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Articles

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On the Rule of Law in Old Poland *

O rządach prawa w dawnej Polsce

ABSTRACT

The Polish Republic of Nobles was characterized by the fact that the activities of public authorities were based on statute law. This is a feature that distinguishes this country from the vast majority of European states in the early modern period where the principle of the sovereign power of the absolute monarch was dominant. In Poland, the highest authority in the state was the Sejm, in which the monarch was only one of the three estates in the Sejm, along with the Senate and the Chamber of Deputies. The General Sejm was formed in the second half of the 15th century, expanding its powers over the next two centuries. At the beginning of the 16th century, the view of the sovereignty of law in the state prevailed among the nobility, to which the monarch himself was also subordinated, according to the principle that *in Polonia lex est rex*. It can therefore be concluded that in Poland as early as in the 16th century there was a practical division of powers according to the principle that two centuries later would be formulated by Baron de Montesquieu, and which would underlie the constitutional systems of the bourgeois state. The second half of the 18th century brought a further change. It was during this period that the subordination of all activities of the state to the applicable law became even more clear. At that time, an essentially hierarchical structure of executive authorities was established with the king, the Guardians of the Law (Pol. *Straż Praw*) acting as the government, government commissions constituting central departmental institutions, and commissions of order, which were responsible for the performance of local government. All these collegiate bodies were established by legislation with appropriate Sejm constitutions. Their activity and structure were thus clearly defined by the provisions of law. They could function only within the framework of Sejm statutes and on the basis thereof. In most European countries, it was only the postulates of political liberalism in the 19th century that brought the possibility of extending legislative control over the government in the form

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of constitutional and parliamentary responsibility of ministers. In Poland, however, this principle was introduced by the Constitution of 3 May 1791.

Keywords: the Polish Republic of Nobles; rule of law; public authorities; statute law

INTRODUCTION

Until the end of the estate monarchy, the political system of Poland did not differ much in form from the systems functioning in other European countries. This began to change as a result of the Polish nobility obtaining extraordinarily wide privileges. The year 1454 is generally accepted as the end of the state monarchy in Poland, when the nobility won for themselves the leading position in the state, depriving the king of the exercise of supreme legislative power, the right to levy extraordinary taxes, or the convocation of an assembly without the consent of the local noble assemblies (Pol. *sejmiki ziemskie*). Thus, unlike in most European countries, it did not come to the development of absolutism in Poland, but rather a peculiar political form was born – the Republic of Nobles (Pol. *Rzeczpospolita szlachecka*).

The period of the Polish Republic of Nobles, which lasted until the dissolution of the state in 1795, was characterised by full power being assumed into the hands of one estate, the nobility, and in particular that part of it with substantial landholdings called the *posesjonat*. Until the beginning of the 17th century, the nobility as a whole held power, but later a shift took place towards strengthening the position of the magnates at the expense of the other layers of the noble estate. That is why the term "noble democracy" has been applied to the early form of the Commonwealth,[1] and for the later period – the magnate oligarchy. The state reforms initiated in 1764, which culminated in the Four-Year Sejm and the adoption of the Constitution of 3 May, marked the beginning of the final stage of this form of government, known as the period of constitutional monarchy.[2]

Characteristic for the Polish Republic of Nobles was that all activities of the public authorities were based on statute law. This constitutes a feature that sets this

[1] The accuracy of this term has been recently called into question by W. Uruszczak, claiming that the lesser nobility had at best the possibility of cooperating with the monarch and the magnates, not being a truly decisive factor themselves. See W. Uruszczak, *Swoistość systemów prawno-ustrojowych państw Europy Środkowowschodniej w XV–XVI wieku*, [in:] *Europa Środkowowschodnia od X do XVIII wieku – jedność czy różnorodność*, eds. K. Baczkowski, J. Smołucha, Kraków 2005, pp. 47–48.

[2] Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa i prawa Polski*, vol. 2: *Od połowy XV wieku do r. 1795*, ed. J. Bardach, Warszawa 1966, p. 31 ff., 189 ff., 474 ff.

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state apart from the vast majority of European states in the early modern period.[3] It is therefore necessary to trace the operational principles of this systemic anomaly functioning among systems in which the sole source of law appeared to be the will of an absolute monarch. To this end, it is necessary to characterise such elements of the Commonwealth's system as the form of the state, the legislature, the king and the executive, and the judiciary.

