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## *Source Editions of Municipal Law in Poland (14<sup>th</sup>–16<sup>th</sup> Century): A Proposal for an Electronic Metaedition of Normative Source Material\**

### Abstract

Extant editions of municipal criminal court records from the 16<sup>th</sup>–17<sup>th</sup> century provide ample evidence of the proceedings that relied heavily on of written law and of attorneys often invoking the authority of lawyer authors. These observations add extra weight to the postulate of preparing new, critical editions of sources for the study of municipal law in medieval and Early Modern Poland. They should encompass both the German and the Polish text of the Magdeburg Weichbild, the Sachsenspiegel, urban statutes known as *wilkierze* (*Willkür*), and the records of judgements (*ortyle*, *Urteile*) of the Higher Court of German Law at the Wawel Royal Castle. The texts of the Magdeburg Weichbild, the Sachsenspiegel should be reprinted in extenso – at best by selecting one text representative of each of the main versions (MS branches) to be identified in the course of preliminary researches. To ensure that all the texts are readily available to interested scholars equipped with up-to-date research tools it is recommended that paper or e-book editions be supplemented with matching database online editions.

**Keywords:** MSS source editions, Kingdom of Poland, the Magdeburg Weichbild, the Sachsenspiegel, *Ius municipale*, records of municipal law, Magdeburg, Kraków, inheritance

## 1. Introduction

In 2011 a landmark study by Inge Bily, Wieland Carls and Katalin Gönczi of Saxon-Magdeburg Law in Poland was added to the magisterial series *Ius Saxonico-Maideburgense in Oriente. Das sächsisch-magdeburgische Recht als kulturelles Bindeglied zwischen den Rechtsordnungen Ort- und Mitteleuropas*. The book, *Sächsisch-*

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\* Polish text: *Edycje źródeł do dziejów prawa miejskiego w Polsce XIV–XVI w.: propozycja elektronicznej metaedycji źródeł normatywnych*, “Cracow Studies of Constitutional and Legal History” 2016, vol. 9, issue 4, pp. 487–508; DOI 10.4467/20844131KS.16.025.6325. Author’s ORCID: 0000-0001-6708-004X.

*magdeburgisches Recht in Polen: Untersuchungen zur Geschichte des Rechts und seiner Sprache*, is divided into two parts. The first part contains a systematic presentation of the sources of Saxon-Magdeburg Law in Poland; the second brings together a number of linguistic studies of the medieval German legal texts. The former – which includes not only an overview of the types of extant sources but also a catalogue of manuscripts and incunabula based on the earlier catalogues of Karl Gustav Homeyer and Ulrich-Dieter Oppitz – will certainly be extremely useful to anybody interested in that segment of law history. This scholarly publication is an excellent guide to the sources of Saxon-Magdeburg Law in Poland. Thanks to the meticulous research of the trio of Leipzig scholars we now have (together with Oppitz's *Deutsche Rechtsbücher des Mittelalters* and its supplements)<sup>1</sup> a definitive map of this relatively little explored terrain.<sup>2</sup> A neighbouring field, though, urban law in Poland at the turn of Middle Ages and the early modern period, is still waiting for systematic exploration, the beginning of which must be the preparation of a critical edition of sources. Polish historians of law have already done some ground-breaking work in that area, but a lot more needs to be done.<sup>3</sup>

The aim of this article is to present the current state of editing of critical editions of urban law in old Poland and identifying those texts that should be picked up as a priority and some suggestions about how to go about it. Chronologically, my overview ends at the turn of the 16<sup>th</sup> century; territorially, my focus is on Polish towns incorporated under Magdeburg law excepting Chełmno law (Kulmer Recht).

## 2. Normative sources of urban law

### 2.1. The Magdeburg *Weichbild* and the *Sachsenspiegel* in the treatises of 16<sup>th</sup>-century jurists

On the basis of the internal evolution of the sources, the early history of urban law can be divided into two phases with a watershed in the second half of the 16<sup>th</sup> century.

<sup>1</sup> U.-D. Oppitz, *Deutsche Rechtsbücher des Mittelalters*, Köln–Wien 1990–1992; *idem*, *Ergänzungen zu Deutsche Rechtsbücher des Mittelalters*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanische Abteilung” 2000, Bd. 117, pp. 645, 649–651; *idem*, *Ergänzungen zu Deutsche Rechtsbücher des Mittelalters und ihre Handschriften*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanische Abteilung” 2011, Bd. 128, pp. 440–454.

<sup>2</sup> In Poland, a similar guide, though less detailed, was compiled by Krystyna Kamińska in her monograph *Lokacje miast na prawie magdeburskim na ziemiach polskich do 1370 r. Studium historyczno-prawne [Incorporation of Towns under Magdeburg Law in Poland until 1370: A Study in the History of Law]*, Toruń 1990, p. 45 ff.

<sup>3</sup> For a summary of the contribution of Polish historians, see Danuta Janicka, *Wkład polskich historyków prawa w badania nad prawem magdeburskim w XX w. (1945–2010) [The contribution of Polish law historians to the study of Magdeburg Law in the 20<sup>th</sup> century (1945–2010)]*, “Studia Iuridica Toruniensia” 2013, vol. 10, pp. 46–75; *Neuere Rechtsgeschichte in Polen in den Jahren 2002–2014*, “Zeitschrift für Neuere Rechtsgeschichte”, 2015, Bd. 37, pp. 130–142. Cf. also Maciej Mikuła, *Prawodawstwo króla i sejmu dla małopolskich miast królewskich (1386–1572). Studium z dziejów rządów prawa w Polsce [Royal and Parliamentary Legislation for the Royal Towns of Małopolska (1386–1572): A Study in the History of the Rule of Law in Poland]*, Kraków 2014, pp. 17 ff.

Equally uncontested is the view that the sixteenth century was the golden age of urban law.<sup>4</sup> It saw the publication of new editions of the Magdeburg-Saxon law and important legal treatises as well as a string of reform legislation of private law and judicial procedure. Jointly, they can be treated as a manifestation of a cultural revival and a new legal consciousness of the urban middle class. This remarkable flowering began with a series of treatises by Bartłomiej Groicki (*Artykuły prawa majdeburskiego* [*Articles of the Magdeburg Law*], 1559; *Porządek sądów i spraw miejskich prawa majdeburskiego* [*The Constitution of Courts and Urban Matters According to the Magdeburg Law*], 1559; *Postępek sądów około karania na gardle* [*Court Procedure on Capital Crimes*], 1559; and *Tytuły prawa majdeburskiego* [*Titles of the Magdeburg Law*], 1567)<sup>5</sup> and its momentum was reinforced with the publication of the Magdeburg *Weichbild* and the *Sachsenspiegel* by Paweł Szczerbic<sup>6</sup> and the adoption of the Polish language both in legal practice and learned discourse. The translation of the principal sources of Magdeburg-Saxon law into Polish was necessitated by the demands of legal practice. One clear sign of it was the official admission of the vernacular into the recording of criminal trials in the middle of the 16<sup>th</sup> century.<sup>7</sup> The publication of Polish manuals and then Polish translations of the sources of Magdeburg-Saxon law greatly contributed to the standardization and stabilization of the justification of judicial decisions. A similar process in towns under the sway of Old Chełmno Law (*Der Alte Kulm*) was set on foot by the publication in 1594 of the *Ius Culmense Revisum* (*Rewizja Toruńska/Gdańska*), which brought the reform measures initiated in 1552 to a comprehensive conclusion. What seems common to all these developments in the field of urban law was the triumphal march of the idea of codification under the banners of unification and modernization (though within the bounds of reason so as not to provoke a backlash of “old law is good law”). Crucial to its success was the publication and adoption of standard versions of the basic law texts.<sup>8</sup> The latter half of the 16<sup>th</sup> century was also the time when municipal court record-keeping became more and more common (as evidenced by the rise in the number of extant records).

<sup>4</sup> Cf. S. Estreicher, *Kultura prawnicza w XVI w.* [*Legal culture in the 16<sup>th</sup> century*] [in:] *Kultura staropolska. Zjazd im. J. Kochanowskiego* [*Polish Culture Until 1795: Jan Kochanowski Commemorative Conference*], Kraków 1932.

<sup>5</sup> *Ius municipale*, compiled and edited by Paweł Szczerbic, was reprinted twice, in 1610 and 1646. Cf. G.M. Kowalski, *Wstęp* [*Introduction*] [in:] Paweł Szczerbic, *Ius Municipale, to jest prawo miejskie majdeburskie nowo z łacińskiego i z niemieckiego na polski język z pilnością i wiernie przełożone* [*Ius Municipale, or the Magdeburg Municipal Law: A New and Meticulously Accurate Translation from the Latin and the German*], ed. G.M. Kowalski, Kraków 2011, p. X, note 5. The next step would be to compare Szczerbic's redaction with the text of Mikołaj Jaskier in his *Juris Municipalis Majdeburgensis Liber vulgo* (1535 and 1601).

<sup>6</sup> P. Szczerbic, *Speculum Saxonum albo prawo saskie i magdeburskie porządkiem abecadla z łacińskiego i niemieckiego* [*Speculum Saxonum, or the Saxon and Magdeburg Law in Alphabetical Order*] [translated] *from Latin and from German*, Poznań 1610; *idem*, *Ius Municipale*...

