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Olga Kozubska-Andrusiv

German Law in Medieval Galician Rus' (Rotreussen)

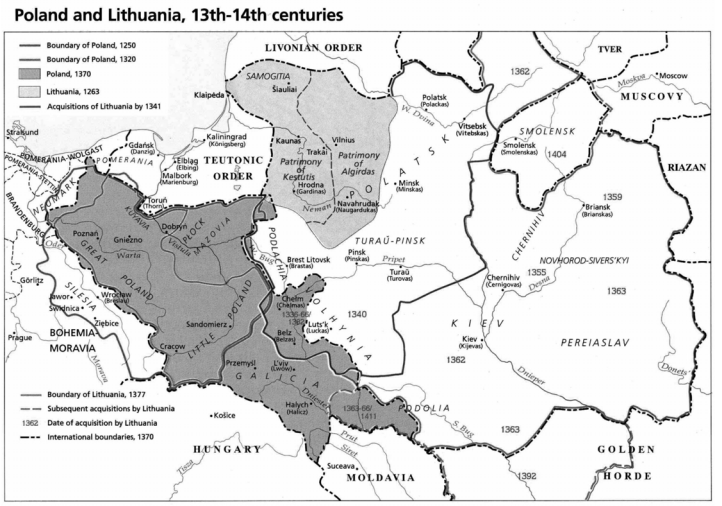
Abstract

This article focuses on the ius *theutonicum Magdeburgense*, its meaning and functions, attempting to understand what *ius theutonicum* meant for contemporaries. It starts with the present interpretation of the term. This is followed by a detailed analysis of the available medieval privileges for Magdeburg law issued for towns in Galician Rus'. The result was not an identification or »reconstruction« of a particular »law« or combination of different »laws« adopted in town courts of Galician Rus' under the term *ius theutonicum*. It was rather the recognition that the notion called *ius theutonicum* in medieval documents was an adaptable pattern applicable to different conditions, a model with many variants or a general set of principles which was filled with real content and adapted to concrete circumstances.

German Law in Medieval Galician Rus' (Rotreussen)

The Galician-Volhynian Principality (the westernmost part of Kievan Rus') was possibly the only land in Rus' where the *ius theutonicum* was adopted: the first signs of the new »law« belonged to the thirteenth century, the time of Prince Daniel of Galicia (died 1264). The process greatly intensified after the territory was incorporated into the Polish kingdom in the mid-fourteenth century and when most of the territory of Galician Rus' was organized in a large administrative unit called the Rus' Palatinate (»Rotreussische Wojewodschaft« or »Rotreussen« in German).

German law (or more precisely the *ius theutonicum Magdeburgense*) mentioned in privileges from Galician Rus' was assumed to be a special form of urban law, perhaps the law of Magdeburg adapted and applied in local settlements. A grant of *ius theutonicum* – in oral form or in the form of a privilege – dated the formation of »a town in a legal sense.« When a new »law« was being granted (proclaiming also the withdrawal of old »laws«) one must ask what it consisted of. However, primary medieval sources



Historical Atlas of East Central Europe, by Paul Robert Magocsi, Seattle, London 1993, p. 21.

collected for this research did not give, at first glance, any idea of the »normative« content of the new »law«: assuming that »law« should be a certain set of »norms« and rules, ideally a codified set.[1]

It was generally accepted that »German law« was brought by settlers and subsequently denoted as *ius theutonicum*.[2] According to Schubart-Fikentscher, one has to think that, especially at the beginning, it meant customary law (»Gewohnheitsrecht«), without implication of any concrete town law.[3] Some authors saw it as a combination of the »Sachsenspiegel« with Magdeburger town law.[4] In this way *ius theutonicum,* being presumably imported by Germans themselves, was implicitly or explicitly identified with a kind of German *ius scriptum*, or with combinations of certain *iura*. The term *ius theutonicum* was translated directly as »Deutsches Recht« or »German law«, and modern researchers have worked predominantly with a translated version of the term (as »law«). However, as often happens, a linguistic change turns into a change in modern understanding.[5]

The secondary literature revealed how scholars had solved similar problems in other regions; they first looked at the sources for the law of Magdeburg , and then tried to find similar sources in their own region, searching the contents of town law books and other legal manuscripts. This method did not work in the case of Galician Rus', however, because the legal manuscripts with which the new »law« supposedly spread are practically absent. Still, a relatively high number of preserved medieval privileges for towns »under Magdeburg law« (several dozens), and an even higher number for villages (also founded with the same »law«) is surprising and forces one to find another explanation. The impossibility of conducting research based on traditional written sources for Magdeburg law points to the need for clarification of the term *ius theutonicum*, of the meaning and functions associated with it in medieval Galician Rus.

Historiography

The volume of writings dealing with the subject of *ius theutonicum* is enormous. Studies written by Polish and German authors are especially numerous.[6] The present overview is focused mainly on Ukrainian historiography which is seldom included in interna-

1 The oldest document associated with the law of Magdeburg is a privilege Bishop Wichmann granted to this town in 1188. A great deal of the law of Magdeburg consisted of legal teachings (»Rechtsmitteilungen«) addressed to other towns founded according to »the law of Magdeburg«: to Wrocław/Breslau (1261, 1295), Görlitz (1304), Chelmno/Kulm (1338), and Halle (1364). See: Lexikon des Mittelalters, vol. 4, Munich 1999, 856.

2 For instance, Menzel wrote that German law was »von den Siedlern mitgebracht und kurzum als *ius theutonicum* bezeichnet.« See: Josef Joachim Menzel, Die schlesischen Lokationsurkunden des 13. Jahrhunderts, Würzburg 1977, 229.

3 Gertrud Schubart-Fikentscher, Die Verbreitung der deutschen Stadtrechte in Osteuropa, Weimar 1942, 38.

4 Rolf Lieberwirth, Das sächsisch-magdeburgische Recht als Quelle osteuropäischer Rechtsordnung, in: Sitzungsberichte der Sächsischen Akademie der Wissenschaften zu Leipzig, (Philolog.-histor. Klasse), Bd. 127/1, Berlin 1986, 5.

5 D. Willoweit aptly commented on this: »es ist wenig wahrscheinlich, dass dieses gedankliche Substrat der rechtshistorischen Germanistik eben jenes *ius theutonicum* ist, das 600 Jahre früher die Urkundenaussteller und Kanzleischreiber beschäftigte.« See Dietmar Willoweit, Das deutsche Recht im Osten – vom Kulturvergleich zur Rezeptionsgeschichte, in: Die Historische Wirkung der östlichen Regionen des Reiches, hg. von Hans Rothe, Köln, Weimar, Wien 1992, 72.

6 The most recent book providing a profound review of the literature on »Ostkolonisation« is J. Piskorski (ed.), Historiographical Approaches to Medieval Colonization of East Central Europe, New York 2002. Among other works on German law in historiography see Johannes F. Fechner, Deutsches Recht in Polen. Ein Überblick über die Forschungslage in Deutschland, in: Dietmar Willoweit and Winfried Schich (Hg.), Studien zur Geschichte des sächsisch-magdeburgischen Rechts in Deutschland und Polen, Frankfurt am Main 1980.

tional discussions and surveys, and has been developing in isolation until the present day.