FORM OF STATE. UNION WITH LITHUANIA

In the 16th century, the Commonwealth adopted a "republican" form of state as it was understood at the time, meaning a strong influence of societal factors on the government. The very name *rzeczpospolita* was in fact a literal translation of the Latin *res publica*. At the same time, it emphasised the character of the state as a community of its citizens. This system was characterised by the progressive weakening of monarchical power. This led to the conviction that the Polish state could not be regarded as a pure monarchy, but rather as a mixed form (*monarchia mixta*). It consisted of adopting a republican nomenclature while maintaining the institution of monarchy. After the introduction of the elective monarchy, however, this monarch was elected by all of the nobility, subject to the law, and could even be deprived of the throne by means of the right of revolution. This right, the famous *articulus de non praestanda oboedientia*, was enshrined in the Henrician Articles in 1576 and became part of the coronation oath taken by Polish kings.[4] In item 21 it was written: "And if, God forbid, we should transgress or fail to comply with any laws, liberties, articles or conditions, then the citizens of the Crown of the two nations shall be free from obedience and from the faith due to us and our rule".[5] This meant that any violation by the ruler of any previously enacted laws, privileges granted to the nobility, the Henrician Articles or the *pacta conventa* (articles of agreement) would result in a confederation against the ruler, which in such a case took the form of a *rokosz* or organised noble rebellion. As is well-known, the nobility exercised this right twice (the Zebrzydowski Rebellion and the Lubomirski Rebellion, both in the 17th century).

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[3] T. Kucharski, *„W tej Rzeczypospolitej prawo królem, prawo senatorem, prawo szlachcicem". Idea nadrzędności prawa i jej praktyczne konsekwencje w realiach staropolskiej przedkonstytucyjnej monarchii „mieszanej" (XVI–XVIII wiek)*, "Przegląd Prawa Konstytucyjnego" 2021, no. 3, pp. 64–67.

[4] J. Malec, *Ustrój polityczny*, [in:] *Encyklopedia historyczna świata*, vol. 5: *Historia nowożytna*, Kraków 2000, p. 125 ff.

[5] *Wybór tekstów źródłowych z historii państwa i prawa polskiego*, comp. J. Sawicki, vol. 1, part 1, Warszawa 1952, p. 155: "A jeślibyśmy (czego Boże uchowaj) co przeciw prawom, wolnościom, artykułom, kondycjom wykroczyli albo czego nie dopełnili, tedy obywatele koronni obojga narodu od posłuszeństwa i wiary nam powinnej wolne czyniemy i panowania".

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After the conclusion of the Union of Lublin in 1569, the Polish-Lithuanian Commonwealth was a union of two states: Poland, or the Crown, and the Grand Duchy of Lithuania, linked on the basis of equality by a real union, which was a peculiar form of confederation. In the second half of the 18th century, there was a certain evolution in the nature of the Polish-Lithuanian Union. As a result of centralising tendencies and the creation of new shared institutions, the Polish-Lithuanian state, known as the *Rzeczpospolita Obojga Narodów* or the Polish-Lithuanian Commonwealth, began to transform into a federation – from an association of states into a federal state.[6]

The Union of Lublin began the coexistence of two nations in a single state – in fact, three: the Polish, Lithuanian and Ruthenian – interrupted only after nearly two and a half centuries by the partitions of the Commonwealth.

The Act of the Union of Lublin began with the declaration: "[…] that the Kingdom of Poland and the Grand Duchy of Lithuania are now one indivisible and uniform body, as well as a uniform but single united Commonwealth, which has been brought together from two states and nations into one people".[7]

This wording could suggest much more than the Act of the Union of Lublin did in reality, for the particular provisions clearly guaranteed the legal and political autonomy of the Grand Duchy. This resulted in particular from the provision (point 15): "[…] that the title of the Grand Duchy of Lithuania, and the high ranks, and all offices and dignities of the estates […] shall remain intact, as this creates no division or separation in the union and community".[8]

The permanence of the union was to be ensured by a common monarch and a common Sejm. The king, elected in a common election, became the Grand Duke of Lithuania at the same time, "for the two nations that for all time one head, one lord and one king shall rule, who shall be chosen by common vote by the Poles and the Lithuanians, and who shall be elected in Poland, and then be anointed and crowned in Kraków".[9]

Sejms, held in Warsaw, were to bring together representatives of both dignitaries and deputies representing both nations, gathering to discuss their shared needs

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[6] J. Malec, *Szkice z dziejów federalizmu i myśli federalistycznej w nowożytnej Europie*, Kraków 2003, p. 39 ff.

[7] *Akta unii Polski z Litwą, 1385–1791*, eds. S. Kutrzeba, W. Semkowicz, Kraków 1932, p. 343; *Volumina Legum*, vol. 2, Petersburg 1859, p. 89 (hereinafter: VL): "[…] iż już Królestwo Polskie i Wielkie Księstwo Litewskie jest jedno nierozdzielne i nieróżne ciało, a także nieróżna ale jedna spolna Rzeczpospolita, która się ze dwu państw i narodów w jeden lud zniosła i spoiła".

[8] *Ibidem*, p. 91: "[…] iż przy tytule Wielkiego Księstwa Litewskiego, i dostojeństwach, i urzędziech wszystkich i zacności stanów […] cale a nienaruszenie zostać ma, gdyż to zjednoczenia i społeczności tej roztargnienia i rozdziału nie czyni".

