

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

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**Summary.** The 100<sup>th</sup> anniversary of regaining independence of Poland in 1918 is a circumstance towards which a jurist cannot remain indifferent. Following the consequences of the First World War, the intellectual and military effort of many generations of Polish independence activists turned into the long-awaited rebirth of Polish statehood after 126 years of oppression. The article analyses the normative aspects of reconstructing the Polish both during the warfare on the fronts of the Great War and just after it finished. Such an analysis cannot possibly be made without taking into account the impact of political decisions on the formation of the political system of the Polish state and that is why the author frequently makes references to the issues that are at the root of these decisions.

**Key word:** partitioned Poland, World War I, Act of 5<sup>th</sup> November, independence

I

When writing over a hundred years ago about the causes of the collapse of the Polish state, W. Smoleński emphasised that “the weakness of Poland as a state had two sources: faulty political solutions and flawed social organisation”<sup>1</sup>. The Polish nation lost its independence at the end of the 18<sup>th</sup> century, at the time when Polish political elites introduced the first modern constitution in Europe, the second in the world after the American constitution<sup>2</sup>.

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<sup>1</sup> W. Smoleński, *Przyczyny upadku państwa polskiego*, Gebethner i Wolff, Warszawa 1921, p. 4.

<sup>2</sup> The American Constitution aroused keen interest in Europe, while at the same time enhancing the weakened prestige of the United States on the international front and in European fi-

In addition, W. Smoleński points out that “the nation’s enthusiasm for the government act exceeded all expectations. Abroad, the Constitution made the best impression. [...] Russia was dissatisfied: the court in St. Petersburg waited only for the end of the Turkish war to start action against Poland. The choice of means for Empress’s revenge was facilitated by Polish magnates who went to St. Petersburg «with a request for help in overturning the Constitution»”<sup>3</sup>. J. Michalski emphasizes that in the last year of its activity, the Four Year Sejm almost completed the reform of the political system and, acting without inhibitions and pressure from the outside, reflected the genuine opinions, moods and will of the society it represented, while its activity aroused great interest among the public and contributed to a great revival of political and socio-economic thought<sup>4</sup>. W. Uruszczak observes that the Constitution of 3 May collapsed as a result of a conspiracy of partitioning powers and a betrayal of state by the members of Targowica Confederation, while the Polish king Stanisław August Poniatowski did not rise to the challenge and is also to blame for the collapse of the state. Furthermore, “the last king of the First Republic of Poland, when joining the Targowica Confederation and announcing the capitulation of the Polish army, broke his oath, to God and the nation, of loyalty to the Constitution, taken on 3 May 1791”<sup>5</sup>. In A. Ajnenkiel’s opinion “the military defeat, preceded by the outbreak of the Kościuszko Uprising and its collapse, followed by the epic of the Polish Legions fighting «for your and our liberty» alongside Napoleon and the November and January Uprisings are milestones of activities documenting not only to ourselves, but also to Europe that Poles want to achieve independence”<sup>6</sup>. A. Ajnenkiel also pointed out that “for well over 10 years after the January Uprising there were no conditions on Polish soil for considering the vision of a future Poland”<sup>7</sup>.

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nancial circles. See: Z. Libiszowska, *Tomasz Jefferson*, Zakład Narodowy im. Ossolińskich, Wrocław 1984, p. 159.

<sup>3</sup> W. Smoleński, *Przyczyny upadku państwa*, p. 11.

<sup>4</sup> J. Michalski, *Sejm w czasach panowania Stanisława Augusta*, in: *Historia Sejmu Polskiego*, vol. I: *Do schyłku szlacheckiej Rzeczypospolitej*, ed. J. Michalski, Państwowe Wydawnictwo Naukowe, Warszawa 1984, pp. 412–413.

<sup>5</sup> W. Uruszczak, *Konstytucja 3 maja 1791 r. Testament polityczny I Rzeczypospolitej*, „Przeгляд Sejmowy” 2 (2011), p. 39.

<sup>6</sup> A. Ajnenkiel, *75 rocznica odzyskania niepodległości: refleksje historyka*, „Niepodległość i Pamięć” 1 (1994), p. 7.

<sup>7</sup> Idem, *Polskie konstytucje*, Wiedza Powszechna, Warszawa 1982, p. 203.

