

AT THE ROOTS OF THE RECONSTRUCTION OF POLISH STATEHOOD. A FEW REMARKS AT THE HUNDREDTH ANNIVERSARY OF REGAINING INDEPENDENCE (1918–2018). PART TWO

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Summary. This article constitutes the second part of the analysis of normative aspects of the reconstruction of the Polish state. This part covers the period which started when the Regency Council of the Kingdom of Poland passed authority over the army to Józef Piłsudski on 11 November 1918 and finished when Józef Piłsudski launched a coup in May 1926. The author analyses individual stages of the formation of Polish constitutionalism during this period, drawing attention to, *inter alia*, the fact that the political system of the Third French Republic particularly inspired the Polish constitutional legislator.

Key words: independence, Second Polish Republic, Legislative Sejm, Small Constitution of 1919, March Constitution, May Coup of 1926

I.

On 11 November 1918, at the request of all major political forces, the Regency Council of the kingdom of Poland transferred the command over the army to Józef Piłsudski. On 14 November 1918, on the assumption that according to the decree of 11 November the division of the supreme state authority could not continue without harming the emergent Polish state, the Regency Council appointed J. Piłsudski as the Chief of State,¹ and then dissolved itself.² Under the decree of 22 November 1918 the Interim Chief of State took up the Supreme Authority of the Republic of Poland and, according

¹ Journal of Laws of the Polish State No. 17, item 38 [Kumaniecki 1924, 135; Paciorkowski 1922, 40–41]. The Regency Council asked Piłsudski to form a National Government, and Piłsudski reached agreement with the Provisional People's Government of the Republic of Poland in Lublin, which subordinated itself to him [Ajnenkiel 1997, 52].

² Journal of Laws of the Polish State No. 17, item 39.

to the decree, he was supposed to stay in power until the Legislative Sejm was convened.³ It should be noted that – until the Small Constitution of 1919 was adopted – the decree was the basis of issuing legal acts and for the functioning of the central and local authorities; its provisions had a significant impact on the solutions introduced by the Small Constitution [Rogowski 1999, 14]. The Chief of State was authorised to issue normative acts in the form of decrees on the basis of draft legislation adopted by the Council of Ministers.⁴ In order to be valid, these decrees required approval during the first meeting of the Legislative Sejm while government acts – according to Art. 4 of the decree – had to be countersigned by the President of the Ministers. This decree was undersigned by Jędrzej Moraczewski, who became the head of the Cabinet. Next, J. Piłsudski issued a decree in the form of a proclamation to the nation, in which he appointed Ignacy Daszyński as Prime Minister.⁵ As A. Ajnenkiel emphasises “this decree was the first constitutional act of independent Poland” [Ajnenkiel 1997, 54].

On 28 November J. Piłsudski announced, in the form of a decree, the law on elections to the Legislative Sejm⁶ and scheduled the election to the legislative Sejm for 26 January 1919.⁷ D. Dudek points out that the electoral law was democratic to a degree that was unprecedented in Europe at that time

³ The Manifesto of the Provisional People’s Government of the Republic of Poland in Lublin, created during the night of 6 to 7 November 1918 and led by I. Daszyński is considered – D. Malec’s opinion – to be the first formal, and at the same time real, announcement of the creation of the Legislative Sejm. For more about the origin of the Lublin Government [Pajewski 1978, 285–92]. However, the first proposals to establish the Legislative Sejm appeared already after announcing the Act of 5 November 1916 by German and Austrian authorities [Malec 2009, 10].

⁴ The decree of the Chief of State on the highest representative authority of the Republic of Poland of 22 November 1918, Journal of Laws of the Polish State No. 17, item 41.

⁵ The decree of the commander-in-chief Józef Piłsudski of 14 November 1918, Journal of Laws of the Polish State No. 17, item 40. This decree did not introduce any serious social reforms [Krukowski 1990a, 7–9]. For more about the role of I. Daszyński and socialists from Galicia with regard to the independence of Poland see Olszewski 2013, 31–47; cf. Samuś 1987, 51–107.

⁶ The decree on the electoral law to the Legislative Sejm, Journal of Laws of the Polish State No. 18, item 46. D. Malec writes that the work on the electoral law was treated as a priority and started at the first meeting of the government and the draft of the Social Labour Office, prepared before the independence was regained by M. Niedziałkowski, Z. Chrzanowski and W. Wakar, was used [Malec 2002, 12].

