

Józef KOREDZUK*

August Karl Heylman's thoughts on the legal science

Abstract: August Heylman is one of the forgotten lawyers of the Kingdom of Poland in the 19th century. He was a practitioner, holding high positions in the then administration and judiciary of the Kingdom. At the same time he occupied himself with scholarly activity. He was one of the main advocates of the historical school of law in the Polish legal science in the 19th century as well as a co-creator of one of the best-known Polish scientific journals edited under the title *Themis Polska*.

Keywords: JURISPRUDENCE, THE KINGDOM OF POLAND, LEGAL SCIENCE, ROMAN LAW, HISTORICAL SCHOOL OF LAW, *THEMIS POLSKA*

August Heylman is one of the forgotten lawyers of the Kingdom of Poland, who combined work in the judicial system with scientific activity. He was interested in the role which law plays in the functioning of the state. Therefore his works deal with many issues which today fall within the scope of administration sciences. In this respect, he was one of the precursors of this science in Poland in the 19th century.¹

August Karol Heylman was born in Poznań on 7 September 1796. After losing his parents (Samuel Heilmann and Anna Maria, nee Kauschke), at a young age, he was sent to his relatives in Warsaw. In 1815, he graduated from the Warsaw High School (*Liceum Warszawskie*), run by Samuel Bogumił Linde, whose graduates included also Waclaw Aleksander Maciejowski, Jan Szymanowski, Aleksander This and Jan Kanty Wołowski.²

* Chair of State and Law Sciences, Institute of Legal Sciences, University of Opole, e-mail: kored.j@interia.pl, ORCID: <https://orcid.org/0000-0002-3471-586X>.

¹ W. Witkowski, *August Heylman polskim prekursorem nauki administracji w drugiej połowie XIX stulecia*, In: S. Grodziski, D. Malec, A. Karabowicz, M. Stus (eds), *Vetera novis augere. Studia i prace dedykowane Profesorowi Waclawowi Uruszcakowi*, v. 2, Kraków 2010.

² W. Witkowski, *Aleksander This i Jan Kanty Wołowski. Wybitni prawnicy Królestwa Polskiego*, Lublin 2001, p. 13; [K.Wł. Wójcicki], *Karol August Heylman*, „Kłosy” 1872, v. 15, no. 378, p. 199.

Between 1815 and 1818 he studied law at the University of Berlin and the University of Göttingen. However, he completed his studies at the Faculty of Law of the University of Warsaw, where he received his Master's degree in both laws (*iuris utriusque magister*) on 18 February 1819.³

After his graduation, he worked in the justice system of the Kingdom of Poland, first in the Government Commission for Justice (*Komisja Rządowa Sprawiedliwości*), then as a subprocurator at the Court of Appeal in Warsaw and later as a judge of this Court (since 1837), ending his professional career as a vice-president of this Court (since 1861) and a member of the Council of the State of the Kingdom of Poland (working in departments of litigation, appeals and complaints).⁴ Apart from his professional activities, he was also engaged in scholarly work, which he practiced outside the scientific institutions existing at that time in the Kingdom of Poland. Regarding the field of legal science, his works also dealt with subjects exceeding the sphere of his professional interests. He was primarily interested in civil law, in which he proposed modernisation of many outdated regulations, often in spite of the resistance from more conservative lawyers and members of society.

A.K. Heylman, alongside Romuald Hube and Aleksander This, was – according to Wojciech Witkowski – one of the most outstanding lawyers in the Polish Kingdom, who also successfully developed scientific work.⁵ A.K. Heylman was highly valued by Władysław Sobociński, who noted in his biography that „during the period of the greatest collapse of legal science in the Kingdom of Poland, that is between the closure of the University of Warsaw [in 1831 - J.K.] and the opening of the Main School [in 1862 – J.K.], he was undoubtedly the most active of the Polish legal writers.”⁶ In fact, he did not limit his duties only to the proper performance of his professional commitments, but rather undertook activities in those fields which, in his opinion, were connected with the concepts of law and justice. Therefore, he devoted his entire life to scientific work on law.⁷ At that time, this activity was rewarded in the best possible way – in 1848, he received an honorary doctorate from the Jagiellonian University.

