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**THE ENTAILED ESTATE IN POLISH LAW
FROM LATE 15TH TO THE 20TH CENTURY:
EXCEPTION FROM GENERAL SUCCESSION LAW
AND PERPETUATION OF ESTATE¹**

The usefulness of studying history of law has often been questioned. Particularly, the discrepancy has been pointed to between the tendency to utilise legal studies as a preparation to undertake legal profession (which diminishes the role of history, philosophy, or theory of law), and willingness to provide students of law with overall knowledge. In connection with this, the Polish legal doctrine of the turn of the 20th and 21st centuries presented numerous important arguments proving the necessity to teach and investigate the history of law as a way to the proper understanding of the modern law.

Such opinions prompted the research presented in this article, which aims at presenting the entailed estate² in the Polish law from late 15th to 20th century as an institution worth analysis. Although the entailed estate as such has no immediate successor, it does not mean that the problems similar to those solved with the use of this institution no longer exist. It could be even stated that the peculiarity of the current socio-economic situation makes those problems even more topical.

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² From the perspective of time and place of functioning of the institution, the factually alike institutions were named as family *fideicomissum*, fiduciary substitution, majorat, or primogeniture, see K. Sójka-Zielińska, *Fideikomisy familijne w prawie pruskim w XIX wieku i początkach wieku XX*, Warszawa 1962, p. 8. Cf. M. Kozaczka, *Ordynacja zamojska 1919-1945*, Lublin 2003, p. 108; and A. Meleń, *Ordynacje w dawnej Polsce*, „Pamiętnik Historyczno-Prawny” 1929, Vol. 7, issue 2, p. 44, who indicate the institution of seniority, alike to majorat and primogeniture. Cf. also other foreign law institutions enumerated by K. Sójka-Zielińska, *Fideikomisy...*, pp. 16-23. This article uses the notion of entailed estate (*ordynacja* in Polish) when referring to the Polish law institution, and family *fideicomissum* when referring to the institution in general.

1. LEGAL CONCEPT OF THE ENTAILED ESTATE

Entailed estate was a significant institution of the old-Polish law, which aimed to solve the problem of dissolution (dismemberment) of the family estate by means of inheritance (and division between heirs), or sale-out (by the successors willing to gain immediate profit). On the territories of Poland the institution was in force from the late 15th century up to the times of the land reform of 1944. It was based on the Roman law framework (mostly *fideicomissum*), which was complemented with the Germanic concept of family estates³.

Among numerous Polish entailed estates⁴, special attention shall be paid to the 1589 estate of family Zamoyski⁵ as the biggest⁶ and the one whose functioning has been the subject of the most thorough research⁷. At the same time, it was not the oldest one – it was established only after other significant entailed estates, i.e. those of the families Tarnowski (later Jarosławski, in 1471), Lubrański (in 1518), and Radziwiłł (in 1579)⁸. Thus, Zamoyski estate was capable to adopt the experience of its predecessors⁹.

³ K. Sójka-Zielińska, *Fideikomisy...*, pp. 33-36; at the same time it is stated a little differently (that it was partly based on the ancient Roman legal concepts of the late classical period, as well as on late-medieval European law) by A. Meleń, *Ordynacje...*, p. 55; only about Spanish origin, M. Drózdź-Szczybera, *Ordynacje rodowe w XIX i pierwszej połowie XX w. Wielkie posiadłości ziemskie i ich kształt prawno-organizacyjny w Polsce porzbirowej na przykładzie ordynacji łańcuckiej*, Kraków 1998, p. 5; G. Jędrejek, *Regulacje prawne dotyczące Ordynacji Zamojskiej*, „Roczniki Nauk Prawnych” 2012, Vol. 22, issue 3, p. 8; H. Świątkowski, *Ordynacje rodzinne. Zarys historyczno-prawny*, „Głos Sądownictwa” 1937, issue 5, p. 378; T. Zielińska, *Ordynacje w dawnej Polsce*, „Przegląd Historyczny” 1977, Vol. 68, issue 1, p. 18 (while K. Sójka-Zielińska, *Fideikomisy...*, pp. 48-50, recalls Spanish origin only as an incentive for development and popularity); only about Roman origin – S. Płaza, *Historia prawa w Polsce na tle porównawczym, I: X-XVIII w.*, Kraków 1997, p. 280; only about Western origin – J. Bardach, *Historia państwa i prawa Polski*, Vol. II, Warszawa 1966, p. 289.

⁴ In this article the specificity of the entailed estate will be, therefore, described either based on generalisations, or exemplified by the Zamoyski entailed estate. In case any other entailed estate is subject to analysis, it will be specifically mentioned.

⁵ See the content of the estate act – Statuta Ordynacji Zamojskiej, Warszawa 1902, pp. 11-30.

⁶ M. Kozaczka, *Ordynacja...*, p. 163; H. Świątkowski, *Ordynacje...*, p. 385. The fact that it was only one of the biggest, but without mentioning which one was the biggest, was pointed out by M. Kowalski, *Państwo magnackie w strukturach polityczno-administracyjnych Rzeczypospolitej Szlacheckiej na przykładzie Ordynacji Zamojskiej*, „Przegląd Geograficzny” 2009, issue 81, p. 174.

⁷ See e.g. G. Jędrejek, *Regulacje...*, M. Kowalski, *Państwo...*, R. Orłowski, *Ordynacja Zamojska*, (in:) K. Myśliński, (ed.), *Zamość i Zamojszczyzna w dziejach i kulturze polskiej*, Zamość 1969; R. Orłowski, *Szkie z dziejów Ordynacji Zamojskiej w XVIII wieku*, Zamość 2011.

⁸ K. Kościński, *Polskie ordynacje i związki rodzinne ze szczególnym uwzględnieniem ordynacji Książąt Sulkowski*, Poznań 1906, pp. 3-10. The fact that the Radziwiłł entailed estate was the first one is mentioned by both M. Kozaczka, *Ordynacja...*, p. 10; and T. Zielińska, *Ordynacje...*, p. 19. However, A. Meleń, *Ordynacje...*, pp. 8-9, claims that the Radziwiłł entailed estate was only the first permanent one.

⁹ M. Kowalski, *Państwo...*, p. 182.

Entailed estates were created by the landowning nobles, usually hailing from among the young and rich nobility¹⁰. Most often they belonged to the families enjoying significant political influence¹¹.

