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The Polish Code of Obligations of 1933

Historical Roots and Comparative Context

Edited by
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in cooperation with
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Preface

In a few years, Polish jurists will be celebrating the centenary of the Polish Code of Obligations (*Kodeks zobowiązań*), one of the most impressive legislative achievements of interwar Poland, enacted in October 1933 with binding force from July 1934. This is ground enough to present the Code already now as a unique example of Polish interwar legal thought – one that embraced diverse legal cultures of continental Europe and implemented a variety of legal values.

However, primary objective of the Code was to unify the most important branch of various private laws in force on Polish territories. Although modern in conception, the Code was firmly rooted in legal traditions of continental Europe. It was national in scope yet transnational in inspiration. While Polish codifiers are frequently described as comparatists by necessity, it seems that they chose this approach deliberately, since they drew also on legislative materials which did not apply in interwar Poland.

Authors of this volume analyse the available *travaux préparatoires*, contemporary legal literature, and the drafts as well as the final text of the *Kodeks zobowiązań* itself. This enables the identification of the multifarious sources of inspiration underlying the Code, legal institutions that define it from the point of view of legal doctrine, and finally the influence of the Code on legal debates in the emerging states of interwar Central Eastern and Southeastern Europe.

The *Kodeks zobowiązań* was a short-lived legislative act which remains relatively unknown among legal comparatists. The Second World War and the subsequent introduction of Soviet communism profoundly transformed Polish law. The impact of real socialism, as well as the resilience of pre-war legal thought, is examined in this volume by several contributors, drawing in part on previously unpublished archival materials of the Codification Committee responsible for the Polish Civil Code of 1964.

This volume is divided into three sections: inspirations, institutions, and receptions. The first examines the influence of foreign legal systems on the codification process. The second analyses the distinctive legal institutions of the 1933 Polish Code of Obligations. The third traces the echoes of Polish codification in other European legal systems of the interwar period through

the 1940s. The book concludes with a General Outlook which explores the broader significance of the Code of Obligations within the history of Polish private law.

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Warsaw, in November 2025

*Tomasz Giaro,
Witold Borysiak and
Aleksander Grebieniow*

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List of Abbreviations

AAN	Archiwum Akt Nowych
AAPR	Atti dell'Accademia Polacca di Roma
ABGB	Allgemeines bürgerliches Gesetzbuch of 1811
AcP	Archiv für die civilistische Praxis
AIDC	Annales de l'Institut de Droit Comparé de l'Université de Paris
AJCL	The American Journal of Comparative Law
AJJ	The American Journal of Jurisprudence
ALR	Allgemeines Landrecht für die Preußischen Staaten of 1794
APDN	Архив за правне и друштвене науке [Archive for Legal and Social Sciences]
ArRPh	Archiv für Rechtsphilosophie in Lehre und Praxis
Art.	Artikel
AUW.Prawo	Acta Universitatis Wratislaviensis. Prawo
BGB	Bürgerliches Gesetzbuch of 1900
BGHZ	Entscheidungen des Bundesgerichtshofes in Zivilsachen
BPLC	Baltic Private Law Code of 1864
BSLC	Bulletin de la Société de Législation Comparée
C	The Code of Justinian
CC	Code civil of 1804
CESL	Common European Sales Law
CISG	Convention on International Sale of Goods of 1980
CLR	Comparative Law Review
CPH	Czasopismo Prawno-Historyczne
CPiE	Czasopismo Prawnicze i Ekonomiczne
D	The Digest of Justinian
DCFR	Draft Common Frame of Reference
DCO	Draft Franco-Italian Code of Obligations and Contracts of 1927
DPP	Demokratyczny Przegląd Prawniczy
edn	edition
eds	editors
e.g.	exempli gratia
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
FLR	Fordham Law Review
FP	Forum Prawnicze
fn	footnote
G.	The Institutes of Gaius
GP	Głos Prawa
GS	Głos Sądownictwa