³ W. Witkowski, *Aleksander This...*, p. 13-14; W. Witkowski, *Nowe pokolenie prawników Królestwa Polskiego I połowy XIX wieku*, „Rejent” 2000, y. 10, no. 4, p. 191.

⁴ W. Witkowski, *August Heylman...*, p. 1155; W. Witkowski, *Nowe pokolenie...*, p. 197.

⁵ W. Witkowski, *W kręgu prawników XIX-wiecznej Warszawy – Jan Chryzostom Sławianowski (1804–1867)*, In: *Z dziejów kultury prawnej. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w dziewięćdziesięciolecie urodzin*, Warszawa 2014, p. 268.

⁶ W. Sobociński, *Heylman (Heilmann) Karol August*, In: *Polski Słownik Biograficzny*, v. 9. *Gross Adolf – Horoch Kalikst*, Wrocław-Warszawa-Kraków 1960-1961, p. 503.

⁷ M. [K. Małkowski], *August Karol Heylman*, „Tygodnik Ilustrowany” 1872, series. A, v. 10, no. 247, p. 133.

In 1828, he joined the group of young lawyers from Warsaw, who started publishing *Themis Polska, czyli pismo nauce i praktyce prawa poświęcone* [Themis Polska, a journal dedicated to the science and practice of law]. Because of the composition of the editorial board and links between the authors, the *Themis Polska* was virtually a journal of the workers of the Faculty of Law of the University of Warsaw,⁸ who co-opted representatives of legal practice, such as A.K. Heylman. Thanks to the *Themis Polska*, Polish lawyers had an opportunity to learn about the basic principles of the German Historical School – almost every volume contained a section on jurisprudence, in which the views of this school, especially its main representative – Friedrich Carl von Savigny – were presented.⁹

After the *Themis Polska* ceased to come out, A.K. Heylman began longer cooperation with the *Warszawska Biblioteka* [Warsaw Library] and, for a short time, with the *Kwartalnik Naukowy* [The Scientific Quarterly] published in Krakow by Antoni Zygmunt Helcel. This cooperation did not last long, since *The Quaterly* itself was published for only two years (between 1835-1836) and promoted the principles of George Wilhelm Friedrich Hegel's Philosophical School rather than Friedrich Carl von Savigny's Historical School.¹⁰

During his studies in Germany he attended lectures given by Friedrich Carl von Savigny and Karl Friedrich von Eichhorn in Berlin, as well as those delivered by Gustav von Hugo in Göttingen. A.K. Heylman became an advocate of the Historical School in the Polish jurisprudence to such a degree that because the views which he included in some of his publications, he could be perceived as an enthusiastic apologist of this school.¹¹ He defined his theoretical and legal position in several articles from the early and middle period of his legal writing. They were characterized by both youthful idealism and maturity of opinions, which was the result of numerous polemics with people who, while staying close to him, expressed different scientific views.¹² Despite the fact that his scientific views were not always accepted by others, his works were nevertheless noticed by the Warsaw's Intelligentsia – for example, Julian Bartoszewicz recalls a situation in the salon of Waclaw and Nina Łuszczewska, when in April 1844,

⁸ B. Koredczuk, *Udział inteligencji prawniczej Królestwa Polskiego w kształtowaniu kultury książki (1815–1915)*, Wrocław 2011, p. 75.

⁹ G. Jędrejek, *Teoria prawa niemieckiej szkoły historyczno-prawnej w świetle piśmiennictwa polskiego z XIX wieku*, „Czasy Nowożytne” 2000, v. 8(9), p. 176, footnote 2.

¹⁰ J. Michalski, *Warunki rozwoju nauki polskiej w latach 1795-1862*, In: *Historia nauki Polskiej*, B. Suchodolski (ed.), v. 3. 1795-1862, J. Michalski (ed.), Wrocław 1977, p. 243.

¹¹ W. Witkowski, *August Heylman...*, p. 1156.

¹² W. Sobociński, *op. cit.*, p. 504.

W.A. Maciejowski «read out some review of Heylman's legal work.»¹³ It may have been the work entitled *O historycznej szkole jurystów* [On the Historical School of Jurists], published that year by A.K. Heylman – first published as an article in the *Warsaw Library* (1844, vol. 4, no. 3), and then, in the same year, as a separate publication.

