius commune* by judges and notaries and the employment of its modes of argumentation in the litigation tactics of practitioners was a form of interaction between the *ius commune* and *iura propria* that resulted in a subtle, yet profound reconceptualization of law and its processes<sup>58</sup>. This, more than the adoption of a rule or two as auxiliary law, was the gradual process through which the *variae causarum figurae*, the concepts and doctrines of the *ius commune*, were impressed upon the legal consciousness of at least some of the members and auxiliary personnel of the High Court at Kraków and thus came to play an important role in its culture. This transformation is well represented in the court's *Acta iudiciaria* from the fifteenth century in which the substantive and procedural terminology of the *ius commune* (e.g. *vendicio*, *excepcio*) provide the framework for describing the issues before, and actions of, the High Court. The progressive nature of this development is highlighted in the middle of the sixteenth century in a description of contemporary German law procedure by the High Court's erstwhile notary Bartłomiej Groicki in terms that parallel romano-canonical procedure<sup>59</sup>.

The university training of the men who served as secular officials is generally indicated as the conduit through which the habits of mind associated with the *ius commune* came to influence local laws<sup>60</sup>. However, the majority of those who occupied the assessors' bench of the High Court at Kraków were citizens of that city and its suburbs, business men who were unlikely to have had university training in law<sup>61</sup>. The advocates, men of affairs who largely originated from Kraków's urban patriciate, were expected to be thoroughly knowledgeable of the German law through prior experience, but were

<sup>58</sup> M. Bellomo, *The Common Legal Past...*, p. 153–154.

<sup>59</sup> B. Groicki, *Porządek sądów i spraw miejskich prawa majdeburskiego w Koronie Polskiej (1559)*, Part 3, ed. Karol Koranyi, Wydawnictwo Prawnicze, Warszawa 1953, p. 96–190.

<sup>60</sup> M. Bellomo, *The Common Legal Past...*, p. 155.

<sup>61</sup> M. Łysiak, *Ius supremum...*, p. 45–47.

equally unlikely to have had a formal legal education, though there were a couple of exceptions to this in the sixteenth century<sup>62</sup> On the other hand, several sources indicate that at least a couple of the court's fifteenth-century notaries had attended university. Thus, the *ius commune* is more likely to have made its initial entry into the *Ius supremum* through the court's auxiliary personnel rather than its judges.

The first page of a book containing the court's *Acta iudiciaria* records for the years 1451 to 1471 noted the following: "The present register has been provided by [the court's advocate and assessors] and written by Jan Spiczmer, Master of Arts, at this time notary of the aforesaid court"<sup>63</sup>. Given his position at a prestigious institution, it seems quite probable that Spiczmer had studied the *ars notaria*, which had been stressed as part of the trivium syllabus of the University of Kraków from the time of the rectorate of Stanisław of Skarbimierz (1400–1431). This training may well have exposed Spiczmer to at least a few *ius commune* concepts<sup>64</sup>. Further, a record of 27 January 1457 noted that one Piotr Glowa was court notary at that time. Although it is not mentioned here, Glowa had at least some university education, if not legal training, as he appeared in the matriculation records of the University of Kraków for the year 1426<sup>65</sup>.

Glowa also appeared in the court's records as one of the several proctors who regularly represented litigants in their cases there. These men were not occasional proctors, but formed a nascent bar at the High Court at Kraków<sup>66</sup>. While they no doubt learned the substance and procedure of German law through experience and observation, sometimes as clerks and notaries, these proctors may have had some formal legal training as well. In western Christendom of the fifteenth century generally, it would have been relatively common for a proctor who practiced before an important secular court or a notary in an important public position to have studied in a law faculty for a year or two or more without taking a degree<sup>67</sup>. Though men like Jan Spiczmer and Piotr Glowa may have lacked a degree in law, this by no means indicates that they had not studied some law at university. Such men at least composed a potential conduit for *ius commune* influence.

Scripture, which like the romano-canonical sources mentioned above, was considered authoritative by medieval academia, brings one to the end of codex B] 168. The upper portion of folio 88 verso is filled with the first fourteen verses of the first chapter of the Gospel of John inscribed in a high-quality Gothic book hand, but worn in various parts (See Figure 3). Below the biblical text, are the formulae for three oaths. The first two, inscribed in fifteenth-century hands, are oaths that were sworn by assessors when they were installed on the High Court's bench. The first is in Polish, the second

<sup>62</sup> *Ibidem*, p. 30–33, 184.