[9] *Wybór tekstów źródłowych*..., p. 143: "temu obojemu narodowi żeby już wiecznemi czasy jedna głowa, jeden pan i jeden król spolny rozkazował, który spolnemi głosy od Polaków i od Litwy obran, a miejsce obierania w Polsce, a potem na Krolestwo Polskie pomazan i koronowan w Krakowie będzie".

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(Pol. *radzić o spolnych potrzebach*).[10] Moreover, the Act of Lublin introduced the unity of coinage, differing only in the matrix and the place they were minted. It also allowed for the mutual acquisition of property from each other and freedom of resettlement within the territory of the Commonwealth.

The separateness of the Grand Duchy was manifested in the maintenance of separate central offices (although identical to those of the Crown), a separate Lithuanian administration, army and treasury. Lithuanians also retained their own case law, based on the codification of the Second Statute of Lithuania passed in 1566. It should be noted that the Crown, despite several attempts, did not manage to codify the system of land law (Pol. *prawo ziemskie*) until the partitions, and the courts in Poland used Lithuanian law as a supplement.[11]

The last point of the Lublin treaty was a guarantee of its unchanging nature, stating that: "[…] no things determined and established herein shall ever be changed or altered, either by His Majesty, or by the Lords of the Council, or by any other of the estates or deputies of the two nations, by mutual consent or alone, from what part or side, but shall be perpetually preserved, integral and firm".[12]

In fact, the common legislation of the Sejm after 1569 gradually made the system of Lithuania and the Crown, which externally formed the Republic of the Two Nations, more similar. From then on, it was based on constitutional principles established exclusively by General Sejm, thus realising the principle of the rule of law.

STRUCTURE AND SEPARATION OF POWERS

The highest authority in the state was the Sejm, in which the monarch was only one of three estates in the Sejm, along with the Senate and the Chamber of Deputies. General Sejm took shape in the second half of the 15th century, expanding its powers over the next two centuries. From the adoption of the *Nihil novi* constitution in 1505, which formally made both legislative chambers equal in the legislative process, it

[10] "The two nations shall always have joint Crown assemblies and councils under the Polish king, their lord; the lords will sit there among their lords, as deputies among deputies, and will discuss their common needs both at the Sejm and without it, in Poland and in Lithuania" ("Sejmy i rady ten oboj narod ma zawżdy mieć wspolne koronne pod krolem polskim, panem swym, i zasiadać tam panowie między pany osobami swemi, jako posłowie między posły i radzić o spolnych potrzebach tak na sejmie, jako i bez sejmu, w Polsce i w Litwie") (*ibidem*, p. 144).

[11] Cf. J. Bardach, *O Rzeczpospolitą Obojga Narodów. Dzieje narodu i państwa polskiego*, Warszawa 1998, pp. 19–26; idem, *Prawo litewskie w Koronie Królestwa Polskiego*, [in:] *Kultura Litwy i Polski w dziejach. Tożsamość i współistnienie*, ed. J. Wyrozumski, Kraków 2000, pp. 51–65.

[12] VL, vol. 2, p. 92: "[…] wszystkie rzeczy tu postanowione i obwarowane ani przez JKMość, ani przez pany rady i inne wszystkie stany i posły ziemskie obojga narodów za spólnem zezwoleniem ani pojedynkiem od której części i strony nie mają nigdy wiecznemi czasy być wzruszane i odmieniane, ale wieczne, całe i mocne zachowane być mają".

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strengthened the position of the middle nobility. That constitution confirmed the Sejm's monopoly on legislative power, proclaiming "that henceforth nothing new shall be determined by us or by our successors without the joint consent of the senators and deputies of the lands, which would be to the detriment and detriment of the Commonwealth, to the detriment and injury of anyone, or would tend to alter the general laws and public liberties".[13]

It was believed that through the Sejm, the nobility exercised its sovereign power in the state. Hence, it assumed full powers of legislation, enacting taxes, convening a general assembly and calling up a conscript army, it had the right to declare war and control foreign policy. It could also confer nobility (elevation to the nobility as well as naturalisation for foreign nobility), as well as exercise the right of clemency. All activities of the public authorities had to be in line with the laws established by the Sejm.

After the adoption of the Henrician Articles as fundamental constitutional law, the monarch was obliged to convene the Sejm every two years. In special situations, extraordinary Sejms were to be convened between ordinary sessions. The strictly defined short period of sessions (six weeks, and extraordinary sessions only two weeks) could be extended only with the consent of all the deputies. The agenda was shaped by practice and was never exhaustively standardised. The laws of the Sejm were called constitutions and were promulgated in the name of the king.

