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Polnische Historische Mission an der Universität Würzburg
Am Hubland, 97074 Würzburg, Niemcy / Deutschland
<http://apcz.umk.pl/czasopisma/index.php/BPMH/index>
<http://pmh.umk.pl/start/wydawnictwa/biuletyn/>

Kontakt: *dr Renata Skowrońska*

tel. (+49 931) 31 81029

e-mail: renata.skowronska@uni-wuerzburg.de

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WYDAWCA / HERAUSGEBER

Uniwersytet Mikołaja Kopernika
ul. Gagarina 11, 87-100 Toruń, tel. (+48 56) 611 42 95, fax (+48 56) 611 47 05
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MARTA BARANOWSKA

Uniwersytet Mikołaja Kopernika w Toruniu
E-Mail: mb1@umk.pl
ORCID ID: <https://orcid.org/0000-0002-0365-1023>

PAWEŁ FIKTUS

Wyższa Szkoła Prawa we Wrocławiu
E-Mail: pawel.fiktus@prawowroclaw.edu.pl
ORCID ID: <https://orcid.org/0000-0002-2937-6859>

EMIGRATION SEEN THROUGH THE EYES
OF A LAWYER
LEOPOLD CARO ON THE LEGAL ASPECTS
OF THE SEASONAL LABOUR EMIGRATION OF POLISH
AGRICULTURAL WORKERS TO GERMANY
IN THE EARLY TWENTIETH CENTURY

INTRODUCTION

A crucial element determining the migration movements between the Polish and German lands was and still is the law, which, as a normative system, has an enormous impact on the shaping of social and political structures as well as on the life of every individual. The content of the law is defined by politicians, but also by lawyers, who contribute to the creation of concrete legal solutions, create intellectual debate on the law (law in the books), and apply the law in practice (law in action).¹ Learning about the history of migratory movements requires drawing on the history of law as

¹ Hubert Izdebski observed that: “The actual cognition of law – not just the law, if we use the language of the American twentieth-century direction of jurisprudence, i.e. legal functionalism, in the books (law-in-the books), but above all law realistically functioning in society (law in action) – without cognition of its axiological foundations, and at the same time its ideological context, must be considered impossible. It is such cognition that

well as on the history of political and legal thought, which acquaints the ideological aspect of the functioning of specific legal solutions and *de lege ferenda* solutions postulated in doctrine.

One of the lawyers who shaped the intellectual discourse at the turn of the 20th century in Galicia, a province of Austria-Hungary, and later in Poland after it regained independence in 1918, was Leopold Caro (May 27, 1864, to February 8, 1939). Born in Lviv as the son of Henryk Caro, a mortgage bank official and Amelia Maria Caro née Kolscher.² He studied law and philosophy at Jan Kazimierz University in Lviv, where he received his Doctor of Law degree in 1887. He continued his education at the University of Leipzig, this time taking up economics as his main study. At this time, he became acquainted with the doctrine of the German Historical School of Jurisprudence, the doctrine of French solidarism, and Catholic social teaching, which shaped his views on political and legal issues. In 1894, he started his bar training in Krakow. During World War I, he was called up to the Austro-Hungarian army, and then he voluntarily served in the Polish army. From 1920 in Lviv, he continued his bar training and research at the Lviv Polytechnic and Jan Kazimierz University.

Caro published texts in which he analysed the legal system of the Austro-Hungarian Empire, and economic issues.³ He was also one of the first to bring the idea of French solidarism closer to the Polish reader.⁴ One of the social and legal problems that preoccupied Caro was the plight of Polish economic emigrants in Western Europe and South America.⁵ It must be

leads to findings concerning the *iure condendo*, i.e. the foundations of the law.” Izdebski: *Doktryny polityczno-prawne*, p. 12.

² For more on Leopold Caro’s biography, see: Hauswald (ed.): *50 lat życia ekonomicznego i społecznego*, Paygert (ed.): *Księga pamiątkowa ku czci Leopolda Caro*.

³ Caro: *Zasady nauki ekonomji społecznej*; Idem: *Współczesne prądy gospodarcze*; Idem: *Reformy gospodarcze*. On Caro’s views on fascism see Fiktus: *Doktryna faszystwu*, pp. 239–250.

⁴ Caro: *Solidaryzm*. Apart from Caro, another Polish scientist by the name of Jerzy Kurnatowski wrote about French solidarism. See for example, Idem: *O solidaryzmie*; Idem: *Solidaryzm jako doktryna demokracji*.

⁵ Caro analysed Polish economic emigration overseas, especially the so-called “Brazilian fever”. The term “Brazilian fever” referred to the emigration of Poles in the years 1889–1914, mainly from the Austrian partition (Galicia) to the countries of South America. It is estimated that about 100 thousand Poles left the lands of the former Polish state at that time, and settled in Argentina, Peru, and especially in Brazil (near Curitiba).

stressed that he did not explicitly make political emigration the subject of his research. In the interwar period, however, he supported the idea that Poland should become a colonial state like Great Britain or France, and he wrote about emigration in the context of the acquisition of colonies.⁶

The research aim of this article is to analyse Caro's views on the seasonal labour emigration of Polish agricultural workers to Germany at the beginning of the 20th century. Naturally, Germany was not the only country in Europe targeted by Polish agricultural workers, but emigration in other directions, such as to Denmark, Sweden, France, Belgium and Switzerland, Turkey or Hungary, was of lesser magnitude.⁷ The article will also aim to answer the research questions: how did he assess the situation of Polish seasonal emigration in Germany? What were his proposals for the reform of the law in this area, and how did he evaluate the work of institutions dealing with emigration? The pursuit of these objectives will complement scholarly research in the history of legal thought, as no academic literature on this topic exists⁸. This article will also complement research into the history of migration movements between Polish and German lands at the beginning of the 20th century.