One can distinguish at least three periods in Ukrainian scholarship. Representatives of the first period, dated from the second half of the nineteenth to the early twentieth century, being concerned with writing a »national history« tried to evaluate the role of German law in the history of Ukrainian towns and Ukrainian lands in general. One of the most renowned legal historians of that time, Vladimirskiy-Budanov, saw the adoption of German law as the reason for the decay of towns in Polish and Lithuanian lands: »privileges were the reason for the collapse of the nobility's state; similarly the main cause of urban decay was attributed to privileges and special rights of towns.«[7] His contemporary Antonovych argued that urban decay was caused by social differentiation, and German law aimed to be a remedy in such conditions, although without success. Kistiakivskyi, writing in 1879 about the eighteenth-century law book *Prava, za yakymy sudytsia malorosiyskyi narod* (Laws According to which Ukrainian People Judge Themselves), dedicated one chapter to the history of German law and its codifications.[8] Another scholar, Bahaliy, who first published his study on Magdeburg law on so-called Left-Bank Ukraine (that is, Ukrainian lands on the left bank of the Dnipro/Dnepr river) in 1892 (and later in a Ukrainian translation in 1904), stressed that the fundamental feature of the law was to separate town dwellers into a closed group. In his opinion, this was suitable for the social order of Poland, but the Ukrainian folk could not accept this organization because it contradicted Ukrainian historical traditions and was, therefore, alien.[9] A general conclusion in these studies suggested that German law was perceived as a foreign concept transmitted mechanically to Ukraine and therefore it could not be fully accepted by the »Ukrainian town folk.«[10]

The idea of German law as being alien and artificial in Ukrainian lands also prevailed in scholarship at the beginning of the twentieth century. These views were present in the works of Hrushevsky, particularly in the fifth volume of his *History of Ukraine-Rus'* (first published in 1905) dealing with the social and political histories of Rus' territories from the fourteenth to the seventeenth century.[11] In his opinion, urban communities formed under the foreign, »ready-made« law, isolated from each other and unable to cooperate with each other, were made helpless.

7 Mikhail Vladimirskiy-Budanov, Nemetskoye pravo v Polshe i Litve (German law in Poland and Lithuania), Zhurnal Ministerstva narodnogo prosveshchenia 8 (1868) 467–554; 9 (1868) 720–806; 11 (1868) 519–586; 12 (1868) 773–833.

8 Olexandr Kistiakivsky, Prava, po kotorym syditsia malorossiyskiy narod (Laws according to which people of Lesser Russia judge themselves), Kyiv 1879, 83–110.

9 Dmytro Bahaliy, Magdeburzke pravo na Livoberezhniy Ukraini (Magdeburg law in Left-Bank Ukraine), Lviv 1904).

10 Volodymyr Antonovych, Izsledovaniye o gorodakh Yuho-Zapadnogo kraya (Investigation of towns in the southwestern region), Monografii po istorii Zapadnoy i Yugozapadnoy Rossii, vol. 1, Kyiv 1885.

11 Mykhailo Hrushevsky, Istorija Ukraijni-Rusi L'vov 1905–1907, vol. 5, 98.

Moreover, foreign ethnic groups occupied the main urban centers of Rus', reducing the autochthonous population there to minority status. Thus, in his view, the history of urban society organized according to German law was, with a few exceptions, a history of decline and decay.[12]

However, another Ukrainian scholar, Jakowliw, revised the attitude from negative to positive: writing abroad and publishing his work in German in Leipzig (1942), he saw »German/Magdeburg law« as a direct import from German lands incorporated into Ukrainian legal traditions. Magdeburg was perceived as a direct model for Ruthenian towns (and villages), and its law imported there in »full dimension«,[13] although no one knows »the full dimension« of Magdeburg law, since it had never been recorded in its »full dimension.« Denying the importance of Poland's mediation in the process of adoption, he saw the Polish Kingdom as responsible for all the negative effects, while the adoption of German law (in a form of the law of Magdeburg) had a positive influence on urban life.[14] Similarly, this point of view was greatly influenced by the author's contemporary political situation.

Generally, these studies concentrated mostly on the evaluation of the adoption of German law »from a Ukrainian point of view,« regarding the influence it had on Ukrainian population, which was seen as a passive recipient (if not a victim). The view of *ius theutonicum* as a »ready-made« foreign law imposed from above on the indigenous people of Rus' implies that German law was often understood as a rigid set of rules and regulations imported in a process similar to modern law transfer.

During the Soviet era (the second period), research on »German law« or medieval urban self-government was unwelcome or treated negatively, likewise seeing German law as »aggression« from outside.[15] At the same time, some historians considered it necessary to counterbalance the flourishing of Western urban life in the Middle Ages with local examples. Following this idea, a Ukrainian scholar, Otamanosvky, denied that towns in a legal sense appeared in Ukraine only with the reception of German law. He emphasized that codices of Old Rus' law (»Rus'ka Pravda«) served as the legal grounds for urban organizations in Kievan Rus' from the eleventh to the thirteenth century, and stressed that Polish kings conducted a policy of annihilation of this specific form of town by introducing German law.[16] The very attempt to create an

12 Ibid., 222–223. Instead, Hrushevsky praised urban life and the system of town and hinterland relationships in Kievan Rus' before the adoption of German law: »the town was a centre of political, economic and cultural life of the land; but the town was not separated from the land – it represented the land and contained all strata and components of society.« See: Hrushevsky, Istorija (nt. 11), vol. 5, 223.

13 This is, for instance, how Jakowliw explained it: »Es handelt sich hier vielmehr um das nämliche Magdeburger Stadtrecht, dessen Umfang und Wirksamkeit bloss den besonderen Lebens- und Daseinsbedingungen des Dorfes und des Bauerntums durch Kürzung und Modification angepasst wurde. Eine viel wichtigere Rolle hatte in Polen, Lithauen und der ukrainischen Ländern das deutsche Stadtrecht in seinem vollen Umfang, in Form des Magdeburger Munizipalrechtes, gespielt.« See: Andrij Jakowliw, Das deutsche Recht in der Ukraine und seine Einflüsse auf das ukrainische Recht im 16.–18. Jahrhundert, Leipzig 1942, 53.

14 Jakowliw, Das deutsche Recht (nt. 13).

15 Alexandr Rogatschewski, Übersicht über das sowjetische Schrifttum der 1970 und 1980er Jahre zur Geschichte des Magdeburger Stadtrechts, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, 1 (1992) 390–399.

16 Waleriy Otamanovsky, Razvitiye gorodskogo stroya na Ukraine v XIV–XVIII vekakh i Magdebrgskoye pravo (Development of urban organization in Ukraine in the fourteenth-eighteenth centuries and Magdeburg law) in: Voprosy Istorii 3 (1958) 122–135. For more on the subject of Magdeburg law in Ukrainian towns see P. Sas, O kharaktere samoupravlenia po magdeburzkomu pravu v horodakh Ukrainy (XV-60 gody XVI) (On the character of self-government under Magdeburg law in towns of Ukraine [the fifteenth to the 60s of sixteenth centuries]) in: Aktualnyie voprosy istoricheskoi nauki Kyiv (1984) 18–19.

»urban law« out of »Rus'ka Pravda« (when in reality this source did not even distinguish between »urban« and »rural«) demonstrated how artificial and biased research was when it came to questions of comparative legal history. The artificial character of many Soviet »official« ideas and theories, as well as the necessity to apply these »official« ideas in regional studies, often caused distortion and misunderstanding of historical phenomena.

The third period in legal-historical research is associated with the time when Ukraine obtained the status of an independent state in the early 1990s. Communist historiography in Ukraine has been transformed into national historiography without a struggle. The ideas of Soviet times were easily replaced with ideas connected to the national paradigm, although the carriers of those ideas remained the same. The carriers, authors, adapted to the new situation simply by changing colors from red (communist) to blue-and-yellow (national), and proclaiming the previously forbidden M. Hrushevsky the new classic instead of Marx or Lenin.[17]

During the last fifteen years of Ukrainian statehood, the spread of *ius theutonicum* has become a »trendy« subject, though ideological concerns have played a certain role in this revival of interest. Some recent studies on the adoption of »German law« were aimed at identifying »democracy and progressive traditions« in Ukrainian towns (in contrast, for instance, to Russian ones). On the other hand, this interest has resulted in new investigations, publications of source material, and scholarly forums to discuss matters of urban self-government.[18] Magdeburg or German law is mentioned in the most recent handbook on Ukrainian history; it is seen as a synonym for »town law« and positively evaluated as a factor leading to urban independence.[19] Scholars of younger generations have also turned to the subject of German law. For instance, Zayats has studied the process of town foundations under Magdeburg law in Wolhynia.[20] Another person who has contributed to German law scholarship in Ukraine is Hoshko, who has concentrated both on the history and the historiography of Magdeburg law.[21] She interpreted the process of adoption of *ius teutonicum* in Ukrainian lands as »integration into European legal space,« although she does not provide an explanation of what »European legal space« in the Middle Ages meant.[22]

Indeed, the presence of modern notions in works on medieval history is striking; another example is a statement that Magdeburg

17 Serhii Plokhy, Imagining Early Modern Ukraine: The »Parallel World« of Natalia Yakovenko, Harvard Ukrainian Studies 25 (2005) 3–4.

