

KAZIMIERZ KOLAŃCZYK (1915-1982) AND A NEW APPROACH TO THE TEACHING OF ROMAN LAW IN POST- WAR POLAND / Grzegorz Nancka

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Abstract: *An entirely new approach to the teaching of Roman law was long-awaited in post-war Poland. There were not many studies for learning the subject, and in the case of the available ones, their weaknesses were highlighted. A breakthrough in the area of the Roman law academic textbook came with the publication of "Roman Law" by Kazimierz Kolańczyk. It is considered one of the best Roman law textbooks, if not the best, in the 20th century in Poland. The work was significantly different from the other hitherto available textbooks, primarily because the author developed his own concept for that type of study. As it turned out, the work by K. Kolańczyk opened a completely new phase in the Polish didactics of Roman law. It is therefore useful to take a closer look at its assumptions and K. Kolańczyk's approach to the teaching of Roman law, and also to evaluate the permanence of the changes in teaching caused by that study.*

Key words: *Roman Law; Kazimierz Kolańczyk; Teaching; Textbook*

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1. INTRODUCTION

Kazimierz Kolańczyk (1915-1982) was a professor of Roman law at the Adam Mickiewicz University in Poznań.¹ He was remembered primarily as the author of one of the best, if not the best, Roman law textbooks in the 20th century in Poland. The textbook *Prawo rzymskie (Roman Law)*, which was originally published in 1973, has already had six editions to this day (Kolańczyk, 1973; Kolańczyk, 2021; Dajczak, 2021).² It was published three times during the author's lifetime. The first edition was an important event for the Polish Romanist community. According to the pre-release information, the work "stands out by virtue of its vivid presentation of the real meaning and the practical, economic and social function of particular legal institutes" (Nancka, 2021, p. 159). The print circulation of that edition was 5,000 copies and they sold out relatively fast. As a result, soon it was decided that another edition of the work would appear. The second extended and

¹ Kazimierz Kolańczyk, professor of legal sciences, Polish Romanist, and legal historian, scientifically linked with the Adam Mickiewicz University in Poznań, where he was the head of Roman law. He was also connected with the Nicolaus Copernicus University in Toruń (Dajczak, 2010; Lesiński, 1983; Rozwadowski, 1983).

² The latest (sixth) edition was edited by Wojciech Dajczak.

improved edition came out in 1976, and its 10,000 copies vanished from the bookshops as quickly as in the case of the debut edition. The success of that edition meant that the third edition (also 10,000 copies) appeared already in 1978. In essence, it did not differ from the second edition – except for the removal of obvious printing errors. This means that within five years 25,000 copies of the study in total reached readers (Nancka, 2021, p. 159). The work, which at the time of its publication was a major novelty in the publishing market, was very well received by readers, both academics and students (Modrzejewski, 1974; Rebro, 1975; Wiliński, 1974; Wycisk, 1975). However, probably nobody expected at that time that the textbook would still be gladly used fifty years later. The unquestionable success of this work prompts the question as to its immense popularity at the time when it was published and its permanence. Moreover, it will be interesting to see what approach to didactics was adopted in the textbook and why the work by K. Kolańczyk is still considered one of the best Roman law textbooks in postwar Poland.