The reason for emigration was poverty and the desire to escape from serving in the army of the partitioning state. More on the subject see Mazurek: *Kraj a emigracja*; Groniowski: *Polska emigracja zarobkowa*; Fiktus, *Mysł emigracyjno-kolonialna*, pp. 53–60.

⁶ See Caro: *Problem emigracji*, pp. 35–37.

⁷ See Okołowicz: *Wychodźstwo i osadnictwo polskie*; Kołodziej: *Wychodźstwo zarobkowe*; Pilch: *Emigracja z ziem polskich*, p. 285. The academic literature emphasizes that it is not feasible to accurately estimate the volume of seasonal emigration to Germany. Employers frequently withheld notification of workers to avoid paying insurance for them, in addition, the term 'Pole' was underdefined at the time and German authorities adopted different criteria in their statistics. See Szurgacz: *Położenie prawne robotników*, pp. 75–76. Caro estimated the number of Polish seasonal workers at the beginning of the 20th century at 350,000 and less than 10 years later at 630,000 (380,000 from the Kingdom and 250,000 from the Galicia), of whom a small number (around 20,000) worked in Switzerland, Sweden, and Denmark, and around 10,000 in France. Caro: *Emigracja i polityka emigracyjna*, pp. 17–19. Ewa Morawska gave estimates that in the years 1870–1914, 10 million Poles emigrated, which was one third of the population of the former Polish lands. See Morawska: *Labor Migrations*, pp. 246–266.

⁸ See Murdzek: *Emigration in Polish social-political thought*. This book does not fully explore this topic. Caro's legal thought is not sufficiently discussed.

SOURCES AND RESEARCH METHODS. IDEOLOGICAL SOURCES: CHRISTIAN SOLIDARISM

The subject of research within this article is Caro's views on the labour emigration of Poles to Germany, which he presented in the pages of various publications between 1906 and 1914. The most important of these are a book from 1907 *Wychodztwo polskie*⁹ and articles published in the magazines: *Przegląd Powszechny* and *Ateneum Polskie*.

In his works on the issue of emigration, Caro often utilised legal comparativism, comparing examples of legal solutions operating in different countries. To analyse his works and views, this article will employ a legal-historical method.

An analysis of Caro's views also requires outlining his ideological outlook, which influenced his perception of reality, and the manner in which he constructed his legal arguments. In his deliberations, he was inspired by the ideas of the solidarism.¹⁰ Solidarism was an intellectual response to the views formulated by the representatives of liberalism and socialism at the turn of the 20th century.¹¹ Solidarism propounds the thesis of a natural community of interest uniting people regardless of their place in the social structure. Each individual must behave in accordance with the prevailing social norms, as failure to do so violates the principle of solidarity. Solidarism advocated grassroots activities as well as normative and institutional solutions which favour the harmonization of social life, building an order that would enable the individual and community potential to develop.¹² The solutions they proposed concerned the fair distribution of goods, the organization of various forms of social self-help, the implementation of equal opportunities policies, and the prevention of exploiting others. They advo-

⁹ Caro: *Wychodztwo Polskie*.

¹⁰ Solidarism as a socio-political trend was formed in the second half of the 19th century and its main founders included: É. Durkheim, Léon Duguit, Léon Bourgeois, Charles Gide. More on this topic see Augustyniak: *Solidaryzm i idea solidarności*.

¹¹ Charles Gide linked socialism with equality; liberalism with freedom; Christianity with authority. At the foundation of his views lay solidarity which sought to transform the patriarchal hierarchy into a more equal and fraternal hierarchy. See Belot et al.: *Miłosierdzie, sprawiedliwość*, pp. 29–30. More on this topic see Gide: *Solidaryzm*.

¹² Solidarists did not formulate any *a priori* plans that would move towards utopian visions of community.

cated moderate state interventionism justified by concern for the weakest. It had many points of contact with the Catholic social teaching expressed in the *Rerum novarum* encyclical by Leo XIII. There was also a trend of Catholic solidarism, the main representatives of which were: Wilhelm Emmanuel von Ketteler, Bishop of Mainz (1811–1877) and Heinrich Pesch, S. J. (1854–1926).¹³ They emphasized that material progress requires parallel progress in the moral field. The common denominator of these trends was the idea of charity, which indispensably complements justice.

Solidarism is also reflected in legal theory. One of the more original theories on law, in which the phenomenon of solidarity occupies a central place, was created by Léon Duguit (1859–1928). He formulated the thesis that norms are created together with society. Each society in a given era has its own legal awareness (*conscience juridique*). It is shaped by factors of an emotional rather than rational nature: a sense of community (*le sentiment de la socialité*) and a sense of justice (*le sentiment de la justice*). Justice is not an abstract notion, it is one of many concepts that accompanies people which is prone to changes, but the very need to have it is a constant element of human nature.¹⁴ Laws appear as a reflection of social solidarity and justice in individuals' consciousness. Duguit stated that every social rule exists only in the consciousness of the individual. This norm becomes a law when more individuals consider an organized collective response to its violation to be necessary and right. Thus, Duguit's theory oscillates between the psychological and sociological understanding of a law.