He devoted several articles to legal science in his scholarly output of almost sixty publications. The main works of this group included the following articles: “O stanie nauki prawa w naszym kraju” [On the state of science of law in our country] (*Themis Polska* 1828, vol. 1); “Myśli o nauce prawa i prawodawstwie w kraju naszym” [Thoughts on the science of law and legislature in our country] (*Themis Polska* 1830, vol. 7, issue 2); “Wywód zasad ogólnych nauki prawa i prawodawstwa” [The origins of principles of law and legislature] (*Themis Polska* 1830, vol. 7, issue 1), which constituted his first attempts at more general conceptualizations, as well as: “O historycznej szkoły jurystów” [On the historical school of jurists] (*Biblioteka Warszawska* 1844, vol. 4, no. 3); “O pierwiastkach prawa i nauki prawa Zachodniej Europy” [On elements of law and science of law of Western Europe] (*Warsaw Library* 1842, vol. 2); “Rzut oka na praktykę sądowniczą, jako też o potrzebie kształcenia prawa teoretycznego” [Casting an eye on judicial practice as also on the need of studying theoretical law] (*Biblioteka Warszawska* 1841, vol. 1).

A.K. Heylman's article¹⁴ “O stanie nauki prawa w naszym kraju”, was an introductory article of the first volume of the *Themis Polska*, which just started to be issued. In this study, A.K. Heylman gave an overview of Polish law history from the earliest times, paying particular attention to the history of jurisprudence. He believed that initially it was not inferior to the level of science presented in other countries, but in more recent times he had a less favourable opinion on the level of the national jurisprudence. The quality of scientific level was seen by A. Heylman through the merits of introducing the achievements of German jurisprudence into the Polish science of law.¹⁵

The role of A.K. Heylman's article as an introductory piece in the first edition of the *Themis Polska* was undoubtedly a distinction for its author. This does not mean, however, that his article should be treated as the statement of the journal's policy or that his views were shared by other

¹³ J. Bardach, *Wacław Aleksander Maciejowski i jego współcześni*, Wrocław-Warszawa-Kra-ków-Gdańsk 1971, p. 212.

¹⁴ Some scholars claim that the author of this article was Charles Boromeusz Hoffman. This is the opinion of Stanisław Milewski, the author of the articles: *Początki czasopiśmiennictwa prawniczego w Polsce*, „Państwo i Prawo” 1979, R. XXXIV, v. 12, p. 90, ref. 21; „*Themis Polska*” – *periodyk naukowców i adwokatów*, „Palestra” 2003, R. 48, no. 1-2, p. 87. A similar opinion was expressed by Bartosz Horodecki and Jacek Sobczak (see: B. Horodecki, J. Sobczak, *Trzy Themis Polskie*, „Themis Polska Nova” 2011, no. 1(1), p. 14).

¹⁵ J. Bardach, *op. cit.*, p. 100.

co-workers of the *Themis Polska*. On the contrary – it was them, both in the period when the *Themis* was published and afterwards who A.K. Heylman most often and the most fiercely argued with in scientific disputes.

Although A.K. Heylman was a supporter of the Historical School (*historische Rechtsschule*) established in Germany, due to the nature of his work, he had to reach extensively for contemporary French legal literature, whose views he often fought against, using their own method of exegesis of texts.¹⁶ One could say that he „fought with the opponents with their own weapon.” However, he could not keep up with a strict interpretation, adapted to the letter of the law and to the interests and views prevailing in the country. He was not always consistent in his judgements, sometimes giving primacy to a dogmatic and sometimes to natural law. Therefore, he was usually isolated in his views and met with numerous criticisms.¹⁷