2. STARTING POINT FOR A DISCUSSION ON A NEW TEXTBOOK

A Roman law textbook corresponding to the realities of the time was long-awaited in the publishing market in postwar Poland (Dajczak, 2020, p. 209). While an increasing number of studies appeared abroad, for instance, by Max Kaser (1960), Fritz Schulz (1951), or by Antonio Guarino (1957), a new approach was keenly anticipated in Poland. Shortly after the Second World War, in 1948, a textbook by Borys Łapicki came out (1948), but it was not well received by readers (Kodreński, 1995, p. 240). Students also had a textbook by Rafał Taubenschlag with its pre-war traditions at their disposal. The last edition of that work edited by Henryk Kupiszewski appeared in 1969 only after the author's death. That textbook was viewed as too short and unclear due to the insufficient explanation of Latin terms (Kolańczyk, 1965, p. 235). Moreover, since 1962, a textbook by Wacław Osuchowski, which was a significant achievement of Polish postwar Romanist studies, was available to readers (1962). That work, however, was too lengthy and written in a mechanical and at times somewhat tedious manner (Kolańczyk, 1965, p. 239). The author did not attempt to evaluate the particular institutes and failed to point out which were principal, and which were peripheral (Kolańczyk, 1965, p. 253). Besides, the textbook had an overdeveloped scientific apparatus (Kolańczyk, 1965, pp. 236-237). Kazimierz Kolańczyk was aware of those problems and saw the need for the preparation of an entirely new didactic resource. He published a review article in "The Journal of Law and History" on the 1962 work by W. Osuchowski, in which he addressed the most important problems related to the didactics of Roman law and outlined a concept of a new textbook for the study of the subject (Kolańczyk, 1965).

K. Kolańczyk treated the work by W. Osuchowski as a starting point for further discussion on what a modern Roman law textbook should be like. K. Kolańczyk (1965, p. 235) believed that the textbook should be of an appropriate length and be written in a manner that is accessible to students. He held the view that a definition of the didactic role of a university subject was a crucial issue that determined the adoption of an appropriate model of conducting classes and, consequently, the content of the textbook. He believed that in the case of Roman law, it consisted primarily in "the historical and dialectical introduction of the student to the issues of law and civil procedure in general, opening his eyes to those issues and shaping the civilist imagination" (1965, p. 239; Bardach, 1965, p. 331). Roman law is a highly abstract and dogmatic academic subject, therefore, the level of its difficulty is significant (Kupiszewski, 1981; Sondel, 1976). This meant that in the context of the development of a new textbook, it was necessary to

search for new methodological approaches and draw on existing patterns (Kolańczyk, 1965, p. 248).

The adoption of appropriate systematization was a fundamental issue connected with the creation of the textbook (Kuryłowicz, 2018). The Poznan professor took the view that it was essential to determine the position of civil procedure. Two options were the most popular. It was possible to apply the *personae-res-actiones* arrangement known from *Institutiones* by Gaius, or rely on the pandectic systematization (Kolańczyk, 1970; Czech-Jeziarska, 2017). The textbook arrangement according to the Gaius systematization meant that the procedure should be placed at the end, whereas the pandectic systematization implied that this section was included in the general part of the textbook. The latter model was adopted by R. Taubenschlag, even though only since the 1955 edition. W. Osuchowski took a similar approach, and the Roman civil procedure precedes the whole system of Roman private law in his textbook. Kazimierz Kolańczyk was evidently in favor of the systematization in which the part concerning procedure would precede the lecture on substantive law. He believed that "Roman procedural law, however, is an indispensable key to understanding substantive law and therefore its presentation cannot be too concise" (Kolańczyk, 1965, p. 244). However, a different approach was also possible, which was shown in a textbook by Stanisław Wróblewski (Kolańczyk, 1971; Wróblewski, 1916). In *Zarys rzymskiego prawa prywatnego (An Outline of Roman Private Law)*, the Cracow Romanist adopted an original approach whereby a discussion on the particular institutes of procedural law was linked to the institutes of substantive law, with a general outline of the historical development included in the chapter on the history of sources (Kolańczyk, 1965, p. 244). In addition, K. Kolańczyk pointed out that in S. Wróblewski's view, "the separation of the procedural law as a distinct part leads either to the obliteration of its historical function or to a repetition of things once said" (Wróblewski, 1916; Kolańczyk, 1965, p. 244).