<sup>63</sup> SWPM I-9, 1r.: "*Comparatum est presens hoc registrum per eosdem et scriptum per Johannem Spiczmir magistrum artis protunc predicti iuris notarium*".

<sup>64</sup> N. Horn, *Die juristischen Literatur der Kommentatorenzeit* [in:] *Ius Commune*, vol. 2, ed. H. Coing, Vittorio Klostermann, Frankfurt am Main 1969, p. 120.

<sup>65</sup> *Album Studiosorum Universitatis Cracoviensis*, ed. B. Ulanowski, et al., vol. 1, Jagiellonian University, Kraków 1887, p. 62.

<sup>66</sup> M.R. Munzinger, *The High Court of Magdeburg Law at the Castle of Cracow: Legal Actors and Action in the German Law Jurisdiction of Little Poland, 1456–1465* (Ph.D. diss., University of Kansas, 2004), p. 139–142.

<sup>67</sup> J.A. Brundage, *Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts*, University of Chicago Press, Chicago 2008, p. 169, 290–291, 395.

in German, the differences in content are minimal. The final oath, sworn when a new notary assumed office, is rendered in Polish only and was entered somewhat later, in the sixteenth century<sup>68</sup>.

The pairing of this portion of this Gospel with the oaths was no coincidence. It was, in fact, common for this portion of the book of John, with its emphasis on the Word, to be present at the swearing of oaths during the Middle Ages – the symbolism is clear enough. Although clergymen commonly swore in the immediate presence of the Holy Writ, laymen usually swore their oaths while physically touching the Gospel<sup>69</sup>. This would explain the wear on the present text, which admits the possibility of a hand resting on it, and it seems quite probable that codex BJ 168 was an integral component of the ceremony in which a new assessor was installed on the high court's bench. Unfortunately, to the author's knowledge, no full order for, or description of the ceremony in which new assessors assumed their positions exists for the medieval period. Nevertheless, a tentative reconstruction of this event can be pieced together by analogy with later practice and evidence provided by codex BJ 168 itself<sup>70</sup>.

Following a vacancy on the bench, a new assessor was chosen by the mutual agreement of the High Court's advocate and the procurator general of Kraków (*magnus* or *generalis procurator*), the royal official was charged with general oversight of the court<sup>71</sup>. Following the publication of their choice, the formal process of installation took place at a celebratory session of the court at its usual meeting place, the treasury of the castle on the Wawel hill<sup>72</sup>. Aside from the advocate and the current assessors of the court, the royal procurator or his representative and numerous other guests were present. The guests likely included some combination of the friends and relatives of the candidate, members of the local clergy, faculty from the University of Kraków, officers of local municipal institutions like the town council and municipal court, and various royal officials<sup>73</sup>. The court having been officially opened, the procurator general formally presented the candidate to the court's assessors and had an official document confirming the appointment read to the assembled group<sup>74</sup>. Later evidence suggests that at this point the prospective assessor may have promised that he would not engage in commerce or craft during periods in which the court sat<sup>75</sup>.

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<sup>68</sup> For the dating of the notary's oath, see Z. Włodek, *Catalogus...*, p. 153–154, where it is mistakenly described as the oath of an assessor.

<sup>69</sup> D.X. Junkin, *The Oath: A Divine Ordinance and an Element of the Social Constitution*, Wiley and Putnam, New York 1845, p. 175–176; H.G. von Thülemeyer, *Octoviratus; seu, De S.rom. germ. imperii electoribus... tractatio juris publici ...* Editio novissima, XXIV, 72–73, J.M. Rudigerum, Frankfurt 1688, p. 462.

<sup>70</sup> The present reconstruction relies on the details of the installation ceremony for both advocates and assessors presented in Łysiak's *Ius supremum...*, p. 36–37, 45–46 and on the descriptions of judicial oath in general rendered by Groicki in his procedural manual for municipal courts of Magdeburg law in Poland, *Porządek...*, p. 32, 37, 146–148. The remainder of this admittedly hypothetical scenario, particularly the procedure for swearing the oath, has been reconstructed here on the basis of evidence provided by codex BJ 168.