⁷ The decree on the election to the Legislative Sejm, Journal of Laws of the Polish State No. 18, item 47. A. Ajnenkiel emphasises that Piłsudski was becoming the architect of the democratic parliamentary system in Poland, and that the decision to hold elections, taken only two weeks after J. Piłsudski took power, was an expression of courage and faith: “of the courage – that the reviving Poland, its administrative system and the political forces operating in the country will be able to carry out such a difficult undertaking; an act of faith that the society, taking part in the elections, will prove its patriotism and political maturity” [Ajnenkiel 1997, 54–55].

[Dudek 2002, 3; Malec 2009, 12]. The electoral law guaranteed universal, direct, secret, equal and proportional elections. According to Art. 1 of the decree, each citizen who was 21 years old by the date of the announcement of an election to the Sejm could be a voter irrespective of sex, while Art. 2 added that voters should be residents of the constituency in which they vote, from at least a day before the date on which the election was called.⁸

Following the election held in the territories of the former Congress Poland and Galicia on 26 January 1919, during its first meeting on 20 February 1919, the Chamber entrusted Józef Piłsudski to continue to hold office of the Chief of State.⁹ The resolution which entrusted Piłsudski to continue to hold office of the Chief of State, passed by the Legislative Sejm on 20 February 1919, repealed the decree of 22 November 1918.¹⁰ This normative act – commonly known as the “Small Constitution” – confirmed the authority (concentration of power) of the Legislative Sejm, which was expressed by providing the parliament with sovereign power, without specifying its term of office and the scope of its authority over the Chief of State and the government.¹¹ In the area of legislative power, the Head of State had no right of legislative initiative, no right to impose sanctions and no veto rights. He also did not have the right to dissolve the Sejm or postpone its sessions. In the area of administration the Chief of State was only the executor of resolutions of the Sejm in civil and military matters. He was accountable, just like the government, to the Sejm for the performance of his duties and every state act he issued had to be signed by the relevant minister. The result of such a political structure was entrusting the Legislative Sejm with full unlimited power and this parliamentary absolutism was associated with the distortion of the parliamentary system of

⁸ Cf. the circular letter of the Ministry of the Interior to the People’s Commissars on the election to the Legislative Sejm (Official Journal of the Ministry of Interior of 30 December 1918, No. 4, p. 66); additional instructions to the electoral law for the Legislative Sejm (Official Journal of the Ministry of Interior of 30 December 1918, No. 4, p. 68); the decree on postponing the date of the election to the Legislative Sejm in the second constituency (Journal of Laws of the Polish State of 15 January 1919, No. 6, item 101); the decree of 8 January 1919 on penal provisions for preventing elections to the Sejm and the performance of parliamentary duties (Official Journal of the Ministry of Interior of 19 January 1919, No. 5, p. 96).

⁹ The resolution of the Sejm of 20 February 1919 on entrusting Józef Piłsudski with the further performance of the function of the Chief of State, Journal of Laws No. 19, item 226. J. Piłsudski held the office of the Chief of State until 14 December 1922, when he handed over his authority to the first President of the Republic of Poland, Gabriel Narutowicz.

¹⁰ W.T. Kulesza writes in detail about the events of 20 February 1919 as seen by their witnesses [Kulesza 2007, 33–56].

¹¹ As A. Ajnenkiel emphasizes “The small constitution introduced a system of government in Poland in which the Sejm was at the forefront of all state bodies. This system was called the committee government system by the eminent German constitutionalist Hans Kelsen. It brought other supreme bodies into the role of a kind of executive committee of the parliament, a committee devoid of its own powers independent of the parliament” [Ajnenkiel 1997, 57].

government, exceeding the legislative and control sphere, and the removal of other constitutional bodies. As an independent political actor, the Sejm became a kind of governing oligarchy.¹² An exception which limited the rights of the Legislative Sejm was the creation of the Council of National Defence pursuant to the Act of 1 July 1920,¹³ which was a special body of a transitional nature, established in order to decide efficiently and quickly on the most important matters of the state during the Polish-Russian war. As A. Ajnenkiel points out, “the Council of National Defence was temporarily the highest legislative and executive body” [Ajnenkiel 1997, 58]. This body consisted of the Chief of State as its head, the Marshal of the Legislative Sejm, 10 deputies, the Prime Minister, 3 other ministers and three military officers appointed by the Chief of State. The main objectives of this body were to conduct and finish military operations and to conclude peace. In accordance with Art. 3 of the Act, the scope of the Council’s activities included: a) decisions on all matters related to the conduct and the end of war as well as the conclusion of peace, b) issuing ordinances and orders on these matters. The ordinances and orders which, in accordance with the Acts, required a resolution of the Sejm, were to be submitted later via the Prime Minister, at the next meeting of the Sejm, for approval. The work on the constitution of the Reborn Poland was initiated by Jędrzej Moraczewski’s government and the first person to present the programme of this work, at the meeting of the Council of Ministers, was Stanisław Thugutt [Krukowski 1977, 13].¹⁴