GSW	Gazeta Sądowa Warszawska
Inst.	The Institutes of Justinian
JCLIL	Journal of Comparative Legislation and International Law
JCLS	Journal of Civil Law Studies
JEHL	Journal of the European History of Law
JHIL	Journal of the History of International Law
JI	Juridica International
JJ	Jherings Jahrbücher für die Dogmatik des bürgerlichen Rechts
JZ	Juristenzeitung
KC	Kodeks cywilny of 1964
KPCiK	Kwartalnik Prawa Cywilnego i Karnego
KPP	Kwartalnik Prawa Prywatnego
KSHPiP	Krakowskie Studia z Historii Państwa i Prawa
KZ	Kodeks zobowiązań of 1933
LOC	Bulgarian Law on Obligations and Contracts
MHI	Miscellanea Historico-Iuridica
MP	Monitor Prawniczy
MPB	Monitor Prawa Bankowego
MPHiW	Miesięcznik Prawa Handlowego i Wekslowego
Mn	marginal number
MüKoBGB	Münchener Kommentar zum Bürgerlichen Gesetzbuch
NKZ	Nowy Kodeks Zobowiązań
NP	Nowe Prawo
NPaI	Nowa Palestra
OJLS	Oxford Journal of Legal Studies
OR	The Swiss Obligationenrecht of 1911
OSN	Orzecznictwo Sądu Najwyższego
OSP	Orzecznictwo Sądów Polskich
p.	page
PECL	Principles of European Contract Law
PETL	Principles of European Tort Law
PICC	Principles of International Commercial Contracts
PiP	Państwo i Prawo
PN	Przegląd Notarialny
PNH	Przegląd Nauk Historycznych
pp.	pages
PPC	Polski Proces Cywilny
PPH	Przegląd Prawa Handlowego
PPiA	Przegląd Prawa i Administracji
PPUW	Przegląd Prawniczy Uniwersytetu Warszawskiego
PS	Przegląd Sądowy
PUG	Problemy Ustawodawstwa Gospodarczego
PW	Przegląd Współczesny
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RDC	Rivista di diritto civile
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen
RISG	Rivista Italiana delle Scienze Giuridiche
RL	Rocznik Lubelski

RLTG	Rocznik Lubelskiego Towarzystwa Genealogicznego
RNP	Roczniki Nauk Prawnych
RPEiS	Rocznik Prawniczy, Ekonomiczny i Socjologiczny
s.a.	sine anno
SC	Seminarios complutenses de derecho romano: revista complutense de derecho romano y tradición romanística
SDPiPP	Studia z Dziejów Państwa i Prawa Polskiego
sec.	section
sent.	sentence
s.l.	sine loco
SGZ	Serbian Civil Code of 1844
SI	Studia Iuridica
SIL	Studia Iuridica Lubliniensia
SIT	Studia Iuridica Toruniensia
s.n.	sine nomine
SPC	System Prawa Cywilnego
SPE	Studia Prawno-Ekonomiczne
SP KUL	Studia Prawnicze KUL
SPP	System Prawa Prywatnego
Studia PP	Studia Prawa Prywatnego
ThP	Themis Polska
TPP	Transformacje Prawa Prywatnego
UPICC	Unidroit Principles of International Commercial Contracts
WPP	Wileński Przegląd Prawniczy
YPD	Yugoslav Preliminary Draft
ZBljurPr	Zentralblatt für die juristische Praxis
ZfPR	Zeitschrift für ausländisches und internationales Privatrecht
ZGB	The Swiss Civil Code of 1907
ZN	Zeszyty Naukowe Uniwersytetu Łódzkiego. Seria I. Nauki Humanistyczno-Społeczne
ZoR	Zeitschrift für osteuropäisches Recht
ZP TBSP	Zeszyty Prawnicze TBSP
ZSS.RA	Zeitschrift der Savigny-Stiftung. Romanistische Abteilung

Introduction

Tomasz Giaro

This edited volume brings together contributions on the roots of the modern Polish law of obligations and its comparative embeddedness in all its complexity. Situated at the centre of Europe, Poland has long been a melting pot of different sub-traditions within the civil law system. The Polish law of obligations can therefore be regarded as a compound system, whose regulatory foundations reflect a synthesis of several continental codifications. Modern Polish law itself was born with the rebirth of Polish statehood in 1918, following the defeat in the First World War of all three partitioning powers: Russia, Prussia – by then replaced by the German Reich – and Austria, succeeded by Austria-Hungary.