<sup>71</sup> L. Łysiak, *Ius supremum...*, p. 18; cf. BJ 168 1r.

<sup>72</sup> *Ibidem*, p. 45.

<sup>73</sup> *Ibidem*, p. 45–46; cf. the advocate's installation ceremony, p. 36–37.

<sup>74</sup> *Ibidem*, p. 46; likewise cf. the advocate's installation ceremony, p. 36.

<sup>75</sup> *Ibidem*, p. 45.



Following this, the candidate asked the court for permission to kneel<sup>76</sup>. When granted, he knelt before the codex, which was held open to folio 88v by the court's notary, and, after asking permission, he touched the text of the Gospel with two fingers of his right hand<sup>77</sup>. The notary then read the oath, perhaps pausing at the punctuation marks in the text, with the assessor-to-be repeating the words verbatim<sup>78</sup>. The oath was likely read in either Polish or German, as appropriate to the candidate<sup>79</sup>. The Polish oath, to which the German oath is essentially identical, read so:

I swear to God and our benevolent King and to this court of law to which I have been appointed, that I will be obedient to [the advocate] in accordance with the law, and also that I will find just judgments for people both poor and rich, and that I will defend the assessors' bench in accordance with the German law as justly as I know how or am able, so that [its judgments] have validity. I will not forsake this for any cause, so help me the Lord God in Trinity<sup>80</sup>.

After the oath had been sworn, the juror asked, after seeking permission to rise, if he had sworn it correctly<sup>81</sup>. If he had, this was confirmed by the bench in what amounted to a formal decision of the court, an act which constituted the assessor's formal assumption of office<sup>82</sup>. The new assessor was now formally set in his place on the bench and congratulated with "joyous applause"<sup>83</sup>. The guests departed and the court likely opened a regular session<sup>84</sup>. By that time, surely, the new assessor was keenly aware of the gravity of his new responsibilities. The symbolic essence of the codex, which obviously played a crucial role in the ceremony, and the language of the oath, which addressed God, king, and court and promised justice and, indeed, legality must have made a deep impression on juror and observer alike. It is worth noting in this regard, that in the advocate's installation ceremony, which seems to have involved touching a crucifix rather than a book, the codex BJ 168 may have been among the *insignia* that were handed the new chairman

<sup>76</sup> By analogy with the general procedure of judicial oath, cf. Groicki, *Porządek...*, p. 148.

<sup>77</sup> Alternatively, the codex may have rested on a lectern. For the position of the juror, cf. L. Łysiak, *Ius supremum...*, p. 45: "[...] flexis genibus positisque duobus manus dextrae ad imaginem Crucifixi digitis. The advocate's presentation of his oath differed with respect to the sacred object involved and his formula did not appear in BJ 168. This may be because his oath was taken under the auspices of another office, that of the royal procurator general of Kraków. One might emphasize in this regard that the office of the advocate, as representative of the authority of the state, was quite distinct from that of an assessor".

<sup>78</sup> By analogy with advocate's ceremony, cf. L. Łysiak, *Ius supremum...*, p. 36: "praelegente sibi rotham iudicii eiusdem notario [...]". Alternatively, the juror may have read the oath himself.

<sup>79</sup> It may be that the oath was made in both languages, though this seems unlikely.

<sup>80</sup> BJ 180, 88 v.: "*Ja przysengam bogu y Nasschemu Myloszczymemu krolowy y themu prawu kw kthoremum weszwan yest, ysz ja themu sendzemu podlug prawa poslussen chce bicz, y thesz Ludzom ubogum y bogathym sprawyedlywy ortel znac chce, y then przyschensnyczy stolecz podlug Nyemyeczkego prawa bronycz jako nasprawyedlywy wyem albo moga, y folgą myecz mogą a thego dla zadney rzeczy opuszczyc nye chce tako my pan bog pomosz w troicz yedliny*", and "*Ich swere gote und meynem herre dem konige, und dem gerichte do ich czu gekorn bin, das ich dem Richter: noch dem rechte gehorsam wil seyn und den leuten arm und reych, in dem lande recht orteil funden wil, und den scheppin stuel noch dem deutze rechte vorsten wil so ich rechte konne und wisse und des folge habin wurde und den durch keyne sache noch durch liebe adir gobe lossen wil als mir got helfe und dy heyligen*".