The typical consequence of the entailed estate's formation extended to the exclusion of the organised part of the estate from the subjection to general principles of civil law. Such operation made the estate inalienable, unburdenable, and indivisible – which was supposed to ensure its perpetuation in an unchanged shape. Not only the *inter vivos* limitations on alienation were imposed (and extended to the prohibition to alienate even the smallest part of the estate, while their lease appeared as quite doubtful¹²), but also succession *mortis causa* was subject to specific regulation.

Entailed estates, like the above mentioned, were created by an one-sided, *inter vivos*, legal act of the founder¹³ upon acceptance of the Parliament¹⁴. The demand of the latter resulted from the fact that the entailed estate explicitly opposed the general law¹⁵. Thus, instead of intestate succession (in the old-Polish customary law by sons), in equal parts¹⁶, the succession of estate favoured one man only¹⁷, the oldest descendant of the founder, in the oldest line and of nearest proximity¹⁸, who became the entailed estate holder (in Polish – *ordynat*). This concept of estab-

¹⁰ J. Bardach, *Historia...*, Vol. II, p. 289.

¹¹ K. Kościński, *Polskie ordynacje...*, pp. 4, 12, proves this by the example of the Jarosławski or the Myszkowski (Pińczowska) entailed estates; similarly M. Kowalski, *Państwo...*, p. 177, connects entailed estates with magnates. See also T. Zielińska, *Ordynacje...*, p. 27, who extends this argument, showing that in old-Poland the institution was adopted differently than in the countries of its origin, where it served even the poor nobility.

¹² A. Meleń, *Ordynacje...*, s. 39.

¹³ K. Sójka-Zielińska, *Fideikomisy...*, pp. 10, 29-30, underlines the character of a founding act as founder's *inter vivos* act, and neither the benefit in favor of the third person, nor the last will.

¹⁴ The acceptance, according to A. Meleń, *Ordynacje...*, pp. 22-23 and H. Świątkowski, *Ordynacje...*, p. 380, contains both permission to exclude the validity of general rules to the estate in the founding act, and subsequent confirmation of the already established entailed estate (but both may take place after that). Further clarification by H. Świątkowski, *Ordynacje...*, p. 380, refers to the scope of permission as delineating the possible future changes of the entailed estate act. The possibility to indirectly accept the entailed estate, e.g. by demanding the military support from the estate, is, at the same time, pointed out by A. Meleń, *Ordynacje...*, pp. 29-32, who also argues that entailed estates could not have been accepted, when they were functioning irresistibly, e.g. when the founders and the holders had one son only.

¹⁵ A. Meleń, *Ordynacje...*, p. 22; S. Płaza, *Historia...*, p. 280.

¹⁶ J. Bardach, *Historia państwa i prawa Polski*, Vol. I, Warszawa 1964, p. 304; K. Kolańczyk, *Najdawniejsze polskie prawo spadkowe*, Poznań 1939, p. 15; H. Świątkowski, *Ordynacje...*, p. 379.

¹⁷ Female succession was, however, ensured in Sułkowski entailed estate, see K. Kościński, *Polskie ordynacje...*, p. 21; and that of Łańcut, see M. Kozaczka, *Ordynacja...*, p. 10. See also indirect function of women, who allowed to transfer succession from the expired generation to the new one, A. Meleń, *Ordynacje...*, p. 42.

¹⁸ *Statuta...*, p. 25.

lishing the succession resembles the primogeniture, and with regard to entailed estates was in fact most often adopted¹⁹. The particularities of succession could be, however, established otherwise, based on the principle of majorat (favouring the oldest descendant of the founder within equal proximity; in Polish – *majorat*), or seniority (favouring the oldest person in family, in Polish – *seniorat*)²⁰. Regardless of the principle adopted, the entailed estate act included the detailed description of such succession, and the conditions thereof, with consideration of numerous scenarios. Such predictability was caused by the rationale in the attempted permanence of their functioning, as well as by the fact that lacking subjection to general law, the entailed estate act had the sole regulatory power within its own succession²¹.

Further requirements, which must have been met by the estate holder, were e.g. the Catholic faith, lack of crimes committed or lack of mental illness²², but usually not age²³. Also the estate holder had to swear an oath²⁴.

Eventually, the subsequent entailed estate holder became the owner of the estate as understood by the property law, and the family was vested with neither controlling right, nor direct ownership (*dominium directum*)²⁵, as according to Austrian *Allgemeines bürgerliches Gesetzbuch* or Prussian *Allgemeines Landrecht*²⁶. The legal situation of the holder was, however, only partly privileged over his family members²⁷. This in particular regards the prohibition from alienating or burdening the estate (and eventually the obligation to maintain the substance of the wealth to the further descendants), while the entailed estate act explicitly regulated the way to dispose of the estate's benefits for the needs of its

¹⁹ *Statuta...*, p. 25; J. Bardach, *Historia...*, Vol. II, p. 289; R. Orłowski, *Ordynacja...*, p. 105; S. Płaza, *Historia...*, p. 280; H. Świątkowski, *Ordynacje...*, p. 380; T. Zielińska, *Ordynacje...*, s. 17. Similarly A. Meleń, *Ordynacje...*, p. 20; W. Uruszczak, *Historia państwa i prawa polskiego. Tom 1 (996-1795)*, Warszawa 2013, p. 313, who both claim that it takes place always, however the prior, on p. 44, also enumerates other possibilities.

²⁰ M. Kozaczka, *Ordynacja...*, p. 108; A. Meleń, *Ordynacje...*, p. 44.

²¹ A. Meleń, *Ordynacje...*, p. 24.

²² A. Meleń, *Ordynacje...*, pp. 52-53, who refers to the improper behaviour of the holder as illegal from the perspective of the entailed estate act, and thus leading to revocation of such holder; otherwise losing mental health resulted only in establishment of a curator.

²³ This is stated together with addition as to creation of a curator, A. Meleń, *Ordynacje...*, pp. 45-46.

²⁴ *Ibidem*, pp. 50-51.

²⁵ *Ibidem*, p. 36; S. Płaza, *Historia...*, p. 280; H. Świątkowski, *Ordynacje...*, p. 380; similarly as to conclusion, M. Drózdź-Szczybera, *Ordynacje...*, p. 7.

²⁶ K. Sójka-Zielińska, *Fideikomisy...*, pp. 27-28.

²⁷ T. Zielińska, *Ordynacje...*, p. 27; similarly as to conclusion, M. Drózdź-Szczybera, *Ordynacje...*, p. 7.

holder²⁸. Then, the holder could not have even managed the estate freely – also the methods of management of the estate were enacted²⁹. Additionally, further obligations were imposed on the holder – e.g. to support other relatives in a form of quasi-alimony, to gain education (which was supposed to lead to better management³⁰), or to bear the predecessors' surname³¹.