<sup>7</sup> Cf. *Księga kryminalna miasta Krakowa z lat 1554–1625* [*Book of Criminal Court Records of the City of Cracow, 1554–1625*], eds. W. Uruszczak, M. Mięka, A. Karabowicz, Kraków 2013 (Fontes Iuris Polonici, Series: “Municipal law”, vol. 1); *Księga kryminalna miasta Krakowa z lat 1589–1604* [*Book of Criminal Court Records of the City of Cracow, 1589–1604*], eds. W. Uruszczak, M. Mięka, K. Fokt, A. Karabowicz, Kraków 2016 (Fontes Iuris Polonici, Series: “Municipal law”, vol. 3).

<sup>8</sup> Cf. S. Salmonowicz, *Narodziny nowożytnej myśli kodyfikacyjnej w Europie* [*The Birth of the Modern Idea of Codification in Europe*], “Czasopismo Prawno-Historyczne” 1977, vol. 29, issue 1, pp. 77–104; W. Uruszczak, *Europejskie kodeksy prawa doby renesansu* [*European Law Codes of the Age of the Renaissance*], “Czasopismo Prawno-Historyczne” 1988, vol. 40, issue 1, pp. 59–90.

Both the pace and the character of the changes in the 16<sup>th</sup> century are unprecedented. The earlier phase began at the turn of 13<sup>th</sup> century with the arrival in Poland of the various texts of the Magdeburg-Saxon law – Legal Instructions (*Rechtsmitteilungen*) from Magdeburg and Halle, the *Weichbild*, and the *Sachsenspiegel*. Until the publication of the Polish redactions of the Magdeburg-Saxon vulgate (Bartłomiej Groicki and Paweł Szczerbic) the *Sachsenspiegel* was circulating in Poland in a multitude of differing texts, offshoots of the Wrocław version, the Sandomierz version I, the Sandomierz version II, in German and in Latin. Moreover, the institutions of law used numerous versions of the *Weichbild*. Of all the texts of Magdeburg-Saxon law produced in Poland at that time nearly forty have survived.<sup>9</sup>

The individual versions exhibit a range of variations, not only linguistic but also in matters of substance. The variegated quality of the texts of the Magdeburg-Saxon law is crowned by the two late redactions, Jan Łaski's and Mikołaj Jaskier's.<sup>10</sup> The latter, in particular, diverges from the lines of textual transmission in Poland. Jaskier, with the King's permission, chose as his archetype the *versio vulgata* that had been adopted in the German Empire, together with the so-called *Keiserglosse*. In effect, his text represents a clear break with the 14<sup>th</sup>-century Polish compilations: behind his Latin translation is an "alien" German text which he encrusted with provisions from the manuscripts of Polish provenance.<sup>11</sup> However, the abandonment of the corpus of "native" texts in favour of the vulgate and its marginal annotations did not take place on a larger scale until the publication of Groicki's treatises and Szczerbic's Polish translation.

Any attempt to reconstruct the institutions of urban law in the period predating the late 16<sup>th</sup>-century must take into account the fact that practically no two source texts of the *Weichbild* and the *Sachsenspiegel* are identical and that even minor variants may indicate differences in legal practice.<sup>12</sup> Moreover, until the publication of Jaskier's work the courts relied on different compilations of Magdeburg judgments (*ortyle*), though

<sup>9</sup> For a catalogue of extant manuscripts of the Saxon-Magdeburg law, see U.-D. Oppitz (cf. note no. 1), who relies for the most part on the list compiled earlier by Karl Gustav Homeyer. Cf. also Z. Rymaszewski, *Łacińskie teksty Landrechtu Zwierciadła Saskiego w Polsce. Versio Wratislaviensis – versio Sandomiriensis – Łaski* [Latin texts of the *Sachsenspiegel* Landrecht in Poland: *Versio Wratislaviensis – versio Sandomiriensis – Łaski*], Warszawa 1985, Table 6; M. Miłkuła, *Die Modifizierung des Erb- und Familienrechts im Magdeburger Weichbildrecht (Einführung zum Thema)* [in:] *Judiciary and Society Between Privacy and Publicity*, ed. D. Janicka, 8<sup>th</sup> Conference on Legal History in the Baltic Sea Area, 3<sup>rd</sup>–6<sup>th</sup> September, Toruń 2015.

<sup>10</sup> *Commune Incliti Poloniae regni privilegium constitutionum et indultuum publicitus decretorum approbatorumque*, ed. J. Łaski, Cracoviae MDVI. Jaskier's *opus* was published in 1535, and another edition, revised by Adam Burski and authorized by King Zygmunt III Vasa, went into print in 1602. Hence, Jaskier's text the Saxon-Magdeburg law should be treated as the canonic version in the period after 1535. M. Jaskier, *Iuris Municipalis Maideburgensis Liber vulgo Weichbild nuncupatur...* [2nd ed.] Samosci MDCII; *idem, Iuris Provincialis quo Speculum Saxonum vulgo nuncupatur Libri tres...* [2nd ed.] Samosci MDCII.

<sup>11</sup> Cf. Z. Rymaszewski, *Łacińskie teksty Landrechtu Zwierciadła Saskiego w Polsce. Jaskier – tekst główny i noty marginesowe* [Latin texts of the *Sachsenspiegel* Landrecht in Poland: *Jaskier – The Main Texts and Marginal Annotations*], Łódź 1985, p. 217.

<sup>12</sup> Z. Rymaszewski, *Łacińskie teksty...*, *Versio Wratislaviensis...*, p. 206 ff.; M. Miłkuła, *Modyfikacje łacińskich tekstów Weichbildu magdeburskiego a ewolucja prawa w średniowiecznych miastach polskich. Uwagi wstępne* [Modifications of Latin texts of the Magdeburg Weichbild and the evolution of law in medieval Polish towns: *An Introduction*] [in:] *Acta Iuridico-Historica Pilsnensia*, 2012–2013 (published 2014; ed. V. Knoll), pp. 137–152.

their importance, we may assume, declined rapidly as well after 1535, i.e. when Jaskier's gloss to the *Weichbild* and the *Sachsenspiegel* became widely available.

Regrettably, the number of critical editions of texts of German law used in Polish towns incorporated under Magdeburg law is very small. Their list includes two German-language manuscripts of the *Sachsenspiegel* and a recently published Grzegorz M. Kowalski's edition of Paweł Szczerbic translation of the Magdeburg *Weichbild*.<sup>13</sup> Even though scans of Szczerbic's printed text as well as Łaski's and Jaskier's tomes are available online, they are not easy to read, which can make research frustratingly time-consuming. The contrast with the G.M. Kowalski's carefully prepared edition, with an impressive critical apparatus, of *Ius municipale Magdeburgense* could not be greater. A great deal of his explanations illuminate not only the text in hand but also throw light on earlier redactions of the *Ius municipale*. The texts of German law used in towns incorporated under Lübeck (specially the Charter of Gdańsk)<sup>14</sup> and Chełmno Law (*Kulmer Recht*) have received more attention than the Magdeburg bunch, though still not enough. Here we find Jan Wincenty Bandtkie's edition of the Chełmno Law (unfortunately not up to modern standards),<sup>15</sup> Zygfryd Romaszewski's edition of a manuscript with a recently discovered compilation of Chełmno law,<sup>16</sup> and Polish translations of law charters of towns founded under Chełmno law.<sup>17</sup>

An indispensable element of any research project is a review of the findings and opinions concerning the provisions and legal practice of the 16<sup>th</sup>-century urban lawyers and clerks. It seems that this part of the field has in large measure been satisfactorily explored thanks to the efforts of among others Lotar Dargun, Karol Koranyi, Stanisław Estreicher, Lesław Pauli, Władysław Bojarski and Zbigniewa Naworski.<sup>18</sup>

<sup>13</sup> Manuscripts BJ 170a i 170b: *Der Sachsenspiegel aus Oppeln und Krakau*, ed. I.T. Piirainen, W. Wasen, Berlin 1996; *Der Sachsenspiegel aus der Dombibliothek in Breslau/Wrocław. Einleitung. Edition und Glossar*, ed. I.T. Piirainen, I. ten Venne, Wrocław 2003; P. Szczerbic, *Ius Municipale...*

<sup>14</sup> *Decretum civitatis Dancke. Gdański kodeks prawa lubeckiego z 1263 roku [Decretum civitatis Dancke: The Gdańsk Code of the Lübeck Law (1263)]*, ed. T. Domagała, Gdańsk 2005.

<sup>15</sup> *Ius Culmense*, ed. J.W. Bandtke, Warszawa MDCCCXIV.

<sup>16</sup> *Nieznaný spis prawa chełmińskiego z przełomu XIV i XV wieku [A newly discovered manuscript of Chełmno Law from the Late 14<sup>th</sup>-Early 15<sup>th</sup> Century]*, ed. Z. Rymaszewski, Łódź 1993.

<sup>17</sup> Cf. D. Janicka, *Wkład polskich historyków...*, pp. 64–65.