<sup>81</sup> By analogy with the general procedure of judicial oath, cf. B. Groicki, *Porządek...*, p. 148.

<sup>82</sup> L. Łysiak, *Ius supremum...*, p. 46.

<sup>83</sup> By analogy with advocate's ceremony, cf. L. Łysiak, *Ius supremum...*, p. 36.

<sup>84</sup> Likewise by analogy with advocate's ceremony, cf. *Ibidem*, p. 36–37.

as symbols of office after he swore his oath<sup>85</sup>. Here, the court and the *Ius supremum* itself were symbolically put under the protection of the new advocate. One might also note in this regard that the oaths of the assessors were in part oaths of obedience to the High Court's advocate.

Arguably, the order of oath-taking described was derived from Roman law, though more likely from long standing custom than from the civil law revival of the twelfth century<sup>86</sup>. Nevertheless, given the *ius commune* context mentioned above, it is worth noting that Justinian's Novel 8 called for those undertaking to serve as public officials to take an oath in a ceremony that included physical contact with the Gospels:

I swear by God Almighty and his only begotten Son our Lord Jesus Christ and the Holy Spirit and the glorious Mother of God, ever virgin, Mary and the four Gospels, *which I am holding in my hands*, and the holy archangels Michael and Gabriel [etc.]<sup>87</sup>.

The status of the Gospels as a physical ceremonial object that stands with the intangible Trinity, the Holy Virgin, and the archangels in this formula is striking.

The need for the oaths page to be easily accessible for ceremonial purposes, and so on the final page of the book, raises the question of when it was created. The assessor's oaths were written in a cursive fifteenth-century hand and the notary's oath is of later, sixteenth-century, provenance, but the book hand of the Gospel text is more difficult to place and might range from the fourteenth to the fifteenth century<sup>88</sup>. Indeed, it is quite possible that the codex was used in the oath-swearing ceremony before the words of the oaths were added; they need not have been there for oaths to have been sworn on the book. Thus, the Gospel text could have been added soon after Kazimierz's donation in 1356 or at any point thereafter prior to the end of the fifteenth century. One thing is certain; the text upon which future members of the court would swear to conscientiously carry out their duties would have been placed in a location that reflected the gravity of that oath, a circumstance that points to a contemporary perception of the book's significance at the time the oaths page was created. If this occurred early in the court's history, the original importance of the codex is indicated. If relatively late, the addition highlights the increasing consciousness of its symbolic importance, as discussed above. The possibility that it was added at the same time the foundation charter was appended to the beginning of the codex, perhaps around the time Czarnisza added his *Nota reliquias* in 1398, is the most intriguing possibility since it indicates a conscious effort to take advantage of, and enhance, the book's symbolic value.

The present study has suggested that codex BJ 168 served multiple purposes for the High Court at Kraków and is, therefore, illustrative of several aspects of the court's culture during the Middle Ages and, more generally, of the medieval mentality with respect to the uses of books within the legal culture. Admittedly, the foregoing study perhaps

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<sup>85</sup> *Ibidem*, p. 36.

<sup>86</sup> Cod. 2.58. 1–2; Nov. 8; 124.1.

<sup>87</sup> Nov. 8: “*Iuro ego per deum omnipotentem et filium eius unigenitum dominum nostrum Iesum Christum et spiritum sanctum et sanctam gloriosam dei genitricem et semper virginem Mariam et quattuor evangelia, quae in manibus meis teneo, et sanctos archangelos Michael et Gabriel [...]*”.

<sup>88</sup> The oaths are inscribed in *gothica cursiva* and the biblical text in *gothica textualis semi-quadrata*. For the dating, cf. Z. Włodek, *Catalogus...*, p. 153–155.

raises more questions than it answers and therefore makes no claim to being the last word on the issues addressed; it is exploratory and suggests lines for further inquiry. In this light, a few tentative conclusions will be drawn.