It was equally important to determine whether the textbook should be based solely on pure Roman law, as was the case with a majority of works published at the time, or whether it should also contain references to the later history of the given institutes, also in the present day. The Romanist thought that such references were necessary because they brought "a lot of animation" into the presented matter. He also held the view that comparative remarks made it possible to perceive the relation of the problems inherent in antiquity to contemporary ones and to determine certain parallels and contrasts (Kolańczyk, 1965, p. 254; Kodreński, 1995, pp. 241-242). He believed that a Roman law textbook should present the matter "in the problem-based formulation, with an indication of the political, economic and social need to regulate the specific legal problems of the Roman state, with a strong emphasis on various possibilities, directions and attempts to solve them. The conceptual outline of a given legal institute in the shape that Roman law actually achieved would emerge only in the conclusions and, consequently, would not necessarily always be provided in the form of a complete definition. An attempt at evaluation and criticism of the manner in which a given institute functioned in the Roman state, its economic and social effects and its class edge, possibly with an indication of its further development, for example, in the form of references to modern civil law, could add the finishing touch" (Kolańczyk, 1965, p. 251). It should be highlighted that a reference to "the class edge" was, in the case of K. Kolańczyk, more of "a methodological label" that was welcomed by the authorities of the time and did not stem from the author's beliefs (Kuryłowicz, 2019, p. 942).

3. "PROBLEM CONTACT POINTS" AS A CHANCE FOR THE TEACHING OF ROMAN LAW

Kazimierz Kolańczyk indicated in the course of work on his textbook that the purposefulness of teaching historical-legal subjects can be amply demonstrated by placing emphasis on problem relationships with the present day (Wiliński, 1970). Those relationships, which the Poznan professor called "problem contact points", would prove to be particularly useful for students getting acquainted with Roman law. That approach was based on his previous teaching experience, as he highlighted in his letter of 22 December 1973 addressed to Bogusław Leśnodorski:

"The problem of linking antiquity with the present day, updating our venerable scientific discipline has been my concern for a long time. For many years I have conducted lectures with two teaching aids: on the one hand, an excellent Italian edition of a selection of sources /brevarium iuris Romani/ and, on the other hand, the Civil Code, the Family and Guardianship Code, or the Code of Civil Procedure. For many years I have observed animation among students both in Poznan and Torun when ad oculos I showed them problem contact points between Roman law and modern law. I am very glad that I managed – thanks to the help from my friends, Romanists and Civilists – to convince the Polish Scientific Publishers of the advisability of including this comparative apparatus in the footnotes to the textbook."³

As a result, his textbook addressed the need to connect the past with the present. The scholar indicated that the footnotes included approximately 400-500 problem contact points between Roman law and modern substantive and procedural civil law, and even in some points with criminal law (Nancka, 2021, pp. 164-165). That approach was in line with the issue of the problem-centered inclination of Roman law discussed for some time by civilists and legal historians (Wiliński, 1970, pp. 345-346). With such a presentation of the matter of Roman law, students would turn to the Civil Code more eagerly and thus better prepare for the study of modern law (Nancka, 2021, p. 165). In the course of those discussions, it was also emphasized that "the more thorough the lawyer's knowledge of Roman law, the easier it was for him to master the new system of civil law" (Ohanowicz, 1969, p. 177), and also that there was no possibility "for anyone to be a good civilist without a thorough knowledge of the method of Roman lawyers" (Szpunar, 1969, p. 181). The textbook by K. Kolańczyk fitted in with the set course and differed significantly from the textbooks by R. Taubenschlag and W. Osuchowski, which were considered "not easily accessible" because of their lack of references to modern law (Nancka, 2021, p. 165).