¹² Cf. Komarnicki 1927, 6. R. Rogowski writes that “the Small Constitution fulfilled its role. It allowed political action not to be limited and, at the same time, it created a flexible basis for the functioning of the state system. It also did not hinder, due to its laconic nature and the contents limited to the main principles of the authorities’ functioning, the shaping of legal bases in various areas of state and social life” [Rogowski 1999, 21].

¹³ The Act of 1 July 1920 on the Creation of the National Defence Council, Journal of Laws No. 53, item 327.

¹⁴ Cf. Wójcik 2013, 19–29. It should be remembered that before regaining independence, the work on the work on the Constitution was conducted by the Provisional Council of State, which, in order to prepare the constitution, established the Sejm and Constitution Committee on 17 January 1917. The first draft of the constitution was approved by the Provisional Council of State on 3 July 1917 and contained a vision of the institutions and political principles envisaged for the transitional period – between the functioning of the Provisional Council of State and the establishment of a separate Polish state. This document regulated only the functioning of the main state authorities, leaving aside a number of issues, such as the organisation and functioning of the judiciary, the basic principles of the social and economic system and the legal and political status of citizens. However, the final result of the work of the Provisional Council of State was a draft adopted by the Sejm and Constitution Committee on 28 July 1917, which, unlike the previous draft, contained a proposal for a complete and permanent fundamental Basic Law, which was the basis for the hereditary constitutional monarchy [Jabłonowski, Jakubowski, and Jajeczniak 2015, 48–52].

II.

The inspiration for the creators of the March Constitution was the political system of the Third French Republic. Incidentally, it was not the first time in the history of Poland that Polish eyes were turned towards the Seine. Starting from the European first modern democratic uprising – the French Revolution – the admiration for French democratic and republican thought and the will to change society, first within the feudal and then bourgeois class divisions, was expressed in Poland over the following decades in various forms.¹⁵ France inspired Polish insurgents and then emigrants, who willingly sacrificed their lives in the defence of the values presented by several generations of French revolutionaries fighting for the cause of democracy, not only at the European level. French political and social thought, which found fertile ground beyond the borders of the country and successfully spread to most of Europe, aroused deep admiration in Polish society. And also at that time – in the reborn Poland – Poles turned to France, treating its political system – as if France was Poland's elder sister – as closest to the nature, culture and history of Polish society.¹⁶

Despite the fact that France's political system between 1871 and 1940 had many shortcomings, it became a model for many democratic states. The states under the influence of French constitutionalism also included Poland, which was regaining its independence after 126 years. As we know, the Constitution of the Third Republic was created on the bloody ruins of the Paris Commune, which was the response of the Parisian people (proletariat),¹⁷ restoring the honour of the French nation. to the disgraceful conditions of capitulation after the lost war with Prussia adopted by the National Assembly,¹⁸ at the time when the people of Paris heroically defended their city besieged by the Prussian Army.¹⁹

¹⁵ There is an interesting example of a vision for the reconstruction of the Polish nation and state n can be found in the "Project of establishing a New Poland" dated 20 July 1871, written by Piotr Wereszczyński. The author writes that Poles, always serving France faithfully and "equated their hopes of resurrecting Poland with France's help," should finally give up this hope [Cegielski 1983, 34–43].

¹⁶ H. Jabłoński draws attention to another aspect, related to the French-Polish alliance of 1921. According to the author, "this alliance, accepted by a large part of society related to the traditional friendship of the two nations and with the common interest to oppose the threat of German militarism, in reality of that time went against these assumptions and in fact served the purpose of perfectly subordinating the economic wealth of Poland to French capitalists and also helped French anti-soviet policy" [Jabłoński 1961, 55].

¹⁷ For more about the origin of the concept "commune" see Laronze 1928, 106–10.

¹⁸ It should be remembered that defeat of France was a serious shock for the Polish public opinion because it was not after the January Uprising but only after the defeat of the French at the Battle of Sedan that the Polish question lost its primary importance in European politics [Borejsza 1971, 8].