18 Among the latter one can mention at least two conferences dedicated to urban self-government: »Current Questions of Urban Development and Urban Self-Government« (held in Rivne in 1993) and »Self-Government in Kyiv: History and the Present. International conference dedicated to the 500th anniversary of the Magdeburg Law grant for Kyiv« (held in Kyiv in 1999). A publication enterprise from 2000 – A Corpus of Magdeburg Law Charters for Ukrainian Towns: Two Editorial Projects in the 20s and the 40s of the Twentieth Century – reveals a story from 1942–1943, when Nazis initiated a search for Magdeburg law privileges in the Kyiv Central Archives in order to transport them to Germany (in fact, documents relocated to Germany were saved, in contrast to those that remained in Kyiv). See Volodymyr Andreytsev, Vasyl Ulianovskyi and Viktor Korotkyi, Korpus magdeburzkikh hramot ukrainskym mistam: dva proekty vydan' 20–40-x rokiv XX st. (Corpus of Magdeburg law charters for Ukrainian towns: Two editorial projects in the 20s –40s of the twentieth century), Kyiv 2000.

19 Natalya Yakowenko, An Outline History of Medieval and Early Modern Ukraine, Kyiv 2005, 127–131.

20 Andriy Zayats, »Do istorii pravovoyi lokatsii volynskykh mist XVI – pershoi polovyny XVII: lokatsiyni pryvileyi v Lytovskiy I Volynskiy (Ruskiy) Metrykakh« (Concerning the legal »location« of Volhynian towns in the sixteenth – first half of the seventeeth centuries: »Location« privileges in the Lithuanian and Volhynian Metricas), Archivy Ukrainy 4–5 (2001): 83–98; Urbanizatsiynyi proces na Volyni v XVI – pershiy polovyni XVII stolittia (The urbanization process in Volhynia from the sixteenth to the middle of the seventeenth century), Lviv 2003.

21 Tetiana Hoshko, Istoriohrafichni problemy magdeburzkoho prava v Ukraini (Historiographic problems of Magdeburg law in Ukraine), Ukraina v mynulomu, 4 (1993) 40–63; Magdeburzke pravo v Ukraini: istoriohrafiya problemy (Magdeburg law in Ukraine: historiography of the problem), in: Materialy zasidan' Istorychnoi ta Archeohrafichnoi komisiy NTSh u Lvovi, Lviv 1994, 16–19.

22 Tetiana Hoshko, Essays on History of Magdeburg Law in Ukraine, Fourteenth – Early Seventeenth Centuries, Lviv 2002.

law »promoted … the strengthening of democratic tendencies, legal culture, and was one of the most important agents of integration of Ukrainian society into European civilization.«[23] Such passages demonstrate an inability to speak about this epoch in terms appropriate to it and may signify that some historical phenomena are still explained insufficiently or inadequately, despite rejecting negative attitudes that were typical for Soviet and pre-Soviet studies. A lack of understanding of the nature of medieval customary laws on the one hand, and uncritical use of constructs and terms of secondary literature on the other, has led to misunderstanding and misinterpretation of the *ius theutonicum quod est ius Magdeburgense* mentioned in privileges.

Therefore, the aim of this study is to interpret *ius theutonicum* from a new perspective and to consider more closely written primary sources (mainly royal privileges) from Galician Rus,' whose references have been used as a basis for the issue of *ius theutonicum Magdeburgense*. At the same time, this will not be a search for the »universal meaning« of *ius theutonicum*. Even an unchanged, coherent system functioned differently under different regional conditions; and a system which is not necessarily coherent changes in time and is probably understood and used in different ways during different periods.

Ius theutonicum as a New System of Settlement Organization

A privilege typically explained *ius theutonicum* as an alternative to the existing order. This term emerged by the thirteenth century in the western Slavic territories neighboring the German lands and should be, therefore, understood as a mark of separation from the *ius* of indigenous Slavic populations and identified with the special position of German settlers there.[24] It signified a safeguarded legal standing, a set of rights and exemptions granted to Germans.

In Silesian documents from the thirteenth century, applied here for comparative purposes, the two terms held the key position: *locare* (sometimes *collocare*) and *ius theutonicum*. Thus, a village was usually *iure teutonico locata* (1251); but one could also talk about *villam … iure teutonico populandam* (1264), literally »a vil-

23 Hoshko, Essays (nt. 22) 196.

24 Rudolf Kötzschke, Die Anfänge des deutschen Rechtes in der Siedlungsgeschichte des Ostens (Ius theutonicum) in: Veröffentlichungen der Sächsischen Akademie der Wissenschaften, phil.-hist. Klasse No. 93 (2), Leipzig 1941, 15 ff.

lage to be populated according to *ius theutonicum*,« which meant that people were settled there according to »German law«.[25] It is necessary to keep in mind the variety of meanings of the Latin word *locare*. It was used in privileges to define two possible acts: the act of foundation of a new settlement and the act of renting already existing settlements.

Abandoned local law was often defined through *gravaminibus, angarias et perangarias iuris polonici,* which was the reason to interpret *ius theutonicum* as a form of liberty or freedom. However, *libertas teutonicorum* was a relative freedom, because the act of liberation from local burdens[26] was usually followed by the list of *iura et servicia* coming *ex dicto iure Teutonico*. In this way, the privileges were dealing not so much with freedoms and rights as such, but rather with replacing one type of obligations with another, so freedom was, in fact, only the release from older burdens.

Privileges for *ius theutonicum* issued for villages and towns in Galician Rus' also declared freedom from local »laws« and typically contained the phrase: … *de iure Polonico, Ruthenico et quovis alio in ius Theutonicum transferimus, removentes ibidem omnia iura Polonicalia, Ruthenicalia et quovis alia*. Such privileges were granted to old settlements as well as to new ones, founded *a crudo radice*. But, contrary to the declaration in charters, in reality this legal »transfer« often did not totally eliminate older systems called *ius Ruthenicum* or *ius Polonicum*. For instance a »Ruthenian village« Nowosielce (known since 1390) was transferred to *ius theutonicum* in 1426,[27] but still preserved institutes of »Ruthenian law« such as *servilis*.[28]

Organizations of medieval royal estates (as well as private ones) apparently required the preservation of the old system (labor services or payment in naturals) in some of the villages, and even foundations of new settlements according to *ius Ruthenicum*.[29] The apparent necessity to settle people under »Ruthenian law« was evident from sources: Phyl, a servant from the village Kostarowce (first mentioned in 1390), sold his land property (*agrum servilem*) into »German law« to a certain Lawr in 1446, promising to free this estate from obligations regarding the castle of Sanok; nevertheless, the court of Sanok castle declared this transaction invalid and ordered Phyl to come back and serve *more Ruthenico* or to settle someone who could do it instead of him.[30] These examples

25 Menzel, Die schlesischen Lokationsurkunden (nt. 2), Urkundentexte no. 1, 358; no. 64, 401.

26 In some documents, these obligations were mentioned: Extraximus autem illam villam … ab omnibus angariis et podvorove et stroza et ab aliis gravaminibus iuris polonici … (1252). See: Menzel, Die schlesischen Lokationsurkunden (nt. 2), Urkundentexte no. 9, 362.