<sup>18</sup> L. Dargun, *O źródłach prawa miast polskich w wieku szesnastym. II O źródłach porządku sądowego spraw miejskich Prawa Magdeburgskiego przez Bartłomieja Groickiego [Sources of urban law of Polish towns in the 16<sup>th</sup> century: II. Sources of judicial procedure in urban matters in accordance with Bartłomiej Groicki's Magdeburg Law]*, "Rozprawy Akademii Umiejętności. Wydział Historyczno-Filozoficzny" ["Proceedings of the Academy of Arts and Sciences: Department of History and Philosophy"] 1891, vol. 25, pp. 120–156; K. Koranyi, *Johannes Cervus Tucholiensis i jego dzieła (z dziejów praw obcych i literatury prawniczej w Polsce) [Johannes Cervus Tucholiensis and his work (Chapters from the history of foreign laws and legal literature in Poland)]*, "Przewodnik Historyczno-Prawny" 1930, vol. 1, pp. 1–29; L. Pauli, *Z badań nad źródłami dzieł prawniczych Bartłomieja Groickiego [A study of the sources of Bartłomiej Groicki's legal treatises] [in:] Miscellanea iuridica złożone w darze Karolowi Koranyiemu w czterdziestolecie pracy naukowej [Miscellanea iuridica Dedicated to Karol Koranyi to Mark Forty Years of His Research Work]*, ed. K. Bukowska, Warszawa 1961, pp. 83–109; *idem*, *Jan Kirstein Cerasinus (1507–1561). Krakowski prawnik doby odrodzenia. Studium z dziejów praw obcych i literatury prawniczej w Polsce [Jan Kirstein Cerasinus (1507–1561): A Cracow jurist of the Renaissance. A Study in the History of Foreign Laws and Legal literature in Poland]*, Kraków 1961; W. Bojarski, *Speculum Saxonum and Ius Municipale jako źródła prawa w dziejach Tucholczyka [Speculum Saxonum and Ius Municipale as sources of law in the work of Johannes Cervus Tucholiensis] [in:] Studia z dawnego prawa sądowego i miejskiego [Studies in Historical and*

## 2.2. Judgments of the Magdeburg Bench (*ortyle*) and case law of High Courts of German Law in the Kingdom of Poland

Another important source of law that need to be taken into account in the study of urban law is the corpus of high court judgments.<sup>19</sup> They include the Magdeburg judgments (*ortyle*, Ger. *Urteile*), which were sometimes used by municipal courts in preference to the provisions of the *Weichbild* or the *Sachsenspiegel*, and the judgments handed down by High Courts of German Law in Poland.<sup>20</sup> The list of critical editions of this source is incomplete, but by no means small. In Germany systematic work on the compilation and editing of the Magdeburg case law (*Schöffensprüche*, or *Schöffengericht*) was initiated by Friedrich Ebel. In Poland, before the First and the Second World War, the *ortyle* were studied by among others Stanisław Estreicher. He distinguished six basic clusters of the German-language texts (each with its own trail of abbreviations and adaptations). Of those the following appeared in print. Compilation I, the earliest collection from the Brzesko Codex, was published by J.E. Böhme; Compilation II, or the *Poznań Book of Magdeburg-Meissen Law* [*Das Posener Buch des Magdeburger und Meissner Rechts*], edited by W. Maisel; Compilation IV was included in the volume *Magdeburger Fragen* edited by J.F. Behrend; and Compilation V from the Dresden MS was published by H. Wasserschleben.<sup>21</sup>

A notable contribution to the study of the *ortyle* was Emil Kałużniacki's distinction between two types of collections, systematic and non-systematic (more recently this idea was developed further by Krystyna Kamińska).<sup>22</sup> To the first type belong the *Magdeburger Fragen* used in Saxony, Silesia and Prussia,<sup>23</sup> as well as the late 15<sup>th</sup>-century Magdeburg-

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*Urban Law*], ed. S. Salmonowicz, Toruń 1990, pp. 39–56; *idem*, *Prawo rzymskie w dziełach Tucholczyka* [*Roman Law in the work of Johannes Cervus Tucholiensis*], “Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze” 1989, issue 125, pp. 7–28; *idem*, *Jan Jelonek Cervus z Tucholi. Z dziejów prawa rzymskiego w Polsce. Prawo prywatne materialne* [*Johannes Cervus of Tuchola: A Chapter in the History of Roman Law in Poland. Substantive Private Law*], Toruń 1989; W. Bojarski, Z. Naworski, *Jan Jelonek Cervus z Tucholi i jego twórczość prawnicza. Ustrój sądów i prawo procesowe* [*Johannes Cervus of Tuchola and His Legal Treatises: The Constitution of Courts and Judicial Procedure*], Toruń 1993. Cf. also D. Janicka, *Wkład polskich historyków... passim*.

<sup>19</sup> K.G. Homeyer, *Die deutschen Rechtsbücher des Mittelalters und ihrer Handschriften*, Berlin 1856, pp. 32–33.

<sup>20</sup> For a list of high courts in the Kingdom of Poland, see H. Samsonowicz, *Dzieje miast i mieszczaństwa do schyłku XV wieku* [*A history of towns and burghers until the end of the 15<sup>th</sup> century*] [in:] M. Bogucka, H. Samsonowicz, *Dzieje miast i mieszczaństwa w Polsce przedrozbiorowej* [*A History of Towns and the Urban Middle Class in Poland until 1795*], Wrocław 1986, p. 70 (Table 2).

<sup>21</sup> *Diplomatische Beiträge zur Untersuchung der Schlesischen Rechte und Geschichte*, ed. J.E. Böhme, vol. V (1770), pp. 60–61, and vol. VI (1775), pp. 90–157; *Poznańska księga prawa magdeburskiego i miśnieńskiego* [*The Poznań Book of Magdeburg-Meissen Law*], ed. W. Maisel, Wrocław 1964; *Die Magdeburger Fragen*, ed. J.F. Behrend, Berlin 1865; *Sammlung deutscher Rechtsquellen*, ed. H. Wasserschleben, vol. I, Giessen 1860, pp. 80–120.

<sup>22</sup> E. Kałużniacki, *Die polnische Recension der Magdeburger Urtheile und die einschlägigen deutschen, lateinischen und czechischen Sammlungen*, “Akademie der Wissenschaften. Philosophisch-Historische Klasse. Sitzungsberichte” 1886, vol. 111, p. 321; K. Kamińska, *Lokacje miast...*, pp. 65–66.

<sup>23</sup> According to *Repertorium*, or the main bibliographical guide to the historical sources of the German Middle Ages, only one of the compilations of the *Magdeburger Fragen* can be called systematic (it is the compilation published by Jacob Friedrich Behrend in 1865); other compilations are classified as non-system-

-Wrocław Code that was used in Silesia.<sup>24</sup> We have plenty of critical editions of sources for various Silesian towns, chief among them Friedrich Ebel's complete edition of the *ortyle* of the Magdeburg Bench for Wrocław covering a period down to the end of the 16<sup>th</sup> century.<sup>25</sup> Together they make up an ample (though not complete) collection of legal texts from Silesia, which, though indebted to a common source, often differ from one another (they adapt the received version of the archetype for their own purposes and/or produce their own combinations of current instructions [*Rechtsmitteilungen*], *ortyle* and provisions of the *Sachsenspiegel*). They need not be the work of many (anonymous) hands. So Nikolaus Wurm, glossographer of the *Sachsenspiegel* and the Magdeburg *Weichbild*, is believed to be the author of the *Liegnitzer Stadtrechtsbuch*. German scholars attribute the late 15<sup>th</sup>-century compilation of laws from Wrocław *Der Rechte Weg* to Kaspar Popplau.<sup>26</sup> The text of *Das Liegnitzer Stadtrechtsbuch* [*The Book of Urban Law of Legnica*] was published by Hans-Jörg. Leuchte; *Der Rechte Weg* [*The Right Way*] by Friedrich Ebel.<sup>27</sup> Other source texts that have been published include books of urban law of Głogów (*Das Glogauer Rechtsbuch* of 1386 based mainly on customary law [*Landrecht*] and the feudal law section of the *Sachsenspiegel*),<sup>28</sup> Środa (*Das Neumarkter Rechtsbuch* from the early 16<sup>th</sup> century with extracts from the *Sachsenspiegel* and legal instructions from Halle from 1235),<sup>29</sup> and Zgorzelec (*Das Görlitzer Rechtsbuch* from early 14<sup>th</sup> century).<sup>30</sup>

Meanwhile (i.e. in the early 15<sup>th</sup> century) in Prussia Walter Ekhardi, town clerk of Toruń (Thorn), produced a compilation of the Magdeburg Law in nine volumes. This hefty compendium, which included *Magdeburger Fragen*, Old Chełmno Law (*Der*

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atic (they include the Polish translation of the Magdeburg judgments, an early 16<sup>th</sup>-century alphabetic compilation edited by Hermann Wasserschleben (*Deutsche Rechtsquellen des Mittelalters*, Leipzig 1892, pp. 1–144 [2<sup>nd</sup> ed., Aalen 1969]; and *Schöffensprüche [für] Thorn* [in:] *Geschichtequellen des deutschen Mittelalters*, [http://www.geschichtsquellen.de/repOpus\\_04220.html](http://www.geschichtsquellen.de/repOpus_04220.html) (accessed: 27 January 2016). For the sake of clarity and to avoid misunderstandings it is indeed better to use the designation 'systematic' solely with reference to the compilation edited by J.H. Behrend (the word is after all mentioned in the full title of that set of texts).

<sup>24</sup> Cf. Note no. 21. The compilation *Das Magdeburgisch-Breslauer Schöffengericht aus der Mitte d. XIV. Jahrhundert* edited by Paul Laband (Berlin 1863) is non-systematic. However, the one edited by Friedrich Ebel is not (cf. *idem*, *Magdeburger Recht*, Bd. 2: *Rechtsmitteilungen und Rechtssprüche für Breslau*, Teil 1: *Die Quellen von 1261 bis 1452*, ed. F. Ebel, Köln–Weimar–Wien 1995).