¹⁹ One should emphasise that there was wide participation of Polish emigrants and volunteers in the Paris Commune. The majority of Poles fighting on the barricades of Paris saw the Com-

The commune did not recognise the authority of the National Assembly and did not allow it to combine its mandate with that of the Assembly [Grajewska 1976, 168–74]. This led to a conflict between the French Government, which capitulated on 28 January 1871, and the city's population, which did not want to surrender. On March 28, 1871, the Council of the Paris commune was solemnly proclaimed as the revolutionary authority of the city [Lissagaray 1950, 146–52]. The Declaration to the French nation issued by the Paris Commune defined the political of future France, which was to become an association of autonomous communes, whose system would be based on that of the Paris Commune.²⁰ The Commune, in accordance with 19th century revolutionary views and under the influence of the then popular concepts of the supporters of the unity of power, from Thomas Hobbes, through Jeremy Bentham, to Karl Marx and Friedrich Engels, broke with tradition and gave full indivisible power to the people [Grajewska 1976, 286–88, 397]. Its leaders thought that the separation of powers was unnecessary because in practice it does not protect against the supremacy of one of them and, in addition, if one makes good use of the possession of power it should not be divided, and if one does not, he should be deprived of power [Grajewska 1971, 146]. The commune thus rejected the tripartite system and created a new type of state organisation which was to a certain extent related to the Jacobin Constitution of 1793.²¹

After France had concluded a humiliating treaty with Germany and the Paris Commune had been crushed, the National Assembly – elected in early 1871 – commenced work on a new constitution. Four years later, after many disputes over the future shape of the republic, it adopted a constitution, which provided for the republican form of the political system at the time when all countries in Europe, with the single exception of the Swiss federation, were monarchies. The system of the Third Republic was based on three constitution

mune as the last chance to save France, to revive it as a democratic state – a defender of Poland [Borejsza 1966, 390]. In the revolutionary Paris, the word “Pole” was a synonym of a revolutionary. Cf. Kozłowski 1967, 506–14; Myśliński 1971, 25–42. Most Poles took part in the Paris revolution not because they considered themselves to be socialists but because they thought that in this way they could bring the reconstruction of Poland closer. In addition, what led them to fight on the side of the Parisian side were democratic convictions as well a community of views and fate [Borejsza 1966, 390]. J.W. Borejsza points out that “the time after Sedan and the Paris Commune were marked by Europe's move towards parliamentary democracy, the extension of election rights and the strengthening of republican movements [...] The slogans that had long been the motto of the democratic movement in Europe began to be put into practice” [Idem 1971, 12].

²⁰ As J.W. Borejsza points out, “the name of the Parisian movement – *Commune* – did not initially have a precise meaning, nor did the adjective *communaliste*. Initially, the commune had various associations, including the «community» of those fighting with the Prussians, a free «city commune», Paris independent from the province” [Borejsza 1971, 20].

²¹ In more detail elsewhere see Konarski 2016, 31–47.

acts.²² This system was different from all earlier systems in terms of its form – previously each French political system was contained in a single constitution act. In addition, these new constitution acts – contrary to the previous practice of France’s constitution – did not include a declaration of rights or the sovereignty of the nation and the republican form of the government was only declared indirectly, in the title of the head of state. Furthermore, they very laconically defined the principles under which the legislative and executive powers are organised and related to each other. As a result, the political system of the Third Republic was very much based on customary law [Grzybowski 1947, 77]. K. Grzybowski points out that “all previous French constitutions were arranged methodically, logically constructed and divided into parts (titles, chapters, articles) in accordance with a certain general principle. The constitutional laws of the Third Republic are strikingly lacking in a methodic approach. There is not a single clear criterion that would explain why some provisions are in one of the acts and the other provisions are in a different act [...] However, these characteristics and the lack of any dogmatism, its laconic nature, flexibility as well as leaving much room for evolution and customary law are perhaps the most important reasons for the permanence of these constitutional laws” [ibidem, 77–78].

