Between Roman Law and Law Codification in Interwar Poland. The Case of Ignacy Koschembahr-Łyskowski

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Abstract:
The article aims to present the multidimensional activity of Ignacy Koschembahr-Łyskowski as a professor of Roman law and a member of the Codification Commission of the Republic of Poland. Based on archival sources, the course of his professional career is presented in a synthetic overview. An analysis of his scientific achievements shows the fundamental methodological assumptions relating to his perception of the role of Roman law at the outset of the 20th century. His views on the mutual relationships between Roman law and ABGB are also presented. Considerable attention is given to his participation in the work of the Codification Commission of the Republic of Poland and its reception. The discussion also addresses 'the basic concept of the law of obligations' and the draft of the general provisions of civil law authored by this scholar. The subsequent fate of the drafts prepared by Koschembahr-Łyskowski is also indicated.

Keywords: Roman law; law codification; Codification Commission of the Republic of Poland; civil law

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1. Ignacy Koschembahr-Łyskowski – life and legacy

Ignacy Koschembahr-Łyskowski was undoubtedly a scholar with significant scientific and organizational achievements. He came to be remembered as a Romanist associated with the University of Warsaw, and previously with the Universities in Lviv and Freiburg.[1] Koschembahr-Łyskowski obtained a thorough education at the Faculty of Law in Berlin, participating in classes given by such authorities as Heinrich Brunner, Levin Goldschmidt, Paul Hinschius, Alfred Pernice, Adolf Wagner, Theodor Mommsen or Rudolf von Gneist.[2] As he recalled, his scientific commitment was recognised by H. Brunner, who invited him to take part in the publication of 'Monumenta Germaniae Historica'. As a recent graduate, Koschembahr-Łyskowski declined. His intention was to focus on Roman law. In his memoirs written during World War Two, he made no secret of the fact that his decision was motivated by the aspiration of securing an appointment at the University in Cracow and Lviv.[3]

Before he committed himself to the scholarly career, he passed a referendary examination in 1888 and completed a 9-month judicial internship, during which he was assigned to work in a poviat court in Altlandsberg near Berlin.[4] Also in 1888, Koschembahr-Łyskowski passed the doctoral examination, submitting a thesis 'Die collegia tenuiorum der Römer'.[5] A few years later, most likely in 1894, he completed his habilitation based on a thesis 'Die Theorie der Exceptionen nach klassischem römischen Recht',[6] though the issue of his habilitation degree raises considerable doubts.[7] There is no doubt that the scholar was at the University in Freiburg in 1895–1900. In 1900, he moved to Lviv, where he was promoted to full professor in 1906. However, this did not occur without complications. Despite his efforts in 1903, Koschembahr-Łyskowski was not appointed a full professor of Roman law at that time.[8] Finally, in 1915, the scholar moved to Warsaw, where

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1 As regards the life of Koschembahra-Łyskowski, see GREBIENIOW, A. Ignacy Koschembahr-Łyskowski – profesor Uniwersytetu Fryburskiego (1895–1900) [Ignacy Koschembahr-Łyskowski – professor at the University of Freiburg (1895–1900)]. *Kwartalnik Prawa Prywatnego*, 2015, R. 24, No. 2, pp. 249–284; IDEM, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage. In: BEGGIO, T. – GREBIENIOW, A. (eds.). *Methodenfragen der Romanistik im Wandel. Paul Koschakers Vermächtnis 80 Jahre nach seiner Krisenschrift*, Tübingen: Mohr Siebeck, 2020, pp. 165–210; VESPER, E. M. *Ignacy Koschembahr-Łyskowski. Polski romanista przełomu XIX i XX wieku* [*Ignacy Koschembahr-Łyskowski. Polish Romanist at the turn of the 19th and 20th centuries*], Białystok, 2019 (unpublished doctoral thesis); WOŁODKIEWICZ, W. Ignacy Koschembahr-Łyskowski – romanista, cywilista, kodyfikator [Ignacy Koschembahr-Łyskowski – Romanist, civil law expert, codifier]. *Studia Iuridica*, 1995, No. 29, pp. 51–58.

2 Archive of the University of Warsaw, Legacy of Ignacy Koschembahr-Łyskowski, Studies at the University of Berlin, judicial internship, professor of Roman law in Freiburg, File no. Sp. 19/3, p. 7.

3 Ibidem.

4 Ibidem.

5 KOSCHEMBAHR-ŁYSKOWSKI, I. *Die collegia tenuiorum der Römer*. Berlin: R. Nietschmann, 1888; See Archive of the University of Warsaw, Legacy of Ignacy Koschembahr-Łyskowski, Studies at the University of Berlin, judicial internship, professor of Roman law in Freiburg, File no. Sp. 19/3, p. 7.

6 KOSCHEMBAHR-ŁYSKOWSKI, I. *Die Theorie der Exceptionem nach klassischen römischen Recht*. Berlin: J. Guttentag, 1893.

7 See KOREDCZUK, J. Przyczynek do sprawy habilitacji Ignacego Koschembahr-Łyskowskiego we Wrocławiu [A contribution to the case of Ignacy Koschembahr-Łyskowski's habilitation in Wrocław]. *Acta Universitatis Wratislaviensis. Prawo*, 2004, No. 288, pp. 191–207.