One of his longtime opponents was, among others, R. Hube who also studied in Berlin, but was a vivid oponent of the Historical School, accusing it of overestimation of the importance of customary law in the hierarchy of legal sources. This opinion of Hube was contested by A.K. Heylman on the basis of a misinterpretation of Friedrich Carl von Savigny's views. A.K. Heylman, following von Savigny, distinguished the political element (*das politische Element*), by which he understood the law arising from the internal life of a nation and existing in its consciousness, and the technical element (*das technische Element*), which was the law developed by lawyers. In his opinion, the political element was to be dependent on the nation, while the technical element was to be dependent on courts which need to be as close to the society as possible.¹⁸ According to A.K. Heylman, by customary law von Savigny understood both of the above-mentioned elements, from which „this huge organic unity of Roman law” can be derived. Heylman argued further that von Savigny did not counter customary law to the positive law – as R. Hube interpreted it – but, on the contrary, he approved of positive law (*positives Recht*) when it was based on the customary law. Savigny, on the other hand, objected to the law which was imposed on nations by force.¹⁹ Another supporter of the Historical School, Cyprian Zaborowski, considered, among others, the Prussian Landrecht, Austrian legislation and Napoleon's Code as laws imposed on Poles. A.K. Heylman's

¹⁶ On the side note, it is worth mentioning that also among the collaborators of the French *Thémis ou Bibliothèque du Jurisconsulte* (which was the precursor of the Polish *Themis*) there were both supporters and opponents of the Historical School (cf. P. Pomianowski, *Główne nurty ideologiczno-metodologiczne w środowisku warszawskich prawników przed użyciem powstania listopadowego*, „Zeszyty Prawnicze UKSW” 2011, vol. 11.4, p. 408.

¹⁷ W. Sobociński, *loc. cit.*; W. Witkowski, *August Heylman...*, p. 1156.

¹⁸ P. Pomianowski, *Dyskusja w środowisku „Themis Polskiej” nad przywróceniem trybu kasacyjnego w sądownictwie najwyższym Królestwa Polskiego (1828-1830)*, „Zeszyty Prawnicze UKSW” 2008, v. 8.2, p. 133-134.

¹⁹ G. Jędrejek, *op. cit.*, p. 187-188.

position on this issue was to become extremely valid in the Kingdom of Poland after the fall of the November Uprising in 1831.

This dispute between A.K. Heylman and R. Hube, even if the scientific arguments of the former were not fully convincing, was nevertheless a very promising sign. A.K. Heylman, who tried to implement into Polish jurisprudence the achievements of German Historical School, treated the situation in the Kingdom of Poland as analogous with the situation in Germany after 1814. By this merit he appeared as an apologist, defender of the old Polish law and an opponent of the Russian law imposed on the Kingdom of Poland.

The above hypothesis is confirmed by yet another dispute that A.K. Heylman entered into and which concerned the question whether Poles, as a nation, were ready for codification. His opinion expressed in 1830 was that they were not. Justifying the prematurity of legislative work on this scale, A.K. Heylman pointed to the low level of Polish jurisprudence. He saw a special role of Roman law in education of lawyers. He described Roman law as „the most perfect school of lawyers”. He emphasized that in the studying of Roman law it was necessary not to limit oneself only to the knowledge necessary for passing the exam, but it was also necessary to „ordain [know - J.K.] the spirit of this law.” According to A.K. Heylman, jurisprudence and teaching of law were inextricably linked. He also wrote that in the last 20 years (after 1815) a great progress had been made in this area. He attributed particular merits to W.A. Maciejowski and his method of teaching Roman law, however according to A.K. Heylman, „the present moment seems to be not right for a creation of perfect and national legislation.”²⁰ Moreover, this conclusion was similar to Savigny’s, expressed in his work *O powołaniu naszych czasów do ustawodawstwa i nauki prawa* [On the vocation of our age for legislation and jurisprudence], where he stated that “not at all times does a nation have an attitude for legislation.”²¹ At the same time, the following difference between the Kingdom of Poland and Germany should be noted: there was French civil law in force in the Kingdom, while in Germany there was mostly local law.²²

At the same time, A. Heylman considered it necessary to develop the legal science not only on the basis of case law – as was the case in Germany – but also on the basis of political writings of lawyers and academics.²³

As for A.K. Heylman’s opinion on the low level of Polish jurisprudence and the role that Roman law had to play in this respect, it is worth men-

²⁰ A. Heylman, *Myśli o nauce prawa i prawodawstwie w kraju naszym*, „Themis Polska” 1830, v. 7, issue. 2, p. 139; G. Jędrejek, *op. cit.*, p. 190-191.

²¹ A. Heylman, *op. cit.*, p. 111.