<sup>25</sup> *Magdeburger Recht*, Bd. 2: *Rechtsmitteilungen* [...], Teil 2: *Die Quellen von 1453 bis zum Ende des 16. Jahrhunderts*, ed. F. Ebel, Köln–Weimar–Wien 1989 [1995].

<sup>26</sup> W. Carls, *Rechtsquellen Sächsisch-magdeburgischen Rechts* [in:] I. Bily, W. Carls, K. Gönczi, *Sächsisch-magdeburgisches Recht in Polen. Untersuchungen zur Geschichte des Rechts und seiner Sprache*, Berlin–Boston 2011, pp. 88–89, 101.

<sup>27</sup> H.-J. Leuchte, *Das Liegnitzer Stadtrechtsbuch des Nikolaus Wurm. Hintergrund, Überlieferung und Edition eines schlesischen Rechtsdenkmals* [in:] *Quellen und Darstellungen zur schlesischen Geschichte*, 25, Sigmaringen 1990; F. Ebel, *Der Rechte Weg. Ein Breslauer Rechtsbuch des 15. Jahrhunderts*, 2 vols., Köln 2000.

<sup>28</sup> The text of the *Landrecht* from the Leipzig MS in *Sammlung deutscher Rechtsquellen*, vol. 1, ed. H. Wasserschleben, Berlin 1860 [2<sup>nd</sup> ed., Aalen 1969], pp. 1–79.

<sup>29</sup> *Das Neumarkter Rechtsbuch und andere Neumarkter Rechtsquelle*, ed. O. Meinardus [in:] *Darstellungen und Quellen zur Schlesischen Geschichte*, vol. 2, Breslau 1906, pp. 91–203.

<sup>30</sup> C.G. Homeyer, *Des Sachsenspiegels zweiter Theil nebst den verwandten Rechtsbüchern*, vol. II, Berlin 1844, pp. 75–158, 177–226; *Auctor vetus de beneficiis*, vol. II: *Archetypus und Görlitzer Rechtsbuch*, ed. K.A. Eckhardt [in:] *Monumenta Germaniae Historica. Fontes iuris Germaniae, Nova Series*, 2/2, 1966, pp. 21–133.

*Alte Kulm* based on a systematic exposition of the Magdeburg-Wrocław law), a glossed *Sachsenspiegel* and the *Weichbild*), was redacted and published in Königsberg in 1547 (or, alternately 1574) by Albert Poelmann (hence it was usually referred to as *Poelmannsche Distinktionen*).<sup>31</sup> Neither of the two sources has yet been critically edited.<sup>32</sup>

However, of relatively greater importance for the study of the history of Magdeburg law in the medieval Kingdom of Poland and Poland under the Jagiellons are the non-systematic collections of *ortyle*, grouped by Stanisław Estreicher into six basic sets. The most popular of them was the Cracow-Wrocław compilation, produced in Cracow at the end of the 14<sup>th</sup> century and used in Małopolska and, to a lesser extent, in Silesia, Saxony and Bohemia. In Estreicher's typology it was Compilation VI, a collection which should be regarded as fully comprehensive in so far as its stock of *ortyle* was continually updated. Stanisław Estreicher's analyses show that it was continually amended, amplified (latest judgments from the Cracow High Court were added), abridged, systematized.<sup>33</sup> The German-language version of the compilation with the text of over 260 judgments is kept at the Jagiellonian Library (MS BJ 399), while the Latin version has been preserved in the Pauli Manuscript (BJ 4405). Estreicher believes that the numerous Polish glosses in the latter manuscript echo the text of a Polish translation of the *ortyle*, and provide intriguing insights into the workings of the law in the 14<sup>th</sup> and 15<sup>th</sup> century.<sup>34</sup> The Polish translations were made in c. 1440–1460 (the original has not survived; the earliest extant copy MS Oss. 50 dates back to c. 1490). They were reproduced – as an interesting sample of late medieval Polish – in the fifth volume of Michał Wiszniewski's *History of Polish Literature*<sup>35</sup> and in Waław Maciejowski's *History of Slavic Legislation*.<sup>36</sup> Also Antoni Kalina published and analyzed from the philological perspective a collection of about fifty Polish-language Magdeburg *ortyle* from c. 1500.<sup>37</sup> In his view, their compiler attempted to order (systematize) them in accordance with their subject matter. In the postwar years one more item was added to this bibliography, Józef Reczek and Waław Twardzik's excellent critical edition of the earliest extant *ortyle* manuscript MS Oss. 50.<sup>38</sup> Its Polish text follows Compilation VI, i.e. the most comprehensive collection of

<sup>31</sup> A. Poelmann, *Die IX Bücher des Magdeburgischen oder sechssischen Rechten*, Königsberg 1574; *Die neun Bücher Magdeburger Rechts* [in:] *Geschichtequellen des deutschen Mittelalters*, [http://www.geschichtequellen.de/repOpus\\_00727.html](http://www.geschichtequellen.de/repOpus_00727.html) (accessed: 17 January 2016).

<sup>32</sup> W. Carls, *Rechtsquellen...*, pp. 95–97.

<sup>33</sup> S. Estreicher, *Nieznane teksty ortyli magdeburskich* [*Recently discovered texts of the Magdeburg ortyle*] [in:] *Studia staropolskie. Księga ku czci Aleksandra Brücknera* [*Old Polish Studies: A Festschrift in Honour of Aleksander Brückner*], Kraków 1928, p. 113.

<sup>34</sup> *Ibidem*, p. 118 ff.

<sup>35</sup> M. Wiszniewski, *Historia literatury polskiej* [*History of Polish Literature*], vol. 5, Kraków 1843, pp. 190–322. The author used MS No. 223 (dated 1501) from the Chapter Library of Wawel Cathedral. Experts find Wiszniewski's editorship sloppy (the transliteration is often inaccurate).

<sup>36</sup> His edition does not meet modern editorial standards (omissions). He used another manuscript from the turn of the 15<sup>th</sup> century, BN 12575 II Pol., also known as the Maciejowski MS.

<sup>37</sup> A. Kalina, *Artykuły prawa magdeburskiego z rękopisu ok. 1500 r.* [*Articles of Magdeburg Law from a manuscript dated c. 1500*], "Rozprawy Akademii Umiejętności. Wydział Filologiczny" 1880, vol. 7, pp. 299–318.

<sup>38</sup> *Najstarsze staropolskie tłumaczenie ortyli magdeburskich* [*The Earliest Polish Translation of the Magdeburg ortyle*], 1–3, eds. J. Reczek, W. Twardzik, Warszawa 1970.



the Magdeburg judgements.<sup>39</sup> The editing and publication of the texts of Compilation VI from the Latin manuscripts BJ 399 i BJ 4405 is a task that needs to be completed.

Legal instructions sent out by high courts of German law located in the Kingdom of Poland played an important role as the Magdeburg *ortyle*. The latter were to be replaced by instructions drafted by Polish courts, with the Higher Court at Wawel acting as final arbiter in disputes concerning urban law.<sup>40</sup> In fact, Polish towns kept up the link with Magdeburg Bench until the 16<sup>th</sup> century and used their instructions alongside those that were produced by high courts in Poland. An ample collection of *ortyle* issued by the high courts of Wielkopolska was edited and published by Witold Maisel.<sup>41</sup> Maisel's work has provided a valuable enhancement of Theodor Goerlitz's critical edition of the *ortyle* issued by the Magdeburg Bench for the towns of Wielkopolska.<sup>42</sup> For Małopolska of primary importance were the pronouncements of the Higher Court at Wawel and the Court of Six Towns (Kraków, Kazimierz, Wieliczka, Olkusz, Sącz, Bochnia). The first two volumes of the *decreta* of the Higher Court of German law at the Royal Castle in Cracow (1456–1511) are now available in an excellent critical edition prepared by Ludwik Łysiak and Karin Nehlsen-von Stryk in the series *Ius Commune* published under the auspices of the Max-Planck Institut für Europäische Rechtsgeschichte in Frankfurt am Main.<sup>43</sup> The publication of the remaining books of the Higher Court *decreta* from the

<sup>39</sup> The 19<sup>th</sup>-century legacy includes also a valuable, though not quite up to the mark, incomplete edition of the German-language *ortyle* from Pilzno (*Kodeks pilzneński ortylów magdeburskich* [*The Book of Magdeburg ortyle from Pilzno*], ed. W. Wisłocki, "Rozprawy Akademii Umiejętności" 1874, vol. 2, pp. 125–205). Michał Bobrzyński's facsimile edition of the *ortyle* is much inferior to modern scanning techniques (*Ortyle magdeburskie*, ed. M. Bobrzyński, Poznań 1876).

<sup>40</sup> L. Łysiak, *Ius supremum Maydeburgese castris Cracoviensis 1356–1794. Organisation, Tätigkeit und Stellung des Krakauer Oberhofs in der Rechtsprechung Altpolens*, Frankfurt am Main 1990, p. 5 ff.