8 NANCKA, G. O votum separatum w obronie Ignacego Koschembahra-Łyskowskiego w 1903 r. złożonym, czyli o sporze o zwyczajną profesurę z prawa rzymskiego na Uniwersytecie we Lwowie [On the votum separatum in defense of Ignacy Koschembahr-Łyskowski in 1903, that is, on the dispute over an

he remained until his death. He became affiliated with the University of Warsaw. He held many honourable positions there, including the office of rector in 1923–1924.[9]

In addition to the scientific, didactic and organizational academic activity, Koschembahr-Łyskowski became involved in work on the unification and codification of law in reborn Poland. He was appointed to the Codification Commission of the Republic of Poland at the time of its creation in 1919. He participated in the Commission's work until the outbreak of World War Two.[10] He became its deputy president after Ernest Till's death in 1927. Among his various activities in the Commission, acting as deputy chairperson of the civil law section, rapporteur of the subcommission on the general part of the civil code and chairing the family law subsection are particularly noteworthy.[11] However, no workshop materials related to Koschembahr-Łyskowski's activity in the Codification Commission of the Republic of Poland have been preserved in his legacy held in the Archive of the University of Warsaw.[12] The archive contains only a note in which the scholar identified the members of the Commission with whom he maintained cordial relations. They were Franciszek X. Fierich, Bolesław Pohorecki, Karol Lutostański, Władysław L. Jaworski, Stanisław Bukowiecki, Józef Skąpski and Zygmunt Nagórski.[13]

Given the course of Koschembahr-Łyskowski's life, it seems reasonable to pose a question about combining intense studies on Roman law with codification activity. An interesting question is in which area he was better able to develop professionally, attain more notable accomplishments, and how these two areas of scientific activity affected each other. Another issue is how his activity as codifier influenced the process of lawmaking in interwar Poland and whether he authored drafts of provisions that were significant in terms of the development and evolution of law in Poland in the 20th century.

2. The school of classical Roman law and the crystallization of methodological assumptions

Ignacy Koschembahr-Łyskowski stood out from other Romanists of his time for his manner of perception of Roman law. The scholar was undoubtedly aware that he lived in the waning days of pandectistics, which was not a particularly obvious attitude at the turn of the 20th century.[14] A considerable portion of the scientific community of the time was still bound by 'a corset' imposed by the pandectists.[15] Numerous scholars failed to

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ordinary professorship in Roman law at the University of Lviv]. *Z Dziejów Prawa*, 2019, Vol. 12, No. 20, pp. 315–328.

9 Archive of the University of Warsaw, Legacy of Ignacy Koschembahr-Łyskowski, Studies at the University of Berlin, judicial internship, professor of Roman law in Freiburg, File no. Sp. 19/3, p. 7; see VESPER, *op. cit.*, p. 28.

10 VESPER, *op. cit.*, p. 45.

11 Ibidem.

12 Archive of the University of Warsaw, Legacy of Ignacy Koschembahr-Łyskowski, Codification Committee, File no. Sp. 19/3, (lack of pagination).

13 Ibidem.

14 See GIARO, T. Europa und das Pandektenrecht. *Rechtshistorisches Journal*, 1993, No. 12, pp. 339–341; see also WOJCIECHOWSKI, R. O pojęciu pandektystyki [On the concept of pandectics]. *Acta Universitatis Wratislaviensis. Prawo*, 2004, No. 290, pp. 25–38.

15 KUPISZEWSKI, H. *Prawo rzymskie a współczesność* [*Roman law and the modern world*]. Kraków, 2013, p. 105; see SÓJKA-ZIELIŃSKA, K. *Wielkie kodyfikacje cywilne XIX wieku* [*The great civil codifications of the 19th century*]. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 1973, p. 159.

recognize the change in status of Roman law, which had occurred in the science of the time. It remained preferable to continue viewing it as a generally applicable discipline rather than acknowledging it as a historical one. The patterns learnt in the second half of the 19th century were widespread and the Romanists trained in that tradition showed no inclination to revise their perspectives.[16]

Coming from Freiburg to Lviv in 1900, Koschembahr-Łyskowski exhibited a truly unique stance in this regard. It became apparent through the substance of his lecture 'Prolegomena do historyi prawa rzymskiego' [Prolegomena to the history of Roman law], given to inaugurate his activity at the University in Lviv.[17] The lecture aimed to compare the achievements of Roman jurisprudence with their legacy in contemporary times. He recognized that Roman jurists were fully aware that acts cannot be exhaustive in nature, meaning they cannot anticipate every conceivable situation. He opposed the perfection of Roman jurisprudence to the 19th century science of law. He believed that codifiers of his time created numerous, very case-specific and detailed laws, thus going against the assumptions developed by Roman jurisprudence.[18]

The problem Koschembahr-Łyskowski identified in the operation of jurisprudence of his time was the overly literal interpretation of laws. The Romanist observed that in seeking a solution, the connection between an act and the needs of practical life was being overlooked.[19] His point of view was entirely different. He believed that law should be founded 'on a scientific basis, that is, on concepts and institutes, not on paragraphs, and secondly, the conformity of those concepts and institutes with the will of the legislator is to be determined by interpretation, which will regard the needs of practical life as a tool for interpreting an act.'[20] He added that the concepts and institutes known to Roman law should serve as the starting point for those considerations.[21]

The question is how Koschembahr-Łyskowski perceived the role and significance of Roman law at the turn of the 20th century. Assuming the perspective of, among others,

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16 See, for example: BODURA, E. Das „antipandektistische Manifest" von Leonard Piętak. Zur nichtpandektistischen Strömung der galizischen Romanistik in der zweiten Hälfte des XIX. Jh. *Pázmány Law Review*, 2021, Vol. 8, No. 1, pp. 95–121.