Caro was inspired by the ideas of catholic solidarism and Duguit's theory of law. He emphasized that the law was intended to unite society, mitigate conflicts, and not to sanction flagrant forms of exploitation. A fair law is one that compensates for all inequalities. Caro considered ethics to be the source

¹³ See *A Catholic View of the Economy*; Pesch: *Ethik und Volkswirtschaft*. More on this topic see Nothelle-Wildfeuer et al.: *Wilhelm Emmanuel v. Ketteler*, pp. 263–279; Hißler: *Der Begriff der Solidarität*; Waleszczuk: *System solidaryzmu Heinricha Pescha*, pp. 156–191; Załuska: *W kręgu solidaryzmu*, pp. 201–220.

¹⁴ Léon Duguit deliberately refrained from using such terms as: idea, concept of justice, or solidarity, because they could be associated with certain theoretical, abstract, absolute constructs of the mind. When writing about consciousness based on a mutual sense of something, Duguit means a certain type of intuition that is difficult to define and that exists in the consciousness of most people. See Duguit: *Traité de droit constitutionnel*, p. 50.

of law, and he believed it to be “an eternal and inexhaustible source.”¹⁵ For this reason, when analysing the law and proposing its changes, he referred to moral and religious argumentation. He showed extremely unjust cases of exploitation, lack of charity, in order to make his readers sense a moral dilemma and a feeling that norms are being broken. The general reaction to these forms of injustice is the only true source of legal norms. For this reason, according to Duguit’s doctrine, he did not invoke natural human rights or appeal for arbitrary decisions of those in power. He believed that it was in the name of solidarity that it would be possible for the majority of society to accept a certain degree of restriction on the freedom of contracts to improve the fate of the poorest. In his opinion, it was not coercion, but the moral education of society and the strengthening of the sense of duty in employers that were the best way to improve relations between social groups.

Caro recognised the ways in which migrants were exploited and, in order to improve their fate, in line with the tenets of Christian solidarity, he appealed to society’s moral sense, its Christian values, and, as a lawyer, he also demonstrated how the legal system should be changed to effectively prevent widespread exploitative practices.

With a view to presenting Caro’s views on the legal aspects of emigration, his assessment of the legal situation of Polish emigrants in Germany will be presented first, followed by his *de lege ferenda* proposals. The article will be completed with remarks on his activities related to efforts to improve the legal situation of emigrants and proposals concerning the functioning of institutions dealing with emigration.

CARO ON THE LEGAL SITUATION OF POLISH SEASONAL AGRICULTURAL WORKERS IN GERMANY

When analysing Caro’s views about emigration to Germany, it is important to commence with the fact that the Germans were the aggressors who took part in the partition of Poland. This was something that he did not ignore, stating that it was humiliating to knowingly serve one’s greatest enemies.¹⁶

¹⁵ Caro: *Ku nowej Polsce*, p. 49.

¹⁶ Caro: *Katolicy niemieccy w Dreźnie*, p. 7.

He also cited a conversation he once had in Munich with economics professor Lujo Brentano¹⁷, who pointed out that the Poles had the only weapon at their disposal against Prussia: to stop sending workers, because without them agriculture and industry in Germany would not be able to function.¹⁸ Germany needed agricultural workers as industrialisation caused an internal migration of people from the countryside to the cities. Referring to Brentano's words in *Przegląd Powszechny*, Caro pointed out that he had previously urged in the press (in *Nowa Reforma, Kuryer Warszawski*) the boycotting of the seasonal work that was building the economic power of Poland's oppressor.¹⁹ That call, however, went unheeded. Caro realised that without the solidarity of all, it is difficult to effect such a successful boycott, and it is precisely this solidarity that was lacking among Poles. In addition, for most of those seeking work abroad, it was not a question of free choice, but of the survival of their entire families.²⁰ Under these circumstances, he decided to help these emigrants within his means. As a lawyer, he undertook to write publications analysing the legal situation of emigrants and to formulate proposals for the revision of the legal system. He wished to make the fate of these people the subject of political and legal discourse, which would be the first step towards improving their situation. He appealed to a moral sense and Christian values because, in line with the tenets of Christian solidarity, he sought to generate a moral source for a new law. It was society that had to become aware of the injustice of existing relations and be willing to change this situation.

¹⁷ Lujo Ludwig Joseph von Brentano (1844–1931) – German lawyer, philosopher and economist of Italian origin, known as the 'Kathedersozialist'. His philosophy and economic concepts influenced the founders of the social market economy after the Second World War. See Brentano: *Die Agrarreform in Preussen*; Idem: *Ethik und Volkswirtschaft in der Geschichte*.

¹⁸ Caro: *Katolicy niemieccy w Dreźnie*, p. 7.

¹⁹ *Ibidem*.

²⁰ Among the reasons for emigration, it is necessary to point to the rapid population growth accompanied by a lack of agricultural and industrial development in the Polish lands. In the years 1857–1910, the population in the Kingdom of Poland, Galicia, Posen, and West Prussia increased from 11,900,000 to 24,300,000 people, i.e., by 105%, and in the Kingdom of Poland alone by 179%. Also significant was the fact that in Germany wages, as well as often working conditions, tended to be better than in the Kingdom and Galicia. See Rutkowski: *Historia gospodarcza Polski*, pp. 229–238.

Caro did not deal with the poor working conditions of the workers in general,²¹ but wrote about those legal solutions and practices directed against Polish seasonal migrants employed in agriculture, also known as itinerant workers (in German: *Wanderarbeiter*).²² The Prussian authorities consistently pursued a policy of Germanization on the seized Polish territories and were unwilling to repolonize them. To this end, they sought to limit the employment of Poles, in particular their permanent settlement, and also engaged in the purchase of lands belonging to them.²³ They preferred that their place be taken by Flemings, Hungarians, Slovaks, Russians, and even Chinese or natives from the German colonies.