27 villam nostram Ruthenicale Novosyelcze dictam … super laneos franconicos dimensurare et iure Teutunico Maydebrgensi … pro nobis collocare … ipsam de iure Polonico, Ruthenico et quovis alio in ius Theuthonicum … transferrimus … removentes ibidem omnia iura Polonica, Ruthenica et quevis alia … Acta castrensia sanocensia in Central State Historical Archive in Lviv, after: Adam Fastnacht, Osadnictwo Ziemi sanockiej w latach 1340–1650, Wroclaw 1962, 231.

28 The inventory of 1565 mentioned five of them. After: Fastnacht, Osadnictwo (nt. 27) 232.

29 Fastnacht, Osadnictwo (nt. 27) 270.

30 … de ipso [agro]servire more Ruthenico vel saltem sessionare vulgariter ossadzicz [a settler] agrum premissum homine tal, qui posset labores et servicia congrue Reginalia exhibere mre consueto. AGZ, vol. XI, no. 2296.

draw our attention to the fact that the term *ius theutonicum* (similarly to *iura Polonicalia vel Ruthenicalia*) used in privileges had very much to do with the determination of the system according to which a settlement had been organized (or certain people settled), defining the type of relationships between owners and settlers. In this context, »German law« pointed to a different system of relationships.

Why were rights and duties coming from »German law« more attractive than those of *iura Polonicalia vel Ruthenicalia*? The main right was certainly the hereditary use of land (»Erbzinsrecht«) and, consequently, the main obligation was the yearly rent payment, *census* or *census hereditarius*. As a rule the rent for burghers was calculated in coin, while the taxed unit was measured in *mansi franconici*. The payment varied (*e.g.*, one marc, three *fertones*, twenty-four *grossi)* depending on the town and its economic potential, taking into account inflation as well as the time of issuing of the privilege. Sometimes no concrete sum was indicated, but it mentioned the rent *prout alie nostre civitates in terra Russie solvere* (a privilege for the town of Zhydachiv, 1393) or according to *censo nostro regio* (a privilege for the town of Horodok, 1389). The date of payments was usually fixed – *die Sancti Martini* (November 11) – the most widely accepted time for payment also in German territories and in Silesia. Often, especially in a new foundation, burghers were freed from paying rent for a certain period of time calculated from the date of the privilege. The longest liberation was given for clearing woods (up to twenty years), while in the »old« fields (*in antiquis agris*) it was usually six years.

What attracted attention in the study of privileges was that they explicitly introduced a uniform right of land use for every settler and that the taxed unit was always the same. This equal settling right and ascription to a specified court (*i.e.*, a local court established according to »German law«) signified the emergence of an autonomous community, settled under *ius theutonicum* and subjected to the local court [of the landlord]. Therefore, *ius theutonicum* could be interpreted also as a strategy for establishing communities, urban or rural.

Membership in the community and a share in the settlement's commodities, land first of all, were closely interrelated. In this way a settlement under *ius theutonicum* represented legally and physically closed and delimited space; it had defined borders in con-

trast to settlements existing under *ius Ruthenicale* or *Polonicale*. A special right directly related to it was the so-called »Bannmeile« – a prohibition to build a tavern or organize an enterprise in the radius of one mile of the town, securing the town's monopoly and jurisdiction over that area.[31] Among other rights and freedoms shared by members of a community was the right to exploit natural resources such as woods for building and heating, fishing rights and communal use of land free from rent.

Terms of relationships between settlers and the owner, especially regarding *census* payments, were included in almost every privilege or contract. These documents did not convey all possible fields of interactions. Quite important »freedoms« such as an annual market, exemptions from tolls in other royal towns, or a staple right were specified in additional charters.

Thus the transformation coming from *ius theutonicum* manifested itself not in diminishing burdens but rather in rationalizing and standardizing them. In general, a broad range of obligations, duties and services, usual and eventual, were replaced with a fixed rent payment paid (in coin and/or grain) on a specified date.

Questions of Law and Jurisdiction and Legal Reality

As follows from the documents, *ius theutonicum* was defined as antagonism to existing local customs and at the same time as liberation from them, and therefore as a variant of immunity. As already mentioned, the transfer to *ius theutonicum* inevitably meant the withdrawal (at least partial) of duties and obligations coming from older local »laws.« It meant also immunity from the jurisdiction of intermediary officials and protection from summons before any court other than the seigniorial. Compared with the Silesian document from the thirteenth century that exempted »only« *ab omni iurisdictioni nostri castellani et ab aliorum iudicum et officialium,* late medieval charters from Galician Rus' presented an extensive list of different officials who, from now on, had presumably no authority over privileged burghers.[32] Liberation from the jurisdiction of *castellani et palatini* became a usual element in the immunity clauses of the charters in the second half of the thirteenth and early fourteenth centuries. In the second decade of the fourteenth century, with the spread of »land courts«

31 This is how it was expressed in the privilege for the town of Rymanow in 1376: ut nullus terrigenarum, religiosorum, civitatensium aut aliarum personarum locet, limited aut edificet thabernam vel thabernas per unum miliare mensuratum ab eadem civitate distantem. See: ZDM, vol. 1, no. 149.

32 Eximimus insuper, absolvimus et perpetui liberamus omnes et singulos, cives et incolas ipsius civitatis nostrae ab omni iurisdictione et potestate omnium regni nostri palatinorum, castellanorum, capitaneorum, iudicum et subiudicum et quorumvis officialium et ministerialium eorundem …

(»Landgericht«, Polish – »sąd ziemski«) and its officials – *iudices et subjudices* – these two soon found their place in the clause as well. The office of the *starost* (*capitaneus*) emerged during Kasimir III's reign (1333–1370); therefore some privileges started to mention also this authority in immunity clauses. Thus, the formulary gave an impression that a privilege totally excluded recipients from the local jurisdiction.[33] However, the reality was certainly different: while the judicial activity of *castellani et palatini* gradually declined by the end of the fourteenth – beginning of the fifteenth centuries,[34] it was hardly possible that other types of courts (land courts or courts of *capitanei*), operating according to the Polish land law, were restrained from judging »Germans.« In spite of the statement of immunity clauses, *cause magne*, capital sentences or cases connected to bloodshed (*cause majores, cause graviores* or *in causis sanguinis*) were typically reserved to the competence of the sovereign all over medieval Europe. No doubt, a similar situation was also in Lesser Poland.[35]

Moreover, quite unreal appeared to be any exemption from the jurisdiction of the *capitaneus*, especially in the case of royal estates: at the turn of the fourteenth century, every royal town or village was under the authority of a certain *capitaneus*. In that case, the liberation from his authority would mean freedom from control of the king as the owner.[36]

Contradictions between the existing land law and the immunity formula were due to the anachronism of the latter. The formulary had been developed since the early thirteenth century and corresponded to a different reality (*i.e.*, to Germans coming to settle in Polish duchies). Conditions for the adoption of *ius theutonicum* in Lesser Poland during the fourteenth-fifteenth centuries were different, but the formulary was not adequately adapted to those changes.[37]

Still, although clauses or formulae might not adequately correspond to reality, one could not deny the effectiveness of the immunity according to »German law« and the benefits flowing from it. First of all, immunities created the basis for an autonomous court: self-judgment was another important element of *ius theutonicum,* and privileges emphasized jurisdiction and competence of such a court.

Exemptions were usually followed by a formal permission for the *advocatus* to judge, and by further definitions of his compe-

33 Stanislaw Kuras, Przywileje prawa niemieckiego miast i wsi małlopolskich XIV–XV wieku, Wroclaw, 119–120.

34 Kuras, Przywileje (nt. 33) 121.

35 For instance, the statutes of Kasimir the Great, in paragraph 50, stated: »ut accusati de crimine incendii, sive exustionis et inventi in civitatibus aut villis Theutunicalibus extra forum ipsorum trahantur et in iure Polonico … tenebuntur respondere.« See: Statuty Kazimierza Wielkiego (The Statutes of Kasimir the Great), ed. O. Balzer, Poznan 1947.