Among the problems facing interwar Poland, first and foremost was the need to overcome the adverse legacy of the country's tripartite political division; alongside this persisted the unresolved issue of national minorities, with its attendant ethnic conflicts. The reborn Polish state continued to suffer from the long-term consequences of the partitions. Until the end of the interwar period, significant disparities survived between the formerly partitioned territories in their political, civilizational, social, and economic development. The immediate reason lay in the fact that interwar Poland was composed of three peripheral provinces of former empires whose economic and intellectual centres were located elsewhere.¹

The unification of the three lands into a homogeneous state was an objective of Polish interwar legislation.² Although the national unification of the administration, the monetary system, and education had been achieved by 1939, the full integration of these provinces remained incomplete. In higher education, the territories formerly annexed by Prussia and Russia had lacked a specifically Polish university. Consequently, only two universities were able simply to carry forward their work from the partitions era: the universities of the Danube Monarchy, Kraków (Cracow) and Lwów (Lemberg), both with

¹ *Koryś*, Poland, 208.

² *Górnicki*, in: *AUW.Prawo* 311 (2011), 111–146.

strong private-law faculties, which were soon joined by Warsaw's Faculty of Law and Political Sciences.

The autonomy of Polish universities was severely restricted when Marshal *Piłsudski's* military coup of May 1926 brought the right-centre *sanacja* (sanation) group to power. The result was a semi-authoritarian form of government, marked by a weak parliament, a strong president, and a lack of political stability. The transition to authoritarian regimes was in fact typical across interwar Eastern Europe: East-Central Europe was ruled by Hungarian, Polish, Lithuanian, Estonian, and Latvian presidential dictatorships, whereas South-Eastern Europe was governed by Albanian, Yugoslav, Bulgarian, Greek, and Romanian royal ones.³ Polish universities likewise moved in an authoritarian direction.

Amid serious assaults on academic freedom during the 1930s, the so-called *Ghetto benches*, reserved for Jewish students, were organised by nationalist youth movements. In 1938, the Ministry of Education officially confirmed this practice at the national level. Some professors and deans protested the measure, and the rectors of the universities of Wilno and Lwów resigned from their offices. By contrast, the *numerus clausus* for Jewish students at law faculties, repeatedly demanded in Poland by nationalist circles, was – unlike in Germany, Hungary, and Romania – never officially introduced at the national level.⁴

To return to the question of legal unification, its guiding sources were drawn largely from the legislation of the partitioning powers that, despite the rebirth of Poland in 1918, remained in force on Polish territory. These included the Austrian ABGB in southern Poland (Galicia), the German BGB in the western lands of the Prussian partition, and – by way of remembrance of the Napoleonic era – the French *Code civil* in central Poland, the former Congress Kingdom. Further east, in the “annexed lands” incorporated directly into the Russian Empire during the partitions, the Russian *Svod Zakonov* of 1835 remained in force. In addition, the small area of Spisz (Spiš) and Orava (Árva) was governed until 1922 by Hungarian customary law.

The frequent and unavoidable conflicts of laws in interwar Poland were resolved on a legal field known as interlocal, interterritorial, or interprovincial private law. This body of law began to be developed in 1919 but received its definitive codified form only in 1926.⁵ In the field of substantive private law, it was the law of obligations that became the first object of codification. The law of obligations was traditionally regarded as the most universal sector of

³ Bernecker, *Europa*, 247–257.

⁴ Giaro, *Provisionally dead*, 671.

⁵ Górnicki, *Prawo cywilne*, 116–133; Kraft, *Europa*, 121–132.

private law and as particularly resistant to cultural and political change.⁶ In addition, its unity was considered essential for the Polish economy and trade, as had been the case in earlier unification endeavours undertaken during the nineteenth century in the United States, Germany, Switzerland, and the Nordic countries.

