

Mikołaj Tarkowski
Gdańska Szkoła Wyższa

Historic-legal trend in the research activities of Izaak Lewin in the interwar period in Poland. Sketch to scientific biography

Abstract

The article is devoted to the academic activities of Izaak Lewin, the historian of state and law publishing his academic works in the inter-war period in Lvov. Short analysis of research activities includes tracing the main theses displayed in the works referring to history of state and legal institutions. The following elaborations were taken into consideration: *Rozwód wiedeński* (1931), *Udział Żydów w wyborach sejmowych w dawnej Polsce* (1932), *Kłątwa żydowska na Litwie w XVII i XVIII wieku* (1932), *Prawo rozwiązywania ciał ustawodawczych* (1933), *Palestra w Dawnej Polsce* (1936). The last position became the basis for doctoral proceeding completed in June 1936, the course of which was recreated in this article on the basis of source materials.

Keywords

doctoral proceeding of Izaak Lewin, the Jews in The Polish-Lithuanian Commonwealth, dissolving legislative bodies, conditional divorce, Jewish anathema

Nurt historycznoprawny w działalności badawczej Izaaka Lewina w latach dwudziestolecia międzywojennego w Polsce. Szkic do biografii naukowej

Streszczenie

Artykuł poświęcony jest twórczości naukowej Izaaka Lewina, historyka państwa i prawa publikującego swe prace naukowe w okresie dwudziestolecia międzywojennego we Lwowie. Krótka analiza działalności badawczej obejmuje prześledzenie głównych tez zawartych w pracach odnoszących się do zagadnień dziejów instytucji państwowych i prawnych. Charakterystyką objęto następujące opracowania: *Rozwód wiedeński* (1931), *Udział Żydów w wyborach sejmowych w dawnej Polsce* (1932), *Kłątwa żydowska na Litwie w XVII i XVIII wieku* (1932), *Prawo rozwiązywania ciał ustawodawczych* (1933), *Palestra w Dawnej Polsce* (1936). Ostatnia z wymienionych pozycji stała się podstawą przewodu doktorskiego zakończonego w czerwcu 1936 roku, którego przebieg odtworzono w niniejszym artykule na podstawie materiałów źródłowych.

Słowa kluczowe

przewód doktorski Izaaka Lewina, Żydzi w Rzeczypospolitej Obojga Narodów, rozwiązywanie ciał ustawodawczych, rozwód warunkowy, kłątwa żydowska

Izaak Lewin was born on 14 January 1906 in Wieliczka¹. He came from rabbinical family and his father Aron was the rabbi of Jewish community in Rzeszów where his family finally settled down. Aron Lewin was active in both political and social area, holding one of the head positions in a religious party Agudat Israel (Unification of Israel) and in 1922 he was elected to Parliament, having a seat till 1935². Izaak Lewin's religious education had its origins in a family home. He passed his "matura" exam in a state II Gymnasium in Sambor. In December 1924 he started studying at Law Department of Jan Kazimierz University in Lvov. He studied Law between 1925-1928. He obtained the Master's Degree on 24 October 1928³.

Similarly to his father, Izaak Lewin was engaged in public activity. He lived in Łódź, where with the mandate of Agudat Israel party he was elected to the City Council, in which he had the councillor seat till 1939. After the outbreak of The Second World War he moved to Vilnius, from where, in 1940, gaining the agreement of Russian authorities, he went to Japan and then to New York. In the USA he was nominated a full professor at Yeshiva University where he worked until retirement⁴.

One of the most important moments in Izaak Lewin's career was obtaining PhD in Law at Stefan Batory University in Vilnius. The process of writing the doctoral thesis titled *Palestra w dawnej Polsce* was connected with Izaak Lewin's participating in a seminary conducted by professor Przemysław Dąbkowski from Kazimierz University in Lwów. The promoter of the doctoral thesis claimed in January 1935 that the doctoral student's achievements proved "[...] his great dilligency, hard work and talents. Professor Dąbkowski also mentioned that Izaak Lewin [...] is a great hope for future as a serious researcher worker"⁵. In September 1935 his doctoral dissertation went for reviews to the Director of Ancient Polish and Lithuanian Law Department — professor Stefan Ehrenkretz and to the Director of History of Law Department in the West of Europe — professor Iwon Jaworski⁶. In the introduction to a review from 10 December 1935 both reviewers, being research workers of Law and Social Science Department of Stefan Batory University in Vilnius, mentioned a positive opinion of professor Przemysław Dąbkowski about the student. The dissertation reviewed consisted of the following chapters: *Skład palestry; Organizacja palestry; Czynności palestry; Odpowiedzialność dyscyplinarna palestry; Przepisy projektu Zamojskiego o palestrze*. Additionally, at the end, the study had an appendix of chronologically

¹Lietuvos Centrinis Valstybės Archyvas, Vilnius, Lietuva (LCVA), F. 175. 2 VIB. 93, *Świadectwo urodzin*. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 2.