17 KOSCHEMBAHR-ŁYSKOWSKI, I. Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900) [Prolegomena to the History of Roman Law (Introductory lecture upon assuming the chair of Roman law at the University of Lviv on October 23, 1900)]. *Przegląd Prawa i Administracji*, 1900, Vol. 25, No. 11, pp. 849–861; More details on the subject: NANCKA, G. *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939* [*In search of new research directions. Roman law in the pages of "Przegląd Prawa i Administracji" (Review of Law and Administration) in the years 1876–1939*]. Warszawa: C.H. Beck, 2024, pp. 79–86.

18 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 850; KUPISZEWSKI, *op. cit.*, pp. 141–145; NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 82.

19 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 851; NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, pp. 83–84.

20 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 851.

21 Ibidem.

Ernst Emanuel Bekker, Moriz Wlassak, Paul Frédéric Girard, or Alfred Pernice, he advocated for adopting the approach he described as 'the school of classical Roman law.'[22] He assigned two primary tasks to it.[23] The first task was the cognition of classical Roman law, which was intended to facilitate the examination of Justinian's law distorted by interpolations.[24] The second task was the criticism of Roman law.[25] He argued that 'Roman law can still render us excellent services, and precisely, serving as a model of rigorous legal method, it can lead us to new law, which everyone talks about today, yet no one knows, and the creation of which no one wants to undertake.'[26]

His lecture formulated another important research proposition referring directly to the domestic science of law: 'Our first task is to create Polish monographic literature based on sources and original studies. It is not merely a matter of demonstrating to foreigners that we also have our own original legal literature, but to an even greater extent, it is a matter of upbringing for the entire nation.'[27] He pointed out that 'the original legal literature is therefore to contribute, together with other branches of science, to the general upbringing of the nation, and specifically to upbringing to the highest degree, upbringing to comprehend and understand ideas on a positive basis.'[28]

He developed his methodological assumptions in 1908,[29] when he formulated a view that the methodology of research on Roman law should have three characteristic features. The first feature was the assumption that it was necessary to understand Roman law in the form in which it was created at the time of its origin, taking into account all the circumstances considered during its formation. The second feature was a critical study of the sources of Roman law. The third one should consist of grounding the reconstruction of Roman law in the entire source material. This entailed a prohibition on selecting sources to justify a predetermined thesis.[30]

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22 Ibidem, p. 856

23 See KOSCHEMBAHR-ŁYSKOWSKI, I. *Die deutsche Schule des klassischen römischen Rechts. Zugleich ein Beitrag zur Beurteilung der Bedeutung des römischen Rechts für modernene Rechte*. Fribourg: Imprimerie et librairie de l'oeuvre de Saint Paul, 1898; see also GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, p. 175.

24 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 857.

25 Ibidem, p. 858; see NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 83.

26 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 860; see NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 84.

27 KOSCHEMBAHR-ŁYSKOWSKI, Prolegomena do historyi prawa rzymskiego (Wykład wstępny przy objęciu katedry prawa rzymskiego w uniwersytecie lwowskim dnia 23. paźdź. 1900), p. 861.

28 Ibidem.

29 See ŁYSKOWSKI, I. Dwa nowe opracowania rzymskiego prawa prywatnego [Two new studies on Roman private law]. *Przegląd Prawa i Administracji*, 1908, Vol. 33, No. 5, pp. 329–353; IDEM, Dwa nowe opracowania rzymskiego prawa prywatnego (ciąg dalszy) [Two new studies of Roman private law (continued)]. *Przegląd Prawa i Administracji*, 1908, Vol. 33, No. 6, pp. 443–456; IDEM, Dwa nowe opracowania rzymskiego prawa prywatnego (ciąg dalszy) [Two new studies of Roman private law (continued)]. *Przegląd Prawa i Administracji*, 1909, Vol. 34, No. 1, pp. 53–77.

30 See NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, pp. 87–96.

3. From Roman law to ABGB

In 1911, the centenary of the coming into force of ABGB was commemorated. This provided an impetus for Koschembahr-Łyskowski to publish a commemorative study,[31] in which he posed a question: what is the position of Roman law in ABGB, given that a large number of principles of Roman law were included in ABGB?[32]

Koschembahr-Łyskowski had no doubt that classical Roman law served as a valuable signpost in the context of Austrian law codification. It facilitated the formulation of the principles of natural law underpinning the Austrian code.[33] However, the thought of Roman law was adopted only when it corresponded to contemporary circumstances.[34] There was a widespread belief that ABGB was derived from natural law, its compatibility with natural law was affirmed, and the provisions were frequently justified through reference to Roman law or Roman law was explicitly rejected in a specific issue.[35]