I. Inspirations

The present collection is divided into three parts, entitled *Inspirations*, *Institutions*, and *Receptions*. The first part presents the normative materials that were available to the drafters of the 1933 *Kodeks zobowiązań* as sources of inspiration. It consists primarily of studies examining the influence of foreign legal systems on the Polish codification of the law of obligations. At the same time, it also explores the extent to which the reborn Polish state and Polish legal scholarship, in the years immediately following 1918, proved capable not only of making judicious choices among foreign models, but also of developing original – if often synthetic – legal solutions.

In this context, it should be recalled that during the nineteenth century, while legal systems across Europe were taking shape, Poland remained divided among three empires which, through the so-called partitions, erased the Polish-Lithuanian Commonwealth from the map of Europe. As a result, the continuity of the Polish legal tradition appears to have been severed between the second and third partitions of Poland-Lithuania (1792–1795), thereby irreparably blocking its further development. In this way, the old Polish law became practically unusable after Poland's restoration of independence in 1918. This problem is analysed by *Adam Moniuszko* and *Piotr Pomianowski* in their chapter “A Broken Bond. The Traditions of Old Polish Law in the 19th and 20th Centuries.”

The authors describe the final attempts to revive the pre-partition law of the Polish nobility during the first three decades of the nineteenth century, culminating in the anti-Russian November Uprising of 1830–1831. After *Napoleon's* defeat, Tsar *Alexander I* actually recommended replacing the Napoleonic codes with new legislation based on the old Polish law. *Moniuszko* and *Pomianowski* analyse several characteristic legal institutions of the Polish nobility: the reciprocal life contract between spouses (*advitalitas mutua*), mortgage law, enforcement proceedings against real estate, and marital property law. Following the defeat of the November Uprising, efforts at resuscitation ceased and, by 1918 – after a further hundred years – would have been completely futile.

⁶ *Longchamps*, Le problème.

In the absence of a genuine Polish law, there was, inevitably, an abundance of foreign legislations. Today it seems wholly natural that the Polish interwar codifiers were, of necessity, comparative lawyers. Although their position as comparatists *malgré eux* justifies the use of a historical-comparative method in studying the sources of the 1933 Code of Obligations, it should be remembered that the task of producing a single code from French, Austrian, German, and Russian law was at the time a pioneering endeavour. Institutions such as the *Lando* Commission for the Principles of European Contract Law, the Action Plans for a Common Frame of Reference, and the various initiatives of international research groups laid too far in the future.

More recently, the *Kodeks zobowiązań* was rightly described by an eminent scholar of European legal culture, *Filippo Ranieri* (1944–2020), as “the first truly European codification”.⁷ Neither purely Romanic nor purely Germanic in character, but based primarily on the compromise embodied in the 1911 Swiss Code of Obligations, the Polish *Kodeks zobowiązań* was already in the interwar period conceived – alongside other new Polish codes promulgated between 1928 and 1934, such as those on civil procedure and commerce – as a modern code that could have been enacted in any European country.⁸ *Ranieri* justified this – at first sight perhaps surprising – assessment by pointing to the predominantly comparative method employed by the Polish drafters.

In our volume *Wojciech Dajczak* analyses “The French *Code civil* and the Search for a Uniform, Modern Law of Obligations for Poland”. The French legislation was the only one that did not originate from a partition power; on the contrary, it was associated with Polish – soon disappointed – hopes of regaining independence. Consequently, the *Code civil* was readily adopted wherever it was consistent with the German and Austrian codes. Where such consistency was absent, however, all foreign codifications were regarded with equal standing in the comparative analysis, and solutions contrary to the *Code civil*, or absent from it, were also accepted. In any event, arguments based on conformity with French jurisprudence or doctrine were readily invoked to justify the resulting choices.

In his chapter “The Austrian ABGB and the Polish Code of Obligations”, *Rafał Wojciechowski* examines the relationship between the *Kodeks zobowiązań* and another early codification, the ABGB of the Habsburg Empire. Together with the French *Code civil*, the ABGB belongs to the first generation of European civil codes, emerging from the age of the Law of Reason and its doctrine of individual autonomy of the will. *Eugen Ehrlich* and *Anton Menger*, the earliest Austrian representatives of social jurisprudence, had not yet been born. *Wojciechowski* rightly stresses that, for political reasons, the

⁷ *Ranieri*, EuOR, 106; *idem*, in: ZNR 33 (2011), 148.