36 Kuras, Przywileje (nt. 33) 132. At the same time, not every formulary gave that exemption, for instance the privilege issued for Krasnystaw in 1394 reflected jurisdictions more adequately: [cives et incole coram suo advocato, advocatus vero] coram nobis (i.e. the king) aut nostro capitaneo, qui fuertit pro tempore … See: ZDM, vol. VI, no. 1598.

37 Kuras, Przywileje (nt. 33) 132.

tence. The most elaborated formulary in privileges for »German law« issued for towns of Red Rus' (and Lesser Poland in general) during the second half of the fourteenth and fifteenth centuries, expressed in the following way: *In causis autem criminalibus et capitalibus advocato eiusdem civitatis corrigendi, iudicandi, puniendi, plectendi et condempnandi plenam damus et omnimodam conferimus facultatem, prout dictum ius Theutonicum Maydeburgense in omnibus suis punctis, condicionibus, clausulis, articulis et sententciis postulat et requirit, iuribus tamen nostris regalibus in omnibus semper salvis* (from the privilege granted to Lezajsk, 1397).[38] As is known, the competence of the court according »to German law« was much more limited in reality; and these limits implied also the conclusion of the clause, forbidding encroachments on royal rights (*regalia*).

Was the passage referring to the *ius theutonicum* and its »articles, paragraphs, *etc*.,« evidence for the above-mentioned »materielles Recht«? Or was it an explicit reference to those numerous legal codices that presumably spread together with *ius theutonicum*? Probably the earliest reference to »books of Magdeburg law« appeared in the privilege of Kazimir III the Great, concerning the establishment of *Ius supremum Theutonicum castri Cracoviensis* in 1356: *libros iuris Maydeburgensis ordinavimus et in thezauro nostro castri Cracoviensis deposuimus*, and, referring to them as »our books«, the king ordered *ius et sentencias postulare de libris nostris predictis iuris Maydeburgensis*.[39] In these books, obtained directly from Magdeburg, »Magdeburger Schöffensprüchen« were collected.[40] Another manuscript preserved in Krakow from the second half of the fourteenth century (provenance: the town council of Krakow / *Ius supremum* …) contained among others »Sächsische Landrecht,«[41] usually seen as one source for »sächsisch-magdeburgisches Recht.« Thus, the most important texts of German *ius scriptum* existed in medieval Krakow and, one can assume, this fact was known to royal notaries responsible for writing privileges.

However, the formulary for numerous charters (*i. e.*, 173 in total, one of them for Rus') issued during the late thirteenth – fifteenth centuries in Poland emphasized total ignorance of the granter in terms of »German law«: *quoniam iura Theutonica (iura Magdeburgensea / Srzedensia / Novi Fori / Culmensi) sunt nobis prorsus (penitus) incognita (ignota)*. This so-called »ignorance

38 ZDM, vol. VI, no. 1622.

39 Ludwik Łysiak, Ius supremum Maydeburgense castri Cracoviensis 1356–1794. Organisation, Tätigkeit und Stellung des Krakauer Oberhofs in der Rechtsprechung Altpolens, Frankfurt/Main 1990, 171, Annexe 1.

40 In the first part of the privilege the king spoke about emendis sentenciis a scoltetis in Maydeburg per novem fertones latorum grossorum Pragensium et nonullas summas pecuniarum pro expensis exigent et extra regnum nostrum in Maydeburg pro predictis sentenciis emendis transmittunt … See: Łysiak, Ius supremum Maydeburgense (nt. 39) 171, Annexe 1.

41 This fourteenth-century manuscript contained the following: Privilegium iuris Teutonici provincialis supremi castri Cracoviensis constituit (1356); Register über Land- und Weichbildrecht; Weichbildchronik (Auszüge); Weichbildrecht (Art. 6–15); Sächs. Landrecht in 364 Artikeln; Extravagantes des Sachsenspiegel; Conrad von Oppeln, Weichbildrecht mit Extravaganten in 112 Artikeln; Andreae Czarnischa, Nota de reliquiis in ecclesia Virginis Mariae habitis; Gregor IX Dekretalen (Art. 3, 52, 2); Justinian, Codex (Art. 8, 17, 12); Versus de latitudine ac longitudine mansi Franconici; Biblia sacra (Joh. I 1–15); Formula iuramenti scabinorum; Eid der Schöffen (deutsch). See: U.-D. Oppitz, Deutsche Rechtsbücher des Mittelalters, vol. 2: Beschreibung der Handschriften, Köln, Wien 1990, 612–613.

formula« was a typical feature of privileges originated in the ecclesiastical chancelleries of Great Poland (*i.e.*, the majority – 140 – from the chancellery of the Archbishop of Gniezno), while the chancellery of Kasimir III (the Great), for instance, used it only three times; and, moreover, the clause was not known in the first period of the reception of »German law.«[42] Again, taken literally, this clause might speak about certain samples of »norms« for »German law« in its particular version (*i.e.*, that of Magdeburg or Neumarkt), which was not familiar to the ruler. However, the provenance of the charters, containing this clause (*i.e.*, ecclesiastical chancelleries) suggested no real relation to any »law« of the mentioned towns. Simply, the ecclesiastical notary, who certainly had some knowledge of canon and, possibly, Roman law, applied the terminology of »scholarly laws« without paying much attention to its suitability. As was convincingly proven by J. Matuszewski, the origin of the clause was certainly »das gelehrte Recht«: taken from Paulus (*regula est, iuris quidem ignorantiam cuique nocere,* D. 22, 6.9 pr.) this passage on *ignorantia iuris* was probably transmitted *via* Gratian's Decretum (*item, ignorantia iuris alia naturalis, alia civilis.* D. 2 c. 1. qu. 4 § 2), while a notary created *ignorantia iuris Theutonici* out of it.[43] Mentioned *ornatus causa* in order to show the notary's awareness of *ignorantia iuris*, this formulary was inflexibly repeated for centuries and should not be taken as evidence about real knowledge in the contemporary Polish elite concerning *ius theutonicum*. To a great extent, the presence of legal terminology demonstrated a certain stage in the reception of the »scholarly law«, but not that of »German law.« At this point the reception was no more, but not less, the transfer of abstract thoughts into writing practice and the introduction of terminology learned by one scribe from another, more experienced one, or at a university.

As noticed by S. Kuraś, the quality of a document sometimes reversely corresponded to the education of the notary: the more educated he was the more abstract, ornate and sometimes inadequate documents he produced.[44] Generally, chancellors and notaries in the royal chancellery had some knowledge of *ius utrumque*,[45] but were not familiar with the administration and legislation of towns. This passage, like the »ignorance formula«, was only a conventional clause of the chancellery serving as one more confirmation of the durability of legal formulae used through centuries.[46]

42 Józef Matuszewski, Die Ignoranzklausel der Schultheissprivilegien, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Germanische Abteilung 92 (1976) 165.

43 Matuszewski, Die Ignoranzklausel (nt. 42) 180–81. It is also worth mentioning that the first Latin translation of »Sachsenspiegel« in Polish territories was ordered in the second half of the thirteenthcentury by the bishop of Wroclaw who felt the necessity to have a copy of German ius scriptum. Thus, it was known to Polish clerics, but, characteristically enough, no locatio charter referred to Speculum Saxonum. See: Matuszewski, Die Ignoranzklausel (nt. 42) 169.

44 kuras, Przywileje (nt. 33) 132.

45 For instance, one privilege was ended with Datum per manus by reverendi … domini Johanni episcope Wladislawiensis, Regni Polonie cancelarii, as well as venerabilis Wladislai de Oporow decretorum doctoris prepositi s. Floriani, eiusdem regni vicecancellarii. Halych 1429, ZDM, vol. VII, no. 2041.