The determination of the position of Roman law in ABGB was not a straightforward matter. Koschembahr-Łyskowski believed that the substantial preparation of the codifiers was a contributing factor. A significant problem lay in their lack of relevant historical-legal education. Consequently, the codifiers failed to determine the position of Roman law with regard to codification and were unable to comprehend the evolution of law.[36] This was due to the reform of legal studies implemented in 1810 by J. Zeiler, which limited the number of classes in Roman law. It coincided with the era of codification and, in the opinion of

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31 KOSCHEMBAHR-ŁYSKOWSKI, I. O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego [On the position of Roman law in the general civil law of the Austrian Empire]. *Przegląd Prawa i Administracji*, 1911, No. 36, pp. 659–725; More details on the subject: NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, pp. 96–104.

32 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 663; see SÓJKA-ZIELIŃSKA, *Wielkie kodyfikacje cywilne XIX wieku*, pp. 41–43; OŻÓG, J. Prawo rzymskie jako środek tłumaczenia ABGB – kilka uwag w setną rocznicę stulecia [Roman law as a means of interpreting the ABGB – a few remarks on the centenary]. *Palestra*, 2011, Nos. 11–12, pp. 193–198.

33 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 672; see GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, pp. 183–184; SÓJKA-ZIELIŃSKA, *Wielkie kodyfikacje cywilne XIX wieku*, pp. 43–47; see also: DZIADZIO, A. Powstanie austriackiego kodeksu cywilnego ABGB i jego twórca [The creation of the Austrian Civil Code (ABGB) and its creator]. *Prawo i Więź*, 2022, No. 4, pp. 449–474.

34 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 672; See PFAFF, L. Ueber die Materialien des allgemeinem bürgerlichen Gesetzbuchen. *Zeitschrift für das Privat- und öffentliche Recht der Gegenwart*, 1875, No. 2, p. 287; IDEM, *Rede auf Franz von Zeiller gehalten am 26. April 1891 bei der enthüllung der in den Universitäts-Arkaden aufgestellten büste Zeillers*. Wien: Manz, 1891, p. 13; STINTZING, R. – LANDSBERG, E. *Geschichte der deutschen Rechtswissenschaft*, Bd. 3. München-Leipzig: R. Oldenbourg, 1898, pp. 435–486.

35 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 674; See NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 98.

36 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 676; See NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 98.

Koschembahr-Łyskowski, the reform resulted in the production of officials lacking broader perspectives.[37]

Determining the mutual relation between Roman law and ABGB, Koschembahr-Łyskowski formulated an argument that 'classical Roman law serves as a comparative tool for interpreting an universal civil act in cases where an universal civil act embraced the leading concepts of Roman law.'[38] It meant that Roman law was an indirect means of interpreting ABGB and there was a legal relationship based on a factual relationship between Roman law and ABGB. The essence of the relationship lay precisely in the fact that ABGB adopted the leading thought of classical Roman law. Koschembahr-Łyskowski argued that in all cases where a factual relationship existed, there was also a legal relationship, and thus Roman law functioned as a comparable instrument for interpreting the Austrian civil act. This gave rise to the need to specify situations in which there existed a factual and a legal relationship because it determined the extent to which Roman law could be an indirect tool for interpreting ABGB. In the opinion of Koschembahr-Łyskowski, this view entailed that classical Roman law was only a signpost for the interpretation of ABGB, which protected us from a wrong path we might take if we did not use this signpost.[39] It was clear from the argument presented by Koschembahr-Łyskowski that he understood the relevance of Roman law in a functional manner. It was intended as a tool for interpreting Austrian civil law.[40]

Koschembahr-Łyskowski defended his argument by referring to the assertions of 19th century scholars. He did not support the arguments put forward by F. K. von Savigny on contemporary Roman law or the phrase 'through Roman law above Roman law' promoted by R. Ihering. He coined his own maxim: 'alongside Roman law and with constant comparison to Roman law, modern law, and therefore the universal civil act' specifying the method of treating Roman law not only in civil studies, where it was intended to be a means of interpreting law, but also in comparative studies – where it was intended to be a comparative criterion.[41] He pointed out that 'In this way, modern law will gain its rightful independent foundation, while Roman law is our compass, our signpost for the interpretation and development of modern law.[42]

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37 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 675; See PFAF, *Rede auf Franz von Zeiller gehalten am 26. April 1891 bei der enthüllung der in den Universitäts-Arkaden aufgestellten büste Zeillers*, pp. 25–27.

38 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 693.

39 Ibidem, pp. 693–694.

40 GIARO, T. Dogmatyka a historia prawa w polskiej tradycji romanistycznej [Dogmatics and legal history in the Polish Romanist tradition]. *Prawo Kanoniczne*, 1994, Vol. 37, No. 3–4, p. 94; NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 100.

41 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 708; see GIARO, Dogmatyka a historia prawa w polskiej tradycji romanistycznej, p. 94; NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, p. 102.

42 KOSCHEMBAHR-ŁYSKOWSKI, O stanowisku prawa rzymskiego w powszechnej ustawie cywilnej dla cesarstwa austriackiego, p. 708; NANCKA, *W poszukiwaniu nowych kierunków badawczych. Prawo rzymskie na łamach "Przeglądu Prawa i Administracji" w latach 1876–1939*, pp. 102–103.