In order to pass a Sejm resolution, the unanimity of all deputies was required, as well as the consent of the Senate and the king. This later became one of the main reasons for the crisis of this institution, and consequently of the entire state. It should be noted that in the era of noble democracy, this principle was often abandoned in practice, and the protests of opponents were taken into account. The right of dissent of every delegate, the notorious *liberum veto*, was initially treated as an entirely exceptional measure, intended to be a safeguard and guarantee of protection of the freedom of the nobility. Until the middle of the 17th century, it never occurred that a single member of parliament could break off the session of the Sejm.

At the beginning of the 16th century, the view grew prevalent among the nobility that the law was sovereign in the state, to which the monarch himself was subordinated, according to the principle that *in Polonia lex est rex*[14] (in Poland, the law is king). The *Nihil Novi* constitution limited the king's power by placing legislative power in the hands of the Sejm, in which the king was only one of three elements

[13] VL, vol. 1, p. 137: "[…] iż odtąd na potomne czasy nic nowego stanowionym być nie ma przez nas i naszych następców bez wspólnego zezwolenia senatorów i posłów ziemskich, co by było z ujmą i ku ciążeniu Rzeczypospolitej oraz ze szkodą i krzywdą czyjąkolwiek tudzież zmierzało ku zmianie prawa ogólnego i wolności publicznej".

[14] Cf. W. Uruszczak, *„Sejm walny wszystkich państw naszych". Konstytucja Nihil novi i sejm w Radomiu w 1505 roku*, Radom 2005, p. [5].

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of the legislative process. The supreme administrative power was left to the king, but in practice this was limited mainly to appointments to offices in the state, formal authority over the army, and the direction of foreign policy in the period between Sejm sessions. As a result, this institution was evolving towards a position more akin to that of a president-for-life of a "republic" of the nobility. Compared to the absolutist model, where the monarch was the law (*rex est lex*) and the highest authority in the state, in Poland one could at most repeat after J. Zamoyski that *rex regnat et non gubernat* (the king rules but does not govern), with his rule being restricted to a minimum level.

The institution which was to advise the king and control his policies were the resident senators. These were appointed at ordinary assemblies, sixteen in number for a period of two years, with four residents remaining constantly at the king's side. They reported on their activities to the Sejm. Introduced by the Henrician Articles, they constituted another element limiting the monarch's independence.[15]

There were no major changes in the structure of central and local government offices from the time of the state monarchy, nor was the scope of their competences expanded. Members were all still appointed for life, with no particular attention paid to the professionalism of candidates. The total lack of modern, bureaucratic forms of administration rather unfavourably set Poland apart from Western European countries.

In field, the nobility exercised its rule through the regional assemblies (Pol. *sejmiki regionalne*). These organs of noble local government, due to the anachronistic structure of local administration, were steadily gaining in importance. After

[15] "For it is certain and appropriate that the royal person alone cannot manage all the affairs of the great states of this kingdom, or the Crown could fall into mischief and danger; therefore we establish, and we wish to have as our eternal right, that at every General Sejm there be appointed from the Crown Councils 16 individuals from Poland, Lithuania and other Crown lands, with the knowledge of all the estates, to other Polish and Lithuanian Crown officials, who shall be with us at all times, observing the person of our dignity and common liberty, without whose advice and knowledge we and our descendants shall not do or be able to do anything in current affairs (without moving anything at the Sejm); and these lords will be responsible for ensuring that nothing is done in all matters against our majesty and the common law, to which they shall later testify at a General Sejm in the near future" ("Gdyż to jest rzecz pewna i dostateczna, iż sama osoba królewska tak wielkich państw królestwa tego wszystkim sprawom zdołać nie może, za czy by w nierząd, w niebezpieczeństwo Korona przyjść mogła; przeto ustanawiamy i za wieczne prawo mieć chcemy, aby każdego sejmu walnego naznaczeni i mianowani byli byli z rad koronnych osób 16 tak z Polski jaki i z Litwy i innych państw do Korony należących, z wiadomością wszech stanów, ku innym urzędnikom koronnym polskim i litewskim, którzy by u nas ustawicznie byli przestrzegając osoby dostojeństwa naszego i wolności pospolitej, bez której rady i widomości nic my i potomkowie nasi czynić nie mamy ani będziem mogli w sprawach potocznych [nie wzruszając nic sejmowych]; a ci panowie będą powinni przestrzegać, aby we wszystkich sprawach nic się nie działo przeciw powadze naszej i przeciw prawu pospolitemu, z czego będą potem powinni sprawę dawać na sejmie walnym blisko przyszłym") (*Wybór tekstów źródłowych*..., p. 153).