On the basis of Caro's information, the Flemings who came with the intention of working in Germany were few in number, and the results of the Russians and Ruthenians coming from Galicia were not satisfactory. On the other hand, the idea of bringing in natives from Africa and the Chinese allegedly met with a negative response from the German public.²⁴

²¹ More on this topic, see Bade: *Massenwanderung*, pp. 311–323; Bade: *Wanderungen*, pp. 266–292.

²² Among this group of *Wanderarbeiter*, Poles made up a significant proportion. Such workers were housed with the landlords free of charge. They were recruited by agents acting on behalf of the landowner, i.e., labour brokers. See Szurgacz: *Polożenie prawne robotników*, p. 71; Wilczyńska: *Diabli z czubam*, pp. 118–130.

²³ In 1885, legislation was introduced in Prussia restricting the employment of Poles. See Herbert: *Geschichte der Ausländerbeschäftigung*, p. 16. "Überdies wurde in den 1880er Jahren der Bevölkerungsrückgang der Deutschen statistisch nachgewiesen, der sowohl auf die höhere Geburtenrate der polnischen als auch auf die verstärkte Landflucht der deutschen und vor allem der jüdischen Bevölkerung zurückzuführen war. Hingegen kehrten viele polnische Land- und Industriearbeiter nach einigen Jahren Arbeit in Mittel- und Westdeutschland in die Ostprovinzen zurück, um sich mit dem Verdienst eine Existenz aufzubauen. Die Klagen der Deutschen über die zunehmende "Polonisierung" der Ostprovinzen waren schließlich ein wichtiger Beweggrund für das Eingreifen des Staates. Die staatlichen Gegenmaßnahmen bestanden in der forcierten Verdrängung des polnischen Religionsunterrichts aus den preußischen Schulen, der Ausweisung von rund 30000 aus Galizien und Kongresspolen eingewanderten, aber nicht naturalisierten Polen und Juden 1885/86 sowie der Verabschiedung des Ansiedlungsgesetzes im Jahr 1886. Zu diesem Zweck wurde die Königliche Ansiedlungskommission in Posen errichtet, die in den Provinzen Posen und Westpreußen polnischen Großgrundbesitz ankaufen, parzellieren und ausschließlich an Deutsche verpachten sollte". Spät: *Die "polnische Frage"*, p. 99.

²⁴ Caro: *Wychodztwo polskie*, p. 26.

It should be observed that Caro did not address issues such as the development of the legal framework of Polish émigré organizations or the development of Polish political and social life abroad. His interest was limited to the legal aspects of the organization of exile, e.g. issues of transport, insurance, and the terms of employment contracts.²⁵ He noted the obligation to have identity cards issued (*ein Legitimationszwang für ausländische Arbeitskräfte*) by the *Deutsche Feldarbeiterzentralstelle*.²⁶ The colours were red for Polish agricultural workers (*rote Polenkarte*), yellow for Ruthenians and white for other nationalities. The colours of the cards were intended to facilitate the segregation of workers and to restrict the stay of Poles from 20 December to 1 February (this restriction did not apply to workers of other nationalities). By this means, the Prussian authorities sought to make it easier for their citizen-employers to rid themselves of the burden of keeping workers during the winter months and to limit the possibility of permanent settlement and demonstrate to Poles that they were merely tolerated aliens. Caro stressed that this policy prevented assimilation, fostered a sense of injustice, and entrenched a sense of national differences and mutual hostility. It is worth adding that he also touched upon the issue of denationalisation, but his remarks should be assessed as very vague.

A special analysis was carried out by Caro of the written contracts concluded with Polish emigrants.²⁷ First and foremost, he criticized the fact that they contained the worker's obligations and not a word about his or her rights.²⁸ It was also characteristic of the contracts that they incor-

²⁵ Caro was aware that the working conditions of Polish seasonal workers depended on a number of factors, such as the place of employment (wages were higher with German employers who had their workshops in Saxony and Westphalia), the type of work performed (the highest wages could be achieved by piecework at mowing during the harvest and in beetroot cultivation), or the respective employers.

²⁶ The obligation for foreign workers to hold identification cards was introduced in 1909. See Oltmer: *Migration*, p. 34. Szurgacz pointed out that not all German Reich states introduced this obligation, "in states such as Baden, Württemberg, Bavaria, Hessen-Darmstadt, Hamburg, Bremen – no restrictions on the employment of foreign workers or the compulsion of identity cards were in place". Szurgacz: *Położenie prawne robotników*, p. 82.

²⁷ These contracts were fundamental in determining all working conditions. Initially, they were individual contracts. Over time, template contracts (*Mustervertrag*), which were drawn up locally or by the *Deutsche Feldarbeiterzentralstelle*, became increasingly common.

²⁸ Caro: *Katolicy niemieccy w Dreźnie*, p. 14.

porated a whole series of solutions unfavourable to Polish workers, which concerned various aspects of the provision of work and the very validity of the contract itself.

Employers usually reserved in them the right of rescission of the contract for specific reasons²⁹, while there were no provisions granting this possibility to workers. Nevertheless, Caro pointed to the possibility for workers to use § 626 *Bürgerliches Gesetzbuch* (BGB) on termination without notice for a compelling reason.³⁰ These rules were not precise, which disadvantaged workers, who had to pursue their case in court if the employer did not want to take into account their “valid reasons” for termination.³¹ However, as Caro emphasized, the courts applied different interpretations of the legislation, which did not give a sense of legal certainty to the weaker party, i.e. the employees.³² It should also be remembered that an emigrant usually lacked knowledge of the German language or was illiterate, and was unaware of his rights and lacked the money to support himself during the court case. This is why it was vital, according to Caro, to organize legal assistance for Polish emigrants. This was one of his most important proposals. Caro pointed out that contracts contained provisions

²⁹ Typically, the following grounds were entered to allow the employee to be terminated: 1) failing to comply with an order given by the employer on two separate occasions, 2) misconduct, 3) being incapable of performing tasks to which the employee had agreed, 4) misconduct in the performance of assigned tasks, 5) tormenting animals belonging to the employer. Idem: *Wychodztwo polskie*, p. 30.