<sup>41</sup> *Ortyle sądów wyższych miast wielkopolskich z XV i XVI w.* [*Ortyle Issued by the High Courts of the Towns of Wielkopolska in the 15<sup>th</sup> and 16<sup>th</sup> Century*], ed. W. Maisel, Wrocław 1959; *Ortyle sądu wyższego w Poznaniu z XVI i XVII w.* [*Ortyle issued by the High Court of Poznań in the 15<sup>th</sup> and 16<sup>th</sup> century*], ed. W. Maisel, "Studia i Materiały do dziejów Wielkopolski i Pomorza" 1966, vol. 9, issue 1, pp. 123–136. Cf. also J. Wyrozumski, *Pouczenie Kalisza dla Wielunia o administracji miasta z 1502 r. (Z dziejów ustroju miejskiego w Polsce średniowiecznej)* [*Instructions from Kalisz for Wieluń on town administration from 1501 (A Chapter in the History of Urban Constitutions in Medieval Poland)*], "Czasopismo Prawno-Historyczne" 1970, vol. 22, issue 1, pp. 185–193; R. Szczygieł, *Zainteresowanie kaliską procedurą wyboru rady miejskiej we Lwowie* [*The interest shown by the Lwów Municipal Council in the election procedure of Kalisz*] [in: *In tempore belli et pacis. Ludzie – Miejsca – Przedmioty. Księga pamiątkowa dedykowana prof. dr. hab. Janowi Szymczakowi w 65-lecie urodzin i 40-lecie pracy naukowo-dydaktycznej* [*In tempore belli et pacis. People – Places – Objects: A Festschrift Dedicated to Professor Jan Szymczak on his 65<sup>th</sup> Birthday Anniversary and 40 Years of Academic and Teaching Career*], eds. T. Grabarczyk, A. Kowalska-Pietrzak, T. Nowak, Warszawa 2011, pp. 469–475.

<sup>42</sup> *Magdeburger Schöffensprüche für die Hansestadt Posen und andere Städte des Wartelandes*, ed. Th. Goerlitz, "Die Magdeburger Schöffensprüche und Rechtsmitteilungen", Reihe VIII: Wartheland, vol. 1, Stuttgart–Berlin 1944.

<sup>43</sup> *Decreta iuris supremi Magdeburgensis castris Cracoviensis. Die Rechtssprüche des Oberhofs des deutschen Recht auf der Burg zu Krakau 1456–1481*, vol. 2: 1481–1511, eds. L. Łysiak, K. Nehlsen-von Stryk, Frankfurt am Main 1995, 1997. Cf. also the reviews by J. Matuszewski and J. Wyrozumski, *O Sądzie Najwyższym Prawa Niemieckiego na Zamku Królewskim. Dwugłos w związku z pracą Ludwika Łysiaka...* [*The Higher Court of German Law at the Royal Castle in Cracow: Two assessments of Ludwik Łysiak...*], "Czasopismo Prawno-Historyczne" 1992, vol. 44, issue 1–2, pp. 169–173, 173–177. However, this is not the only edition of sources from the legacy of Polish high courts of German law. The oldest extant book of documents from Cracow, *Acta: Akta sądu prawa niemieckiego na Wawelu (Najstarsza księga prawa niemieckiego*

16<sup>th</sup> century would require the editing of five manuscripts (ANKr. SWPM I-22 – I-26), and two books of acts of the Court of Six Towns (SWPM II-1, SWPM II-2). There are more records of high courts from Małopolska that have survived in manuscript, e.g. the books of acts from Biecz and Nowy Sącz (ANKr., The Municipal Book of Biecz 1–3 and 8; and the Municipal Book of Sącz 237). However, according to Ludwik Łysiak, they contain mainly documentary records rather than norm-setting judgments.<sup>44</sup>

### 2.3. Royal, parliamentary and town owners' legislation

Another normative source where issues of urban life are dealt with is legislation enacted by the king, the Sejm and individual town owners.<sup>45</sup> In so far as royal legislation is a fundamental source not only for the history of urban law, it has been the focus of attention for researchers and editors for a very long time. The fruit of their efforts are comprehensive editions of privileges for among others Elbląg, Kalisz, Kraków (with Kazimierz and Kleparz that used to be towns in tier own rights), Krosno, Lublin, Lwów, Płock, Poznań, Radom, Warszawa, and Wieliczka.<sup>46</sup> Also town owners introduced various local

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*na zamku krakowskim [Acta: Acts of the Court of German Law at Wawel (The Oldest Book of German Law from Cracow Castle)],* edited by Abdon Kłodziński, was published in in 1936 (vol. 10 of the series “Archiwum Komisji Prawniczej”), while the Acts of the High Court (of *Lehnrecht*) at Gródek Goleski (with jurisdiction over the estates of the Monastery at Tyniec) were published in 1889 (*Akta sądu leńskiego wyższego w Gródku Goleskim 1405–1546*, ed. F. Piekosiński [in:] *Starodawne Prawa Polskiego Pomniki [Ancient Monuments of Polish Law]*, vol. 9, Kraków 1889). In either case the source material consists of documentary records rather than judgments or instructions made to settle a concrete disputes and to set a precedent.

<sup>44</sup> L. Łysiak, *Sąd wyższy prawa niemieckiego w Bieczu [The High Court of German Law at Biecz]*, “Czasopismo Prawno-Historyczne” 1981, vol. 33, issue 1, pp. 1–19; *idem*, *Sąd wyższy prawa niemieckiego w grodzie sądeckim [The High Court of German Law at the Castle of Sącz/Sandez]*, “Czasopismo Prawno-Historyczne” 1984, vol. 36, issue 1, pp. 29–45.

<sup>45</sup> Cf. Note no. 3; M. Mikuła, *Prawodawstwo dla miast z wczesnego okresu polskiego parlamentaryzmu (do 1468 r.) [Legislation on towns from the early phase of Polish parliamentarianism (until 1468)]*, “Krakowskie Studia z Historii Państwa i Prawa” 2014, vol. 7, issue 1, pp. 133–145.

<sup>46</sup> *Prawa i przywileje Staroego i Nowego Miasta Elbląga w Średniowieczu [Laws and Privileges of Old and New Town of Elbląg in the Middle Ages]*, eds. Z.H. Nowak, J. Tandecki, Gdańsk 1998; *Przywileje Kalisza [The privileges of Kalisz]*, ed. W. Maisel, “Rocznik Kaliski” [“The Kalisz Yearbook”] 1973, vol. 6, pp. 263–362; *Kodeks dyplomatyczny miasta Krakowa 1257–1506 [The Diplomatic Codex of the City of Cracow 1257–1506]*, Part 1, ed. F. Piekosiński [in:] *Monumenta Medii Aevi Historica*, vol. 5, Kraków 1879; *Prawa, przywileje i statuta miasta Krakowa (1507–1795) [Laws, Privileges and Statutes of the City of Cracow (1507–1795)]*, vol. 1, issues 1–2 (1507–1586), ed. F. Piekosiński, Kraków 1885; *Najstarszy zbiór przywilejów i wilkierzy miasta Krakowa [The Earliest Collection of Privileges and Municipal Statutes of the City of Cracow]*, ed. S. Estreicher, Kraków 1936; *Dokumenty królewskie dla miasta Krosna [Royal Documents for Krosno]*, ed. J. Gancarski, Krosno 2013; *Materiały do historii miasta Lublina 1317–1792 [Sources to the History of Lublin]*, ed. J. Riabinin, Lublin 1937 (mostly digests); *Привілеї національних громад міста Львова (XIV–XVIII ст.) [Privileges of Ethnic Communities of the City of Lwów (14<sup>th</sup>–18<sup>th</sup> c.)]*, ed. M. Kapral, Lviv 2000; *Привілеї міста Львова (XIV–XVIII ст.) [Privileges of the City of Lwów (14<sup>th</sup>–18<sup>th</sup> c.)]*, ed. M. Kapral, Lviv 1998; *Zbiór dokumentów i listów miasta Płocka [Selected Documents and Letters of the Town of Płock]*, ed. S.M. Szacherska, vol 1: 1065–1495, Warszawa 1975; vol. 2: 1495–1586, Warszawa 1987; *Przywileje miasta Poznania XIII–XVIII w. [Privileges of the City of Poznań (13<sup>th</sup>–18<sup>th</sup> c.)]*, eds. W. Maisel, A. Gašiorowski, Poznań 1994; *Dokumenty miasta Radomia z lat 1444–1611 [Documents of the Town of Radom, 1444–1611]*, ed. B. Wyrozumka, “Biuletyn Kwartalny Radomskiego Towarzystwa Naukowego” 1984, vol. 21, issue 4 [published 1987], pp. 16–74; *Przywileje królewskiego stołecznego miasta Warszawy 1376–1772 [Privileges of the Royal Capital City of Warsaw, 1376–1772]*, ed. T. Wierzbowski, Warszawa 1913; *Codex diplomaticus*

laws and regulations in towns under their dominion. Compiling a comprehensive survey of the various normative sources is an objective that could hardly be accomplished without the creation of a digital repository.

#### 2.4. *Wilkierze*

The last category of normative sources to be considered in connection with urban law are municipal statutes (Pol. *wilkierze*, Ger. *Willkür*) and guild statutes. The acts and statutes can be classified into two groups, those dealing with the economy, trade and the guilds, and those concerned with the law, local government and administration. In the case of economic and guild statutes a great deal of source texts have already been made available in print. The critical editions of charters and statutes from Cracow, Kazimierz and Kleparz (until 1696), as well as Lublin, Lwów, Poznań and Toruń provide ample insights into the legislative machinery of the bigger cities and towns. Similarly, while the Acts (*Lauda*) of Wojnicz and the statutes from Biecz and Konin enable us to get a view of the regulations of medium-sized urban communities, the editions of the *wilkierze* from Czchów Łowicz, Nowy Targ, Przemyśl, Wadowice and Wojnicz do the same for towns at the other end of the spectrum.<sup>47</sup>

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*Vieliciensis. Kodeks dyplomatyczny wielicki* [*The Diplomatic Codex of Wieliczka*], ed. A. Rudyński, Lwów 1872.