4. Ignacy Koschembahr-Łyskowski, Roman law and the work on the Code of Obligations in interwar Poland

When Poland regained independence in 1918, it was clear that the process of law unification and codification on the territories of the reborn state would begin. When the Codification Commission was established, Ignacy Koschembahr-Łyskowski became a member and played a significant role in the civil law section.[43] One of the most important tasks assigned to the Codification Commission in the field of civil law was the preparation of the Code of Obligations.[44] Before its enactment in 1933, numerous partial drafts were developed.[45] One of those drafts was 'the basic concept of the law of obligations' prepared by Koschembahr-Łyskowski in 1925.[46] Advancing his noteworthy views in the field of codification, the scholar pointed out that the civil code must be based 'on the current factual relations of our society,' which he justified on the grounds that 'law arises from factual real-life relations and must be interpreted on the basis of these relations.'[47] He also believed that 'the task of codification should not be restricted merely to a compilation of articles that dogmatically form a coherent whole, but it should seek to order the relations in accordance with the social and economic needs of life, and the provisions of law should be formulated in a way that ensures their consequences are the most beneficial for the further development of social and economic relations.'[48]

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43 See SÓJKA-ZIELIŃSKA, K. Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej [Organization of work on the codification of civil law in interwar Poland]. *Czasopismo Prawno-Historyczne*, 1975, Vol. 27, bulletin 2, p. 275; RADWAŃSKI, Z. Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej [The development of the Polish legal system in the early years of the Second Republic]. *Czasopismo Prawno-Historyczne*, 1969, Vol. 21, bulletin 1, pp. 31–48; MAZUREK, I. Specyfika prac Komisji Kodyfikacyjnej w procesie unifikacji prawa w II Rzeczpospolitej [The specific nature of the work of the Codification Commission in the process of law unification in the Second Polish Republic]. *Studia Iuridica Lublinensia*, 2014, No. 23, pp. 125–126.

44 GÓRNICKI, L. *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939* [*Civil law in the work of the Codification Commission of the Republic of Poland in the years 1919–1939*]. Wrocław, 2000, p. 397; JĘDREJEK, G. Polski kodeks zobowiązań z 1933 roku. Powstanie, źródła, znaczenie dla europejskiego prawa obligacyjnego [The Polish Code of Obligations of 1933. Origin, sources, significance for European contract law]. *Roczniki Nauk Prawnych*, 2001, No. 9, bulletin 1, pp. 53–54.

45 On this subject, see: GÓRNICKI, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, pp. 404–409; IDEM, Metoda opracowania i koncepcja kodeksu zobowiązań z 1934 roku [Method of development and concept of the 1934 code of obligations]. *Acta Universitatis Wratislaviensis. Prawo*, 2008, No. 305, pp. 84–86.

46 KOSCHEMBAHR-ŁYSKOWSKI, I. *W sprawie kodyfikacji naszego prawa cywilnego* [*On the codification of our civil law*]. Warszawa: Themis Polska, 1925; see NANCKA, G. Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań" [An attempt to use Roman law in the codification of law between the wars? Ignacy Koschembahr-Łyskowski and the "basic concept of obligations"]. *Zeszyty Prawnicze*, 2022, No. 22, bulletin 4, pp. 111–134.

47 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 14; GREBENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, p. 178; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 114.

48 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 2; GREBENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die

These were not the only assumptions put forward by Koschembahr-Łyskowski in relation to the codification of that part of civil law. A distinctive feature of his draft was the use of Roman law. Koschembahr-Łyskowski emphasized the experience of Roman jurists, who exhibited the ability to assign clearly defined forms and principles to institutes developed in response to the needs of social life.[49] He definitely held Roman jurists in high esteem for their ability to avoid chaos in the legal system developed thanks to the adopted assumptions. In his opinion, that experience should be of particular value to domestic scholars involved in lawmaking. Koschembahr-Łyskowski declared himself an opponent of full replication of all the institutes of Roman law.[50] He believed that it was necessary to draw upon the achievements of Roman jurisprudence. As he declared, his intention was not to create new primary institutes but to refine law.[51]

The draft prepared by Koschembahr-Łyskowski went further than what he had initially declared, which meant that the provisions occasionally assumed a caricature-like form. When creating relevant regulations, he made a direct reference to Roman law. There would be nothing wrong with this, were it not for the fact that the specific provisions were at times direct translations of Latin excerpts of sources. This was the case, for example, with Article 1 of his draft, which laid down that 'No one shall be unjustly enriched at the expense of another.'[52] This regulation was an almost exact repetition of the statement by Pomponius in D. 12.6.14.[53] This approach could be attributed to the fact that Koschembahr-Łyskowski explicitly pointed out that the principle that no one may be unjustly enriched at the expense of another is the sole merit of the creators of Roman law.[54] In this way, by utilizing the accomplishments of Roman jurisprudence, the entire draft of provisions was prepared. It is an evident and indisputable fact that Koschembahr-Łyskowski sought at all costs to transplant Roman constructions into his draft of the provisions. Justifying the necessity of introducing particular provisions, he relied on and quoted specific statements made by Roman jurists. Thus, his draft includes numerous references to Ulpian,[55] Pomponius,[56] Gaius,[57] or Celsus.[58]

Methodenfrage, p. 184; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 114.