The male relatives of the holder (e.g. other sons of the predecessor) either inherited the estate outside entailed estate, or were vested with right to payments from the revenues of the entailed estate. The female relatives, otherwise, could have also obtained dower³².

The practical performance of the principles of the entailed estate was factually protected by the possibility to revoke the holder, who disobeyed them³³. Additionally, the legal acts against the estate act were null and void³⁴, while the losses resulting therefrom were subject to damages claims against the ex-holder and his private property (outside entailed estate)³⁵.

Additionally, it could be concluded that entailed estates involve a certain mysticism. At first, it can be traced back to the transformation of the individual property into the *sui generis* common, multi-generational estate³⁶. Secondly, each and every holder seems to be a true successor of the founder and the executor of his will, regardless of the current intents, which is, however, a theory difficult to be dogmatically proven³⁷.

It was usually deemed unnecessary to regulate the dissolution of the entailed estate, as it was supposed to function forever, thus expanded scenarios of succession were proposed instead. Sometimes it was, however, included, based on the possibility that the family ceases to exist. Then, the Ostrogski entailed estate act

²⁸ It is pointed out by T. Zielińska, *Ordynacje...*, p. 24-25, who reflects on the conflict between the current needs of the holder and the need to perpetuate the prominence of the family; the solution in favor of the latter threatens the financial stability of the holder, who may not dispose of his primary wealth and is bound by the estate act.

²⁹ A. Meleń, *Ordynacje...*, p. 50. At the same time, R. Orłowski, *Szkice...*, p. 35-36, points out that in the 18th century the management of the holder was replaced by a professional management, which, however, unlike presupposed, led to the care neither of the wealth, nor of the subordinates.

³⁰ R. Orłowski, *Ordynacje...*, p. 109, A. Meleń, *Ordynacje...*, p. 55.

³¹ It is underlined by K. Kościński, *Polskie ordynacje...*, p. 13, and exemplified by the Myszkowski (Pińczowska) entailed estate.

³² In the Zamoyski entailed estate the sons received other wealth, and the daughters – the dower, see *Statuta...*, p. 14; see also J. Bardach, *Historia ...*, Vol. II, p. 288; A. Meleń, *Ordynacje...*, p. 55-56. Both authors indicate that this effect regarded the entail estates in general; see also T. Zielińska, *Ordynacje...*, p. 27.

³³ A. Meleń, *Ordynacje...*, pp. 57-58.

³⁴ *Ibidem*, p. 52; H. Świątkowski, *Ordynacje...*, p. 380.

³⁵ A. Meleń, *Ordynacje...*, pp. 52, 57.

³⁶ K. Sójka-Zielińska, *Fideikomisy...*, p. 24.

³⁷ *Ibidem*, pp. 93-94.

clarified that the estate should pass to the Sovereign Military Order of Malta, while the Sułkowski one – to the educational committee, under condition of sustained indivisibility, and within disposal of its profits onto education of noble youth³⁸. Also, it is claimed that the Parliament could have dissolved the estate at any time³⁹.

Even though on certain territories of Poland during partition (1795-1918) the Napoleonic *Code Civil* was a valid law, including its Article 896 prohibiting fideicommissary substitutions, specific legislation upheld the functioning of entailed estates⁴⁰. Therefore, the old-Polish right to establish entailed estates was regarded as a well-established one⁴¹.

The true dissolution of the estates took place in the 20th century⁴². On the territories of Poland the process began based e.g. on the 1921 bill on family good of the former Prussian district (in Polish – *ustawa o dobrach rodzinnych byłej dzielnicy pruskiej*)⁴³ and the 1939 bill on dissolution of entailed estates (in Polish – *ustawa o znoszeniu ordynacyj rodowych*)⁴⁴. Both these bills did not, however, affect all entailed estates, taking into consideration the profits resulting from the estates to the state, in particular its culture and economy. Eventually all entailed estates were dissolved based on the 1944 decree of the Polish Committee of National Liberation on undertaking the land reform (in Polish – *dekret Polskiego Komitetu Wyzwolenia Narodowego [PKWN] o przeprowadzeniu reformy rolnej*)⁴⁵, which nationalised all larger estates (always over 100 hectares, and used for agricultural aims, see – Article 2, point 1, subpoint *e*), which certainly included all entailed estates. The practical side of execution of this act, however, did not adequately consider the advantages of the estates and the way the division of estates was proceeded led to decrease in agriculture and forestry on their lands⁴⁶.

2. FUNCTIONS OF THE ENTAILED ESTATES

The aim of the entailed estate was to uphold the family estate in its entirety. This could have perpetuated the prominence of the family⁴⁷, in particular by

³⁸ K. Kościński, *Polskie ordynacje...*, p. 24; A. Meleń, *Ordynacje...*, p. 59.

³⁹ A. Meleń, *Ordynacje...*, p. 60.

⁴⁰ H. Świątkowski, *Ordynacje...*, p. 381.

⁴¹ F. Longchamps de Bériet, *Podstawienie powiernicze*, „Kwartalnik Prawa Prywatnego” 1999, issue 2, p. 333.

⁴² T. Zielińska, *Ordynacje...*, p. 23.

⁴³ Bill of 18 November 1921, published with No. 100, position 715.

⁴⁴ Bill of 13 July 1939, published with No. 63, position 417.

⁴⁵ Decree of 6 September 1944, published with No. 4, position 17.

⁴⁶ M. Kozaczka, *Ordynacje...*, p. 161.

⁴⁷ M. Drózdź-Szczybera, *Ordynacje...*, p. 7; F. Longchamps de Bériet, *Podstawienie powiernicze...*, p. 334. A. Meleń, *Ordynacje...*, p. 19; S. Płaza, *Historia...*, p. 280; H. Świątkowski, *Or-*

means of protection of its economical basis⁴⁸, in a way that the latter was not subject to dismemberment. Otherwise, the willingness of the successor to obtain “fluid” assets from the inherited wealth, reached by its sale-out, would result in the deterioration of the situation of all the future generations. Also such disperse of noble family wealth, in general, would have been especially dangerous if it was followed by the acquisition of the goods by the bourgeois, gradually becoming the raising power⁴⁹. Eventually, such loss could have resulted not only in the long-term impoverishment of the nobility as a whole, but also would weaken the political power of the class, which enjoyed a very beneficial share within division of influence in the old-Poland. Apart from the above mentioned socio-political concerns, it was also undeniably understandable to simply uphold the estate in its entirety, which only then was capable to fully perform its economic functions.