<sup>47</sup> The bibliography list in note no. 46 could be expanded to include T. Lutman, *Dwa nieznanne akta cechowe bieckie z w. XVI* [*Two recently discovered 15<sup>th</sup> century guild records*], “Rocznik Zakładu Narodowego im. Ossolińskich” 1927–1928, vols. I–II, pp. 385–398; *Statuty i przywileje cechów bydgoskich z lat 1434–1770* [*Statutes and Privileges of the Bydgoszcz Guilds, 1434–1770*], eds. T. Esman, Z. Guldon, Bydgoszcz 1963; *Statut cechu piekarzy pieczywa ciemnego Starego Miasta Elbląga z 1421 roku* [*Charter of the Brown-Bakers’ (Schwarzbäcker) Guild of the Old Town of Elbląg (Elbing) from the Year 1421*], ed. D. Kaczor, “Rocznik Elbląski” 2004, vol. 19, pp. 161–169; *Trzy statuty elbląskich cechów rzemiosł spożywczych z XVI–XVII w.* [*Three Charters of the food-trade guilds from the 16<sup>th</sup>–17<sup>th</sup> century*], ed. D. Kaczor, “Rocznik Elbląski” 2000, vol. 17, pp. 183–201; *Statuty miasta Kalisza z XVI–XVIII w.* [*Statutes of the Kalisz from the 16<sup>th</sup>–18<sup>th</sup> century*], ed. W. Maisel, “Rocznik Kaliski” 1972, vol. 5, pp. 191–300; *Statuty miasta Konina z XVI–XVIII wieku* [*Statutes of the Konin from the 16<sup>th</sup>–18<sup>th</sup> century*], ed. W. Maisel, “Rocznik Wielkopolski Wschodniej” 1976, vol. 4, pp. 157–173; *Statuty miasta Łowicza 1375–1998* [*Statutes of Łowicz, 1375–1998*], Bydgoszcz 1998; *Wilkierze poznańskie. Część II – handel, rzemiosło i rolnictwo* [*The wilkierze of Poznań. Part II: Trade, craft guilds and agriculture*], ed. W. Maisel [in:] *Pomniki Prawa Polskiego* [*Monuments of Polish Law*] (Series II), Section III: *Municipal Law*, ed. A. Vetulani, Wrocław–Warszawa–Kraków 1968; *Statuty i wilkierze poznańskich rzemiosł budowlanych w okresie staropolskim* [*Statutes and wilkierze of the Poznań building trades (from the Middle Ages until 1783)*], ed. J. Wiesiołowski, “Kronika Miasta Poznania” 1998, no. 1, pp. 7–69; *Statuty cechu piwowarów* [*Statutes of the Brewers’ Guild*], eds. W. Karkucińska, J. Wiesiołowski, “Kronika Miasta Poznania” 2000, no. 4, pp. 7–28; *Statuty i wilkierze złotników poznańskich* [*Statutes and wilkierze of the Poznań goldsmiths*], ed. J. Wiesiołowski, “Kronika Miasta Poznania” 2000, no. 1, pp. 223–263; *Statut cechu złotników, malarzy i konwisarzy przemyskich potwierdzony 6 października 1625 roku* [*Charter of the Goldsmiths’, Painters’, and Tinsplate Makers’ Guild of Przemyśl, confirmed on 6 October 1625*], ed. V. Aleksandrovič, “Rocznik Historyczno-Archiwalny” 1997, vol. 12 [published 1998], pp. 3–16; *Toruńskie bractwo czeladnicze szmuklerzy i jego statut z 1739 r.* [*The Association of Journeymen Drapers and its charter from 1739*], ed. J. Tandecki, “Rocznik Toruński” 1996, vol. 23, pp. 123–132; *Statuty toruńskiego rzemiosła artystycznego i budowlanego z XVI–XVIII w.* [*Statutes of the Craft and Building Trades of Toruń from the 16<sup>th</sup>–18<sup>th</sup> Century*], eds. B. Dybaś, J. Tandecki, M. Farbiszewski, Warszawa–Toruń 1990; *Statuty toruńskiego cechu krawców polskich z połowy XVIII w.* [*Statutes of the Polish Tailors’ Guild of Toruń (c. mid-18<sup>th</sup> century)*] ed. J. Tandecki, “Rocznik Toruński” 1990, vol. 19, pp. 255–270; *Lauda miasta*

Looking back on the steady growth of editions of documents of urban history (*wilkierze* and statutes) we may hope that this category of sources will continue to be published. Though highly welcome, this development is not without a blemish. The reprinted texts often see the light of day in periodicals focused on local history or desultory publications about the guilds in connection with various aspects of economic, social or religious life. In short, the source material is out, but scattered and not always easy to access. The problem can be solved by setting up a repository of the *wilkierze* (statutes). A practical example of how it can look like is the appendix to Marcin Starzyński's book on the Cracow City Council.<sup>48</sup> The statutes that deal with matters of government and administration or points of private law are much less common than those dealing with the economy. The former have usually been published together with regulations concerning economy and trade. The number of *wilkierze* that focus on matters of law and legal procedure in general is small,<sup>49</sup> nonetheless I see no reason why they should not be covered by the proposed repository.

### 3. The need for more critical editions and the methodology of editing normative sources

#### 3.1. Proposals of new editions

As the foregoing overview shows the deficit of critical editions of basic sources of the Saxon-Magdeburg law has not been solved. It is so even though as far back as 1959 Zdzisław Kaczmarczyk in the introduction to his edition of the *ortyle* of the towns of

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*Wojnicza 1575–1801* [Lauda (Acts) of *Wojnicz 1575–1801*] (Polish translation from Latin), transl. J. Szymański, "Zeszyty Wojnickie" 1994, vol. 6, no. 4/5, pp. 10–18.

<sup>48</sup> M. Starzyński, *Krakowska rada miejska w średniowieczu* [*The Cracow City Council in the Middle Ages*], Kraków 2010, Appendix II.

<sup>49</sup> The lists in notes no. 46 and 47 can be extended with the following items: *Wilkierze miasta Chodzieży z XVI w.* [*The 16<sup>th</sup>-century wilkierze of Chodzież*], ed. W. Maisel, "Studia i Materiały do Dziejów Wielkopolski i Pomorza" 1977, vol. 12, issue 2, pp. 175–182; M. Mikuła, *O reformie prawa miejskiego w XVI wieku. Ciężkowicka uchwała o prawie prywatnym i administracji* [*Reforms of municipal law in the 16<sup>th</sup> century: A statute concerning private law and administration adopted by the Municipality of Ciężkowice*], "Krakowskie Studia z Historii Państwa i Prawa 2013", vol. 6, issue 3, pp. 229–245; *Uchwała albo porządek postanowienia artykułów, wedle których opisania mieszczanie i obywatele miasta Liska prawować się i obchodzić mają* [1602 r.] [*A statute, or the order of adopting provisions which, in their written form, the burgers and citizens of Lesko are to follow in their litigation and mutual transactions (1602)*] [in:] A. Fastchnat, *Dzieje Leska do 1772 roku* [*A History of Lesko until 1772*], Rzeszów 1988; *Lauda lubelskie dotyczące archiwum miejskiego* [Lauda (Acts) concerning the Lublin town archives], ed. M. Trojanowska, "Krakowski Rocznik Archiwalny" 2003, vol. 9, pp. 218–226; *Wilkierze poznańskie. Część I. Administracja i sądownictwo* [*The wilkierze of Poznań, Part I: Municipal administration and the courts*], ed. W. Maisel [in:] *Pomniki Prawa Polskiego* [Monuments of Polish Law] (Series II) Section III: *Municipal Law*, Part 1, ed. A. Vetulani, Wrocław–Warszawa–Kraków 1966; *Wilkierz Starogardu z 1634 roku* [*The 1634 wilkierz of Starogard/Stargard*], transl. and ed. J. Milewski, "Kociewski Magazyn Regionalny" 1992, issue 10, pp. 8–18.