However, this did not mean that the scholar distanced himself from pure Roman law. In his work, he tried to keep "within the bounds of historical authenticity," which was manifested in the fact that the textbook presented pure Roman law. In that regard, he agreed with a view expressed by Milan Bartošek, who pointed out that "the real relevance of Roman law lies in its historicism and authenticity" (1966, pp. 101, 111; Kolańczyk, 1973, p. 10; Czech-Jeziarska, 2019). For this reason, the Institutes of Gaius and the Institutes of Justinian provided a basis for the textbook by K. Kolańczyk, whereas the Digest of Justinian served as a supplementary material. Moreover, K. Kolańczyk held the view that it was permissible to go beyond the literal reading of texts in order to make "an interpretation of their sense based on the general historical probability, an analogy, a working hypothesis or finally scientific intuition". Thus, he set a clear boundary between

³ Archive of the Polish Academy of Sciences, branch in Poznań (hereinafter: APAN Poznań), file No. P. III-76, Kazimierz Kolańczyk File (hereinafter: KK File), vol. 32, Kazimierz Kolańczyk's letter to Bogusław Leśnodorski of 22 December 1973.

the activity of the 19th-century Pandectists, who reworked and adapted Roman private law to the needs of contemporary practice and the 20th-century Roman law didactics, in which Roman law was no longer intended to function as a general theory of civil law (1973, p. 10-11).

4. THE METHODOLOGICAL RENEWAL OF THE TEACHING

As noted by Adam Wiliński, the textbook by K. Kolańczyk was a highly successful attempt at "the methodological renewal" of the Roman law didactics. The textbook stood out from others because it linked the particular institutes of Roman law to the economic and social background of ancient Rome and its content was diversified by giving prominence to significant legal institutes (Wiliński, 1974, pp. 238, 240). In the opinion of its author, the textbook published in 1973 contained "an element of rationality and novelty."⁴ K. Kolańczyk indicated that "the author's intention was not only to help a student to master the material, but above all, to think through and understand the subject known in the academic tradition for its exceptional degree of difficulty. The material was presented in a selective way, ignoring everything that was only of an erudite and antiquarian significance, and emphasizing everything that was significant for the ancient society and, moreover, what has survived in one form or another to this day. The author's ambition in this part was the problem-based presentation, so highly recommended and so fruitful in contemporary civil studies."⁵ The adoption of a flexible vision made it possible to point to the significance of principal institutes, and at the same time show the peripheral nature of others (Kolańczyk, 1973, p. 11).

The Slovak Romanist Karol Rebro highlighted that by shifting from an isolated perspective on Roman law, K. Kolańczyk sought to detect problem relationships, in particular with substantive and procedural law, the history of law, and political and legal doctrines (1975, p. 952). Karol Rebro pointed out that the Poznan scholar tried to show the reader how Roman lawyers solved legal problems that were relevant to the Roman society. That approach was of utmost significance to students because they could see that a resolved problem raises an issue that remains relevant in the present day, in completely different social conditions. In this way, the Romanist succeeded in combining two elements very correctly – scholarly and didactic. Moreover, as K. Rebro specified, the textbook by K. Kolańczyk contained much less bibliographic material than the work by W. Osuchowski and was therefore more accessible to a student (1975, p. 952). A proper treatment of scientific documentation was one of the most important issues related to the creation of the textbook by the Poznan scholar. Kazimierz Kolańczyk highlighted in the introduction to the textbook that he assumed at the outset that references to immense specialized literature, often scattered and inaccessible, were not the purpose of a study of a didactic nature. The author of the textbook also believed that the needs and capabilities of its readers should be taken into account during the creation of that type of study, with the corresponding adjustment of the scientific apparatus (Kolańczyk, 1973, p. 11).

The Polish Romanist Franciszek Wycisk highlighted in "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung" that the Roman law textbooks available in the Polish publishing market at the time were not sufficiently suited to the

⁴ APAN Poznań, file No. P. III-76, KK File, vol. 121, Kazimierz Kolańczyk's letter to the Polish Scientific Publishers – Editors of Legal Publishing of 25 January 1972, p. 2.