⁸ Citations in *Slapnicka*, Österreichs Recht, 20–21.

Polish drafters of the 1920s and 1930s sought to recognise all the partition districts as having equal standing, which, at the level of legal systems, meant denying precedence to any of the western codifications, whether old or new.

Wojciech Wydmański examines “The Impact of the German BGB on the Polish Code of Obligations”, concluding that although the BGB was the most frequently consulted foreign codification among the foundational sources of the *Kodeks zobowiązań*, it cannot be said to have been straightforwardly received in reborn Poland. The author divides the provisions of the *Kodeks zobowiązań* into three groups: (1) those more or less directly modelled on the BGB; (2) those of a Germanic type, derived also from the Austrian ABGB, or the Swiss OR; and (3) those combining Germanic and Romanic elements, in particular those based on the French *Code civil*. In sum, Wydmański speaks not of reception, but rather of adaptation, together with some incidental borrowings from the German Civil Code.

With regard to the role of Russian legislation, Polish legal historiography has traditionally relegated Volume X, Part 1 of the Russian Code of Laws (*Svod Zakonov*, 1835), as well as the 1913 Russian draft Law of Obligations (Volume V of the general draft *Grazhdanskoe Ulozhenie*), to a decidedly minor position among the sources of the Polish codification. This traditional view is questioned by Jarosław Turlukowski in his chapter “The Influence of Russian Law and Codification Processes on the Polish Code of Obligations”. The *Svod* was generally dismissed as underdeveloped, without due regard to the modernising case law of the Russian Governing Senate; moreover, this negative assessment was improperly extended to the far more modern *Ulozhenie*.

The Polish drafters of the *Kodeks zobowiązań* also consulted a number of more recent foreign legislative instruments unconnected with the era of the Polish partitions.⁹ These were the Swiss Civil Code and, in particular, the Swiss Law of Obligations in its newest 1911 version, as well as the Franco-Italian Draft Code of Obligations, intended to rejuvenate the French *Code civil* and its Italian counterpart, the *Codice civile* of 1865. Aleksander Grebieniow devotes his chapter to “Swiss Inspirations in the Polish Code of Obligations”, while Katarzyna Kryla-Cudna examines the Franco-Italian Draft – published in 1927 but never brought into force – in her succinct study “The Influence of the Franco-Italian Draft Code of Obligations on the Polish *Kodeks zobowiązań*”.

Beyond the mere fact that the Swiss law of obligations was codified in a separate statute – as the Polish drafters likewise intended – and was designated, at least in French, as a Code,¹⁰ Aleksander Grebieniow identifies its several further merits. These included the substantive modernity of the Swiss codifi-

⁹ Longchamps de Berier, in: BSLC 64 (1935), 330.

¹⁰ Górnicki, *Prawo cywilne*, 433–434.

cation, its tendency to achieve social balance, and its accessible yet precise language, free from excessive casuistry. *Roman Longchamps de Berier*, the chief rapporteur for the *Kodeks zobowiązań*, explicitly emphasised the paramount role of the Swiss *Obligationenrecht* as the principal source of inspiration, enabling the Polish drafters to overcome the Romanic-Germanic dilemma by reconciling, with conspicuous success, the French and German approaches to private law.¹¹

Katarzyna Kryla-Cudna focuses her analysis on the Franco-Italian DCO. This topic brings into view a broader choice confronting the drafters of the *Kodeks zobowiązań*: between the traditional liberal-individualist principle animating the *Code civil* and the ABGB, on the one hand, and the emerging principle of socialisation, which – following the German BGB and the Swiss ZGB – was gaining momentum in private law,¹² on the other. Individualism, understood as an expression of traditional subjective autonomy, was advocated by *Ernest Till*, whereas socialisation, energetically promoted by *Ignacy Koschembahr-Łyskowski*, found clear expression in the *Kodeks zobowiązań*, particularly in its treatment of the contract of employment and the recognition of collective agreements as an independent source of labour law.¹³