At the same time, already in the text of the Zamoyski entailed estate act, at its very beginning, its usefulness to the state was underlined⁵⁰. At first it regarded the military utility⁵¹, while the cultural and educational⁵², socio-economic⁵³, and in particular technological⁵⁴ or administrative⁵⁵ functions were not unimportant. The Zamoyski estate act was, at the same time, not the first one to invoke the argument

dynacje..., p. 378; T. Zielińska, *Ordynacje*..., pp. 20, 27. Also, note that the title of *ordynat* itself raised social recognition of such a person, T. Zielińska, *Ordynacje*..., p. 21; similarly M. Kowalski, *Państwo*..., p. 195, recalls that such a title resembled aristocratic honorification.

⁴⁸ R. Orłowski, *Ordynacja*..., p. 105; similarly M. Drózdź-Szczybera, *Ordynacje*..., p. 7.

⁴⁹ S. Płaza, *Historia*..., p. 280.

⁵⁰ See general passages of *Statuta*..., p. 11.

⁵¹ *Statuta*..., pp. 25-26, specifically mentions e.g. the obligation to protect and to maintain the armoury. More generally, A. Meleń, *Ordynacje*..., p. 54 and R. Orłowski, *Ordynacja*..., p. 107, refer to this obligation as regarding the maintenance of fortress and army, while additionally A. Meleń, *Ordynacje*..., p. 17, classifies it as typical for entailed estates. Regarding the Zamoyski entailed estate, M. Kowalski, *Państwo*..., p. 193, clarifies that further legal acts refer to maintenance of Zamość fortress and 200-person military service. Also M. Drózdź-Szczybera, *Ordynacje*..., p. 8, claims on fundamental character of military aims, as the wealth of the entailed estate allows to maintain military service, and resulted in the eventual acceptance of the entailed estates despite of continuous unwillingness. Partly differently T. Zielińska, *Ordynacje*..., p. 22, who mentions the previous general custom that military service was maintained by the rich people.

⁵² M. Drózdź-Szczybera, *Ordynacje*..., p. 28; M. Kozaczka, *Ordynacja* ..., p. 13; see also about the meaning of the Sułkowski entailed estate in this context K. Kościński, *Polskie ordynacje*..., p. 24, A. Meleń, *Ordynacje*..., p. 59.

⁵³ M. Kowalski, *Państwo*..., p. 174; M. Kozaczka, *Ordynacja*..., pp. 28-31, M. Drózdź-Szczybera, *Ordynacje*..., p. 28; see – in particular – the argument on the attempts to improve the situation of the peasants raised by R. Orłowski, *Ordynacja*..., p. 122. However, M. Kozaczka, *Ordynacja*..., pp. 39, 108, mentions the relevant problems.

⁵⁴ From this perspective mostly the significant industrialization is referred to by M. Drózdź-Szczybera, *Ordynacje*..., p. 28; M. Kozaczka, *Ordynacja*..., p. 86; R. Orłowski, *Ordynacja*..., p. 122.

⁵⁵ M. Drózdź-Szczybera, *Ordynacje*..., p. 26; M. Kowalski, *Państwo*..., p. 174; M. Kozaczka, *Ordynacja*..., pp. 28-31.

of public utility⁵⁶. However, it must be clear that the entailed estate was established primarily to secure the family prestige, whereas the invocation of the state benefit could have served to a great extent only to convince the Parliament to issue the act accepting the foundation of the entailed estate⁵⁷. The Parliament, thus, generally opposed the entailed estates, as infringing the principle of equality within the class of nobility, and among their sons as well⁵⁸.

3. DISADVANTAGES OF THE ENTAILED ESTATES

The entailed estates had also certain disadvantages. At least some of them eventually led to the dissolution of the institution.

To begin with, the principles infringed by the entailed estates became increasingly important in the society under modernisation. This regards e.g. the freedom of testation, family members' rights to a part of family estate⁵⁹, or women rights⁶⁰. On the other hand, the primary function of the entailed estate, mainly upholding the family prestige, was no longer important in the 20th century reality⁶¹.

Mostly, however, the long-term functioning of the entailed estates underlined the difficulties resulting from perpetuation of the estate. They went as far as to excluding the possibility to alienate even their smallest part (and even upon adequate payment, which otherwise could be regarded as an example of ordinary management, especially in the course of changes of socio-economic circumstances)⁶², or to burden the estate (which did not only make it difficult

⁵⁶ The Radziwiłł entailed estate is supposed to be the first, as claimed by K. Kościński, *Polskie ordynacje...*, pp. 9, 11; differently, T. Zielińska, *Ordynacje...*, p. 21, who states that the first one was the Zamoyski entailed estate.

⁵⁷ See the usage of a public benefit argument in a discussion about dissolution of one entailed estate, as referred to by T. Zielińska, *Ordynacje...*, p. 22; and the argument raised by W. Uruszczak, *Historia...*, s. 313, according to which the public duties of the holder were to overcome reservations as to discriminatory entailed estates. However, entailed estates are also presented as uniquely connecting the private and public utility, see e.g. G. Jędrejek, *Regulacje...*, p. 7. Additionally, it is interestingly raised by M. Drózdź-Szczybera, *Ordynacje...*, p. 28, as exemplified by the Myszkowski (Pińczowska) estate, in which the public benefit is invoked generally, but specifically it should regard the benefit of the family.

⁵⁸ H. Świątkowski, *Ordynacje...*, pp. 379, 384; similarly A. Meleń, *Ordynacje...*, pp. 17-19; differently T. Zielińska, *Ordynacje...*, p. 25, who indicates that there is no evidence as to rejections or dissolutions of the entailed estates by the Sejm.

⁵⁹ K. Sójka-Zielińska, *Fideikomisy...*, p. 207-208, clarifies that it took place mostly after the French revolution.

⁶⁰ G. Jędrejek, *Regulacje...*, p. 18.

⁶¹ H. Świątkowski, *Ordynacje...*, p. 383.

⁶² H. Świątkowski, *Ordynacje...*, p. 383. Differently, M. Kozaczka, *Ordynacja...*, pp. 61, 163, who observes that the Zamoyski estate was of significant worth already in the interwar period,

to execute debts from the holder, but primarily limited the possibility to obtain an estate investment loan)⁶³, which at a certain moment of the economic change and popularisation of crediting seriously affected the estate's development. At the same time, such improperly functioning entailed estate allowed the holder neither to satisfy his or her own needs, nor to invest in its improvement.