Let us also highlight several specific features of the constitution laws of the Third Republic. For first time, the French constitution breaks with the republican tradition of one chamber and the tradition – characteristic for a monarchy – of one elective chamber and one non-elective chamber thus creating two chambers in a unitary republic, while breaking the monarchic tradition and basing both chambers on elections. In addition, the Constitution of the Third Republic maintained the monarchic system as regards the assembly of chambers. Although the chambers were convened by the President, they met of their own accord on the second Wednesday of January and the President had to convene them at the request of the absolute majority of the members of each chamber. One should note that in the light of the provisions of the Third Republic Constitution the Chambers could only be dissolved with the consent of the Senate. As far as foreign policy is concerned, the Constitution enabled the President to conclude international agreements but for a number of them the consent of the chambers was required. K. Grzybowski emphasises that “the combination of solutions concerning the political system that were

²² The Law of 25 February 1875 on the on the organisation of public authorities (Loi du 25 février 1875 relative à l’organistaion des pouvoirs publics), the Law of 24 February on the organisation of the Senat (Loi du 24 février 1875 relative à l’organisation du Sénat), the Law of 16 of 1875 on the relations between public authorities (Loi constitutionnelle du 16 juillet 1875 sur les rapports des pouvoirs publics), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-de-1875-iiiie-republique.5108.html> [accessed: 4.07.2018].

hitherto not combined was not only a result of compromise. It was an expression of the political ideology prevailing in the Assembly, identical for both «liberal-democratic monarchists» and «conservative republicans». The two groups to whom this ideology was alien did not influence the content of the Constitution. The Right was too small. The Left, based on the Jacobin tradition and demanding a «social republic» was also too small and, in addition it had been destroyed by the terror that reigned after the suppression of the Paris Commune. And the vast majority of the National Assembly – despite the disagreement on the name of the head of the state – had the same views” [Grzybowski 1977, 80].

In P. Bała’s view, the political system offered to Polish society by the Legislative Sejm in 1921 did not result from democratic traditions of individual constituent parts of the Republic of Poland and was “a simulacrum without support in the society” [Bała 2012, 73].²³ The constitutional solutions in the March Constitution were modelled on those in the 1791 Constitution [Wołpiuk and Kuciński 2012, 150],²⁴ which obviously only concerned the weaker position of the executive in relation to the legislature, i.e. the Sejm. What is more, the political position of the other chamber of the parliament – the Senate – deprived of any real impact on the legislation process (it only had a veto right), meant that its position was weakened. The senators were elected in a similar way as the members of the Sejm, which weakened their prestige. It should be noted that in federal countries senators were the representatives of the federated states and in unitary states – the representatives of local governments. The term of office of the Senate was longer than that of the lower chamber [Kutrzeba 1926, 90–92].

III.

In January 1919, the Constitution Office of the Prime Minister was established, the purpose of which was to prepare drafts of the Constitution, each of which was to contain a separate point of view on the matter of the Polish system, which was to be understood as a non-uniform text of the government’s draft [Krukowski 1977, 14]. The Constitution Office prepared three drafts of the Constitution: one written by Józef Buzek – known as “American,” one by Mieczysław Niedziałkowski – known as the “people’s draft,” and one by Władysław Wróblewski – known as “French” [Krukowski 1977, 15–22]; it

²³ Cf. Jabłoński 1962, 241–68.

²⁴ However, as S. Krukowski points out, as a result of adopting the French model of a parliamentary republic, the constitution referred to the native tradition to a lesser extent than was originally planned. The promoted concept of imitating the style of the Government Act of 3 May 1791 was rejected, and the term “Naczelnik” [commander-in-chief], alluding to the Kościuszko Uprising, was replaced by the term “president” [Krukowski 1977, 314].

should be stressed that none of the presented drafts was in its nature a formal governmental study. In January 1919, a committee of 20 people was created. It consisted of representatives of regions of Poland, represented different political views and was commonly known as the “Questionnaire.” Its aim was to evaluate the constitution drafts prepared by the Constitution Office [Krukowski 1990b, 24].²⁵ On 14 February 1919, the Legislative Sejm established the Constitution Committee,²⁶ which from the very beginning protested against the existence of a competing body – the “Questionnaire.” On March 12, 1919, the Constitutional Commission called on the government to hand over the Constitution Office to it and to submit the government’s draft of the constitution. The constitution draft presented by the “Questionnaire” did not have the support of the government and as a result it was ignored by the Constitution Commission during its further work. Government’s work on the constitution was led Stanisław Wojciechowski, who invited W. Wakar – a prominent activist of Polish People’s Party “Wyzwolenie” [Krukowski 1977, 70]. The “Constitutional Declaration” prepared by the government was submitted to the Sejm on 6 May 1919, and a number of other drafts were prepared. However, the draft prepared by the Paderewski government was finally submitted, and the draft adopted by the Skulski government on 3 November 1919 was called “official” [Kutrzeba 1926, 71]. In June 1920, after fifteen months of work and over 100 committee meetings, the final draft was submitted to the plenary work of the Legislative Parliament, which after 34 meetings adopted the Constitution of the Republic of Poland on 17 March 1921.²⁷ The Constitution was announced a month later together with an Act on Constitution of 18 March 1921, which provided for further functioning of the Legislative Sejm till newly elected bodies of the Sem and Senate meet.²⁸ In accordance with Art. 4 of the Act, the National Assembly was to meet immediately, but not later than 7 days after the establishment of the Sejm and