⁵ APAN Poznań, file No. P. III-76, KK File, vol. 121, Kazimierz Kolańczyk's letter to the Polish Scientific Publishers – Editors of Legal Publishing of 25 January 1972, p. 1.

needs of students (1974). The textbook by R. Taubenschlag was too concise and thus failed to provide a student unfamiliar with the intricacies of Roman law with the sufficient clarity of the presentation of the matter, whereas the work by W. Osuchowski was too lengthy (Wycisk, 1974, p. 551). By contrast, the textbook by K. Kolańczyk was adapted to the current methodology in every respect. As F. Wycisk underlined, the textbook put emphasis on certain common problems that occurred also in the general history of the state and law, as well as in law and in civil procedure. Another advantage of the textbook lay in breaking with the purely dogmatic, formalistic and “flattened” presentation of material, making it easier for a student to master it. K. Kolańczyk also sought to show a practical sense of legal institutes, describing them against a fairly broadly drawn social, economic and historical background. He also managed to avoid the mechanical presentation of the legal institutes in the textbook. He paid more attention to some of them because of their significance, giving less space to those of lesser importance (Wycisk, 1974, p. 552). All of this meant that the textbook by K. Kolańczyk – as F. Wycisk pointed out – presented the didactics of Roman law in a new, previously unused manner (1974, p. 553).

5. SUCCESSIVE EDITIONS – A FURTHER NEED FOR A NEW APPROACH?

The textbook got a good reception from both academics and students. The Poznan scholar received letters connected with the reception of the work, in which the numerous strengths of the work were praised, and certain improvements were suggested (Nancka, 2021, pp. 174-175). Kazimierz Kolańczyk started work on the second edition already in 1974, although the textbook did not differ significantly from the previous edition. The Romanist pointed out that “the general methodological and constructive assumptions of the textbook will remain unchanged.”⁶ The source material underwent slight modifications – new releases were included, in particular in the area of modern civil studies. However, the fundamental changes concerned the issues raised by the readers of the work. In his review published in “The Journal of Law and History,” Adam Wiliński called for a more detailed definition of the particular concepts and institutes of Roman law, “especially where the correct definition can be easily and doubtlessly built on the basis of the source material and where it concerns an institute close to the relevant civilist concepts.”⁷

The content-related improvement of the second edition of the textbook resulted from the inclusion of a passage concerning the subsequent history of Justinian legislation and Roman law in the era of feudalism and capitalism.⁸ The Poznan scholar intended to include that passage already in the first edition of the textbook, but the limited number of publisher’s sheets forced him to abandon the intention. It became possible with the preparation of the second edition, and K. Kolańczyk argued that such a change would bring substantial benefits to readers. He pointed out that the included passage was “a clear bridge that would lead the reader straight from antiquity to the present day. I believe that this bridge should not be missing in the very textbook that for the first time – with such general applause of readers – points to numerous problem relationships between the ancient Roman law and modern civil, substantive and procedural law. The

⁶ APAN Poznań, file No. P. III-76, KK File, vol. 20, Kazimierz Kolańczyk’s letter to editor Kazimierz Nowicki of 29 March 1975, p. 1.

⁷ APAN Poznań, file No. P. III-76, KK File, vol. 20, Kazimierz Kolańczyk’s letter to editor Kazimierz Nowicki of 29 March 1975, p. 1.

⁸ APAN Poznań, file No. P. III-76, KK File, vol. 20, Appendix no. 4 to the letter of 29 March 1975.

postulated outline explains how such problem contact points became possible in the first place.⁹

The changes concerned also some technical issues. In the first edition of the textbook, Kazimierz Kolańczyk deliberately refrained from using space and italics in order to distinguish the particular institutes. It was his intention to let the readers find the most significant issues in the text independently. As it turned out, for some it was too difficult a task. As a result, the author decided to distinguish the titles of sub-points, surnames, technical terms introduced into the text in an essential manner, definitions and initial definitional approximations, and the points of emphasis of the lecture. Italics were used to mark foreign terms.¹⁰ The introduction of the live pagination of paragraphs was a significant technical improvement. It was a further proof of hearing the voices of readers, who had practical difficulties in finding headings placed in the text. In order to meet the readers' expectations, the author improved the second edition of the textbook by introducing a designation of the paragraph and point under discussion on a given page, regardless of normal pagination.¹¹ The introduction of an index of Latin terms and expressions, which was expected by students, grew out of the same need.¹²