²W. Tyloch, *Słowo wstępne*, [w:] I. Lewin, *Przez pryzmat historii*, Warszawa 1994, p. 9.

³LCVA, F. 175. 2 VIB. 93, *Curriculum vitae*. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 3.

⁴Izaak Lewin's works devoted to historical-legal subjects the following have to be mentioned: *The protection of Jewish religious rights by royal edicts in ancient Poland* — 1943, *Religious freedom: the right to practice shehitah (kosher Slaughtering)* — 1946; see: W. Tyloch, *op. cit.*, p. 10.

⁵Quote: LCVA, 175. 2 VIB. 93, Pismo Przemysława Dąbkowskiego z 29 I 1935 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 6.

⁶LCVA, 175. 2 VIB. 93, Pismo dziekanatu WPiNS USB do Stefana Ehrenkretza z 24 IX 1935 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 8; zob. też: LCVA, 175. 2 VIB. 93, Pismo dziekanatu WPiNS USB do Iwo Jaworskiego z 24 IX 1935 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 7.

organized most important constitutions (announced in *Volumina Legum*) dedicated to the past advocacy. Both professor Ehrenkreutz and professor Jaworski pointed out that Izaak Lewin demonstrated critical approach to the subject literature. Furthermore, he settled contentious scientific issues on in a skilful way on the basis of source materials. Appearance of some minor reservations towards the work reviewed were to contribute to “[...] to deepening the knowledge on the issue”. The review was generally very positive. The reviewers agreed that Lewin’s work was “[...] a very important step in the research on organization of the Bar in old Poland”⁷.

On further stages of his doctoral proceedings, Izaak Lewin passed doctoral exams on 4 June 1936. A basic subject at the exam was History of the old Polish law and an additional subject was the History in the West of Europe. The Committee consisting of professors: Jerzy Panejko (a chairman), Stefan Ehrenkreutz, Iwo Jaworski, Bolesław Wilanowski, on the basis of the answers given assumed that the candidate possessed proper theoretical preparation⁸. The defence of the PhD thesis took place on 5 June 1936. In the same year The Council of The Law and Social Science Department of Stefan Batory University in Vilnius adopted a resolution about granting Izaak Lewin with the title of the Doctor of Law⁹.

Izaak Lewin’s doctoral thesis was devoted to historical development of the institution of legal representation. One of the historical sources in which “*advocatus*” or “*patronus*” appeared was *Kronika* by Gal Anonim. The author of *Palestra w dawnej Polsce* did not settle the dispute if the activity of the first representatives was connected only with helping the party to speak better in front of a judge or if its activity was wider and entailed the representation of a person in a legal trial. On the other hand, he ordered the arguments and opinions which were presented about that subject by professors Józef Rafacz, Rafał Taubenschlag oraz Władysław Namysłowski. In the same dissertation Izaak Lewin underlined similarly important fact that after *Wiślicki Statute*, which is more or less from the mid XIV century, a number of acts standardizing various matters of Bar organization were established. However, the codification or writing down of the resolutions in the form of a private collection — totality of powers, duties, qualifications of the representatives of the defence was never completed. There were some attempts, though. The collection of Jan Sierakowski must be mentioned here. He displayed short contents of thirteen acts about advocacy published since *Wiślicki Statute*, after 1548. Independently of written law, the state of the bar in the initial centuries of its functioning was predominantly regulated by custom. Among important written sources Izaak Lewin mentioned the ordination of King Zygmunt August from 1559. It contained six paragraphs about the advocacy duties. Later, in the XVIII century there were attempts at codification and the author of the dissertation

⁷Quote: LCVA, 175. 2 VIB. 93, *Referat w sprawie przedłożonej przez magistra Izaaka Lewina pracy doktorskiej pt. „Palestra w dawnej Polsce”*. Referat z 10 XII 1935 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 10.