46 For comparisons in France and England, see: Ecrit et Pouvoir dans les Chancelleries médiévales: Espace français, Espace anglais, ed. by Fianu Kouky and De Lloyd J. Guth, Louvain-la-Neuve 1997, especially Guth, Introduction: Formulary and Literacy as Keys to Unlocking Late Medieval Law, 1–12.

A granter was always concerned that the court would be organized *iuxta omnem observanciam atque ritum, que prescriptum ius Meydburgense*.[47] This was the »Schöffengericht« and the privilege for Kolomyia (1424), which contained a rare reference to local [*advocatus et*] *scabini* proving it.[48] What, however, cannot be explicitly seen in privileges is »die Anwendung materiellen deutschen Rechtes« mentioned by Menzel in his study on Silesian documents.[49] Establishing a new system of justice, the granter nevertheless did not regulate the question of law to be used there. At least it was not obvious from medieval privileges. A relevant parallel served here the example of »die Kulmer Handfeste« studied by Willoweit: for the Teutonic Order, granting this privilege, it was not important what law was used in the court, but how (according to which »law«) it was organized, that is, its functionality.[50]

Dealing with the history of legal reception required clear distinctions: organization of the court (»Gerichtsverfassung«) according to *ius theutonicum,* and laws or customs used in that court (»Entscheidungsregeln«), represented two different subjects and should, therefore, be treated separately. Concerning the latter, we do not have information on how much of the »Schöffensprüchen« from Magdeburg were incorporated in jurisprudential practice in concrete settlements established according to »German law« in Galician Rus'. Also, we have almost no information on how medieval manuscripts were used there and where they were used. Since *Schöffen*'s sentences were based on personal jurisprudential experience (»Rechtskenntnis«), where this experience was obtained was certainly important for the content of their sentences. Whether the judge was a German, who obtained his »knowledge of law« in his home land, or a Pole – in Poland – appeared to be significant for their judgments. It was not necessary that a settlement with Polish or Ruthenian inhabitants would turn to German customary law while solving internal disputes after the grant of *ius theutonicum*.

Privileges establishing a local system of justice in towns and villages under *ius theutonicum* did not regulate which law should be used in the court. When *ius theutonicum* in medieval Ruthenian privileges was first of all a definition of a type of settlement and its specific rights and obligations, then *ius theutonicum Magdeburgense* in the case of Ruthenian towns had no direct relevance to the

47 Referred to the town of Sambor, 1390. See: AGZ, vol. VI, no. 2. The privilege of the town of Sanok 1366 also implied that the ruler was concerned with the type and form of the court: In causis autem criminalibus … memorato advocato iuxta formam iuris Thewtonici Maydburgensis iudicandi, sinandi, condempnandi et puniendi plenam concedimus facultatem. See: AGZ, vol. III, no. 15.

48 Extunc non alibi solum im Colomia coram advocato et scabinis ipsorum nec aliter quam ipsorum iure Theutonico Maideburgensi de se querulanti respondere tenebuntur et debebunt, nisi hec specialissima requiret consuetude, extunc iure ipsorum Theutonico similiter Maideburgensi et non alio in alys certis locis contra ipsos procedetur. AGZ, vol. IV, no. 67.

49 Menzel, Die schlesischen Lokationsurkunden (nt. 2) 271.

50 »Für das Gericht wird die Freiheit der Richterwahl gewährt und die Urteilfindung nach Magdeburger Recht angeordnet. Der Deutsche Orden unternimmt also gar keinen Versuch, das Gerichtverfahren und die Urteiltragenden materiellen Entscheidungsregeln in irgendeiner Weise zu beeinflussen. Wichtig scheint dem Orden nur die Funktiontüchtichkeit überhaupt, und diese schien durch die Übernahme eines bewährten Mechanismus gewährleistet.« See: Dietmar Willoweit, Das deutsche Recht im Osten – vom Kulturvergleich zur Rezeptionsgeschichte, in: Hans Rothe (Hg.), Die Historische Wirkung der östlichen Regionen des Reiches, Köln, Weimar, Wien 1992, 75.

actual law of Magdeburg (symptomatically, the adjective *Magdeburgense* was not mentioned in thirteenth-century documents), and even to a »family« of this law (in contrast to Polish and Silesian towns that had direct contacts with Magdeburg).

Advocatus and Problem of Town Freedom

Privileges for *ius theutonicum* showed a prominent position of organizers of settlements – *locatores* – known subsequently as *advocati* in towns and *sculteti* in villages. The *advocatus* acted as a mediator (»Zwischeninstanz«) between the owner and settlers: he represented a community before the lord and was himself a lord's representative for settlers, being at the same time relatively independent from both sides. Due to the fact that most existing charters for *ius theutonicum* were agreements between the settlement owner and the *advocatus*, terms and conditions of the *advocatus*'s duties and rights were given the central position. He secured this outstanding position *ratione locationis,* that is, due to his efforts, resources and experience invested in the organization of a new settlement. *Advocati* were the main authority in the community. Among the rights granted to the *advocatus/scultetus* the most important was the right of hereditary possession of *advocacia,* with permission for alienation.[51] Additionally there were usually: a share in the court fee (1/3) and in the yearly rent (1/6), certain measure of land free of tax (up to six *mansi*), fishing and hunting rights, and a possibility to establish taverns, mills, ponds, shops and workshops. Although rights of the *advocatus* were listed in detail, they all showed a great deal of similarity and were often referred to in documents as *ius* or *mos scultetorum*.[52]

Starting from the late thirteenth century, a privileged group comprised of *advocati* and *sculteti* with a distinctive set of rights (*iure sculteciel/iure advocacie*) emerged in Polish medieval society. They had a great freedom, at least until the mid-fifteenth century, in managing their possessions and positions, much greater than *dominium utile* would allow.[53] Distinctiveness of possessions of these medieval ventures from other types of estates was emphasized in decisions of *Ius supremum Theutonicum castri Cracoviensis*.[54] This separate standing gradually deteriorated in the second half of the fifteenth century, because the Polish nobility were actively

51 Etiam ipsam Advocaciam vendendi, donandi et commutandi ac pro sua suorumque posterorum voluntate quovis titulo alienacionis libere convertendi. See: Codex Diplomaticus Poloniae Minorum, I, no. 294.

52 This phenomenon was recognised by Ludwik Łysiak, who identified passages huiusmodi laneos ipsorum iure advocacie possideant or iure scultecie sibi pleno reservato with a typical set of rights connected to the possession of the scultetia or advocatia. Acknowledging these rights as a separate ius proved their special position in the Polish social system. See: Łysiak, U podstaw formowania się polskiego stanu sołtysiego [Les origines de la formation du groupe social des maires de villages (sculteti) en ancienne Pologne] in: Czasopismo Prawno-Historyczne, t. XVI, 1(1964) 231–251.

53 Łysiak, U podstaw formowania (nt. 52) 237–38.

54 Łysiak, U podstaw formowania (nt. 52) 237–38.

buying possessions and positions of *advocatus* and *scultetus*. As a result, more and more cases connected to settlements according to »German law« went to the land law courts, while the supreme courts of *ius theutonicum* increasingly lost their competence and declined, except in Krakow, during the second half of the sixteenth century.[55]

Initially, every settlement established according to *ius theutonicum* was under the leadership of *advocatus* (or *scultetus* in case of a village). Therefore, the foundational process »according to *ius theutonicum*« did not free a town from its owner. The grant of *ius theutonicum* did not automatically mean self-governing freedom for a town, any more or less than for a village; and it did not mean withdrawal of traditional holders. Urban self-government was not implicit for German law, rather it represented a certain stage of development of town foundations; and limits of obtained autonomy differed from case to case.[56] The level of freedom in every town was defined by the owner; as a rule royal towns had more freedom than private ones.