6. PERMANENCE OF THE CHANGES IN DIDACTICS

The textbook by Kazimierz Kolańczyk had many strengths that determined its success. As compared to the other existing textbooks, it impressed its readers with its novelty of the approach. Roman law was shown as a vital discipline having a powerful meaning for the present day. The changes introduced into the second edition of the textbook were designed not only to improve it but also to adapt it to the requirements arising from the realities of the time. The second edition coincided with a reform of legal studies implemented in 1975. The new program of legal studies introduced at the time aimed at the application of "the principle of elasticity" (Czech-Jezierska, 2015; 2018; Nancka, 2022, pp. 46-48; Wołodkiewicz, 2015, pp. 243-244). This meant that it was to be based on "the modernization of studies, and thus on the reconstruction of didactic forms and, above all, on a renewal of the teaching content" (Baskiewicz, 1975, p. 28). In reality, the modification of the legal studies programme led to a mechanical joining of the subjects. The project introduced far-reaching changes with regard to historical-legal subjects. Instead of the previously offered courses in the history of the Polish state and law, general history of the state and law, and Roman law; two new subjects were introduced: history of state systems and history of law, whereas the history of political-legal doctrines became an optional subject (Nancka, 2022, p. 53). Roman law was taught within the history of law, in a very modest number of teaching hours (Czech-Jezierska, 2018, p. 19). Not only did it lose the status of an independent subject, but due to a reduction in the number of teaching hours, the possibility of conducting classes as before the reform was eliminated. Despite those adversities, the Romanist decided to prepare another edition of the textbook, which, jointly with the first edition of the year 1973, held an important position on the not very rich, domestic publishing market. Owing to the modification of the program of legal studies, the textbook was adapted to a situation where the point of gravity of teaching Roman law would shift to a much wider extent to the academic textbook. The direction taken by the author of the textbook proved to be so

⁹ APAN Poznań, file No. P. III-76, KK File, vol. 20, Appendix no. 4 to the letter of 29 March 1975, p. 2.

¹⁰ APAN Poznań, file No. P. III-76, KK File, vol. 20, Appendix no. 1 to the letter of 29 March 1975, pp. 1-2.

¹¹ APAN Poznań, file No. P. III-76, KK File, vol. 20, Appendix no. 3 to the letter of 29 March 1975, pp. 1-2.

¹² APAN Poznań, file No. P. III-76, KK File, vol. 20, Appendix no. 5 to the letter of 29 March 1975.

good that he did not introduce any further modifications and improvements to the third edition, limiting himself only to correcting obvious errors.

It is clear that the model of the textbook adopted by Kazimierz Kolańczyk had a lasting effect on the teaching of Roman law. The thought-provoking textbook, stimulating a reader to further reflection and search, became a model for a textbook on the subject for many years. The pattern, which places particular emphasis on "the problem contact points", showing the relationships between Roman law and the laws currently in force, and highlights the prominent role of some institutes, is still relevant today, as evidenced by the fact that the study has been published in subsequent editions and reprints. The unquestionable success of the textbook contributed to a change in how the didactics of Roman law is viewed in Poland, which may have helped Roman law survive the difficult times of the reform of legal studies. Paradoxically, although Roman law has been pushed into the framework of the history of law since 1975, the textbook by the Poznan professor has enjoyed continued popularity. The study filled an acute gap, has provided a model for an academic textbook for years and still is an attractive proposition for those who are looking for didactic help to learn Roman law.

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