Wielkopolska outlined a plan of action.<sup>50</sup> He gave top priority to the publication of the *ortyle*, to be followed by the *Sachsenspiegel* from MS BJ 168 (used by the Higher Court of German Law at the Royal Castle of Wawel) alongside the text of Jan Łaski's redaction, then the *Weichbild*,<sup>51</sup> the town incorporation charters (*lokacje*), records of courts of feudal law (*Lehnrecht*), acts of the Commissions *boni ordinis* (instituted in 1764). So far only a few objectives of this ambitious programme have been accomplished. Chief among them is the outstanding editorial work of Witold Maisel to whom we owe the publication of the corpus of basic sources of urban law from Wielkopolska. It includes the *Poznań Book of Magdeburg-Meissen Law*, the *ortyle* of the Wielkopolska high courts, *wilkierze* and guild charters of Poznań, Kalisz and Konin as well as royal privileges for the biggest towns of Wielkopolska. Together with the sejm legislation (*konstytucje*) concerning urban affairs that collection constitutes a pool of basic normative acts large enough for research into the history of urban law in Wielkopolska. The critical editions of sources from Małopolska are more numerous, but none of the large-scale projects has been completed. So for example Franciszek Piekosiński's edition of legal documents of Kraków, Kazimierz and Kleparz came to a halt at the year 1696. There is not much material available in print from Ruthenian Voivodships, although the recent publication of the *wilkierze* of the city of Lwów together with the records of the Municipal Council in the series *Monumenta Leopolitana/Історичні пам'ятки Львова* is an impressive contribution. The Chełmno Law had its own peculiarities, which were tidied up by the end of the 16<sup>th</sup> century in the *Ius Culmense Revisum*. In this case, the researcher can look up the basic text, although most of it has not been properly vetted.<sup>52</sup> The *wilkierze* of the Prussian towns, especially in the earlier phase of their history, are underpinned by an idea of the urban community that can be, in some ways, different from that to be found elsewhere. Most importantly, a great deal of the Prussian *wilkierze* have been made available for research, including some handy collections and studies by Tadeusz Maciejewski.<sup>53</sup>

<sup>50</sup> Z. Kaczmarczyk, *Introduction to 'Ortyle sądów wyższych miast wielkopolskich z XV i XVI w. [The ortyle of high courts of the towns of Wielkopolska (16<sup>th</sup> and 17<sup>th</sup> century)]*, ed. W. Maisel [in:] *Pomniki Prawa Polskiego [Monuments of Polish Law]* (Series II), ed. A. Vetulani, Section III: *Municipal Law*, Part 1, ed. Z. Kaczmarczyk, vol. 1, Wrocław 1959, p. x.

<sup>51</sup> Zdzisław Kaczmarczyk does not commit himself when it comes the question about the form in which the *Weichbild* was to be published (*ibidem*, s. IX). The editors of a critical edition which is now being prepared have decided to include the text of each of the extant 14<sup>th</sup> and 15<sup>th</sup> century manuscripts, and supplement them with a reprint of the version redacted by Jan Łaski. As far as normative texts are concerned it seems right to follow in the footsteps of the editors of the Statutes of Kazimierz the Great, the Statutes of Warka and the Statutes/Privileges of Nieszawa in the series *Archiwum Komisji Prawniczej* published under the auspices of the Polish Academy of Arts Sciences in Cracow in 1895–1938.

<sup>52</sup> D. Janicka, *Wkład polskich historyków prawa...*

<sup>53</sup> Cf. T. Maciejewski, *Zbiory wilkierzy w miastach państwa zakonnego do 1454 r. i Prus w sprawach o nieruchomości miejskie XV–XVIII w. [Collected 'Wilkierze' Concerning Disputes about Urban Property in Towns of the State of the Teutonic Order until 1454 and in Prussia in the 15<sup>th</sup>–18<sup>th</sup> Century]*, Warszawa 1989; *idem*, *Prawo sądowe w ustawodawstwie miasta Gdańska w XVIII wieku [Civil, Criminal and Procedural Law in the Legislation of the City of Gdańsk in the 18<sup>th</sup> Century]*, Wrocław 1984; *idem*, *Zbiory wilkierzy w miastach państwa zakonnego do 1454 r. i Prus Królewskich lokowanych na prawie chełmińskim [Collected 'Wilkierze' from Towns of the State of the Teutonic Order until 1454 and Towns of Royal Prussia Incorporated under Chełmno Law]*, Gdańsk 1989; *idem*, *Wilkierz królewskiego miasta Tczewa [Ger. Die Willkür der Stadt Dirschau]*, Gdańsk 1994; *idem*, *Wilkierze miast pruskich lokowanych na prawie lubeckim (do 1454 roku) [The wilkierze of Prussian towns incorporated under Lübeck law (until 1454)]*, "Studia Bał-

The presence of two types of German law in Polish towns in the Middle Ages and the early modern period – the Magdeburg law and the Chełmno law (Kulmer Recht) – is reflected in the character of the normative sources produced in their spheres of influence. Consequently, my reflections are focused exclusively on the sources of the Magdeburg law. In this area the Zdzisław Kaczmarczyk's project has lost little of its relevance; or, to be frank, it has not been carried out. Drawing on his proposal, I would like to suggest starting work on critical editions of the following sources dating back to the time prior to the end of the 16<sup>th</sup> century in that order:

- 1) the Magdeburg *Weichbild* – German and Latin manuscripts used in Poland, the text of Jan Łaski's redaction and Mikołaj Jaskier's printed version;
- 2) Legal Instructions (*Rechtsmitteilungen*) from Magdeburg for towns in the Kingdom of Poland;
- 3) the *Sachsenspiegel* – texts used in Poland, (*versio Vratislaviensis*, *versio Sandomiriensis*, Łaski, Jaskier, Szczerbic);
- 4) building a repertory of already published urban *wilkierze* (*Willkür*) promulgated in the towns of Małopolska;
- 5) building a repertory of unpublished urban *wilkierze* (*Willkür*) promulgated in the towns of Małopolska and preparing their critical editions;
- 6) building a repertory of royal and town owners' legislation with normative content;
- 7) continuing work on the editing and publishing of the legislation of the Higher Court of German Law at Wawel.

Ad 1. For the past years the author of this article has been studying the Magdeburg *Weichbild* and is now convinced that until 1535, at least nominally, it was a source of greater importance than the *Sachsenspiegel*.<sup>54</sup> The courts used the *Weichbild* jointly with the Magdeburg *ortyle*, also taking into consideration urban *wilkierze* and local customary law. That provided a solid enough normative base to make the *Sachsenspiegel* redundant. A qualitative change came with the appearance of Mikołaj Jaskier's *Ius municipalis Maideburgensis*, based on the *Weichbild* vulgate – a simpler, uncluttered alternative to the texts it replaced. Furthermore, the position of the Magdeburg *ortyle* was

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tyckie. Historia” 1996, vol. 1, pp. 119–136; *idem*, *Wilkierze miasta Torunia* [Ger. *Willkür der Stadt Thorn*], Poznań 1997; *idem*, *Wilkierz gdański z czasów krzyżackich (1435–1448)* [Ger. *Danziger Willkür aus der Zeit des Deutschen Ordens (1435–1448)*] [in:] *Szlachta, starostowie, zaciężni* [The Gentry, Starostas and Mercenaries], ed. B. Śliwiński, Gdańsk–Koszalin 1998, pp. 117–133; *idem*, *Wilkierze miasta Koszalina* [Ger. *Willkür der Stadt Köslin*], “Studia Bałtyckie: Administracja” 1998, no. 7, s. 129–150; *idem*, *Ustawodawstwo wielkich miast pruskich* [Legislation of Big Prussian Towns] [in:] *Parlamentaryzm i prawodawstwo przez wieki. Prace dedykowane Prof. Stanisławowi Plazie w siedemdziesiątą rocznicę urodzin* [Parliamentarism and Legislation Throughout the Centuries: A Festschrift in Honour of Professor Stanisław Plaza on His 70<sup>th</sup> Birthday], eds. J. Malec, W. Uruszczak, Kraków 1999, pp. 173–183; *idem*, *Wilkierz Starogardu Gdańskiego z 1619 r.* [Willkür der Stadt Pr. Stargard (1619)] [in:] *Historia integra. Księga pamiątkowa ofiarowana prof. Stanisławowi Salmonowiczowi w siedemdziesięciolecie urodzin* [Historia integra: A Festschrift in Honour of Professor Stanisław Salmonowicz on His 70<sup>th</sup> Birthday], eds. D. Janicka, R. Łaszewski, Toruń 2001, pp. 189–204; *idem*, *Ustawodawstwo miasta Grudziądza w XVI i XVII wieku* [Legislation of Grudziądz in the 16<sup>th</sup> and 17<sup>th</sup> century] [in:] *Studia z historii ustroju i prawa. Księga dedykowana Profesorowi Jerzemu Walachowiczowi* [Studies in the History of Constitutional Systems and the Law: A Festschrift Dedicated to Professor Jerzy Walachowicz], ed. H. Olszewski, Poznań 2002, pp. 203–213.

<sup>54</sup> M. Mikuła, *Prawo miejskie magdeburskie (Ius municipale Magdeburgense) w Polsce XIV–pocz. XVI w. Studium z ewolucji i adaptacji prawa*, Kraków 2018.

undermined by Jaskier's publication of the *Sachsenspiegel* gloss, which could be looked upon as a treasure-trove of new materials. The first critical edition of the *Weichbild* used in Poland was prepared and published Grzegorz M. Kowalski (it is Paweł Szczerbic's Polish text of 1581). However, to complete work on the publication of that basic source it is necessary to edit and print at least seven complete texts, i.e. the German text of the Cracow City Council (BJ 169); the German text of the Higher Court at the Wawel Royal Castle (BJ 168); the German excerpt of an enhanced version of the *Weichbild* in the Żagań manuscript (now in the Wrocław University Library, MS II Q 4; also MS from The National Library in Warsaw BN 12607 III); the earliest extant Latin translation by Konrad of Sandomierz (MS Gn. 104); a text believed to represent a different version from the manuscript from the Archives of the Metropolitan Chapter of Gniezno, i.e. the Działyński MS IV (The Kórnik Library MS 800); the enhanced Latin text of the Żagań manuscript and MS BN 12607 III; and two printed texts, one from Jan Łaski's *Statutes*, and the other from Mikołaj Jaskier's *Ius municipalis Maideburgensis* (together with the gloss). The publication of all these texts *in extenso* is justified by their diversity. Each of them has so many variants and peculiarities that putting them down in footnotes to a single main text (supposing it were possible to fix one) would make such an edition extremely inconvenient to read and study. At present work is under way to produce not only critical editions of the various versions of the *Weichbild* but also a comprehensive analysis of that complex source (i.e. the manuscripts and Łaski's version in print). Of course, the *Weichbild* project will not be complete without a thorough study of Mikołaj Jaskier's main text, glosses and marginalia, and a comparison of his work with that of Paweł Szczerbic's Polish edition.