³⁰ “§ 626 Fristlose Kündigung aus wichtigem Grund. (1) Das Dienstverhältnis kann von jedem Vertragsteil aus wichtigem Grund ohne Einhaltung einer Kündigungsfrist gekündigt werden, wenn Tatsachen vorliegen, auf Grund derer dem Kündigenden unter Berücksichtigung aller Umstände des Einzelfalles und unter Abwägung der Interessen beider Vertragsteile die Fortsetzung des Dienstverhältnisses bis zum Ablauf der Kündigungsfrist oder bis zu der vereinbarten Beendigung des Dienstverhältnisses nicht zugemutet werden kann. (2) Die Kündigung kann nur innerhalb von zwei Wochen erfolgen. Die Frist beginnt mit dem Zeitpunkt, in dem der Kündigungsberechtigte von den für die Kündigung maßgebenden Tatsachen Kenntnis erlangt. Der Kündigende muss dem anderen Teil auf Verlangen den Kündigungsgrund unverzüglich schriftlich mitteilen.” *Bürgerliches Gesetzbuch*.

³¹ Caro indicated that the following were usually considered ‘valid reasons’ allowing the worker to terminate the contract: beating of the worker, derision of the worker because of nationality, mockery of the Catholic religion, failure to provide food, accommodation, fraudulent payment, immoral behaviour on the part of household members, servants, or officials.

³² Caro: *Katolicy niemieccy w Dreźnie*, p. 14.

on the deduction of contractual penalties from the worker's wages, which was unlawful.³³ Furthermore, a frequent provision under the contracts was the obligation of workers to purchase certain goods only in the shops listed in the contract at inflated prices.

In addition, Caro raised the issue of insurance for Polish seasonal workers.³⁴ He considered it a scandalous practice that a contribution to the German insurance fund was deducted from their income, and that they were not provided with the same support as German workers. He was particularly critical of the lack of any protection for widows and orphans, who were deprived of monetary benefits as a result of the death of a Polish worker.³⁵ The argument justifying this was the lack of permanent residence in Germany. Caro also compared aspects of the position of the Polish agricultural worker employed in the Galician and German countryside in terms of insurance. Even though Galician agriculture was much less developed than German agriculture, legal proposals had been drawn up for comprehensive insurance for the agricultural worker against accidents. Furthermore, in the case of fees paid to the insurance fund, the Galician labourer was entitled to compensation, which was not the case with German legal solutions.³⁶

An essential element in Caro's analysis of emigration was his criticism of the activities of agents, or labour brokers.³⁷ Caro presented numerous examples of the abuses they systematically committed. He described an

³³ Idem: *Wychodztwo polskie*, p. 31.

³⁴ Workers' sickness insurance was introduced by a law of 1883 (*Gesetz, betreffend die Krankenversicherung der Arbeiter. Vom 15. Juni 1883*). It was possible to extend its scope to workers employed in agriculture and forestry either by federal state law or by municipal statute. "In the 1890s, in some of the Reich Länder (except Prussia) corresponding laws were passed on compulsory sickness insurance for all persons employed in agriculture, regardless of their nationality. In Prussia, the introduction of sickness insurance through municipal statutes was a rarity". H. Szurgacz: *Położenie prawne robotników*, p. 99. In 1900, the Law of 1895 on Industrial Accident Insurance was amended to include agricultural workers (*Gesetz, betreffend die Abänderung der Unfallversicherungsgesetze vom 30. Juni 1900*). The provisions of the insurance ordinance introduced certain restrictions for foreigners.

³⁵ Caro: *Wychodztwo polskie*, p. 32.

³⁶ See Broński: *Rozwój systemu ubezpieczeń*, p. 13; *Zakład Ubezpieczenia od Wypadków we Lwowie 1889–1914*, pp. 13–41.

³⁷ "The number of agents was estimated to be around 7,000 in Prussia in 1900. They earned double, cashing in 1 to 10 marks from each recruit and then another 12 to 15 marks from the employer. From a financial point of view, acting as a recruiter was very

example of a Galician agent taking a Polish worker to Mysłowice and handing him over to a German agent who was not bound by the arrangements made with the Galician agent. Therefore, the German agent offered the worker inferior working conditions and pay.³⁸ According to Caro, it was factually possible to speak of human trafficking on the eastern borders, which occurred every spring.³⁹

Using legal comparativism, he juxtaposed the position of the Polish labourer in the legal systems of France or Denmark. In his view, it was Danish law, particularly the 1908 Act, that was most favourable to seasonal workers.⁴⁰ Among the solutions he considered noteworthy were the issuance of employment passports in Polish and Danish, the presentation of the tasks covered by the employment contract before it was signed, the provision of board by the employer for the duration of a possible dispute, and the possibility of taking up employment with another employer even before a ruling had been rendered on employment with the first employer.⁴¹

DE LEGE FERENDA PROPOSALS

An analysis of the legal situation of seasonal workers in Germany, as well as in other countries, led Caro to formulate recommendations for the further

attractive, which resulted in cases of trading recruitment contracts with German employers". Szurgacz: *Położenie prawne robotników*, pp. 80–81.