It should be also stated that entailed estates are said to have influenced the destabilisation of Poland at the turn of the 17th and 18th century. Undeniably, they allowed to create *sui generis* feudal states of significant size and good internal organisation⁶⁴. Subsequently, as nearly extraterritorial, they could have produced demoralising effects⁶⁵. However, it should be remembered that they were neither intentionally founded in order to weaken the central power⁶⁶, nor are such tendencies proven by the practice of their functioning⁶⁷. Also in the times of later partition of Poland the estates, otherwise, could have helped sustain the Polish traditions⁶⁸.

The above mentioned considerations resulted in undermining the justification for entailed estates, the regulation of which was a far-reaching exception⁶⁹ from the general law. The German example lets us conclude that the functioning of the feudal legal institution sharply opposing the modern legal and social system was a central issue in the 19th century discussion on the development of law⁷⁰. Despite this criticism, the drafts included the continuation of the institution adjusted to the modern legal system, namely for significant estates, and with family power to decide, e.g. on their dissolution⁷¹.

4. ENTAILED ESTATE AS PART OF HISTORY OF PROPERTY AND SUCCESSION LAW

It must be noted that the limitation of the subjects of the civil turnover, as observed in the entailed estate acts, was not extraordinary in the old-Polish law. Therefore in order to assess their specificity, it is necessary to examine the state

which is to prove its changeability and adjustability to the socio-economic changes.

⁶³ H. Świątkowski, *Ordynacje...*, p. 383.

⁶⁴ M. Kowalski, *Państwo...*, p. 186.

⁶⁵ R. Orłowski, *Ordynacja...*, p. 124.

⁶⁶ *Statuta...*, p. 25.

⁶⁷ R. Orłowski, *Szkice...*, pp. 70, 195, underlines the support that the Zamoyski estate offered to the insurrection of Tadeusz Kościuszko (1794).

⁶⁸ K. Kościński, *Polskie ordynacje...*, pp. 53-55.

⁶⁹ A. Meleń, *Ordynacja...*, p. 40; H. Świątkowski, *Ordynacje...*, p. 383.

⁷⁰ K. Sójka-Zielińska, *Fideikomisy...*, p. 158, refers in this context to the bourgeois revolution.

⁷¹ *Ibidem*, p. 327.

of property and succession law from the times of their foundation, and only then the changes in the general law throughout ages of their functioning.

At first, already before the rise of individual ownership, the family members were jointly subjects of ownership, and the head of such a family was only insignificantly privileged, with the function close to managerial⁷². The death of the member of such an economic structure (indivisible family estate, in Polish – *niedział rodzinny*) did not affect the *sui generis* property right, which was vested in the representatives of subsequent generations already from their birth⁷³. In the course of evolution in the direction of individual ownership, the rights of future family heads (sons) were respected in such a way that they must have agreed on dispositions of their future property (right of waiting, in Polish – *prawo wyczekiwania*)⁷⁴.

The establishment of the individual character of property opened the dispute on the shape of succession law⁷⁵. Firstly, there were long-term doubts as to overall admissibility to dispose of property upon death as opposing the intestate order⁷⁶. The limitations on testation, mostly justified by the fear of the rising power of the Church⁷⁷ (being the typical beneficiary of the goods disposed of *mortis causa* in hope for salvation), gradually kept losing significance. At the same time, in the 15th century, only the third part of the estate could have been disposed of freely (in Polish – *trzecizna*)⁷⁸. The testamentary freedom did not also extend to disposition of most real estates, which was a consequence of a more far-reaching European feudal concept of them being a core of family heritage, of which the owner was truly a fiduciary only⁷⁹.

Then, because of the lack of the right to freely dispose of property *mortis causa*, there was no need to protect the family by means of its limitations⁸⁰. Also, rights of women in succession were supposed to not have been vital, as the concept of family wealth was to be continued in main successors of family wealth and knight tradition, i.e. men, while women, by moving to other family by marriage should not inherit real estate, which meant about the initial family power⁸¹.

⁷² J. Bardach, *Historia...*, Vol. I, p. 295.

⁷³ *Ibidem*, p. 78; K. Kolańczyk, *Najdawniejsze...*, pp. 3-4; S. Płaza, *Historia...*, p. 296.

⁷⁴ J. Bardach, *Historia...*, Vol. I, p. 304; K. Kolańczyk, *Najdawniejsze...*, p. 96; S. Płaza, *Historia...*, p. 278.

⁷⁵ K. Kolańczyk, *Najdawniejsze...*, pp. 3-5.

⁷⁶ S. Płaza, *Historia...*, p. 296.

⁷⁷ *Ibidem*, p. 302.

⁷⁸ *Ibidem*, p. 304.

⁷⁹ W. Uruszczak, *Historia...*, pp. 310-312

⁸⁰ S. Płaza, *Historia...*, pp. 302-306; that this argument was followed, when testamentary freedom was adopted, but did not regard power to testamentary dispositions of real estates, see W. Uruszczak, *Historia...*, pp. 310-311.

⁸¹ W. Uruszczak, *Historia...*, p. 312.

Even later, there existed law demanding the acceptance of the alienation by the relatives of the transferor (in Polish – *prawo bliższości*). Gradually this right became subject to content limitations, and eventually transformed into the right to repurchase (in Polish – *skup, retrakt*, in modern Polish law equivalent to *odkup*), or yet later – to preemption (in Polish – *pierwokup*)⁸². The extinction of the above mentioned right in 18th century Poland was regarded as the earliest in Europe⁸³.

Taking such development into consideration, initially the entailed estate should not be an extraordinary institution from the perspective of limitation of civil turnover. Otherwise, it was specific from the perspective of the estate's perpetuation in favour of a single member, so that dismemberment could have been avoided. Such perpetuation, at the same time, allowed entailed estates to continue their functioning in an unchanged way, even when property and succession law were modernised. And already then such estates appeared to have been much more specific in comparison to general law.

5. SPECIFICITY OF RESEARCH WITHIN HISTORY OF LAW

The analysis as above would fit in the category of history of law. It examines the example of past law⁸⁴, by usage of both historical research (as to facts of establishment and applicability of the institution), and legal one (as to analysis of the content of norms arising therefrom, and their validity). Then, it could be useful for both historians and lawyers.