First, the codex served an important purpose *qua* textualized object, as the symbolic representation of the *Ius supremum Magdeburgense castris Cracoviensis* and all that this body of law signified, including the institution that administered it. Each of the codex's individual texts composed a semantic enclave; pockets of meaning that gave the book as artifact a powerful symbolic significance. Secondly, the codex served as an exemplar of *ius scriptum* (or textualized law) that composed a repository of, and reference to, the *Ius supremum*. On the one hand, the "textualization" of law in the Middle Ages is the creation of historians who discern a new trend in the composition of written collections of customary laws in the thirteenth century. On the other hand, one must certainly acknowledge that an increasing prevalence of *ius scriptum* created new expectations among contemporaries and occasioned a shift in legal consciousness. Although it was not compiled all at once, codex BJ 168, as both artifact and *ius scriptum*, was ultimately a very consciously designed item. Its practical purpose dovetailed neatly with its symbolic and ceremonial purposes. It may go without saying that, when the textualized object is a book, its function as a textualized object cannot be divorced from the linguistic meaning/intellectual content of the text, but does it go too far to suggest that in the culture of the High Court, if not the general legal culture of the later Middle Ages, the authority of the linguistic meaning/intellectual content of the legal text owed a good deal to its existence as physical artifact?

In its completed medieval form, the codex began with the charter that brought the court into existence and established its basic constitution and mode of operation while simultaneously pointing to the identification of the German law texts that composed the bulk of the book with a new law and, thereby, a new jurisdiction under the sovereign authority of the king of Poland, the divinely ordained guarantor of justice for that land. The notion that the law was associated with the divine and that royal law was authoritative is corroborated near the beginning of the next component of the codex. Here, the first prologue of the *Sachsenspiegel* proclaims that, "God is law itself so justice is dear to Him. Therefore, all those entrusted by God to judge shall strive to reach judgments in such a way that God in His wrath and judgment may treat them mercifully"<sup>89</sup>. The second prologue then equates God's commandments with the laws of the model Christian rulers Constantine and Charlemagne<sup>90</sup>. As such, the codex was a concrete symbol of divine justice and the legitimacy of the royal legal and political authority that insured it, a textual monument for the perpetual use of posterity. In this respect, BJ 168 was possessed of a very traditional instrumentality that reached back into the earlier Middle Ages<sup>91</sup>.

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<sup>89</sup> BJ 168, 16r.: "Got ist selbe recht darumme ist im recht lip, um das sen si sich alle vor den gerichte von gotishalden beuolin ist, das si also richtin, das gotis czorn und sein gerichte genediclichin ober si ergen muse".

<sup>90</sup> BJ 168, 16v.: "Nu wir abir irlosit sein mit sinim turmblute, nu sulle wir ouch haldin seine e und sein gebot, das uns seine wissagin und gute geistliche leute und ouch cristene kunge gesaithan, Constantinus und Karl an den das sachs in lant noch rechte tu". [But now that we are redeemed by his blood, we keep His laws and His commandments, both those provided by the prophets and the clergy and those provided as law for Saxony by the Christian kings Constantine and Charlemagne.]

<sup>91</sup> M.T. Clanchy, *From Memory to Written Record...*, p. 117–118, 121–122.