²² P. Pomianowski, *Główne nurty...*, p. 412.

²³ P.Z. Pomianowski, *Początki polskiego czasopiśmiennictwa prawniczego. Seria pierwsza „Themis Polskiej”*, Warszawa 2015, p. 117.

tioning his high hopes for introduction the achievements of the German historical school into the Polish legal science, which he expressed two years earlier in his article "O stanie nauki prawa w naszym kraju" [On the state of science of law in our country]. In this text, after presenting the history and science of Polish law, while describing them in the times of the Duchy of Warsaw, he expressed hope for the establishment of a school in Poland which "by the support of an alliance of true philosophy, jurisprudence and even literature, will put us on an equal footing with other nations in Europe."²⁴ Critics of A.K. Heylman, like Konstanty Malkowski, accused him of vagueness in the application of the historical method and excessive fascination with Roman law and of ignorance of the old Polish law.²⁵

Due to the fact that his scientific activities were dominated by studies devoted to the judicial organisation and the current civil law of the Kingdom, he often had to use the method of text exegesis and referred to contemporary, especially French, legal literature. At that instance, he held dogmatic views to which he subordinated his historical and philosophical ideas. On the other hand, he was unable to maintain strict legal interpretation when dealing with current social and economic issues of the country.²⁶ This is why the methodological foundations of A.K. Heylman's views were perceived as his weakest point. This somewhat unstable methodological approach, which he adopted, made some of his views unacceptable at all and criticized by many.²⁷

Among the three disciplines, that A.K. Heylman distinguished in legal science (history, dogmatics and philosophy), he gave the paramount importance to dogmatics. History explored the past, dogmatics surveyed the present and philosophy unwound the objectives possessed by legislation on the merits of history and dogmatics. These three tasks of lawmaking should be mutually distinctive and form a harmonious unity.²⁸

A.K. Heylman remained faithful to both his legal and scientific views throughout his whole life. They resulted from his social attitude and philosophical concepts adopted by him in his youth during the studies. He admitted to that only at the end of his life, in a series of articles written after 1862, stressing that they were based on an idealistic concept of absolute justice, belonging primarily to the scope of the volition and not mere hu-

²⁴ H-n, *O stanie nauki prawa w naszym kraju*, „Themis Polska” 1828, v. 1, no. 1, p. 28; J. Bar-dach, *loc. cit.*

²⁵ K. Małkowski, *O sporach jurysdykcyjnych w zakresie sądownictwa zwyczajowego cywilnego*, In: *Pismo zbiorowe wydane przez Jozafata Ohryzko*, v. 1, Petersburg 1859, p. 342-343; W. Witkowski, *August Heylman...*, p. 1156.

²⁶ W. Witkowski, *Nowe pokolenie...*, p. 202.

²⁷ W. Witkowski, *August Heylman...*, p. 1157.

²⁸ P.Z. Pomianowski, *Początki czasopiśmiennictwa...*, p. 118.

man knowledge.²⁹ There are some analogies to the view of Immanuel Kant to whom Friedrich Carl von Savigny³⁰ succumbed and which were close to A.K. Heylman due to him being evangelist. It is worth mentioning that A.K. Heylman was an active member of the consistory of the Evangelical-Augsburg Church in the Kingdom of Poland.

A.K. Heylman died childless in Warsaw on 9 September 1872. The scientific works, which he left, testify to his being an active, consistent and striving scholar, and cause memory of him to last.