⁸LCVA, 175. 2 VIB. 93, Protokół z 4 VI 1936 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, p. 16.

⁹LCVA, 175. 2 VIB. 93, Pismo rektora USB do dziekana WPiNS z 23 VII 1936 r. Rok akademicki 1935/1936. Doktoryzacja Izaaka Lewina, c. 23.

pointed at *Zbiór praw sądowych* created at the direction of Andrzej Zamoyski and above all at the fragment titled *O patronach spraw*¹⁰.

When looking for scientific evidence in favour of necessity to write a monograph he proved that the nineteenth century elaborations of advocacy were written in terms of “relationships” (Aleksander Kraushar, *O palestrze staropolskiej*). Also works or fragments devoted to the history of the bar in the books of Oswald Balzer (*Kancelarie i akta grodzkie w wieku XVIII*), Karol Dunin’s (*Dawne mazowieckie prawo*), Romuald Hube (*Prawo polskie w wieku XIII*) did not fully cover the topic. In Izaak Lewin’s opinion “more serious attempts in that area were” made by professor Przemysław Dąbkowski, professor Stanisław Kutrzeba, and professor Józef Rafacz. In Lewin’s view, a perfect completion of Józef Rafacz’s (*Zastępcy stron w dawnym procesie polskim*) was the article by Adam Vetulani entitled *Zastępstwo procesowe w Polsce przed statutami Kazimierza Wielkiego*. Approaching subject literature critically Izaak Lewin argued “Literature above mentioned did not exhaust the topic. Thus, synthetic approach to the bar in old Poland is the purpose of that dissertation, which above all aims at drawing conclusions directly from the sources about the legal state of the Polish bar, its body, division, qualifications, activities, powers, duties and disciplinary responsibility”¹¹.

The dissertation *Palestra w dawnej Polsce*, being the basis Izaak Lewin’s doctoral proceedings, was published in 1936 in Lvov. The next year, in one of Vilnius magazines, Juliusz Bardach started his academic career and presented the review of that dissertation. His opinion was generally positive. Juliusz Bardach noticed that the editorial layout of the work reviewed was very clear. The dissertation was of a synthetic character but did not overlook the most important elements characteristic for, on one hand, advocacy of The Crown Of The Polish Kingdom, and on the other, for The Grand Duchy of Lithuania. A critical remark made by the reviewer concerned the omission of some biographical positions devoted to the old Lithuanian-Russian bar, among others, work by Stefan Borysenko, published in 1927 in Kiev¹².

Academic achievements of Izaak Lewin in the interwar-period comprise many writings on historical-legal matters. As far as history of the Jews in Polish-Lithuanian Commonwealth is concerned, one’s attention should be attracted by work published in the brochure form from 1932 titled *Udział Żydów w wyborach sejmowych w dawnej Polsce*. Its author characterised the influence of the Jewish population on the course of the sessions in councils and General Sejm. First, he stressed that even though the chamber of deputies was of a state representation with a distinct predominance of the nobility, some unauthorised persons took part in the sessions, especially in the Sachsenspiegel times. Additionally, during the council sessions there was chaos, the MPs lacking political culture and devoid of any responsibility for the mandate executed were prone to different kinds of bribery. In such conditions influences of various social groups shaped, also that of the Jews population. They had their representation in the

¹⁰LCVA, 175. 2 VIB. 93, I. Lewin, *Palestra w dawnej Polsce*, c. 32.

¹¹Quote: LCVA, 175. 2 VIB. 93, I. Lewin, *Palestra w dawnej Polsce*, c. 33.

¹²J. Bardach, *Palestra w dawnej Polsce. Recenzja z pracy Izaaka Lewina. Palestra w dawnej Polsce. Praca przedstawiona Uniwersytetowi Stefana Batorego w Wilnie celem uzyskania stopnia doktora praw i przyjęta przez referentów: Prof. dr. Stefana Ehrenkreutza i Prof. dr. Iwona Jaworskiego*, „Pamiętnik Historyczno-Prawny”, t. XIII, z. 1, Lwów 1936, p. 156.