49 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 23.

50 Ibidem; See GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, p. 188; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 115.

51 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 19; GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, pp. 187–188; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 115.

52 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 79.

53 See D.12.6.14 (*Pomp. 21 ad sab.*): *Nam hoc natura aequum est neminem cum alterius detrimento fieri locupletiorem.*

54 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 44; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 117.

55 E.g. D. 17.1.10.3 (*Ulp. 32 ad ed.*).

56 E.g. D. 23.3.6.2 (*Pomp. 14 ad sab.*).

57 E.g. D. 50.17.57 (*Gai 18 ad ed. prov.*).

58 E.g. D. 12.1.32 (*Cels. 5 dig.*).

What was the value of the draft prepared by Koschembahr-Łyskowski? The Code of Obligations enacted in 1933 was not based in any way on the basic concept of the law of obligations formulated by this scholar.[59] Having analysed all the partial drafts, the subcommission of the law of obligations, which worked on the draft Code of Obligations, chose to carry out work on drafting the general part of the law of obligations based on the counter-draft prepared by co-rapporteur Ludwik Domański, taking into account the draft by E. Till developed in cooperation with the Lviv commission.[60] The Koschembahr-Łyskowski draft was a manifestation of the concept of socialization of civil law and it stood in contrast to the draft authored by E. Till, which was based on individualistic assumptions.[61]

It is clear that the basic concept of obligations by Koschembahr-Łyskowski is likely the only example of such an extensive use of sources of Roman law in the work on the law of obligations in interwar Poland. Relying on Roman law, Koschembahr-Łyskowski presumably sought to demonstrate that it is not possible to shape law in isolation from its historical roots.[62] It seems that the rather awkward and, in many instances, unclear drafting of the provisions resulted from an intention to accurately replicate the sources, which the scholar sought to adapt to the provisions being developed.[63]

5. The 'specific' concept of the general provisions of civil law

In March 1927, the Codification Commission of the Republic of Poland established the Subsection of the General Part of the Civil Code and the Code of Obligations.[64] Koschembahr-Łyskowski became the principal rapporteur of the draft and he prepared the draft provisions of the general part, published in three parts. The first part included Articles 1–128, the second part Articles 129–161 (on things) and the third part Articles 162–169 (on legal relationships). Koschembahr-Łyskowski set out the assumptions underlying the draft in an introductory note placed in the first bulletin:

> I have formulated the general provisions somewhat more broadly than may be deemed necessary. Because our legal terminology is divergent in our districts due to foreign influence, the Civil Code must clearly define what is understood by each legal concept. Thus, I did not hesitate to occasionally provide even definitions, in spite of the sentence omnis definitio periculosa est. The codification must primarily adapt to real-life needs and cannot be constrained by doctrinaire slogans.

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59 KOSCHEMBAHR-ŁYSKOWSKI, *W sprawie kodyfikacji naszego prawa cywilnego*, p. 102; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 126.

60 GÓRNICKI, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, p. 411; see also NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 126.

61 See NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 126.

62 GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, p. 186; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 128

63 GREBIENIOW, Römisches Recht als Vergleichsfaktor Ignacy Koschembahr-Łyskowski (1864–1945) und die Methodenfrage, p. 186; NANCKA, Próba wykorzystania prawa rzymskiego w międzywojennej kodyfikacji prawa? Ignacy Koschembahr-Łyskowski i "koncepcja podstawowa zobowiązań", p. 128

64 GÓRNICKI, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, p. 167.

This position was also upheld by the great codifications at the beginning of the 19th century (the Napoleonic Code and the Austrian Code), which also had to redefine legal terminology.[65]

At the same time, the author of the draft pointed out that "My main endeavour was to ensure that the provisions are clear and comprehensible to all. The Swiss Civil Code may serve as an example in this regard."[66]

The loft comments made by Koschembahr-Łyskowski could indicate that the draft would be the pinnacle of legislative perfection. However, this was not the case. First, the draft was very lengthy. The volume of its individual parts was so large that even a diligent reader struggled to follow their intricacies. The draft certainly cannot be considered synthetic. Within Title I 'On law,' Chapter I titled 'On rules of conduct aimed at achieving the objectives of law' contained 5 articles, Chapter II 'On common law' contained 3 articles, Chapter III 'On the interpretation of the provisions of law' contained 8 articles, and Chapter IV 'On the exercise of rights' contained 5 very extensive articles. In turn, in Title II 'On persons,' Chapter I 'On the physical person' contained 63 articles, Chapter II 'On the legal person' contained 44 articles. The part relating to things (Title III 'On things') contained 32 articles. The third part of the draft, consisting of Title IV 'On legal relationships,' was the shortest, as it contained 8 articles.

The problem of the draft was not only the expanded nature of its specific sections but primarily its editing precision. Not only did Koschembahr-Łyskowski fail to adhere to verbal discipline, but he also clearly struggled to observe the proper standards of legislative technique. The draft and its substantiation, which bore greater resemblance to a dissertation, referred both to the doctrine and Roman law, so strongly espoused by their author.