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the mid-17th century, in connection with the weakening position of the Sejm and the progressive decentralisation of executive power, the main scope of state authority began to be concentrated in these local assemblies. This led to the development of a peculiar form of "*sejmik* governments".[16]

Until 1578, the king was the highest judge in Poland. This year, at a session in Warsaw, the Sejm established the highest court under the name of the Main Crown Tribunal (Pol. *Trybunał Główny Koronny*; Latin *Iudicium Ordinarium Generale Tribunalis Regni*),[17] which was an appellate court adjudicating *causa omnes et singulas* from Land, Castle, and Chamberlain (Pol. *Ziemskie*, *Grodzkie* and *Podkomorskie*) Courts. While the Tribunal weakened the position of the monarch in the structure of the judicial system, it was at the same time a sign of progress in the Polish judiciary, acting as a permanent institution dealing only with judicial matters, separate from the administration, operating on the basis of new principles of the legal order.[18] At the same time, the Tribunal was the first court in Europe that was entirely independent of the king and the Sejm. It is true that until the end of the Polish Republic of Nobles the structure of the judiciary was estate-based, but it was a judiciary separated by law from the other branches of government, the legislative and the executive, operating almost exclusively on the basis of statute law.

It can therefore be stated that in Poland, as early as the 16th century, a practical division of powers came about according to the principle formulated two centuries later by Baron de Montesquieu, which would underlie the constitutional systems of the bourgeois state.

In the era of magnate oligarchy, the political model of the state itself did not change. What did change, however, as the magnates took control of the structures of power, was the circle of people who determined the political life of the country. The defeat of the rebels in 1607 marked the beginning of the rule of the magnates, who completely took over the reins of power in the second half of the 17th century. This was followed by a further decline in the position of the king and, as a result of the economic crisis following the numerous wars of the century, a decline in the political significance of the middle nobility. The doctrine of the apotheosis of the "golden liberty" of the nobility, with free election and the *liberum veto* as its basic pillars, became widespread at this time. It also assumed the need to achieve a balance *inter maiestatem et libertatem*, between the king seeking to strengthen his power at the nobility's expense, and the nobility's freedom, which was leading

[16] J. Malec, *Ustrój polityczny*..., p. 126 ff.

[17] VL, vol. 2, pp. 962–969. Cf. A. Lisiecki, *Trybunał Główny Koronny siedmią splendorów oświecony*, Kraków 1638; H. Rutkowski, *Trybunał Koronny w Piotrkowie*, [in:] *Dzieje Piotrkowa Trybunalskiego*, Łódź 1989; W. Zarzycki, *Trybunał Koronny dawnej Rzeczypospolitej*, Piotrków Trybunalski 1993.

[18] W. Witkowski, *Trybunał Koronny w Lublinie – organizacja i funkcjonowanie*, [in:] *400-lecie utworzenia Trybunału Koronnego w Lublinie*, Lublin 1982, p. 59.

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to anarchy. The institution guarding this balance was seen in the Senate, which was increasingly becoming a symbol of oligarchic rule.[19] The abuse of the *liberum veto* led to paralysis of the sessions of the Sejm, and in consequence the entire state.

REFORMS OF POWER IN THE SECOND HALF OF THE 18TH CENTURY

A fundamental change came in the second half of the 18th century. It was in this period that the subordination of all state activities to the law in force became even more evident.[20]

The turning point was the Convocation Sejm of 1764, which was called for the election of a new ruler, at which the party of the Czartoryski Princes, known as the "Familia", carried out a number of reforms important for the repair of the Commonwealth. Although these were largely half-hearted, they initiated a process which culminated in the resolutions of the Four-Year Sejm, with the Government Act of 3 May 1791 at the fore.

The reform of the Sejm undertaken in 1764 brought about the restriction of the principle of unanimity to the most important matters regarding the political system, the establishment of written rules of procedure, and the strengthening of the position of the *marszałek izby poselskiej* or Speaker of the Chamber of Deputies. The Sejm introduced the principle of majority voting in many matters, limited the participation of the nobility, and abolished the confirmation by oath of instructions to deputies.

A fundamental reconstruction of the structure of the administrative apparatus of the state also began to take place. The first stage, from 1764 to 1775, saw the establishment of central governmental bodies based on the principles of collegiality and departmentalism, such as the Great Commission of the Treasury (Pol. *Komisja Wielka Skarbu*) and the Great Commission of the Army (Pol. *Komisja Wielka Wojskowa*), the National Education Commission (Pol. *Komisja Edukacji Narodowej*), and the first government body in the history of the Commonwealth, the Permanent Council (Pol. *Rada Nieustająca*).