²⁵ The following people became the members of the “Questionnaire”: M. Bobrzyński, S. Bukowiecki, Z. Cybichowski, S. Starzyński, M. Rostworowski, W. Maliniak, B. Koskowski, J. Świeżyński, S. Horwatt, K. Niedziałkowski, F. Ochimowski, A. Świętochowski, Z. Chrzanowski, S. Wróblewski.

²⁶ See *Projekty konstytucji Rzeczypospolitej Polskiej. Projekt Komisji Konstytucyjnej Sejmu Ustawodawczego*, Wydawnictwo Kancelarii Cywilnej Naczelnika Państwa, Warszawa 1920, p. V.

²⁷ Act of 17 March 1921, the Constitution of the Republic of Poland, Journal of Laws No. 44, item 267. In order to commemorate this epochal event (the adoption of the constitution), as well as to fulfill the commitment made by the Grand Sejm, a law was passed on the construction of the Temple of Divine Providence. The Constitution was also to be celebrated by the construction of the People’s House of the Republic of Poland in Warsaw [Car 1930, 5; Krukowski 1977, 305].

²⁸ Transitive Act of 18 May 1921 to the Constitutional Act of 17 March 1921 on the temporary organisation of the supreme authority of the Republic of Poland, Journal of Laws of the Republic of Poland No. 44, item 268.

Senate, at the invitation of the Marshal of the new Sejm in order to elect the President of the Republic of Poland.²⁹ There was number of executive acts to be passed later, including: the Act of 28 July 1922 – the Electoral Law for the Sejm,³⁰ the Act of 28 July 1922 – the Electoral Law for the Senate,³¹ the Act of 27 July 1922 – the Regulations of the National Assembly for the Election of the President of the Republic of Poland,³² the Act of 5 August 1922 on the Freedom of Assembly before the Elections,³³ and the Decree of 18 August 1922 on Calling Elections to the Sejm and Senate of the Republic of Poland.³⁴ In addition, the date of elections to the Sejm was set for 5 October 1922, and to the Senate for 12 October. The first meeting of the newly elected Sejm was set by the Chief of State for 28 November 1922.³⁵

The Marshal of the Sejm convened the National Assembly for 9 December 1922 in order to elect the President of the Republic of Poland. The former Minister of Foreign Affairs, Gabriel Narutowicz, was elected President. On 11 December, the President was sworn in to the National Assembly, and on 14 December 1922 at 12 o'clock in the Belvedere Palace in Warsaw a solemn act of handing over of power by the Chief of State, J. Piłsudski, to the newly sworn President took place. At the time of signing the protocol, a battery of guns, set up in the Łazienki Park fired a 25 round salute and the national anthem was played. The act of taking over the office of the President was presented in a communiqué from the Civil Chancellery dated 15 December 1922.³⁶ Between November 1918 and December 1922, there was a transitional period in Poland, which began with the truce between the parties involved in the First World War and finished with the election of G. Narutowicz, the first President of the Second Republic of Poland and the handover of power by Józef Piłsudski, the Chief of State.

²⁹ Cf. the Act of 27 July 1922, Regulations of the National Assembly for the election of the President of the Republic of Poland, Journal of Laws No. 66, item 596.

³⁰ Journal of Laws No. 66, item 590.

³¹ Journal of Laws No. 66, item 591.

³² Journal of Laws No. 66, item 596.

³³ Journal of Laws No. 66, item 594. This law assumed that all meetings convened by voters or by candidates for election during the electoral period, i.e. until the date of election, did not require the consent of the administrative authorities; however, pre-election meetings on public roads and squares were to be reported by the person calling the meeting to the relevant administrative authority of the first instance or to the nearest police station not later than 24 hours before the commencement of the meeting (Art. 2).

³⁴ Journal of Laws No. 66, item 593.

³⁵ Decree of 17 November 1922 on the convening of the Sejm and Senate, Journal of Laws No. 100, item 914.

³⁶ "Monitor Polski" of 15 December 1922, No. 285.

IV.