The editing of Article 1 reflects the overall draft. Koschembahr-Łyskowski indicated how he understood private law already in the first article of the draft.[67] In his opinion, private law did not present 'a system of subjective rights' but the full body of provisions governing human conduct.[68] Under this assumption, the draft rejected the concept of subjective rights.[69] Moreover, in the opinion of Koschembahr-Łyskowski, social and economic relations were shaped not by law but by life, so the aim of law was to indicate the norms of conduct. Their observance was to be an obligation during the establishment

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65 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3a. Projekt. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3a. Draft. Part One (Articles 1–128)], Warszawa 1928, pp. 4–5.

66 Ibidem, p. 5.

67 It read as follows: 'Norms of conduct derive from legal provisions and are binding upon individuals to achieve the social and economic objectives defined by law.' See Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3a. Projekt. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3a. Draft. Part One (Articles 1–128)], Warszawa 1928, p. 1.

68 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3b. Uzasadnienie. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3b. Justification. Part One (Articles 1–128)], Warszawa 1928, p. 7.

69 GÓRNICKI, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, p. 177.

of legal relationships and when shaping social and economic relations.[70] The author of the draft believed that private law and the administration of justice should serve to materialize social and economic justice objectively. This should occur based on an objective social and economic aim expressed by the parties and arising from legal provisions. Koschembahr-Łyskowski argued that the role of a judge is not to materialize to the will of the parties but to make an objective assessment of the rules of conduct arising from legal provisions. Specifically, the judge was to determine whether the parties sought to achieve an objective that was socially or economically consistent with the legal norms in force and determine the ensuing legal consequences for them.[71] This conception of private law, highly 'innovative' for its time, provoked resistance from the other subcommission members, though it referred to a certain extent to Leon Duguit's theory of solidarity.[72]

The substantiation of the draft also contained references highly evocative of Roman law. For example, providing a substantiation to the wording of Article 18,[73] Koschembahr-Łyskowski pointed out that

> Before at the beginning of the 2nd century C.E., likely under the influence of the Greek philosophy, the Roman jurists of the classical era invoked the ethical-philosophical tenet that law is the art of the good and the just (Celsus D. 1,1,1,pr *ius est ars boni et aequi*), as early as since the 1st century B.C., they based the legal system on social and economic objectives (*causa*), professing the principle that whatever is in someone's possession without a justified cause must be returned (D. 12,5,6, *Perpetuo Sabinus probavit veterum opinionem existimantium id, quod ex iniusta causa apud aliquem sit, posse condici: in qua sententia etiam Celsus est*). In turn, the concept of the social and economic objective (*causa*) was known to Roman law as early as at the time of the Law of the Twelve Tables (*legis actio sacramento in rem*), which is not a doctrinaire concept but a concept emerging solely from real-life relationships in legal transactions. Causa is undoubtedly a legal basis, but because law does not originate only within the state, but it is socially formed in every sphere of social life, causa is at the same time 'the cause' and 'the social and economic objective' of a legal act, *a legal relationship established between the parties by means of a legal act*.[74]

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70 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3b. Uzasadnienie. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3b. Justification. Part One (Articles 1–128)], Warszawa 1928, p. 7.

71 Ibidem, p. 7.

72 GÓRNICKI, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, pp. 177–178.

73 Article 18 read as follows: 'Whoever uses the provisions of law contrary to the fundamental principles of the legal system commits an abuse of law and shall not receive legal protection, and in the case of enrichment at the expense of another or other person, that person shall be obliged to return the unjust enrichment to the individual at whose expense the enrichment occurred. A person against whom an abuse of rights has been committed may seek a declaratory judgment establishing the legal situation, as well as measures to prevent its recurrence, and compensation for the harm suffered.' See Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3a. Projekt. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3a. Draft. Part One (Articles 1–128)], Warszawa 1928, p. 3.

74 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3b. Uzasadnienie. Część pierwsza (art. 1–128) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3b. Justification. Part One (Articles 1–128)], Warszawa 1928, p. 21.

References to Roman law are also evident in the other parts of the draft. They are particularly conspicuous in the second part of the draft relating to things.[75] Article 129 of the draft introduced a broad concept of things: 'The thing is everything that can be the object of a legal relationship.' It also introduced numerous casuistic classifications of things. It is difficult to avoid the impression that the introduced classifications of things into sensory and non-sensory (Article 142), consumable and non-consumable (Article 143), individual and generic (Article 144), divisible and indivisible (Article 145), composite and collective (Articles 146 and 147) found their way into the draft under the influence of Roman thought. A reader familiar with Roman sources cannot resist the impression that they are at times reading passages of the Institutes of Gaius or the Digest of Justinian. Although Koschembahr-Łyskowski pointed out that 'In the codes in force in our territories, the division of things into various categories is highly divergent. It is explained by the fact that the codes frequently adhere mechanically to a division handed down to us by Roman law, which is often misinterpreted or improperly adapted, instead of taking as a basis the modern real-life relations, which should form the foundation of codification.'[76] Subsequently he added: 'however, Roman law divides things into various categories, and among those relatively numerous categories, one can distinguish between movable and immovable things. By no means does Roman law hold that all things are movable or immovable.'[77]