This consisted of five departments, equivalent to government ministries, namely *Interesy Cudzoziemskie* or Foreign Interests (foreign affairs), Police, i.e., *Dobry Porządek* or Good Order (internal affairs), *Wojsko* (Army), *Sprawiedliwość* (Justice) and *Skarb* (Treasury). The Council was responsible for the management and supervision of administration in the state, legislative initiative, control of central officials, and – starting in 1776 – interpretation of the law. Members of the Council were liable before the court of the Sejm for exceeding their powers. The Council and its departments were to meet constantly – twice a week (although in practice

[19] S. Grodziski, *Porównawcza historia ustrojów państwowych*, Kraków 1998, p. 152 ff.
[20] Por. J. Malec, *Studia z dziejów administracji nowożytnej*, Kraków 2003, p. 104 ff.

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they met less often). Persons applying for the post of councilor were henceforth also required to have some practical experience in administration or government service, which created the legal basis for the formation of a professional cadre of officials in Poland. Care was also taken to ensure the ethical behaviour of officials, with provisions designed to prevent corruption and bribery. At the same time, fixed salaries for members of the Permanent Council were introduced in order to eliminate pressure on councilors from magnate coteries or foreign courts, arguing correctly that "it is better to let one's own country pay, because someone paid by a foreign country will be more kindly disposed to the one who is paying" (Pol. "lepiej niech własna Ojczyzna płaci, bo gdyby był płacony od obcej, życzliwiej by tej sprzyjał, która płaci").

The second stage, encompassing the reforms of the Four-Year Sejm, gave the Commonwealth a modern constitution, with a more complete reorganisation of the apparatus of power.

Passed on 3 May 1791, the fundamental law implementing the postulates of advocates of state reform created a modern structure of public authority.

It was based on two fundamental principles derived from the political thought of the Enlightenment: popular sovereignty and the tripartite separation of powers. J.-J. Rousseau's idea of popular sovereignty corresponded with the provision in the Constitution that "all powers in human society have their origin in the will of the people" ("wszelka władza społeczności ludzkiej początek swój bierze z woli narodu"). The Montesquieuian principle of the separation of powers was referred to in the statement that "three powers shall constitute the government of the Polish nation, […] namely, the legislative power in the assembled estates, the supreme executive power in the king and guardians, and the judicial power in the jurisdictions" ("trzy władze rząd narodu polskiego składać powinny, […] to jest władza prawodawcza w stanach zgromadzonych, władza najwyższa wykonawcza w królu i straży i władza sądownicza w jurysdykcjach").

Legislative power was to be vested in a bicameral Sejm, in which the role of the oligarchic factor – the Senate – was reduced. The *liberum veto* was finally abolished as contrary to "the spirit of the present Constitution, overthrowing the government and destroying the community" ("duchowi nieniejszej konstytucji przeciwne, rząd obalające, społeczność niszczące"), creating at the same time the institution of the Sejm always "at the ready" ("zawsze gotowy"), to operate throughout the entire duration of its two-year term, during which delegates retained their mandates and could be summoned at any time for an extraordinary session. All resolutions were passed by a simple or qualified majority. For the first time, representation of the bourgeoisie was permitted in the Chamber of Deputies by 24 so-called town plenipotentiaries. A Constitutional Sejm was to be convened every 25 years to revise the fundamental law. This was justified by the need to prevent, on the one hand, "sudden and frequent changes in the national constitution, and on the other

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to recognise the need to improve it, after experiencing its effects" ("gwałtownym i częstym odmianom konstytucji narodowej, z drugiej uznając potrzebę wydoskonalenia onej, po doświadczeniu jej skutków").

Subject to significant change was the position of the monarch, mainly by the introduction of the principle of hereditary succession to the throne and the abolition of free election, one of the main sources of anarchy in the state. Although the king was placed at the head of the executive, he was required to have all his public acts countersigned by the appropriate ministers, who bore the political responsibility for these before the Sejm.

A hierarchical structure of executive authorities was then established, with the king, the Guardians of the Laws (Pol. *Straż Praw*) fulfilling the function of government, government commissions constituting the central departmental institutions (of the army, treasury, police and education), and commissions of order charged with carrying out the functions of local government. All these collegiate bodies were established by way of legislation by the respective Sejm constitutions. Their activities and structure were thus clearly defined by law. They could only function within the framework of, and on the basis of, Sejm statutes.

This was clearly emphasised in the Constitution of 3 May 1791. It entrusted the Sejm with "the power to make laws for itself and the power to keep watch over the entire executive" ("władzę praw sobie stanowienia i moc baczności nad wszelką wykonawczą władzą"). The latter, in turn, strictly "is obliged to observe the laws and to execute them. It will act itself where the law permits, where supervision of the execution of the law, or even forceful assistance, is needed" ("do pilnowania praw i onych pełnienia ściśle jest obowiązana. Tam czynna z siebie będzie, gdzie prawa dozwalają, gdzie prawa potrzebują dozoru egzekucji, a nawet silnej pomocy").

At the same time, the executive "shall not have the power to make or interpret laws, levy taxes or assessments under any name, contract public debts, alter the distribution of revenue made by the Sejm, make war or make peace or definitively conclude any treaty or diplomatic act".[21]

The executive shall account for its actions before the Sejm, in particular by the submission of periodic reports.