³⁸ Caro: *Wychodztwo polskie*, p. 27.

³⁹ Idem: *Katolicy niemieccy w Dreźnie*. The regulations governing departure from the Kingdom to work in the German Reich forbade the recruitment of labour by German agents within Russia, with the result that recruitment itself took place at the border on the Prussian side. See Drewniak: *Robotnicy sezonowi*, p. 236. "With an increased influx of labour, the recruiters arranged a kind of fair for Polish workers, selecting among them the fittest, according to the order of the landowner. The less fit were offered inferior pay conditions, and some of the recruited were not offered work. With no language skills and no means of subsistence, they were forced to return to their homeland". Szurgacz: *Położenie prawne robotników*, p. 81.

⁴⁰ Caro: *Wychodztwo*, p. 35. More on this topic see Nellemann: *The Introduction of the Sugar Beet*, pp. 45–57.

⁴¹ Caro: *Wychodztwo*, p. 35. Caro also made comments about the law in Sweden, but without detailing the provisions concerning the legal situation of the Polish seasonal worker. In this case, he focused on the unfair activities of employment agents. Ibidem, pp. 35–36.

development of legislation on emigration. He recognised the negative sides of emigration and believed that as a priority, public employment offices should be instituted, whose responsibility would be to exchange information on potential employment in the Polish lands. Such offices would thus contribute to halting the depopulation of the villages of the Kingdom of Poland and Galicia during the summer period, which led to wasted harvests and, in the longer term, inadequate economic progress. The described solution would also be beneficial for job seekers, who would not have to leave their families and the country.

Furthermore, he advocated the establishment of an emigration office to broker jobs in other countries and drive out the rogue agents so criticized by Caro. The remit of this office would be quite comprehensive. Its tasks would include the collection of all information on the potential whereabouts of emigrants, settlement and employment opportunities, as well as travel conditions.⁴² The office would be tasked with providing opportunities for emigration to places where there were already concentrations of Poles and Catholic churches with masses conducted in Polish. In addition, its tasks would include the establishment of Polish societies, the import of Polish books and the publication of Polish newspapers.⁴³ The emigration office would be supervised by an emigration council, which would include a representative of the sciences, as well as wealthy persons, to counteract potential bribery.

Furthermore, Caro advocated the introduction of a legal obligation for emigrants to insure themselves, a compulsory deposit to secure against the fraudulent activities of agents, as well as the regulation of the liability of ship societies. He believed that seasonal emigrants, departing from their country, should have contracts already signed so as not to be exposed to the manipulation of agents while abroad. In the case of illiterate workers, it would be the responsibility of the officials of the emigration office to read and explain to them the rules of the contract.⁴⁴ Caro also proposed the creation of inspectorates to control the housing, food, and working condi-

⁴² *Ibidem*, pp. 36–37. Caro noted that offices of this type, whose tasks included providing the public with written reports on emigration destinations, operated in Italy and Germany.

⁴³ *Ibidem*, p. 39.

⁴⁴ *Ibidem*.

tions of all seasonal agricultural labourers and to settle employer-employee disputes.

An important proposal was the establishment of legal societies, tasked with the legal care of emigrants. Caro elaborated on an interesting solution using the example of Polish emigration in Germany. Despite the lack of such societies, their role would be taken over there by the Polish intelligentsia, landowners, and other Polish sections of society.

The comments made above referred mainly to national regulations. However, Caro emphasized that emigration was about relations between states and that: “there is a natural conflict of interests between the state supplying labourers and the state seeking them for itself, either by giving them the opportunity to work at all, or by offering them more favourable conditions for such work.”⁴⁵

Despite the conflicting interests, in Caro’s view, the two sides should recognise the primacy of the principle of protecting the human individual choosing to leave the country and jointly regulate the following aspects of emigration: 1) the development of common rules for emigration statistics⁴⁶, 2) furthering of the agreement of 18 May 1904 on combating the white slave trade⁴⁷, 3) the introduction of legal regulations on minimum lighting, air, and supplies for emigrants, 4) the establishment of halls for emigrants (e.g. at check stations or ports), 5) the introduction of legal regulations simplifying baptism, marriage, and death documents issued abroad, and 6) the reduction of postal fees for money shipments.⁴⁸

International aspects, concerning transport and living conditions, were also addressed by Caro in his work *Emigracja i jej wpływ na stosunki zdrowotne i na ruch ludności*.

⁴⁵ Idem: *Międzynarodowy Problem Emigracji*, p. 323.

⁴⁶ It should be noted that Caro was one of the first Polish researchers dealing with the issue of emigration emphasizing the question of statistical research, as exemplified by his work entitled: Idem: *Statystyka emigracji polskiej i austro-węgierskiej do Stanów Zjednoczonych Ameryki Północnej*. Subsequently, work on statistics was undertaken by one of the leading Polish philosophers and sociologists Florian Znaniecki, who published an article: Znaniecki: *Statystyka wychodźstwa*, pp.10–21.

⁴⁷ This agreement was one of the first deeds concerning the international regulation of this practice, see Makowski: *Podręcznik prawa międzynarodowego*, p. 771.

⁴⁸ Caro: *Międzynarodowy Problem Emigracji*, pp. 331–332. Caro put forward similar proposals in his work *Emigracja i jej wpływ*, p. 9. As a model to follow he mentioned the Hamburg dormitory hall. Ibidem, p. 5.