form of kahals. Basic instrument of interfering on the results of votes in the council was care for taking the interests of the local Jews into account. The activities in that respect were connected with gaining the favours of MPs fulfilling concrete instructions during the general Sejm. Jewish municipalities noted in their pinkasy (type of a book depicting the activities of kahal) that they allocated particular sums of money and distributed gifts in order to secure — during the council session — accomplishing tasks delegated by them. The scale of that phenomenon was getting greater and creating the election funds by Jewish municipalities became a norm. As a result, there was a common conviction in the XVII century that “Who talks well about the Jewish, has been already bribed, and who talks badly about them — wants to be bribed”¹³. Reliability of Izaak Lewin’s arguments about functioning of state representation in The Polish-Lithuanian Commonwealth was due to the fact of referring to historical sources, mainly to municipal and county files and pinkasy.

In the thirties of XX century Izaak Lewin dealt with explaining one of the institutions of the Polish constitutional law, which was dissolution of legislature bodies before the end of the term of the office. That subject, in a dogmatic as well as comparative and historic approach, was explored in an elaboration published in Lvov in 1933 titled *Prawo rozwiązywania ciał ustawodawczych*. A proper analysis in Lewin’s work aimed to follow the projects of changes in the Polish constitution from March 1921 in the areas of dissolving the parliament and the senate before the end of the office. These projects eventually reached the form of the act accepted on 2 August 1926. On the basis of that legal act the president of The Republic of Poland gained the title to shorten, on request of the Council of Ministers, the term of the office of two parliamentary chambers¹⁴.

It must be stated, though, that Izaak Lewin did research on the constitutional regulations also in terms of a wide historical-legal approach. In the initial fragments of his work he analysed legal solutions in some countries. To do that he referred to the following French constitutions (for example, The Chart form June 1814) and Bavarian (1818), Baden (1818), Wuerrtemberg (1819), Saxon (1831), Hungarian (1848), Italian (1848), Prussian (1850), Austro-Hungarian (1867), Luxembourg (1868), Island (1874), Egyptian (1883) or Japanese (1889)¹⁵.

After analysing the afore-mentioned constitutional acts, the author of the publication formed two important opinions according to which the acts regulating the possibility of dissolving the parliament by the head of state could be divided into two groups. To the first group belonged these acts which “were supposed to facilitate that solution”, the second was connected with the acts with “the tendency to hinder the solution or even make it impossible”. In the first catalogue he enumerated the norms introduced by The Constitution of the Great Duchy of Baden and The Constitution of Japanese Empire, in the second — the rest of the constitutions¹⁶.

¹³ I. Lewin, *Udział Żydów w wyborach sejmowych w dawnej Polsce*, Warszawa 1932, p. 3–12.

¹⁴ *Idem*, *Prawo rozwiązywania ciał ustawodawczych*, Lwów 1933, p. 35–76.

¹⁵ *Ibidem*, p. 9.

¹⁶ *Ibidem*, p. 8.

Together with topics connected with the history of state Izaak Lewin dealt with the research on the development of the institution of the religious law. An example of analyses devoted to a conditioned divorce according to Judaism rules was work published in 1931 titled *Rozwód wiedeński*. Circumstances preceding the discussion on this topic referred to the marriage between Izak Abrahamowicz Wolficz and Szejwa Fajwisz in 1610 in Lvov. After getting married, the couple went to Vienna where they were planning to stay for the next few years. Legal and factual premises of a divorce conducted in that city were quite complicated. Soon after coming to Vienna Izak Abramowicz came down with a serious illness. Samuel Fajwisz got concerned about his daughter's legal situation. After her husband's death, wanting to obtain the right to get married again, she would have to carry out the expensive ceremony of *chaliza*. To avoid the cost was possible only when signing a written contract (the so-called "*sztar-chaliza*") in which her husband's brothers, while he was still alive, obliged to grant permission to carry out the ceremony of *chaliza* only at the demand of the widow. Such a document was not signed due to the distance between Vienna and Lvov. Instead of that, the families decided to communicate in a different way. The solution turned out to be a divorce given to the couple by the rectors of Lvov Talmudic universities — Jozue Falk, Kohen and Chanoch Hendel. The rabbis emphasised that the conditional divorced was impossible. All divorces given resulted in a complete annulment of marriage. Both Talmud experts suggested a different solution. They presented a concept of making a contract, which, if a husband recovers, will oblige both sides to signing it, to contract a new marriage. Families agreed to the solution suggested. The contract included the most important condition, which was Izaak's Abrahamowicz recovery, but it also contained additional resolutions regulating the date of contracting a new marriage (30 days since the day of the condition being fulfilled) as well as the sum of compensation in case of one of the sides not fulfilling the terms of agreement. Then, Izak's Abrahamowicz condition improved greatly and he recovered completely. However, Szejwa's Fajwisz family did not intend to fulfil the commitments resulting from the contract signed. After many negotiations and attempts at reaching an agreement the families, between which the feeling of distrust was getting greater, failed to reach the settlement¹⁷.