Koschembahr-Łyskowski, Professor at the University of Warsaw, linked his support for a more socially oriented approach to a corresponding preference for the Franco-Italian Draft Code of Obligations as the principal source of inspiration for the Polish codifiers. *Longchamps de Berier*, however, rejected the Draft as a suitable foundation for further Polish preparatory work.¹⁴ On this occasion, Longchamps received support from another member of the so-called Lwów Committee, the commercial-law specialist *Maurycy Allerhand*, who published a short review endorsing *Longchamps's* negative assessment. *Allerhand* extolled his acuity in identifying the various “deficiencies” of the Franco-Italian Draft and concluded that, while it “could be considered adequate in other countries, in Poland it would signify a regression”.¹⁵

The first part of the volume, devoted to the “Inspirations” of the *Kodeks zobowiązań*, concludes with a chapter by *Jan Rudnicki*, entitled “The Men Behind the Polish Code of Obligations”. These were two professors from Lwów – *Ernest Till* (1846–1926) and *Roman Longchamps de Berier* (1883–1941) – as well as a Warsaw attorney, *Ludwik Domański* (1877–1952). *Till's opus magnum* was his six-volume “Austrian Private Law” (*Prawo Prywatne Austriackie*), published in Polish between 1884 and 1904. *Longchamps*, too,

¹¹ *Longchamps de Berier*, Zasada wolności, 3.

¹² *Waśkowski*, in: GP 6 (1934), 3–4.

¹³ *Górnicki*, Zasada uspołecznienia, 155–158.

¹⁴ *Longchamps de Berier*, Projekt; cf. *Deroussin*, in: *Clio@Themis* 2 (2009), 20–21.

¹⁵ *Allerhand*, in: *PPiA* 54 (1929), 491–492.

is generally associated with the University of Lwów and with Austrian law; however, between 1920 and 1939 he also lectured at the University of Lublin on the Franco-Polish civil law, based on the *Code civil*. *Domański* practised as an attorney in Warsaw and served as professor of civil law at the Free University of Poland (*Wolna Wszechnica Polska*).

II. Institutions

The second part of the volume focuses on the substantive legal content of the *Kodeks zobowiązań*, which, promulgated in October 1933, entered into force in July 1934. Its period of application before the outbreak of the Second World War in September 1939 thus amounted to a mere five years. Given the limited awareness of the *Kodeks zobowiązań* in Western Europe, this part concentrates on the legal dogmatics of its characteristic institutions, examined from a historical and comparative perspective. Particular attention is devoted to those institutions which the *Kodeks zobowiązań* was the first among European civil codes to regulate. These legislative innovations comprise the modification or rescission of contracts following a change of circumstances, as well as the codification of general terms and conditions of contracts.

With regard to the institution of change of circumstances – whose development in Polish private law is described in detail by *Bogusław Lackoroński* in his study “The *rebus sic stantibus* Clause in the Polish Code of Obligations” – it is worth recalling that the *Kodeks zobowiązań* (Art. 269 KZ) anticipated two later European codifications promulgated only during the Second World War: the Italian *Codice civile* of 1942 (Art. 1467–1468) and the Greek *Astikos Kodikas*, adopted in 1940 but, owing to Italy’s aggression against Greece, entering into force only after the war, in 1946 (Art. 388). Yet to this day, Western comparative lawyers usually cite the Italian *Codice civile* as the first civil codification to contain a remedy of this kind.¹⁶

Contractual standard terms, analysed by *Ernest Bodura* in his chapter “Terms and Conditions of Contracts in the Polish Code of Obligations”, had indeed already appeared in the Swiss Code of Obligations of 1911. There, however, they were located within the special part of the Code, in the section on labour law dedicated to work regulations (Art. 321 OR: *Arbeitsordnung*) and the standard employment contract (Art. 324 OR: *Normalarbeitsvertrag*). By contrast, the *Kodeks zobowiązań* was the first to transfer these rules into the general part (Art. 71–72 KZ). Western comparative lawyers have once again overlooked the historical priority of the *Kodeks zobowiązań*, instead

¹⁶ *Rüfner*, Art. 6:111, 908.