At the same time, and in the context of the existence of the High Court, the combination of this royal guarantee of justice with exemplars of the written law, the *Sachsenspiegel* and *Weichbildrecht*, symbolically conveyed something newer, abstract, and perhaps less consciously perceived, the notion of legality and the implication that justice would be achieved *per legem*, through a judicial process associated with the institutions of royal law. Beyond its symbolic aspect, this notion also implied the practical use of the book as a reference for the advocate and assessors who would conduct that legal process and apply the *Ius supremum*. The legal culture that developed in the age of the *ius scriptum* allowed the various legal actors associated with the court to avail themselves of the habits of mind, the *variae causarum figurae*, of the *ius commune*, a reception that left a mark in the High Court's most esteemed law book in the form of a canon and a civil law prescription that were assumed by the *Ius supremum*. Likewise were the contents of the various other notations in the book absorbed into the *Ius supremum*. As a legal reference, the codex BJ 168 was a practical instrument of artificial memory for contemporary use, a newer idea about the use of books that coincided with the beginning of true record keeping in the fourteenth and fifteenth centuries<sup>92</sup>. The practical and symbolic uses of the book are combined on the final page of codex BJ 168, the oaths page. As a practical matter, the bottom of the page is a brief formulary for the High Court's oaths of office. More striking, of course, is the ceremonial use of the book as a vessel for the biblical text on which the court's members swore to carry out their duties justly (*sprawyedlywy ortel znaczczyce* or *recht ortel funden wil*) and under the aegis of legality (*podlug prawa* or *noch dem rechte*) as they touched Scripture that proclaimed, "In the beginning there was the Word, and the Word was with God, and the Word was God". The text was biblical, but the ceremony was not conducted with a Bible, perhaps quite intentionally. For beneath the Gospel text pressed by the hand of the juror lay king, custom, written law, legal process, and divine providence – justice in all its later medieval aspects, both novel and traditional. What greater symbolism could there have been than a combination of justice guaranteed by the law and order established by royal authority, normative precepts that promised justice through legal process, and the certainty of divine justice, of which all else was a pale reflection? As an amalgam of all these aspects of justice, as specifically reflected in the court's activity, it is no wonder that codex BJ 168 was a treasured possession of the High Court of Magdeburg Law at the Castle of Kraków from its foundation in 1356 until it ceased operation in 1794.

The codex is likewise precious to the historian as a window to a range of perceptions that accompanied trends in later medieval legal development. It would be overly simplistic to say that the transition from the medieval to the modern entailed a shift in mentality from a symbolic to literal understanding of the structures and relationships of human society. Nevertheless, the symbolic was clearly more pronounced in the legal culture of, say, the eleventh century, than it was several centuries later. Arguably, a shift of emphasis in legal consciousness from the concrete, yet figurative to the abstract, yet literal that began in the twelfth and thirteenth centuries and continued well into the early modern period resulted in a general change in the legal culture of western Christendom. This change, however, was accomplished over a long period and the presence of one world-

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<sup>92</sup> *Ibidem*, p. 123–125.

view does not necessarily mean the absence of another or their incompatibility. Indeed, codex BJ 168, which, as argued above represents both mentalities with respect to the use of legal texts, embodies the coexistence of continuity and change in the legal consciousness and legal culture of a particular later medieval jurisdiction. This duality reminds us that studies of legal development that do not adequately account for the larger social and cultural context are perilous undertakings that may well misrepresent human realities.

Perhaps, for a moment, one might again imagine Andrzej Czarnisza – his inventory of relics complete and the ink dry, he closes the book before him and carefully places it in the chest that contained the court’s record books and ceremonial paraphernalia – an early link in a chain of custodians who preserved this codex for some four centuries as if it were a precious jewel.

## The Text and Textualization of Codex BJ 168: Legal Culture in Transition at the High Court of Magdeburg Law at the Castle of Kraków

### Summary

“Text and Textualization” examines the various symbolic and practical uses of a law book possessed by the High Court of Magdeburg Law at the Castle of Kraków through the entirety of its four centuries of operation. The essay contends that this book, now preserved at the library of the Jagiellonian University as manuscript codex BJ 168, played a vital symbolic role alongside its practical function. In the course of detailing these aspects, the study suggests that the multiple purposes for which the codex was used are illustrative of several aspects of the court’s peculiar culture during its medieval period of operation and beyond. Methodologically, the essay employs the notion of textualization as a tool for understanding what roles codex BJ 168 played in the context of the culture of the court and how its component texts represented different varieties of legal consciousness within that culture. First, the essay argues that the codex served an important purpose as a textualized object – as the symbolic representation of the *Ius supremum Magdeburgense castri Cracoviensis* and all that it signified. Secondly, the codex served as an exemplar of *ius scriptum* – law literally textualized – that composed a repository of, and reference to, the law represented by the *Ius supremum*. The essay ultimately argues that the dual function of the codex, which dates to the court’s fourteenth-century foundation, points to the complexity of the social and cultural context in which later medieval legal development occurred. Indeed, this duality represents a general transformation in the broader legal culture of Latin Christendom – a culture that was marked by the coexistence of different perspectives in legal consciousness – and suggests that elements of both continuity and change can comfortably coexist within a legal culture over long historical periods.