The Constitution of 17 March 1921 was the third Polish constitution, in the proper sense of the word, in a row, i.e. a law not enacted by a ruler but constructed by political means. The first two, i.e. the Constitution of Alexander Jagiellon of 1505 and the Constitution of the Four-Year Sejm of 3 May 1791, as Włodzimierz Tetmajer emphasizes, “were conceived under the unhappy star because the first one appeared too early and the second one too late” [Tetmajer 1924, 4].

The Constitution was based on the principle of continuity of the Polish state, which meant that independent, reborn Poland was not a new state, established in the 20th century, but a state resurrected after more than a century of oppression.³⁷

Moreover, the principle of restitution, as a basic principle of the organisation of the state, was confirmed in the first decrees of Józef Piłsudski as the Chief of State. As Jan Kolasa points out, “regardless of the factual situation

³⁷ J. Kolasa pointed out that the Supreme Court (Civil Chamber) took the view that there was a presumption of continuity of the Polish state and issued its rulings in this spirit; the same idea was also expressed among the Polish constitutionalists at the time [Kolasa 2008, 23–24]. L. Antonowicz refers to the conclusions of S. Hubert, who thinks that the Republic of Poland, which was reconstructed after the First World War and the pre-partition Republic of Poland are the same legal and political organisation and the same legal entity. Such a conclusion is justified by the following findings: “1) the collapse of the Republic of Poland was contrary to international law binding the states forming the international community in the last quarter of the 18th century; the partitioning powers violated such legal principles as the principle of compliance with international obligations, the principle of freedom from illusory claims, the principle of non-coercion in the conclusion of international agreements and the principle of non-interference in the internal affairs of other states; 2) it is difficult to accept the existence of the limitation category in international law, in any case it is possible to interrupt the continuity of time; the Polish nation constantly sought to regain its illegally lost independence and thus did not allowed the partitions of Poland to be legalised by means of a limitation period; 3) the countries forming the international community demonstrated in various ways that they had not recognised the partitions of Poland as a lasting basis for international relations in this part of Europe; 4) the application of the restitution thesis to the Republic of Poland reborn in November 1918 depended, firstly, on whether the Republic itself accepted that thesis and, secondly, on whether other states recognised that thesis in their relations with Poland; the practice indicates that the Independent Republic of Poland from the very beginning based itself on the principle of reference to the pre-partition legal and state organization, and that the restitution thesis also found its application in the internationally” [Antonowicz 1998, 24]. Kolasa notes that there is no unanimity as to whether the Republic of Poland before the partition was restored in 1918 or whether a completely new Polish state was established from the very beginning without a subjective relationship with Poland before the partition [Kolasa 2008, 38]. L. Antonowicz is of the opinion that treating the Second Republic of Poland as a newly established subject of international law does not undermine whatsoever the continuity of the thousand-year-long tradition of Polish statehood [Antonowicz 1998, 27].

and the real chance to carry out his plans, already in the first decree of 14 November 1918, as well as in subsequent official state acts, he accepted the principle that the supreme power he held covered all the three partitions, i.e. the entire pre-partition Poland. Addressing the Prime Minister, he called on him to create the supreme authority covering all three partitions. The principle of reconstruction of the state lost in the 18th century was soon confirmed by the decree on the electoral law for the Legislative Sejm and by subsequent decrees and related laws” [Kolasa 2008, 31]. K.W. Kumaniecki points out that “the Polish Constitution [the March Constitution – M.K.] is – in my opinion – characterised by one feature: it was born because of the fear – whether conscious or unconscious, I do not know – of absolute dominion, as people used to say in the 17th century, and in the desire to make members of the legislative body irresponsible enough for this freedom to become anarchy” [Kumaniecki 1924, 20].

Despite his favourable attitude towards changes to the constitution, W. Komarnicki, quoted above, assessed in bitter words some of the solutions adopted in the novelisation and pointed out a number of inconsistencies of a substantive, legal and political nature, while errors of a political nature were treated only in terms of possible future consequences, which it is premature to talk about. However, it is stressed that the specific political atmosphere was the result of the fatigue of the society with many negative symptoms of the system of parliamentary absolutism and, on the other hand, of the personal influence of the former Chief of State [Komarnicki 1927, 67]. In the case of substantive errors, he claimed that, rather than remain within the existing political system and improve this system, the Act went too far in some of its provisions (budget law), and in other provisions it proved to be inadequate (government’s position, ministerial responsibility). It also ignored a number of issues related to its provisions which could easily become the subject of regulations (limiting the initiative of the Sejm in budgetary matters, abolishing Art. 42 of the Constitution in order to strengthen the authority of the President of the Republic) [Komarnicki 1927, 66–67]. The second type of errors in the August Novelisation, of a legal nature, consists in – according to W. Komarnicki – the abysmal editing in terms of language and style, ambiguities and inaccuracies in the formulae, as well as artificiality of its construction and the introduction of unnecessary fictions, thus giving rise to numerous doubts as to the interpretation of the Act [ibidem].