identifying the Italian *Codice civile* of 1942 (Art. 1341) as the first code to regulate standard terms of contract.¹⁷

Attention then turns to legal innovations of a more moderate kind introduced by the *Kodeks zobowiązań*. These original Polish solutions were not necessarily groundbreaking when set against all the foreign legislation then in force in Poland; nonetheless, they displayed innovative features that may be described as mid-range innovations. Two such examples are examined: the Polish general clause of strict liability (Art. 152 KZ), analysed by *Piotr Ratusznik* in his chapter “*Kodeks zobowiązań* and the Polish Conception of the Strict Liability General Clause”, and the so-called monetary-reparation paradigm (Art. 159 KZ), discussed by *Sandra Hadrowicz* in her chapter “Comparative Origins of Polish Regulations Concerning Forms of Compensation for Damage”.

Even though *Longchamps de Berier* regarded strict liability for damages caused by enterprises using natural forces as accepted across all the legal systems then in force in Poland,¹⁸ *Piotr Ratusznik* characterises the Polish model of strict liability as atypical. This model, formulated in Art. 152 KZ and later reproduced in the 1964 Civil Code (Art. 435), was based on a general clause of strict liability rather than on a specific statute, such as the closed model found in the German *Reichshaftpflichtgesetz* of 1871. Owing to the solution adopted in the *Kodeks zobowiązań* – praised by *Ratusznik* as “forward-thinking” – we can now observe the emergence of a genuine trend towards general clauses of strict liability, reflected in more recent codifications such as the Dutch Civil Code of 1992 (Art. 6:175), the Estonian Law on Obligations Act of 2001 (§ 1058), the Czech Civil Code of 2012 (Art. 420a), and the Hungarian Civil Code of 2014 (Sect. 6:535).

With respect to forms of compensation for damage, *Sandra Hadrowicz* analyses the Polish paradigm of monetary reparation as adopted in the *Kodeks zobowiązań* which, while prioritising monetary compensation, also granted the injured party the right to request restoration in kind. By contrast, Austrian law (§ 1323 ABGB) and German law (§ 249 BGB) favoured natural restitution, permitting monetary compensation only where restitution was impossible. *Hadrowicz* commends the solution adopted in the *Kodeks zobowiązań* as consistent with the general trend of modern tort law; nevertheless, she ultimately expresses a preference for the 1964 *Kodeks cywilny* (Art. 363), with its paradigm of equivalent reparation, which – by leaving the choice to the victim – better reflects the essence of tort liability.

To this category of legal innovations of a moderate kind may also be assigned the presumption of remunerability – rather than, as in earlier civil

¹⁷ *Schmidt-Salzer*, AGB, 26–35; *Kötz*, European Contract Law, 134.

¹⁸ *Longchamps de Berier*, Uzasadnienie, 220–221.

codes, the contrary presumption of gratuitousness – within the framework of the contract of mandate. This topic is examined by *Michał Tutaj* in his chapter “Contract of Mandate in the Polish Code of Obligations”, in which he argues that the presumption of remunerability introduced by the *Kodeks zobowiązań* (Art. 500 KZ) was an original solution not inspired by any other codification. It may further be noted that, in this respect as well, the *Kodeks zobowiązań* anticipated the Italian *Codice civile* of 1942 (Art. 1709), which is still generally – but incorrectly – regarded by comparative lawyers as the first civil code to establish such a presumption.¹⁹

It should be recalled that, for political reasons, the Polish drafters explicitly sought to maintain a balance between the three legal districts of interwar Poland. This necessarily entailed reconciling Romanic and Germanic approaches to private law. In one legislative context, however, the choice of a French-inspired solution was almost inevitable. This issue is examined by *Witold Borysiak* in his chapter “Historical Roots and Comparative Inspirations of the General Tort Clause in Polish Law of Obligations”. The general tort clause – well known to most European private-law codifications, including the *Code civil* (Art. 1240), the ABGB (§ 1295), the Spanish *Código civil* (Art. 1902), and the Swiss *Obligationenrecht* (Art. 41) – was accordingly adopted in the *Kodeks zobowiązań* (Art. 134) and later reproduced in the 1964 *Kodeks cywilny* (Art. 415).