In the Sejm constitution, regarding the structure and functioning of the Guardians of the Laws, i.e., the government, it is further written that against the law would be any decision, "by which the executive appropriates for itself the power to legislate or to interpret the law" ("przez którą władza wykonawcza przywłaszcza sobie moc stanowienia prawa lub onego tłumaczenia"), violating the constitution of the

[21] *Volumina Legum*, vol. 9, Kraków 1889, p. 222: "nie będzie mogła praw stanowić ani tłumaczyć, podatków i poborów pod jakimkolwiek imieniem nakładać, długów publicznych zaciągać, rozkładu dochodów skarbowych przez sejm zrobionego odmieniać, wojny wydawać, pokoju ani traktatu i żadnego aktu dyplomatycznego definitive zawierać".

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state, freedom of the individual, of speech, the press, or the right to property. Against the law would be a decision that interfered with court rulings, or, finally, one that contravened the law on the Sejm, of local assemblies (Pol. *sejmiki*), government commissions, all magistrates' offices and offices, "in a word, one that violated any law that had not been abolished" ("słowem, która narusza jakiekolwiek bądź prawo nie zniesione").[22] The introduction of the institution of countersignature of royal acts, and the consequent refusal of ministers serving as a Guardian to sign off on acts violating the law on pain of being held accountable in court, led in effect to both the king and the entire state administrative apparatus being bound by law.

Laws enacted in Poland during the reign of S.A. Poniatowski unequivocally emphasised the subordination of administrative bodies to the law. Not only did the administrative apparatus have a clearly delimited sphere of activity, which it could not exceed, but also citizens, exercising their rights, could demand that they be respected or fulfilled by the administrative authorities. It should also be stressed that the scope of administrative action in Poland was relatively limited, not least because a number of matters were excluded from its remit (e.g., tax matters or interference in private property). This allows one to conclude that in the Commonwealth, the areas in which the administration could act freely was limited in a way that is already characteristic of the stage of the rule of law, where its activity was exclusively one strictly defined by statute, being an execution of this, and not showing in this regard any significant difference to the activity of the judicial bodies.

The Polish administration in this period, apart from being bound by the law, was also subject to ongoing control by the legislative body. The Police Commission (Pol. *Komisja Policji*) was obliged to report on its activities and submit accounts of the funds entrusted to its care at every Sejm. Every citizen had the right to submit written complaints to the parliamentary deputation, which held the Commission accountable, about the activities of Commission officials. These complaints could not, however, concern the official activities of the Committee itself. After the deputation's report, the Sejm could give the commission a vote of approval or a reprimand, cancel its regulations, or order that those responsible be brought before the court of the Sejm. The relationship between the Military Commission (Pol. *Komisja Wojskowa*) and the Treasury Commission (Pol. *Komisja Skarbu*) was regulated in a similar way. The Military Commission was responsible to the Sejm in particular for the use of the armed forces against the Sejm or the local assemblies, against executive or judicial bodies, as well as for the imprisonment of a settled citizen. The Treasury Commission was obliged to submit to the Sejm detailed reports and tables of all income and expenditures of the treasury, the table of debts of the country, as well as the balance of trade. This was connected with extensive interference by the Sejm in the economic life of the state.

[22] *Ibidem*, p. 269.

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The scope of the commission's activities was defined in both positive and negative ways. For example, the Police Commission was not allowed to violate "the rights to freedom and personal property of citizens and those in transit that are inborn and ensured by the laws of the Commonwealth" ("przyrodzonych i zabezpieczonych ustawami Rzeczypospolitej praw wolności i własności osobistej obywateli i przechodniów"), nor to extend its authority beyond royal cities to private towns and villages (in which case it could only provide advice and warnings ["rada i ostrzeżenia"]), incur public debts and levy taxes and fees, or establish laws and assume the competences of other authorities. The positive scope of activities was enumerated in great detail, exhaustively, with competences grouped into matters of "the security and general tranquillity of the whole country, security and particular tranquillity of the free cities of the Commonwealth, the general comfort of the whole country, the particular comfort of the cities" ("bezpieczeństwa i spokojności ogólnej całego kraju, bezpieczeństwa i spokojności szczególnej miast wolnych Rzeczypospolitej, wygody ogólnej całego kraju, wygody szczególnej miast") as well as judicial matters.[23]

In most European countries, it was only the demands of political liberalism in the 19th century that brought about the possibility of extending legislative control over the government in the form of the constitutional and parliamentary responsibility of ministers. In Poland, however, the Constitution of 3 May explicitly provided in Article VII: "And in the event that a two-thirds majority of the secret ballots of both chambers jointly in the Sejm demand a change of a minister, either among the Guardians or in office; the king shall immediately nominate another in his place. Desiring that the Guardians of the Laws be obliged to answer strictly to the people for all their offences, we stipulate that when ministers are accused by the deputation appointed to examine their actions of an offence against the law, they are to answer from their own persons and property. In all such accusations, the assembled estates, by a simple majority of the votes of the joint chambers, are to send the accused ministers back to the Sejm courts for just and equitable punishment, or, if proven innocent, to be released from the proceedings and from punishment".[24]

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[23] B. Leśnodorski, *Dzieło Sejmu Czteroletniego (1788–1792). Studium historyczno-prawne*, Wrocław 1951, pp. 325–328.