At the same time, usage of methods deriving from two varied branches of science involves the subjection to two-fold falsification of results. Firstly, it is, thus, important not to distract the research by lacking proper historical research on fact of establishment and functioning of the institution⁸⁵, which should, however, be of smaller significance with regard to the written acts, as of entailed estates. Secondly, the legal context of the institution must be observed⁸⁶. Only then, the

⁸² J. Bardach, *Historia...*, Vol. II, p. 296; S. Płaza, *Historia...*, p. 278.

⁸³ S. Płaza, *Historia...*, p. 278.

⁸⁴ The issue that historical analysis of law may take place only after such law no longer solves current legal problems is considered by H. Kupiszewski, *Prawo rzymskie a współczesność*, Kraków 2013, p. 26.

⁸⁵ A. Zakrzewski, *Czemu ma obecnie służyć historia prawa, co jej grozi?*, „Miscellanea Historico-Iuridica” 2011, Vol. X, pp. 38-42.

⁸⁶ F. Longchamps de Bérrier, *Z uwag do metodologii nauki prawa prywatnego: powoływanie łacińskich reguł i maksym na przykładzie nemo plus iuris*, „Krakowskie Studia z Historii Państwa i Prawa” 2014, issue 7 A, p. 144.

past law may be analysed just as the entirely modern one⁸⁷. Thus, every time we analyse modern law, we consider it (though maybe less intentionally) as a part of the whole legal system, and the past institution should be then analysed accordingly.

6. UTILITY OF RESEARCH ON ENTAILED ESTATES FOR HISTORY

Proper research on the act of past law allows to depict the époque, in which it was established, particularly its social, economic, political, and cultural reality⁸⁸. Thus, the study of entailed estates shows functioning of the far-reaching exemption from the principle of equality of nobility, and provides us with an outlook on methods of securing the members of noble families, and their attitude toward public duties.

Having proper knowledge on the changes of reality and law, it could be analysed, whether it was the law, which evolved due to the socio-economical changes⁸⁹, or whether such changes were motivated by law⁹⁰. Considering the specificity of creation of entailed estates, it could be concluded that the law actually created by members of important noble families aimed to strengthen their already significant power. Thus, they must have gathered adequate wealth, and manage to convince the Parliament to accept the entailed estate beforehand.

The analysis of the past law answers also important questions on its exact shaping. This was especially the direction of development of the 19th century Polish schools of history of law, which in their research followed social expectations as to protect the old-Polish legal institutions as a part of the heritage of the non-existing state⁹¹. Entailed estates, partly continuously functioning then, created a significant example for such research, as there were few examples of institutions

⁸⁷ J. Maziarz, *Czy historia prawa jest nauką historyczną czy prawną?*, „Czasopismo Prawno-Historyczne” 2015, issue 1, pp. 329-330.

⁸⁸ J. Bardach, *Themis a Klio, czyli o potrzebie podejścia historycznego w prawoznawstwie*, (in:) J. Wróblewski (ed.), *Zagadnienia metodologiczne prawoznawstwa*, Wrocław-Warszawa-Kraków-Gdańsk-Lódź 1982, pp. 23-25; S. Grodziski, *Uwagi o służebnej, choć nie usługowej roli nauki historii państwa i prawa*, „Czasopismo Prawno-Historyczne” 2002, issue 2, p. 19.

⁸⁹ See below.

⁹⁰ W. Uruszczak, *Tradycja w historii prawa*, „Zagadnienia Naukoznawstwa” 2002, issue 3, p. 354.

⁹¹ S. Grodziski, *Uwagi...*, p. 65; similarly both J. Bardach, *Przemówienie Juliusza Bardacha*, „Czasopismo Prawno-Historyczne” 1997, issue 1-2, p. 300, and S. Salmonowicz, *Oratio pro domo sua, czyli kilka uwag o nauce historii prawa w Polsce*, „Miscellanea Historico-Iuridica” 2011, Vol. 10, p. 22.

based on old-Polish law still in force after partition of Poland, and even despite colliding law of the invading states⁹².

7. UTILITY OF RESEARCH ON ENTAILED ESTATES FOR LAW

Next to the sheer analysis of the institution of past law, it is also possible to set it in the context of the social, economic, political, and cultural past situation. Already then it could be concluded on the true consequences of the functioning of law in the historical place and time⁹³.

Thus, entailed estate proved to be effective in order to uphold the estate as a whole, maintain the prestige of the owning families, but also to assist the development of the entire neighbouring departments⁹⁴. It had, however, its drawbacks, such as impracticability in a later developed credit-based economy as well as lacking adjustability to the new circumstances⁹⁵, namely in the period from late 15th to 20th century, when a dramatic social and economic progress could have been observed.

The above mentioned utility of history of law as a kind of legal dogmatics, but directed into the past context, corresponds to its “antiquarian” vision of history of law. Otherwise, it is also possible to adopt the history of law to analyse the modern law, to search for the genesis of modern law in the past which resembles the “presentistic” attitude⁹⁶. This distinction is followed by T. Giaro, who indicates that “history of law studies, which in any way neither want, nor are capable of supporting the interpretation of the current problems, seem to miss their vocation”⁹⁷.

Consideration of this thought, yet careful, justifies the analysis of the heritage of entailed estates within history of law from the perspective of its possible implications to modern law. The few dimensions of such approach will be presented below.

Firstly, past law may act as a source of possible legal solutions of everlasting legal problems⁹⁸. It is also of significance with regard to a starting point for

⁹² H. Świątkowski, *Ordynacje...*, p. 381; while M. Kozaczka, *Ordynacja...*, p. 39, mentions its character as a vehicle of continuity of national tradition; at the same time A. Meleń, *Ordynacje...*, p. 3, characterizes them as one of the few living monuments of the old-Polish law.

⁹³ W. Uruszczak, *Tradycja...*, p. 354.

⁹⁴ G. Jędrejek, *Regulacje...*, p. 18; A. Meleń, *Ordynacje...*, pp. 17-19; M. Kozaczka, *Ordynacja...*, pp. 13, 21-25; R. Orłowski, *Ordynacja...*, pp. 107, 122.

⁹⁵ H. Świątkowski, *Ordynacje...*, p. 383.

⁹⁶ A. Zakrzewski, *Czemu...*, p. 38.

⁹⁷ T. Giaro, *Prawo i historia w dobie globalizacji. Nowe rozdanie kart*, (in:) T. Giaro, (ed.), *Prawo w dobie globalizacji*, Warszawa 2011, p. 73.