Eventually, Izak's Abrahamowicz family gave rise to suspicion that he was not ill but got slightly poisoned so that he would be coaxed into a divorce. Some other accusations resulted in the case being finally settled by the rabbinic court in Jarosławiec. The rabbis gathered there claimed that "Vienna divorce" preserves its power and entails legal consequences. In reasoning of the judgement they referred to the fact that Szejwa Flajwisz's husband's illness was real and threatening to life. The tribunal also claimed that whoever wants to question the force of that divorce will be anathematised by the curse put in XII century by rabbi Jakub Tam. The sentence of the tribunal in Jarosławiec did not put stop to discussions about the case of "Vienna divorce". It even became the grounds for many later Talmudic discourses which were also mentioned in Izaak Lewin's book¹⁸.

¹⁷ *Idem, Rozwód wiedeński. Dzieje sporu o ważność rozvodu warunkowego wedle prawa żydowskiego w Polsce w XVII wieku*, Lwów 1931, p. 3–11.

¹⁸ *Ibidem*, p. 12–42.

The motif of anathema in Judaism appeared in Izaak's Lewin books several times. The subject was so interesting that the historian of law decided to write a separate book on it (*Kłątwa żydowska na Litwie w XVII i XVIII wieku*). The author of monograph published in Lvov in 1932 narrowed its geographical frames to the territory of Grand Duchy of Lithuania. Temporal caesura was delineated by him for the XVII and XVIII century. A significant fragment, explaining social and legal influence of the anathema on the life of Jewish municipalities in pre-partition period The Polish-Lithuanian Commonwealth was "The power of kahals, dominant opinion of rural assemblies (regional councils) and national assemblies (»The Parliament of Four Lands« in The Crown and Lithuanian parliament) and ecclesiastical authorities were all based on the anathema, which was the main penal measure for refractory units"¹⁹. In this monograph Izaak Lewin stressed that the curse influenced not only the public sphere of life but was also present in private-legal relations, being the strengthening element helping to fulfil obligations resulting from agreements. Additionally, at court trials together with statements given under oath statements under threat of anathema were obtained. Sometimes it was also used as measure in executive proceedings. Izaak Lewin in an analogical compared the Jewish anathema with the institution of excommunication, which was researched on by professor Jan Wincenty Bandtkie and professor Przemysław Dąbkowski²⁰.

Izaak Lewin noticed that public-legal institutionalization of Jewish anathema took place in XVI century. Till that time it had only been observed in the spheres of sacral and religious relations. At the beginning of XVI century it began to be used at the clear commission of the king as enforcement measure enabling to collect taxes. Sanctioning of the Jewish anathema took place on the basis of three decrees from 1514 (29 September, 24 and 25 October) of King Zygmunt I²¹. When analysing the development of the institution of Jewish anathema over the centuries on the basis of source materials Izaak Lewin noticed the lowering level of its effectiveness. He wrote in reference to this: "a few decades later, at the beginning of the XVII century one can notice some weakening of its authority. Putting it into practice too frequently, to which substantial secular help might have contributed, resulted in partial liquidating of the sacral glory initially surrounding the anathema"²².

Izaak Lewin's academic achievements from the inter-war period including, inter alia, monographs analysed in a synthetic form in this article lead to conclusion that not only the doctoral dissertation but also a number of preceding publications reveal distinctively the historical-legal trend in the researcher's activity. It seems to be important considering the fact that after the end of The Second World War Izaak Lewin published mainly historical works and articles devoted to legal topics, especially to the ones connected with international public law.

¹⁹ Quote: *idem*, *Kłątwa żydowska na Litwie w XVII i XVIII wieku*, Lwów 1932, p. 3.

²⁰ *Ibidem*, p. 4.

²¹ *Ibidem*, p. 10–11.

²² Quote: *ibidem*, s. 15.