Reflecting on a private-law codification promulgated almost a hundred years ago – one that enjoyed barely five years of practical application and never attained the recognition it merited – it is easy to succumb to a missionary impulse aimed at demonstrating how unjustly this superb creation of the Polish legal mind has passed unnoticed in legal history. Not all the chapters of the present volume, however, adopt such a celebratory or proselytising tone. As the Roman lawyer *Alan Watson* (1933–2018) once observed in speaking of the “brainwashing by authority of Roman law”,²⁰ it cannot be excluded that, in certain contexts, the ossified authority of the *Kodeks zobowiązań* may likewise have exercised a comparable influence.

In her chapter “Termination for Breach of Contract in the Polish Code of Obligations. The Background and the Future”, *Karolina Panfil* examines the specific legislative context in which the *Kodeks zobowiązań* – by distinguishing between contractual rights of withdrawal (Art. 76–79 KZ) and statutory rights of withdrawal (Art. 250–253 KZ) – was influenced predominantly by the German Civil Code BGB (§§ 323–326, 346–361). This solution adopted in the *Kodeks zobowiązań* was transposed with relatively little modification into its successor, the 1964 *Kodeks cywilny*, which has preserved it unchanged to the present day, even though both German and French law have since re-

¹⁹ *Finkenauer*, Das entgeltliche Mandat, 57.

²⁰ *Watson*, Legal Transplants, 90.

formed their law of obligations, including termination for breach of contract, in a markedly more flexible spirit.

A further unifying thread running through the remaining chapters of the second part of the volume is the Romano-Germanic synthesis, which in the interwar period was still regarded as a matter of pressing relevance. In her chapter “Contract Interpretation and Supplementation: Regulatory Foundations and Guiding Sources”, *Bogna Kaczorowska* analyses two provisions of the *Kodeks zobowiązań* that deliberately departed from the Romanic approach based on an extensive catalogue of casuistic rules of interpretation (Art. 1156–1164 CC; Art. 51–59 DCO). Under the *Kodeks zobowiązań*, declarations of intent were to be interpreted in accordance with good faith and fair dealing (Art. 107 KZ), while contracts were to be construed by reference to the parties’ common intention and the purpose of the contract (Art. 108 KZ). This Romano-Germanic synthesis, as the product of comparative reflection, was subsequently preserved – albeit within certain limits – in the 1964 *Kodeks cywilny*.

Krzysztof Riedl examines “Games and Bets. A Comparative and Historical View on the Enforceability of Gambling Contracts”. The innovative regulation of such contracts in the *Kodeks zobowiązań* (Art. 610) was based on the assumption that a natural obligation entitles the creditor to retain any benefit received, whereas German (§ 762 BGB) and Swiss law (Art. 513 OR) emphasised the absence of any enforceable obligation. The 1964 *Kodeks cywilny* subsequently transferred games and bets to the general part (Art. 413 KC), reflecting the fact that they may arise in a variety of modern contractual contexts, such as forward and option transactions. Incidentally, the absence of a statutory definition of “game” or “bet” in the *Kodeks zobowiązań* enhanced the flexibility and longevity of this regulatory approach.

In a similar Romano-Germanic spirit, *Bartłomiej Woźniak* reaches his conclusions in the chapter “Assignment in the Polish Code of Obligations. A Historical and Comparative Perspective”. He argues that the provisions of the *Kodeks zobowiązań* governing the assignment of claims cannot be understood as deriving from any single Western European civil code, but rather as a new, syncretic solution that nonetheless fits within the broader continental tradition. Several issues – such as the abstract or causal nature of the assignment agreement – were left unresolved, even though Polish interwar legal doctrine tended to favour the former view. In addressing such questions, however, the *Kodeks zobowiązań* deliberately adopted a prudent strategy leaving their resolution to legal scholarship and jurisprudence. Notably, the same agnostic approach is also followed today by the PECL (Art. 11:204) and the DCFR (Art. III-5:112).²¹

²¹ *Eidenmüller et al.*, in: OJLS 28.4 (2008), 689.