⁹⁸ T. Giaro, *Prawda dogmatyczna i „ponadczasowość” jurysprudencji rzymskiej*, „Czasopismo Prawno-Historyczne” 1988, issue 1, pp. 4-5.

searching for a best solution to a problem, which lasts throughout centuries, and up till now, especially as private law, though to some extent both evolves and remains partly constant⁹⁹. From the other perspective the history of law may consist of names as a collection of legal solutions to the problems, which mostly remain unchanged.

The numerous adaptations of the institution of family *fideicommissum*, partly in a form of the old-Polish law entailed estates, both in the past, and in the modern legal systems, show the similarity of the basic legal concepts involved, as well as their basic content. Then, some economic units may be exempted from subjection to general law upon their lifetime management and passing onto next generations, because of their significant values.

Secondly, it is also possible to generally observe how a legal institution functions in the reality of particular features. This could be also seen as an experiment performed somehow on a particular “living organism”. Thus the practical functioning of a certain institution in certain circumstances may either mean the specificity of the latter, or, otherwise, may suggest that comparable aims may be reached with a use of such an institution also in subsequent *époques*¹⁰⁰, which share the characteristics of the prior ones. In particular, the similar societal problem and the need to adopt measures which are adjusted thereto¹⁰¹, may justify the usage of the past institution to the modern reality, which is of comparable characteristics. The historical analysis may, at the same time, help avoid mistakes of a new institution¹⁰².

Such examination is not otherwise possible with regard to law which is to be implemented, and particularly the succession law, which is at first effective only after lapse of life of one generation¹⁰³. The existence of private ownership of significant value, which is organised as an economic entirety, connected with significant respect to private autonomy of the subjects involved, may everytime justify comparable solutions. However, colliding values must always be considered.

Thirdly, past law may be seen in the perspective of evolution of law, which follows historical changes¹⁰⁴. Primarily, old law should not be then automatically rejected as anachronistic (which often is raised as to long-lasting rules), but, otherwise, long-established law should be even more respected¹⁰⁵. In particular, modern law may correct, or supplement past law, creating the common legal cul-

⁹⁹ W. Dajczak, F. Longchamps de Bériér, *Prawo rzymskie w dobie dekodyfikacji*, „Forum Prawnicze” 2012, issue 2, p. 22.

¹⁰⁰ See T. Giaro, *Prawda...*, p.17.

¹⁰¹ W. Zakrzewski, *Nauki...*, p. 302.

¹⁰² S. Grodziski, *Uwagi...*, p. 17, depicts history as a lesson of the last generations’ experience.

¹⁰³ A. Stelmachowski, *Zarys teorii prawa cywilnego*, Warszawa 1998, p. 23.

¹⁰⁴ J. Bardach, *Themis...*, p. 30; W. Uruszczak, *Tradycja...*, p. 354.

¹⁰⁵ A. Stelmachowski, *Zarys...*, pp. 20-21.

ture¹⁰⁶, and demanding that the application of entirely modern law must consider such broader context¹⁰⁷. Also, even though past law is no longer binding, modern law is still based on the past one, its content (regulation and practice), its context (socio-economic, political, cultural, and axiological), and the process of its change, which altogether may be analysed in the course of a historical interpretation¹⁰⁸. Such tradition may even derive from formally non-binding rules – which deny the strict, positivist, border between the past and the present¹⁰⁹. Then, as it is still believed that new law may outdistance the past one, and then will better meet the expectations of the modern turnover, it may still adopt, or adjust the well-checked institutions of the past law¹¹⁰. At the same time, even if new law does not explicitly follow past law, new institutions may out of habit of conservative legal society remain at least partly understood in connection with the previous one¹¹¹. It may particularly affect the institutions shaped in a long-term historical process¹¹², or preserved in a social recognition, where they are likely to remain sustained for long after the formal loss of binding power¹¹³. Otherwise, the regulation, which entirely renounces the previous one, could be understood properly only upon careful analysis of its predecessor, in order to avoid that the new regulation reaches those effects, which were aimed to be rejected¹¹⁴. Considering both those tendencies, it becomes clear that knowledge of past law allows to understand modern one, which includes the circumstances of enactment of new law, and its *rationes decidendi*¹¹⁵.

The analysed institution of entailed estates is not continued in modern Polish law. Then it seems that the historical interpretation of modern Polish law should be directed against the tendencies to favour the right of the ancestor to perpetuate the estate as an efficient economic unity over the freedom of disposal of succeeded wealth, as such a concept, no matter for how long upheld beforehand, is no longer followed.

¹⁰⁶ H. Kupiszewski, *Prawo...*, pp. 275-276; while W. Uruszczak, *Tradycja...*, p. 356, explicitly states that law with no tradition becomes an order guaranteed by the state (forced) execution.

¹⁰⁷ W. Zakrzewski, *Nauki historycznoprawne a prawnopoztywne*, „Czasopismo Prawno-Historyczne” 1964, issue 1, p. 303.

¹⁰⁸ R. Jastrzębski, *Wykładnia historyczna we współczesnej judykaturze*, „Przegląd Sądowy” 2010, issue 1, pp. 107, 111.

¹⁰⁹ T. Giaro, *Prawo...*, p. 74.

¹¹⁰ W. Uruszczak, *Tradycja...*, p. 356.

¹¹¹ W. Zakrzewski, *Nauki...*, p. 299.

¹¹² J. Bardach, *Themis...*, p. 31; W. Zakrzewski, *Nauki...*, p. 302.

¹¹³ S. Grodziski, *Uwagi...*, p. 70.

¹¹⁴ See e.g. the judgment of the Highest Administrative Court in Warsaw of 8 February 2012, I OSK 1653/11.

¹¹⁵ W. Wołodkiewicz, *Nauczanie prawa czy przepisów prawnych?*, „Czasopismo Prawno-Historyczne” 2015, issue 1, pp. 246-247.

However, it should be considered which were the unique circumstances of dissolution of the entailed estates and times directly after that. The Polish socialist system in its political, economic and legal dimensions was based on the concept of absolute equality, economical omnipotence of the state, as well as of undermining the protection of the individual ownership, and at the same time, of undermining the succession law as such. This could be the reason for lacking continuation of the entailed estates, as highly unnecessary, or even harmful. Though, they demanded sustaining large private economy units in hands of nobility, which were to be continued upon death of the property holder, and also by means of favouring one successor over another.