Bibliography

- Bardach J., *Wacław Aleksander Maciejowski i jego współczesni*, Wrocław-Warszawa-Kraków-Gdańsk 1971.
- H-n, *O stanie nauki prawa w naszym kraju*, „Themis Polska” 1828, v. 1, issue 1.
- Heylman A., *Myśli o nauce prawa i prawodawstwie w kraju naszym*, „Themis Polska” 1830, v. 7, issue 2.
- Horodecki B., Sobczak J., *Trzy Themis Polskie*, „Themis Polska Nova” 2011, no. 1(1).
- Jędrejek G., *Teoria prawa niemieckiej szkoły historyczno-prawnej w świetle piśmiennictwa polskiego z XIX wieku*, „Czasy Nowożytne” 2000, v. 8(9).
- Koredczuk B., *Udział inteligencji prawniczej Królestwa Polskiego w kształtowaniu kultury książki (1815–1915)*, Wrocław 2011.
- M. [Małkowski K.], *August Karol Heylman*, „Tygodnik Ilustrowany” 1872, ser. A, tv 10, no. 247.
- Małkowski K., *O sporach jurysdykcyjnych w zakresie sądownictwa zwyczajowego cywilnego*, in: *Pismo zbiorowe wydane przez Jozafata Ohryzko*, v. 1, Petersburg 1859.
- Martinek M., Poczobut J., *Friedrich Karl von Savigny (1779–1861). Życie i dzieło*, „Kwartalnik Prawa Prywatnego” 2007, y. 16, issue 1.
- Michalski J., *Warunki rozwoju nauki polskiej w latach 1795 – 1862*, w: *Historia nauki polskiej*, red. B. Suchodolski, t. 3. 1795 - 1862, red. J. Michalski, Wrocław 1977.
- Milewski S., *Początki czasopiśmiennictwa prawniczego w Polsce*, „Państwo i Prawo” 1979, y. XXXIV, issue 12.
- Milewski S., „Themis Polska” – *periodyk naukowców i adwokatów*, „Palestra” 2003, y. 48, no. 1-2.
- Pomianowski P., *Dyskusja w środowisku „Themis Polskiej” nad przywróceniem trybu kasacyjnego w sądownictwie najwyższym Królestwa Polskiego (1828-1830)*, „Zeszyty Prawnicze UKSW” 2008, v. 8.2.
- Pomianowski P., *Główne nurty ideologiczno-metodologiczne w środowisku warszawskich prawników przed wybuchem powstania listopadowego*, „Zeszyty Prawnicze UKSW” 2011, v. 11.4.
- Pomianowski P.Z., *Początki polskiego czasopiśmiennictwa prawniczego. Seria pierwsza „Themis Polskiej”*, Warszawa 2015.
- Sobociński W., *Heylman (Heilmann) Karol August*, w: *Polski Słownik Biograficzny*, v. 9. Gross Adolf – Horoch Kalikst, Wrocław-Warszawa-Kraków 1960-1961.
- Witkowski W., *Aleksander This i Jan Kanty Wołowski. Wybitni prawnicy Królestwa Polskiego*, Lublin 2001.
- Witkowski W., *August Heylman polskim prekursorem nauki administracji w drugiej połowie XIX stulecia*, w: *Vetera novis augere. Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi*, S. Grodziski, D. Malec, A. Karabowicz, M. Stus (ed.), v. 2, Kraków 2010.

²⁹ W. Sobociński, *loc. cit.*

³⁰ M. Martinek, J. Poczobut, *Friedrich Karl von Savigny (1779–1861). Życie i dzieło*, „Kwartalnik Prawa Prywatnego” 2007, y. 16, issue 1, p. 17.

Witkowski W., *Nowe pokolenie prawników Królestwa Polskiego I połowy XIX wieku*, „Rejent” 2000, y. 10, no. 4.

Witkowski W., *W kręgu prawników XIX-wiecznej Warszawy – Jan Chryzostom Stawianowski (1804–1867)*, w: *Z dziejów kultury prawnej. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w dziewięćdziesięciolecie urodzin*, Warszawa 2014.

[Wójcicki K.Wł.], *Karol August Heylman*, „Kłosa” 1872, y. 15, no. 378.

MYŚLI AUGUSTA KAROLA HEYLMANA O NAUCE PRAWA

Streszczenie: August Heylman jest jednym z zapomnianych prawników Królestwa Polskiego w XIX w. Praktykiem zajmującym wysokie stanowiska w administracji i sądownictwie Królestwa Polskiego, zajmującym się przy tym działalnością naukową. Był jednym z głównych propagatorów szkoły historycznej prawa w polskiej nauce prawa w XIX w. oraz współtwórców jednego z najbardziej znanych polskich czasopism naukowych „Themis Polska”.

Słowa kluczowe: JURYSPRUDENCJA, KRÓLESTWO POLSKIE, NAUKA PRAWA, PRAWO RZYMSKIE, SZKOŁA HISTORYCZNA PRAWA, “THEMIS POLSKA”