At the same time, the institute of an *advocatus* could enhance the formation of organs of self-government. Richer urban communities were able to buy the office of *advocatus*, limiting the influence of a land lord and took themselves all duties connected to external and internal policy. Gradually a town council, a representative organ of an urban community, developed and this was interpreted as a sign of urban self-government.[57] Unfortunately, there is no information from the medieval period concerning how town councils of Rus' were elected and functioned, but sources from the sixteenth and seventeenth centuries as well as parallels to other Polish towns demonstrated that this institution was traditionally concerned with organization and regulation of trade and production in towns.

Motivations for Adoption of *ius theutonicum* and Royal Policy

Motives for a grant of *ius theutonicum* were expressed in privileges schematically. Nevertheless, formulary used to express the motives reflected general expectations, political programs and goals connected with such a grant. As a rule, documents connected

55 Łysiak, Małopolskie dokumenty lokacyjne w praktyce sądowej XIV–XVI wieku [Les documents de location dans la pratique judiciaire du XIV–XVI s. dans la Petite Pologne] in: Czasopismo Prawno-Historyczne, t. XVI, 2 (1964) 48.

56 Zygfryd Rymaszewski, Miejskość czy wiejskość prawa niemieciego w Polsce [Urbanity or rurality of German law in Poland] in: Zeszyty naukowe universytetu Lódzkiego, I/69 (1970) 69.

57 Rymaszewski, Miejskość (nt. 56) 69.

to the grant of *ius theutonicum* from thirteenth-century Silesia defined the motives plainly: … *cupientes meliorationem terre; quia cupimus … de deserto fructum aliquem … percipere; considerantes statum terre et cupientes bona et res nostras in amplius reformari; etc.*[58]

Charters for Ruthenian towns issued at least a century later demonstrated a development in the formulary used by the chancellery, but fewer changes in motives. Almost every privilege for German law stressed the process of reformation and re-organization, while expressing the motivations for a new foundation: *cupientes terram nostram Russie per civitatum locacionem maioribus utilitatibus reformare*.[59] The right to found a town belonged exclusively to kings, being a part of *regalia*; therefore, initially most towns were founded on the royal domain; their foundations and development were important agents in re-structuring and re-organizing the economic basis of the state.

Famous for his foundational activity, Kazimir III (the Great) conducted intensive reforms on Ruthenian lands after they were incorporated into the Polish Kingdom. In fact, most of the important Ruthenian urban centers here were re-chartered or transferred to Magdeburg law during his reign (1349–1370). Furthermore, the majority of foundations of that period were royal ones. The foundational policy in Poland changed greatly during the reign of Wladyslaw II Jagiello (1387–1434); along with the emergence of royal towns, private foundations took place more and more often. In general, the royal initiative in Poland was dominant during the thirteenth and fourteenth centuries, when royal estates were developed and re-organized. An increase in private foundations became prominent in the fifteenth century, along with the development of private landed estates and the strengthening of the position of the nobility in the Polish Kingdom at the expense of royal power. At the same time, the volume of ecclesiastical foundations was quite meager in the context of urban development of Galician Rus'.

In spite of the division of »motivation statements« according to the rulers who issued the privileges, they dealt with similar motives and often with similar formulary to express them. The adoption of *ius theutonicum* was recognized as an appropriate way to augment revenue for the kingdom and its inhabitants (or for the Roman Church in ecclesiastical foundations), to cultivate and

58 Menzel, Die schlesieschen Lokationsurkunden (nt. 2) 184–185.

59 A privilege for the town Rymanow issued by Wladyslaw of Opole in 1376. See: ZDM 1, no. 149.

populate the land »because no profit comes from a desert«, to increase incomes of the royal treasury and the king himself, and to restore wellbeing and create good conditions. These aims were supposed to be reached through foundations of new villages and towns, as well by reforming and populating already existing settlements by granting *ius theutonicum*. Moreover, for already existing towns, this grant was perceived as compensation for losses and destructions experienced from enemies, as an increase of prosperity and the possibility to get more benefits, to attract new dwellers. For that reason the royal grant of *ius theutonicum* was always a sign of *gracia specialis*. It was described as remuneration for industrious and faithful service, when granted to a lay man, or as a mark of the King's religious piety when granted to the Roman Church. Consequently, *ius theutonicum* could be rightly interpreted as something profitable and desirable, often granted *ad peticiones*.

In general, economic motives dominated grants of *ius theutonicum*: regardless of the region, »German law« was seen as a remedy for financial shortage, a suitable means to improve conditions to attract new settlers and to organize the land. However, the terminology used in the declared motivation drew attention to deeper reasons. The kings were concerned with reforming *res et bona nostra, terra nostra, regnum Poloniae*. In general, that meant they were aiming at re-forming and re-organizing possessions and incomes, their realm and finally the territory of the kingdom, establishing their influence and power over the economy and law in their domain.

References to Local Practice and its Meaning

The formula expressing the transfer to *ius theutonicum* frequently referred to local examples of already »located« towns, mentioning either a concrete town or the general practice in Galician Rus'. The privilege of duke Wladyslaw of Opole, establishing a town in the villages Czysna et Lezin in 1376, had the following declaration: *volumus, quod omnes incole et inhabitatores dicte nostre civitatis omnia iura et consuetudines nobis faciant, prout cetere nostre civitates terre Russie facere consueverunt*.[60] The expression *iura et consuetudines facere* gave one

60 ZDM, vol. I, no. 149.

more proof that the ruler, while granting *ius theutonicum*, expected his town not only to enjoy freedoms but also to perform anticipated duties and services similar to those of other towns in the land. Founding a town of Nowotaniec according to »German law« in the village with a similar name in 1444, Kasimir IV pointed out the transfer *in ius theutonicum, quod Maidburgense dicitur, quo alie civitates in regno nostro sibi vicinate gaudent et fruuntur.*[61] Often the privilege indicated a specific town as a model: *iure Teutonico Maydeburgensi, quo gaudet civitas nostra Sanocensis*. In this charter, Sanok was ordered to be a model for the newly founded town of Tyczyn in *districtus Sanocensis*.[62] Lviv / Lemberg often served as a regular model for other foundations in Galician Rus' territory: *iure Teutonico Maydeburgensi, quo civitas nostra Leona alias Lwow utitur* – is stated in the privileges for the towns of Horodok and Peremyshl.[63] In one case, the privilege explicitly stated that the newly chartered town of Zhydachiv (1393) should turn for judicial help *ad civitatem nostram Lemburgensem*.[64] One privilege contained a unique reference to the urban statute, »Willkür«, which meant that not only »outer« but also »inner« rules and regulations of the town should be taken as a model.

At the same time, there was no evidence that any town of Galician Rus' turned to Magdeburg for legal advice. What is more, while establishing *Ius supremum Theutonicum castri Cracoviensis* in 1356, Kasimir the Great forbade any judicial consultation that went beyond his realm. In this way, he terminated the access to the supreme court of »Schöffen« of Magdeburg as a source of law. Taking into account these facts, as well as constant references to the local practice in the process of adoption of *ius theutonicum*, it is hardly possible to suppose that Ruthenian towns obtained »das nämliche Magdeburger Stadtrecht,« as stated by Jakowliw.[65]

Already in the second half of the fourteenth century, to which the earliest Ruthenian privileges belonged, references to *ius Magdeburgense* or *Culmense* as specific variations of *ius theutonicum* became conventional clauses; they turned to *termini technici,* used to indicate the type of a settlement, its organization as well as related freedoms and obligations, and not to the »Stadtrecht« of Magdeburg. In late medieval and early modern times, which »law« – *ius Magdeburgense / Culmense / Sredense* – was mentioned in the »transfer« might depend more on the formulae and terminology of the royal chancellery than on concrete circumstances and require-

61 AGZ, vol. III, no. 109.

62 CDPM, vol. I, no. 294.

63 ZDM, vol. VI, no. 1561; AGZ, vol. V, no. XIX. Further references to Lemberg: Et quilibet incolarum de quolibet manso tantum solvet et eodem termino pro censu, decimis et aliis solutionibus, quantum et quo tempore homines de Lemburga solvere sint soliti (Belz 1377): ZDM, vol. IV, no. 1034; Volentes ipsa civitas Lubaczow et omnes ipsius inhabitatones omnibus et singulis iuribus, gratiisque quibus civitas nostra Lamburiensis et incolae eius uti consueverunt, potiri debeant et gaudere (Liubachiv 1376): ZDM, vol. IV, no. 1028; omnia iura, quibus civitam nostra Lembergensis fruitur ab antiquo … (Sudova Vyshnia 1368): KDM, vol. III, no. 812; Item mensuris et librarum ponderibus ipsis incolis uti et gauderi concedimus, prout Leopolis et alie nostrae civitates in terra Russie potiuntur et fruuntur. Item Wielkircz eisdem incolis more et consuetudine aliarum urbium conferimus observandum … (Stryi, 1431): ZDM, vol. VII, no. 2088.