Ad 2. The team formed by the late Professor Friedrich Ebel will probably complete its work with a critical edition of the Legal Instructions from Magdeburg to towns in the Kingdom of Poland. It is an extremely time-consuming high-cost project as the original books of the Magdeburg Bench were destroyed by fire. In effect, the team have had to search for copies of the *Rechtmitteilungen* that may have been preserved in the archives and libraries of Central and Eastern Europe.

Ad 3. The third source that is still waiting for coverage is the *Sachsenspiegel*. A substantial portion of it was made available to the modern reader by Zygfryd Rymaszewski. Within the scope of his project there remains just one item to be taken on board. It is the gloss Jaskier added to his edition of the main text. At present editorial work by Grzegorz M. Kowalski on Paweł Szczerbic's alphabetical version of *Sachsenspiegel* is nearing completion. Meanwhile, several other early texts are awaiting their turn. Their list includes two German-language texts, *versio Vratislaviensis* from MS BJ 169 and another version in MS BJ 168; the Latin texts of *versio Vratislaviensis* from the same manuscript BJ 169 and *versio Sandomiriensis II* in MS Dział. IV, as well as the printed texts of Jan Łaski's *Statutes* and Paweł Szczerbic's glossed *Sachsenspiegel* (in its entirety).

Ad 4, 5 and 6. Thanks to the efforts of generations of historian editors we are in possession of a string of editions of municipal documents and statutes (*wilkierze*). Now however we have reached the point at which the law historian should address the issue of ordering the accumulated material and create a repertory of sources containing exclu-

sively normative acts.<sup>55</sup> A tool of this kind would enable researchers to get quick access to information and trace patterns of similarity and dependence more easily. However, it should be treated not as a technologically updated card index but as an instrument enhancing the scope and quality of specific research, e.g. complex searches of data on urban communities and the inventory of the Royal Chancellery (*Metryka Koronna*) to identify and collate the text of various legal acts (including the *wilkierze*). The objective could be the creation of a catalogue of sources in the category *wilkierze* of the Małopolska cities and towns, and, as the next step, selecting and preparing materials for prospective critical editions.

Ad 7. The last item of this agenda is the case law of the Higher Court of German at Wawel. As it was mentioned earlier, the court's oldest acts (*decreta*), from a period ending with the year 1511, have already been edited and published. The editing of the remaining, 16<sup>th</sup>-century records should, in my opinion, be put off until the review of the urban sources (Point 5) has been completed. If, as it cannot be ruled out, the latter contain some Wawel *decreta*, it would be worth comparing them with the original text recorded in the books of the Court.

### 3.2. Means of publication: digital meta-edition (database)

The sources listed above differ in kind; it means that the suitability of the form of publication may vary from one category to the next. My proposal envisages the realization of four main goals: (1) provide fast access to critical editions of basic normative texts without any loss of their information value in the process; (2) provide a tool that would enable the researcher to inspect the maximum number of extant texts and their variants; (3) facilitate the search for regulations, commentaries and legislative acts that are connected thematically and/or chronologically; and (4) encourage the study of old urban law by offering direct access to its critically edited sources.

A common practice in Polish historiography is the publication of the texts of a given source in their entirety. Hence the complete editions of the Statutes of Kazimierz the Great, the Statute of Kraków-Warka, the legislation of 1447, and the Statutes/Privileges of Nieszawa in Volumes II–IV of the series *Archiwum Komisji Prawniczej*. In his key lecture at Law Commission of the Polish Academy of Sciences on editing sources of law history Professor Adam Vetulani stressed the importance of preserving all extant textual variants in a critical edition.<sup>56</sup> He claimed that even small, apparently negligible, spelling irregularities can be of crucial importance in the analysis of manuscript filiation. The

<sup>55</sup> M. Mikuła, *Typologia aktów prawnych dla miast w dobie jagiellońskiej – przydatność funkcjonalnego podziału aktów prawnych do badań nad kierunkami polityki królewskiej* [*Typology of legal acts issued for cities and towns in the Jagiellonian period: The practicability of a functional division of acts of law for studies of royal policy*], “*Studia z Dziejów Państwa i Prawa Polskiego*” 2013, vol. 16, p. 41 ff; *idem*, *Prawodawstwo króla...*, p. 66 ff.

<sup>56</sup> W. Uruszczak and M. Mikuła, *Referat Adama Vetulaniego na posiedzeniu Zespołu wyłonionego przez Komitet Nauk Prawnych Polskiej Akademii Nauk dla opracowania planu wydawnictw historyczno-prawnych* [*Adama Vetulani's lecture at the meeting of a team selected by the Commission of Legal Sciences of the Polish Academy of Sciences to draft a plan of editing publications in the field of law history*], “*Krakowskie Studia z Historii Państwa i Prawa*” 2014, vol. 7, issue 3, pp. 527–540.



author of this article shares this view: he has found that in some cases even a change in word order could qualify as a telling indicator to be used in a *stemma codicum*. Yet he also believes that in studies of the institutions of private or criminal law such nuances may be ignored. Therefore, the agenda outlined above foresees the publication of the texts of the *Weichbild* and the *Sachsenspiegel* in the form of classical variorum editions. It means that one manuscript in each group is chosen as a copy-text and published in full while alternative readings suggested by other affiliated manuscripts are acknowledged discretionally in the footnotes. This approach should ensure that the most important historical source texts are made available soon and in a format which is fairly easy to read (i.e. the critical apparatus is kept within limits and the footnotes are not allowed to brim over with textual variants and other references).<sup>57</sup>

The best way to ensure the publication of all texts of the *Weichbild* and the *Sachsenspiegel* is to feed them into a digital data base. Unlike the traditional edition in the form of book or e-book, a digital meta-edition can be successively expanded as new items are added to the existing corpus. This data base would allow the reader to download either the whole text of a given manuscript or article, or, alternately, passages chosen by means of keyword extraction. The latter functionality depends on installing a module (keyword extractor) with a package of keywords specially selected for search operations in that peculiar data base. The construction of an appropriate catalogue of keywords (lexical indexation) would be key to the success of any in-depth textual analysis. The meta-edition should also enable the researcher to compare and collate the text in the critical edition with a photograph of the matching passage in the original manuscript.

The digital meta-edition should, however, offer something more than display for example Article 17 of the Magdeburg *Weichbild* and the facsimile of the matching fragment in any of the manuscripts in store after typing the appropriate command, either specifying the file label (Article 17) or employing the keyword “donation”. The data base software should have the tools to enable the researcher, firstly, to conduct effective search operations for a thematically defined content across all the corpora, and, secondly, to analyze and compare the selected content. These two tools should also possess advanced functions. If the typing of the word “donation” yields a large number of results from all the corpora, it should be possible to filter them down to what is actually need, e.g. only those portions of the *Weichbild* and the *Sachsenspiegel* that crop up in the corpus of privileges, or, for that matter, *wilkierze*, acts of the Sejm (*konstyucje*), judgments of high courts (*decreta*), jurists’ treatises. There should also be a device conducting automatic discriminating linguistic analysis of any chosen texts. That functionality would make the established editorial practice of fixing the basic text (copy-text) and dressing it with chains of notes and footnotes superfluous. It would be so because, to return to the example above, the reader interested in Article 17 of the *Weichbild* may look up its Latin text in MS Gn. 104 and MS BJ 4405, and putting them in parallel, with one more click, get a clear picture of all their differences.

The data base is to be built up gradually, beginning with the already existing critical editions (with permission from the owners of the copyright whenever necessary).

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<sup>57</sup> Cf. the example of a 19<sup>th</sup>-century scholarly edition of the texts of Magdeburg Bench law prepared by Paul Laband (*Magdeburger Rechtsquellen – Zum akademischen Gebrauch*, Königsberg 1869).

However, the editors must not wait with the decision which of the texts in the base is to be the core. In my opinion, the system of core words should be based on the Magdeburg *Weichbild* whose importance, as I have tried to demonstrate in this article, is absolutely central. A digital meta-edition<sup>58</sup> is unique in its capacity to take up all kind of sources, including the inventories of wilkierze, royal statutes and normative acts issued by town owners. In theory, at least, such an agglomerate of data offers unprecedented opportunities of text comparison and in-depth analysis.

Theoretical reflection in the humanities from time to time bears fruit in the form of new research methods. They in turn can inspire researchers to construct their monographs in a novel way or to take a fresh look at their data and sources. There are, however, some fields where traditional approaches and methods seem to work best, although even then the latest technology can be of use. The study of institutions of law and the monuments of medieval and early-modern law is certainly one of those scholarly disciplines in which a set of trusted procedures and methods, such as proper understanding and interpreting of texts, attention to extant textual variants, comparing normative texts with sources indicating the effect of promulgated norms and with opinions of acclaimed jurists, must be held on to. This is the sure way of getting solid results that aspire to the classic ideal of truth, *adaequatio rei et intellectus*.

Translated by *Andrzej Branny*

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<sup>58</sup> I am grateful to Dr Krzysztof Fokt for bringing to my attention the term “meta-edition”, an inspired choice of word for the projected digital database edition.

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