CARO'S ACTIVITY REGARDING EMIGRATION
AND HIS PROPOSALS FOR THE FUNCTIONING OF INSTITUTIONS
DEALING WITH EMIGRATION

Seeking to reform the unjust emigration regulations, Caro not only undertook publication activities, but also participated in conferences, or made appeals and tried to involve diverse types of institutions to act more effectively to improve the lot of emigrants. He was actively involved in the activities of the Austro-Hungarian economic societies (*Mitteleuropäische Wirtschaftsvereine*), which, together with the Belgian society (*Union économique internationale, association Belge*), organized conferences on economic issues. In 1909, a joint conference was held in Berlin, where Caro presented the most important problems relating to emigration from Austria-Hungary.

On the basis of the experience of this conference and the observations made by him, Caro believed that there was a need for an international institution that would deal with the legal regulation of emigration in its entirety. Whether his intention was to establish a new institution, or if the suggestions he made referred to the already existing Institute of International Law, cannot be clearly established from his argument. The Institute was a private establishment founded on the initiative of the Belgian lawyer Gustav Rolin-Jaequemynsa in 1873 in Ghent. Its main tasks were to consolidate the academic community and to take the initiative to codify public international law.⁴⁹ Caro argued that the Institute should collect and compile information from the emigration offices of all countries on the legal systems relating to settlement, employment, or climatic conditions in the countries targeted by emigrants, and provide legal assistance to countries wishing to reform their emigration legislation.⁵⁰

It is also worth noting Leopold Caro's polemics with the Polish Emigration Society.⁵¹ Initially Caro supported its activities⁵², but this came

⁴⁹ A Polish lawyer associated with the work of the Institute was Gustaw Roszkowski. See Roszkowski: *De la codification du droit international*.

⁵⁰ Caro: *Międzynarodowy Problem Emigracji*, pp. 332–333.

⁵¹ The Polish Emigration Society was active in Galicia between 1907 and 1939. The aim of the Society was to organize the Polish emigration movement, mainly to Brazil, see Kowalski: *Przestępstwa emigracyjne*, pp. 79–131.

⁵² In a letter addressed to the President of the Society in October 1907, Caro wrote:

to an end when the Society's president, Dr Jan Hupka⁵³ in the pages of the leading Kraków daily *Czas* (nos. 38, 40, 42 of 1914) made a critical assessment of Leopold Caro's book, *Emigracja i polityka emigracyjna*⁵⁴. In response, Caro published a pamphlet *Odprawa p. Hupce i prawda o P.T.E.*⁵⁵, in which he polemicized Hupka's criticisms of his conference activities and views on emigration issues. Among other things, Caro accused Hupka of a mania for persecution and the Society itself of a mania for grandeur, of presenting false information concerning Polish emigration to Brazil or of collaboration with Michał Pankiewicz⁵⁶, an emigration agent, whom he described as "soliciting"⁵⁷. He wrote of the Society: "The P.E.S. is undermining the national existence as it is sending our people to their doom in South America"⁵⁸.

Whereas, in another work, *Prawdziwa działalność P.T.E. Ignorancja czy zła wola?*, Caro negatively assessed the organization of Polish emigration to Germany. He criticized the provision of erroneous information concerning the centre for agricultural workers, and discussed criminal proceedings against the Society.⁵⁹ In response to Caro's accusations, the Society's activists published a book, *Dr Leopold Caro a P.T.E.*⁶⁰, in which they provided personal details of Caro's period of cooperation with the Society (explaining, for example, why Caro never became a member of the Society, as well as

"sincere congratulations on the commencement of the publication of the *Polish Emigration Review*, as well as on its rich and abundant content". Okołowicz: *Dr Leopold Caro*, p. 3.

⁵³ Jan Hupka (1866–1952) – Doctor of Law, graduated from the Faculty of Law at the Jagiellonian University. Between 1898 and 1914, he was a member of the National Sejm, a member of the State Agricultural Council in Vienna and the National Department (1908–1914). He was affiliated with the National Right Party (a party representing mainly landowning circles) and co-initiated the establishment of the Polish Emigration Society. See Bieńkowski: *Jan Hupka – biogram*, pp. 109–110.

⁵⁴ Caro: *Emigracja i polityka emigracyjna*.

⁵⁵ Idem: *Odprawa p. Hupce*.

⁵⁶ After Poland regained independence, M. Pankiewicz became one of the leading activists of the Maritim and Colonial League, which promoted the necessity of obtaining overseas colonies for Poland. After World War II, he was active in an association subordinated to the communist authorities, the All-Poland League for Fighting Racism.

⁵⁷ See Groniowski: *Polska emigracja zarobkowa w Brazylii*, p. 139.

⁵⁸ Caro: *Odprawa p. Hupce*, p. 47.

⁵⁹ Idem: *Prawdziwa działalność*.

⁶⁰ Okołowicz: *Dr Leopold Caro*.

describing the procedure of writing reviews at Caro's request) and, above all, polemicizing against the Lviv lawyer's comments.⁶¹ The dispute that arose between Caro and P.E.S. stemmed from private disagreements and a certain pettiness and viciousness on the part of the two parties, but the resulting publications, brought to the attention of a wider readership the common phenomenon of the exploitation of emigrants by agents.

Finally, Caro also took steps to organize social and legal care for emigrants. He turned to the founder and president of the Caritasverband für das catholische Deutschland, Lorenz Werthmann (1858–1921), with a request to extend assistance to Polish workers as well. Previously, this organization had helped labourers of other nationalities. Caro's request was met with understanding and jointly they organized a conference in 1911 to investigate the social conditions of seasonal workers and to create an aid plan. The report of this conference was published by Caro in *Przegląd Powszechny* in 1911.⁶²

CONCLUSIONS

Labour emigration is an intrinsic part of social life, subject to legal regulation and consideration by lawyers. The Polish jurist who dealt so extensively with this issue at the beginning of the 20th century was Leopold Caro⁶³. In line with Christian principles, he considered it unethical to abandon the poorest and exploited to their own devices. As a lawyer, he undertook an effort to work for a reform of the law that would improve the condition of emigrants. Amongst a whole range of problems concerning emigration, he

⁶¹ These publications by Leopold Caro and the Polish Emigration Society were enriched with source material on emigration.