[24] VL, vol. 9, pp. 223–224: "W przypadku zaś gdyby większość dwóch trzecich części wotów sekretnych, obydwóch izb złączonych na sejmie, ministra bądź w Straży, bądź w urzędzie odmiany żądała; król natychmiast na jego miejsce innego nominować powinien. Chcąc aby Straż praw narodowych obowiązaną była, do ścisłej odpowiedzi narodowi, za wszelkie onych przestępstwa, stanowiemy: iż gdy ministrowie będą oskarżeni przez deputacją, do egzaminowania ich czynności wyznaczoną o przestępstwo prawa, odpowiadać mają z osób i majątków swoich. W wszelkich takowych oskarżeniach stany zgromadzone prostą większością wotów izb złączonych odesłać obwinionych ministrów mają do sądów sejmowych po sprawiedliwe i wyrównujące przestępstwu ich ukaranie, lub przy dowiedzionej niewinności od sprawy i kary uwolnienie".

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Thus, what we have here are both the beginnings of political responsibility, connected with the principle of a minister countersigning certain decisions of the king, as well as already quite clear constitutional, or legal, responsibility, manifesting itself in the possibility of bringing a minister before the court of the Sejm for the commission of a specific crime. This form of parliamentary control over the government would not appear in continental Europe until after the Revolutions of 1848 (somewhat earlier in France).

CONCLUSIONS

The political model outlined here, unfortunately, did not last long. Its final end was brought about by events which took place after 1792: the Targowica Confederation, the Grodno Sejm, and the Third Partition of Poland. However, the causes of the fall of the Commonwealth cannot be seen solely in external factors, or in the decay of state institutions in the Saxon era. Another contributing factor was the attempt to build a state governed by law in Poland, which could not withstand confrontation with the centralised absolute monarchies of neighbouring states.

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ABSTRAKT

Rzeczpospolita szlachecka charakteryzowała się oparciem wszelkich działań władzy publicznej na prawie stanowionym. Jest to cecha wyróżniającą to państwo od zdecydowanej większości państw europejskich epoki wczesnonowożytnej, gdzie dominowała zasada suwerennej władzy absolutnego monarchy. W Polsce najwyższym organem władzy w państwie był sejm, w którym monarcha był tylko jednym z trzech stanów sejmujących, obok senatu i izby poselskiej. Sejm walny ukształtował się w drugiej połowie XV w., a jego kompetencje były rozszerzane przez dwa następne stulecia. Na początku XVI w. zwyciężył wśród szlachty pogląd o suwerenności prawa w państwie, któremu podporządkowany został także sam monarcha, zgodnie z zasadą głoszącą: *in Polonia lex est rex*. Można zatem stwierdzić, że w Polsce już w XVI w. doszło do praktycznego podziału władz według zasady, którą dwa wieki później sformułował baron de Montesquieu i która legła u podstaw ustrojów konstytucyjnych państwa burżuazyjnego. Dalszą zmianę przyniosła druga połowa XVIII w. W tym okresie jeszcze dobitniej daje się zauważyć podporządkowanie wszelkich działań państwa obowiązującemu prawu. Wytworzona została wówczas w zasadzie hierarchiczna struktura władz wykonawczych z królem, Strażą Praw pełniącą funkcję rządu, komisjami rządowymi stanowiącymi centralne instytucje resortowe oraz komisjami porządkowymi, na których spoczywała realizacja funkcji zarządu lokalnego. Wszystkie te organy kolegialne zostały powołane na drodze ustawodawczej odpowiednimi konstytucjami sejmowymi. Działalność i ich struktura określone zostały zatem w sposób wyraźny przepisami prawa. Mogły funkcjonować wyłącznie w ramach ustaw sejmowych oraz na ich podstawie. W większości państw europejskich dopiero postulaty liberalizmu politycznego w XIX w. przyniosły możliwość rozszerzenia kontroli rządu ze strony organu ustawodawczego w postaci odpowiedzialności konstytucyjnej i parlamentarnej ministrów. W Polsce natomiast wprowadziła tę zasadę już Konstytucja 3 maja 1791 r.

Słowa kluczowe: Rzeczpospolita szlachecka; rządy prawa; władza publiczna; prawo stanowione