The draft was not well received by the community of practitioners. Warsaw advocates Czesław Poznański and Jan Przeworski published an article titled 'O projekcie przepisów ogólnych kodeksu cywilnego' [On the draft of general provisions of the Civil Code][78] in the columns of 'Głos Prawa,' in which they discussed the draft prepared by Koschembahr-Łyskowski. Although in the first sentences they assessed the draft as 'a valuable contribution to our future codification,'[79] they raised very serious objections against it. They argued that 'Professor Łyskowski fails to differentiate adequately between statutory law and the theory of law, and consequently, the draft features a number of articles that would be entirely appropriate in a coursebook of civil law for students but are superfluous, and even occasionally harmful, in a code.[80] Criticism was also directed at 'the professorial pursuit of establishing ideal norms.' As indicated by the authors of the article, 'frequently due to the inability to identify real criteria, these norms are harmful when included in the code.'[81] They pointed out that another major drawback of the draft was the inclusion of a number of provisions that did not fit the general part of civil law in terms of methodology. As the authors of the article emphasized, the draft 'fell short linguistically.'[82]

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75 Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Podsekcja III Prawa cywilnego, Vol. 1, bulletin 3c. Projekt. Część druga (dział III: O rzeczach, art. 129–161) [Codification Commission of the Republic of Poland. Subsection III of Civil Law, Vol. 1, bulletin 3c. Draft. Part Two (Section III: On Things, Articles 129–161)], Warszawa 1931.

76 Ibidem, p. 5.

77 Ibidem, pp. 5–6.

78 POZNAŃSKI, CZ. – PRZEWORSKI, J. O projekcie przepisów ogólnych kodeksu cywilnego [About the draft general provisions of the Civil Code]. *Głos prawa*, 1928, Nos. 9–12, pp. 377–393.

79 Ibidem, p. 377.

80 Ibidem, p. 378.

81 Ibidem, p. 378.

82 Ibidem, p. 378.

The editorial office of 'Głos Prawa,' where the article was published, voiced their opinion far more forcefully. The editorial office pointed out that the criticism expressed by Cz. Poznański and J. Przeworski was very mild. Admittedly, the draft and its substantiation 'brim with extensive erudition and familiarity with countless other codes and doctrines – but what good is that to us if only a slender trickle of practical judgment and common sense ooze from this draft! … Here and there we find a fortunate approach – far more consists of doctrinaire oddities.'[83] They recalled that Empress Maria Theresa decreed in her resolution of 4 August 1772 that an act should not be a scientific coursebook and should avoid unnecessary definitions and subtleties disturbing the clarity of the argument. It was also necessary to avoid casuistry and ambiguity.[84] Although Koschembahr-Łyskowski indicated in the substantiation of his draft that 'codification must primarily adapt to real-life needs and must not be constrained by doctrinaire slogans,' he was reproached for 'being unable to embody this truth in his work! …'[85]

The final blow to the draft prepared by Koschembahr-Łyskowski came in the form of the following comment:

> The draft by Professor Łyskowski is allegedly the result of many years of study and costly foreign research trips paid out of the state chest. The fruit of these trips, costs and studies is entirely immature and gnawed through by the caterpillar of doctrine to such an extent that it is almost beyond saving. Nonetheless, the draft by Professor Łyskowski holds for us considerable didactic value in that it shows in a documentary manner the futility of the mistaken belief prevalent in our government spheres that legislative skill has been given to every pedagogue or researcher of law.[86]

Conclusions

It is clear that Koschembahr-Łyskowski was a prominent figure of his time. Particular attention should be paid to his views articulated at the beginning of the 20th century. They allowed him to stand out markedly as a scholar from his domestic Romanist peers. Primarily, he viewed Roman law in a manner different from the other major representatives of the science of Roman law of the time. As one of the few in the Lviv scientific community at the beginning of the 20th century, he saw the distance between classical Roman and Justinian law and modern law. It seems that the vicissitudes he experienced in the course of securing a full professorship at the University of Lviv at the beginning of the 20th century were not merely a matter of personal animosity but, perhaps above all, some substantive objections related to the manner of his scientific work. It is not a secret that the language of Koschembahr-Łyskowski's works was difficult and specific. It posed a substantial obstacle to the possibility of comprehending his works. This problem became glaringly evident when Koschembahr-Łyskowski became a member of the Codification Commission of the Republic of Poland and started work on drafts of provisions. Not only did he attempt to apply Roman law to them somewhat mechanically, but he also wrote them in a language

83 Ibidem, p. 377
84 Ibidem, p. 377.
85 Ibidem, p. 378.
86 Ibidem, p. 378.

that certainly cannot be described as accessible. While in the case of 'the basic concept of the law of obligations' by Koschembahr-Łyskowski, the situation can be seen as certain 'codification colouring,' it becomes significantly more serious in the case of the provisions of the general part of civil law. The regulations he presented attracted scathing criticism from practitioners, which ultimately led to the cessation of work on the draft provisions. The work was not resumed until the outbreak of World War Two. Koschebahr-Łyskowski's codification achievements were not utilized in any way in the course of work on the development of law in Poland after World War Two. Taking into consideration the entirety of Koschembahr-Łyskowski's multidimensional activity, it can be concluded that he should be regarded more as Romanist and theoretician than codifier and practitioner.