⁶² Caro: *Katolicy niemieccy w Dreźnie*.

⁶³ At the turn of the nineteenth and twentieth centuries, works on emigration from Polish lands did not cover so wide a spectrum of issues. The best-known works include those by activists of the Polish national movement, Jan L. Popławski and Roman Dmowski, in which they postulated the creation of a New Poland, a substitute for Polish statehood within the borders of another country (mainly the state of Paraná in Brazil was indicated). See Fiktus: *Nowa Polska w polskiej myśli kolonialnej*, pp. 107–123; Snochowska-Gonzalez: *Exercises in expansion*, pp. 105–135. The topics discussed at the time oscillated mainly around social and livelihood matters, leaving aside legal issues, see Gucka: *Obraz emigracji polskiej*.

addressed the fate of Polish agricultural workers who emigrated seasonally to Germany. In general, Caro took a negative view of labour emigration to Germany because it built up the economic power of one of Poland's enemies, while, at the same time, undermining development in the Polish lands. He realised, however, that emigrants had no choice, as most often it was their only chance to earn money. For this reason, he took up the subject of emigration in his work to help exploited workers. He presented an extensive diagnosis of the legal situation of Polish agricultural workers in Germany, particularly the discriminatory regulations against Poles, and called for their revision. These included the imposition of unfavourable solutions on workers in employment contracts, the lack of full insurance rights, or the need to leave Germany during the winter months. He also criticized the activities of agents who unscrupulously exploited workers. It should be added that he also pointed out some positive aspects of this type of emigration, such as the opportunity to learn new economic solutions, technical innovations, which could then be applied in the emigrant's home country. Caro not only based his activity on the publication of books, but also participated in numerous conferences or referred to the activities of national and international institutions, proposing that specific measures be taken. He considered their activity insufficient at this stage and formulated many proposals for further action. In the face of the escalating phenomenon of emigration, accompanied on the one hand by dishonesty and exploitation, and on the other by slow and limited protective measures on the part of state institutions, the remarks he raised in the public forum should be evaluated very positively. He was the first Polish lawyer to become so involved in the issue of legal regulation of emigration and to present numerous new solutions aimed at improving the situation of emigrants.

EMIGRACJA OCZYMA PRAWNIKA

LEOPOLD CARO O PRAWNYCH ASPEKTACH SEZONOWEJ EMIGRACJI ZAROBKOWEJ
POLSKICH ROBOTNIKÓW ROLNYCH DO NIEMIEC NA POCZĄTKU XX WIEKU

STRESZCZENIE

Celem badawczym artykułu jest analiza poglądów polskiego ekonomisty i prawnika Leopolda Caro (1864–1939) na temat sezonowej emigracji zarobkowej polskich robotników rolnych do Niemiec na początku XX wieku. Uwzględniono

przy tym, że Caro inspirował się solidaryzmem, co miało wpływ na jego sposób konstruowania argumentacji prawniczej. Przedstawiono również jego działalność społeczną mającą na celu poprawę sytuacji prawnej emigrantów.

AUSWANDERUNG AUS DER SICHT EINES JURISTEN

LEOPOLD CARO ÜBER DIE RECHTLICHEN ASPEKTE DER SAISONALEN
WIRTSCHAFTSWANDERUNG POLNISCHER LANDARBEITER NACH DEUTSCHLAND
ZU BEGINN DES 20. JAHRHUNDERTS

ZUSAMMENFASSUNG

Das Forschungsziel des Beitrages besteht darin, die Ansichten des polnischen Ökonomen und Juristen Leopold Caro (1864–1939) zur saisonalen Wirtschaftsmigration polnischer Landarbeiter nach Deutschland zu Beginn des 20. Jahrhunderts zu analysieren. Dabei wurde auch berücksichtigt, dass Caro vom Solidarismus inspiriert wurde. Die Ideen hatten einen Einfluss auf die Konstruktion seiner juristischen Argumente. Auch sein gesellschaftliches Engagement zur Verbesserung der rechtlichen Situation von Auswanderern wurde vorgestellt.

Übersetzt von Renata Skowrońska

EMIGRATION SEEN THROUGH THE EYES OF A LAWYER

LEOPOLD CARO ON THE LEGAL ASPECTS OF THE SEASONAL LABOUR
EMIGRATION OF POLISH AGRICULTURAL WORKERS TO GERMANY
IN THE EARLY TWENTIETH CENTURY

SUMMARY

The research aim of the article is to analyse the views of the Polish economist and lawyer Leopold Caro (1864–1939) on the seasonal economic emigration of Polish agricultural workers to Germany at the beginning of the 20th century. The analysis of Caro's views considers the fact that he was inspired by solidarism, which influenced his manner of structuring legal arguments. The article also presented his social activity in seeking to improve the legal position of emigrants.

SŁOWA KLUCZOWE / SCHLAGWORTE / KEYWORDS

- Leopold Caro (1864–1939); emigracja; sezonowa emigracja zarobkowa; Niemcy; solidaryzm katolicki
- Leopold Caro (1864–1939); Emigration; saisonale Arbeitsemigration; Deutschland; katholischer Solidarismus
- Leopold Caro (1864–1939); emigration; seasonal labour emigration; Germany; catholic solidarism

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