Among many critical voices concerning the March Constitution, the one of Adam Pragier deserves attention. He noticed that the Constitution of 17 March 1921 “did not take advantage of the gains and experiences of the great reconstruction of the world, which is taking place before our eyes in the capitalist democracies of the Old and New world” [Pragier 1962, 26]. S. Car wrote that “the Constitution could not – and did not – satisfy anyone because it was

not a product of a deep analysis of the actual needs of the country which was slowly recovering after over a century of oppression, in the the conditions of the world balance disturbed by the Great War. Instead, the Constitution matured in the atmosphere of fights between political parties, fuelled by by an unfavourable attitude the Chief of State” [Car 1930, 8–9]. The Constitution was corrected only a few years later, as a result of the reform of the political system caused by Józef Piłsudki’s coup d’état.

A. Garlicki emphasises that the May Coup of 1926 put paid to a few years of parliamentarianism in Reborn Poland because even though the parliament still existed it, it lost its superior role [Garlicki 1978, 367–68]. “From the point of view of written law the process of abolishing parliamentary democracy, the first stage of which was the August Novelisation, was taking place slowly and lasted for a relatively long time. But the essence of the May events was that from that time onwards the will of the winner rather than written law was the highest norm. For he [Piłsudski – M.K.], regardless of the preservation of the old legal structures, had unlimited decision-making powers and he was the only appeal body against these decisions” [Garlicki 1978, 369].³⁸ W. Komarnicki points out that from May 1926 the centre of gravity shifted to the executive power, while parliamentary absolutism was replaced by governmental absolutism [Komarnicki 2000, 55]. In Andrzej Ajnenkiel’s opinion, the coup, and particularly its aftermath – the August Novelisation – created, within the limits of the parliamentary system, the possibility of making political changes aimed at governments of a dictatorial or authoritarian nature (which was finally expressed in the Constitutional Act of 23 April 1935),³⁹ which finally put paid to the period when parliamentary groups could influence the shape of the political system of the state [Ajnenkiel 1982, 286–87]. It can be safely said that the nature of the Polish state and its parliamentarianism returned to its glorious traditions only with the fall of the political doctrine which shaped the form of Polish statehood after World War II.

³⁸ In the years 1926–1939 the term “neutral belt” was used for the political activity of Piłsudski’s camp (author of which was Maciej Rataj). The term referred to the deliberate use of defects in the law, which makes it difficult to attribute the quality of legality to Piłsudski’s methods of practising politics. However, to describe them as definitely illegal, would be going to far. This meant that Marshal Piłsudski, although not recognising the existing legal status, claimed that he did not want to violate the law. The new constitution, as W. Paruch writes, was born of legal and organisational concepts of Piłsudski’s camp and was to provide opportunities to launch exceptional actions for which politicians could not be held politically and legally accountable and these actions were to be judged morally and historically [Paruch 1994, 250, 266].

³⁹ Journal of Laws No. 30, item 227.

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U ŹRÓDEŁ ODBUDOWY PAŃSTWOWOŚCI POLSKIEJ.
KILKA UWAG W SETNĄ ROCZNICĘ
ODZYSKANIA NIEPODLEGŁOŚCI (1918–2018).
CZĘŚĆ DRUGA

Streszczenie. Niniejszy artykuł stanowi drugą część analizy normatywnych aspektów odbudowy państwa polskiego, tym razem obejmujących okres od przekazania przez Radę Regencyjną Królestwa Polskiego zwierzchnictwa na wojskiem Józefowi Piłsudskiemu w dniu 11 listopada 1918 r., do zamachu stanu dokonanego przez Józefa Piłsudskiego w maju 1926 r. Autor analizuje poszczególne etapy kształtowania się polskiego konstytucjonalizmu w tym okresie, zwracając m.in. uwagę na szczególną inspirację polskiego ustawodawcy konstytucyjnego ustrojem Trzeciej Republiki Francuskiej.

Słowa kluczowe: niepodległość, II Rzeczpospolita, Sejm Ustawodawczy, Mała konstytucja z 1918 r., Konstytucja marcowa z 1921 r., zamach majowy 1926 r.

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