64 Si autem ab advocato et scabinis in iudicio contigerit provocari et appelari pro iure supremo consulendo et habendo, non alias preterquam ad civitatem nostram Lemburgensem recurrere debent provocantes civitatis nostre Zidaczoviensis predicte. See: ZDM, vol. VI, no. 1589.

65 Jakowliw, Das deutsche Recht (nt. 13) 53.

ments of a »transferred« settlement.[66] It is more reasonable to see an actual prototype in references to local practice: that is, by identifying the capital town in a district or in the whole land (»a land« or *terra* as a separate administrative unit) as the model for a new foundation.

References to the local practice, or naming the main town in the administrative district (in our case – Lviv) a model for the new foundation, also implied the unification policy of the ruler, formation of a regional variant of *ius theutonicum* and the local practice for organizing and re-organizing settlements. In this way, the granter of *ius theutonicum Magdeburgense* referred in his privileges to »laws« used by burghers in neighboring towns (*e.g.*, Lviv/Lemberg or any other town in the Polish Kingdom) and not to those of burghers of Magdeburg. Similarly as in Silesia a century ago, German law in Galician Rus' was in the first place an imitation of the tenurial, jurisdictional, and status arrangements operating within the particular earlier settlements established according to German law.[67] Specified localities provided standardized models for particular elements, or combinations of elements of German law.

Conclusions

A study of privileges led to the conclusion that the translation of the medieval term *ius theutonicum* as »German law« inspired scholars to look for normative sources (for manuscripts with »Entscheidungsregeln«) which chartered settlements supposedly received together with the grant of *ius theutonicum*. The reception of such a »law« cannot be proven on the basis of medieval privileges, however. The privilege did not refer to any set of legal customs brought by German settlers which were to operate in this new system of justice. On the contrary, it was of no particular importance for the grantor what »laws« were used in the court organized according to *ius theutonicum*.[68]

Considered generally, privileges for *ius theutonicum* regulated two major sets of questions: hereditary land use and jurisdiction, the two constant elements of every settlement under »German law« (both rural and urban). The new order found itself in clear opposition to local customs: a settlement under »German law« was

66 Stanislaw Kuras gave an example, when the settlement of Biała received the privilege for ius civile Culmense, videlicet Magdeburgense. See: Kuras, Przywileje (nt. 33) 149.

67 Piotr Górecki, Economy, Society and Lordship, New York 1992, 257–258.

68 One cannot deny that in courts of »German law« German legal customs were in operation, especially when settlers were Germans. However, it was not a collection of »Entscheidungsregeln« that the rulers in Eastern Europe were so willing to adopt, anticipating economic prosperity and re-organization of the land.

seen by historians as an »island« separated by its special status within the »sea« of »local laws.« As such, these »legal islands« needed a clear boundary and it was one of the characteristic features of the »new town«: a clearly defined boundary, in contrast to the old one.

The set of questions regarding hereditary use of land as well as rights and obligations associated with *ius theutonicum* were, as a rule, discussed in detail. A characteristic feature was that these rights and obligations were equally applied to every member of a settlement. Equal, at least in theory, legal status and subjection to the same jurisdiction of local courts created the basis for establishing an autonomous community, whether urban or rural.

The questions of jurisdiction and of establishing an autonomous court were treated schematically: withdrawal of the jurisdiction of institutions operating under the Polish/Ruthenian »laws«; establishing a new autonomous system of judging, according to *ius theutonicum* (»Schöffengericht«); connecting it directly to the highest authority often defined as the king himself but, in reality, to the specified courts or the courts of »German law«. The major concern of the grantor in this regard was the effective functioning of the new judicial system, created according to *ius theutonicum*. The structure of justice and administration should be »as *ius theutonicum* prescribed.« Therefore, one of the major distinctions of the settlements under »German law« was the change in its internal organization (»Verfassungsordnung«), in the administration and jurisdiction which in medieval times were closely connected. The grant of *ius theutonicum* did not mean autonomy comparable to that of Western towns: the level of freedom in every town was defined by the owner; as a rule royal towns had more freedom than private ones.

Ius theutonicum represented a flexible model, a blueprint, or a general set of principles, which was then filled with actual content and adapted to local circumstances. This term defined a particular type of settlement, the status of its inhabitants and relations to a landowner. It was no a collection of »Entscheidungsregeln« or a codified set of norms, but a new model of economic and legal relationships that the rulers in Eastern Europe were so willing to adopt, anticipating economic prosperity and re-organization of the land. Frequently, a practice that proved to be successful in one place attempted to be reproduced in others, thus contributing

to formation of local »types« of *ius theutonicum,* showing their own features in its reception. In such a situation, references to *iura Theutonicalia (iura Magdeburgensea / Srzedensia / Novi Fori / Culmensia)* in the fourteenth-fifteenth century Galician Rus' signified merely technical terms and did not imply any connection to Magdeburg itself, in contrast to Silesian towns and even Krakow, where legal contacts were evident.

As was seen, a variety of matters were settled by a privilege in connection to *ius theutonicum*. In order to refer to all of them in one word, one had to find an abstract definition, a term that would draw together everything connected to the new system. At that time, Poland was in the process of reception not only of »German law« but also of scholarly / »learned« law (»gelehrtes Recht«). The reduction of diverse social situations and expectations to one basic type (»deutschrechtliche Siedlung«) and the invention of an abstract term to define them indeed indicated the necessity to see the history of »German law« as a »Rezeptionsproblem.«[69] *Ius theutonicum* as a technical term could be seen as the first sign of jurisprudential reflections in royal chancelleries of Eastern Europe.

Instrumentalization of *ius theutonicum* was a part of a broader process of establishing efficient lordship (»Herrschaftsintensivierung«) in Eastern Europe, when the structure of government of a whole kingdom was under the influence of rational ordering. At this point it became even clearer why the chancellery was putting so much emphasis on reforming and re-organizing the *regnum*, expressed in the motivation clauses of privileges.

The process of urban foundation according to »German law« was an important component in a policy that aimed at further development of centralized seigniorial power, which once more points to the importance of the ruler's initiative. Both princes of Galician Rus' and later Polish kings regarded towns as means of their advance. Privileges showed how, by granting a broad immunity from local »laws,« rulers introduced the new order. It was this order, the model for re-organization of settlements, but also of re-establishing lordship, which the documents called *ius theutonicum*. Speaking about *regnum, terra, utilitas, bona et res nostra*, in the motivation parts/*arenga*s of privileges, kings were not only concerned about economic benefits. They were concerned with organizing their possessions, their realm and finally their territory.

69 Willoweit, Das deutsche Recht im Osten (nt. 50) 74.

By adopting *ius theutonicum*, the rulers were establishing their own legal space with the king at the top of the jurisdictional hierarchy and not integrating at all into something that historians might call today »European legal space.«

Olha Kozubska-Andrusiv