At the same time, situation rapidly changed in comparison to the one in which the entailed estates were dissolved, and this should generally be observed by civil law¹¹⁶. The rise of significant family fortunes in Poland after 1989 made the issue of their post-mortal succession important one again. Thus, the rationale of the property holders who plan for their death may also direct towards perpetuation of the estate, in order to retain it as an economic entirety. Thus, the arguments raised in socialist law against a civil law institution may no longer serve as justified in the modern law¹¹⁷.

Fourthly, it should be observed that the analysis of the history of the legal institution, regarding both its origin and development, may help foresee the future of law¹¹⁸. The latter may not, however, be considered certain, though legislation may follow whichever routes, regardless of the needs¹¹⁹.

The analysis of the Polish law development, but – more importantly – comparative law research shows raising interest in the institutions comparable to the entailed estates. In this context, their two important functions may be observed.

It is particularly significant to ensure continuation of the running economic complex after death of its owner and manager. Already modern Polish law had to face the problem of lacking specific rules as to succession of an enterprise, which involves conflict of interests between succession law (respect to the will of the deceased and interests of the successors as well as of the third parties) and efficient functioning of the enterprise (which demands fast establishment of the new legal status)¹²⁰. Eventually a 2018 bill on successional management of a natural person enterprise (in Polish – *ustawa o zarządzie sukcesyjnym przedsiębiorstwem*

¹¹⁶ A. Stelmachowski, *Zarys...*, p. 286.

¹¹⁷ Compare the example of prohibition of fiduciary substitution in Polish law as raised by F. Longchamps de Bérrier, *Podstawienie...*, p. 339.

¹¹⁸ J. Bardach, *Themis...*, p. 48; S. Grodziski, *Uwagi...*, p. 19.

¹¹⁹ T. Giaro, *Prawo...*, p. 88.

¹²⁰ P. Księżak, *Przedsiębiorstwo wobec śmierci przedsiębiorcy*, (in:) W.J. Katner, U. Promińska (eds.), *Prawo handlowe po przystąpieniu do Unii Europejskiej*, Warszawa 2010, p. 155.

osoby fizycznej)¹²¹ was enacted, with the rationale in ensuring the continuation of the economic entirety owned by the deceased. It was done by means of the opportunity for the entrepreneur to grant power of attorney to a specific person to manage the enterprise immediately after their death (Article 9, point 1). The same could be true to institutions like family contract (in Italian – *patto di famiglia*), implemented in the 2006 novelisation of the Italian *Codice Civile*¹²², which is a lifetime contract between the closest family members as to division of rights and duties regarding the family enterprise (Article 768-bis and 768-quater).

The subsequent aspect refers to the perpetuation of wealth. Research on this concept can be placed within a broader discussion of the possibility to regulate passing wealth on death without involvement of the succession law. There is, thus, a growing debate, as to whether this effect may be reached by acts *inter vivos*, more or less significantly oriented into effectiveness after death, or by acts functionally equivalent to wills, which have the characteristics of the *mortis causa* act¹²³. The latter, often referred to as will-substitutes, may, as exemplified by trusts or private foundations, aim at increasing the control over wealth after death, therefore, achieving effects not allowed by the succession law¹²⁴, at the same time being admissible as competitors of system based on wills¹²⁵.

Such a control may take place both in the form of the private regulation of subsequent successions after death (in German – *Privaterbrecht*), and in perpetuation of assets in an economic entirety according to the concept of the initial founder¹²⁶. The rationale therefore lies in its conductivity to far-reaching autonomy of the founder derived from his lifetime ownership¹²⁷, but with varied limits resulting from the importance of free-market turnover of assets by the successors, who are, thus, subsequent owners vested with rights derived from their ownership¹²⁸. It is, however, explicitly said, that effects reached historically by a family *fideicomissum* are not to be followed, due to far-reaching demotivation of successors as to enjoy and multiply obtained wealth, especially of bigger size¹²⁹.

¹²¹ Bill of 5 July 2018, published with position 1629.

¹²² Royal Decree (*Regio Decreto* in Italian) of 16 March 1942, published with No. 262.

¹²³ J.H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, „Harvard Law Review” 1983-1984, Vol. 97, issue 5, p. 1132.

¹²⁴ A. Braun, A. Röthel, *Exploring Means of Transferring Wealth on Death: A Comparative Perspective*, (in:) A. Braun, A. Röthel (eds.), *Passing Wealth on Death, Will-Substitutes in Comparative Perspective*, Portland 2016, p. 363; see also A. Dutta, *Warum Erbrecht*, Tübingen 2014, p. 4.

¹²⁵ J.H. Langbein, *The Nonprobate...*, p. 1108.

¹²⁶ A. Dutta, *Warum...*, pp. 180-182.

¹²⁷ See arguments raised in favour of the fiduciary substitution, F. Longchamps de Brier, *Podstawienie...*, p. 339.

¹²⁸ See arguments raised against the long-term and far-reaching perpetuation of wealth, A. Dutta, *Warum...*, pp. 304-305, 335-337.

¹²⁹ A. Dutta, *Warum...*, s. 175.

Similarly, usage of company forms or other legal persons may allow to perpetuate a certain complex of assets, making the functioning of the resulting economic entirety independent from the life of its human members¹³⁰. The subsequent shape of succession involving particular number of successors, or their qualification, may also be imposed.

8. CONCLUSION

The presented analysis provides an example of research on old-Polish law, which is part of its long-lasting heritage, but supposedly is not subject to continuation. At the same time, however, it serves as an example of a solution to the legal problem, which is still existing now as it existed centuries earlier. Entailed estates were a legal concept aiming to challenge equal subjection to law in favour of an exception supporting other significant values. Greater acceptance of private autonomy followed by care for family prominence and economic efficiency allowed to regulate on inalienability of complex assets and their perpetuated continuation. Those functions are not unimportant now, and alike institutions are often adopted. However, problems produced by hundreds of years of functioning of entailed estates may help their today's equivalents reach better results.

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¹³⁰ *Ibidem*, p. 28.

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Summary

The article describes the old-Polish institution of entailed estate, mostly exemplified by the 1589 Zamoyski entailed estate. Firstly, its legal regulation and practice of functioning is analysed within a broader perspective of the overall property and succession law in the times of their establishment. Then the functions, possibilities, but also challenges and problems connected with it are discussed. Finally, the utility of this study is presented for history, history of law, and modern law.

KEY WORDS

entailed estate, primogeniture, family fideicomisum, succession law

SŁOWA KLUCZOWE

ordynacja, primogenitura, fideikomis familijny, prawo spadkowe