## II

The first significant visions only appeared along with the socialist ideology<sup>8</sup>. “*Ognisko Republikańskie Polskie*” [Polish Republican Centre] founded in Geneva by Ludwik Bulewski and gen. Józef Hauke-Bosak according to the principles of the Polish Democratic Society announced, on 12 September 1867, a programme of independent Poland (“An announcement of Polish democrats due to a peace congress”), which was to be based on the power of the people exercised through universal and direct voting, because “The supreme authority of the Republic is the omnipotent people, who through universal and direct voting settle the main tasks and sanctify the fundamental rights, binding all citizens of the Republic of Poland”<sup>9</sup>. According to point 2 of the programme the Democratic Republic was to become the form of government in free and independent Poland. Sejm (the parliament of the Republic of Poland) was supposed to consist of one chamber and have as its main task developing drafts of laws which would be then put to votes by all citizens. The national administration was to be based on free municipalities (point 11). The programme also ensured complete political freedom, freedom of association, freedom to form religious associations, freedom of the press and education for every Polish citizen (point 7), freedom of religion with no religion being the dominant one (point 8). Education was supposed to be public, free of charge and compulsory. Interestingly the programme did not envisage a permanent army as it was deemed incompatible with the principles of people’s self-government<sup>10</sup>.

The first socialist programme, “The programme of Polish socialists” – the so-called Brussels programme (published in Geneva in 1879) – did not address the issue of Polish statehood. However, its first version, written by Ludwik Waryński, included the following phrase: “political and national freedom provided by the federation of worker groups of the Polish people

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<sup>8</sup> The largest political organisation of Polish emigrants included: „Zjednoczenie Emigracji Polskiej” (1866-1870), „Organizację Ogółu” (1867-1870), „Towarzystwo Demokratyczne Mierosławskiego” (1865-1870) i „Ognisko Republikańskie Polskie” (1864-1870), see: J.W. Borejsza, *Emigracja polska po powstaniu styczniowym*, Państwowe Wydawnictwo Naukowe, Warszawa 1966, pp. 91–156; cf. J. Pajewski, *Odbudowa państwa polskiego 1914-1918*, Państwowe Wydawnictwo Naukowe, Warszawa 1978, pp. 24–28.

<sup>9</sup> The text of „Programme for Poland”, in: *Radykalni demokraci polscy. Wybór pism i dokumentów 1863-1875*, ed.F. Romaniukowa, Państwowe Wydawnictwo Naukowe, Warszawa 1960, p. 348.

<sup>10</sup> *Ibidem*, p. 350.

within the borders of the national”<sup>11</sup>. As P. Samuś notices, the creators of the programme made hardly any mention of the national issue, believing that demands concerning democracy in general and the reconstruction of Polish statehood might harm the emancipation of the proletariat, which was considered to be the most important task<sup>12</sup>. Social Revolutionary Party “Proletariat” (known as the “First Proletariat”), headed by Ludwik Waryński, represented the current in the workers’ movement, according to which only a revolution would solve the problem of national oppression<sup>13</sup>. Such an approach was then taken by the Social Democracy of the Kingdom of Poland and Lithuania (SDKPiL)<sup>14</sup>.

A democratic republic was a demand of the Polish Democratic Society, supported by the democratic circles of Polish emigrants. Ludwik Bulewski, mentioned above, wrote the following in the article entitled “Is republicanism a native Polish idea?” in late 1860s: “We do not pursue novelty, new political or social doctrines, new revolutionary or insurrectionary systems. Our task is to spread knowledge in the nation, both in the country and abroad, that there is no place for a monarchic Poland in the future, just as there was no place for it in the past. However, because we pursue, first and foremost, the revival of Poland, because the existence of Poland is in the common wish of all peoples, it is necessary for their liberation, instead of deluding anyone, both Poles and foreigners, with monarchist schemes for Poland we prefer to tell everyone the naked truth, the truth uninhibited by any personal considerations, loudly, openly and decisively plant this belief in everyone’s mind: that Poland must, Poland will exist, but only as a federal, democratic and social republic of Poland, within the United States of the Slavic people and the mankind; that all Polish attempts, work, efforts, advice, war-

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<sup>11</sup> A. Ajnenkiel, *Polskie konstytucje*, p. 205.

<sup>12</sup> P. Samuś, *Polski ruch socjalistyczny a niepodległość Polski (do 1918)*, “Acta Universitatis Lodzianensis”, *Folia Historica* 1 (1980), p. 7.

<sup>13</sup> *Ibidem*, pp. 7–8. The programme of the “Great Proletariat” of 1 September 1882 did not demand independence of Poland, because it considered it unrealistic in the conditions of that time, and also opposed the inclusion of the working class in the struggle for national liberation at that stage, “because it feared that it would promote the spread of national solidarity and blur class contradictions in the conscience of the masses”, *ibidem*, p. 7; cf. I. Koberdowa, *Kształtowanie się wizji socjalizmu w polskiej myśli politycznej*, in: *Wizje socjalizmu w Polsce do roku 1948*, ed. J. Tomicki, Książka i Wiedza, Warszawa 1987, pp. 49–56.

<sup>14</sup> See: J. Kancewicz, *SDKPiL wobec zagadnień wojny, rewolucji i niepodległości Polski w latach 1914-1918*, in: *Ruch robotniczy i ludowy w Polsce (1914-1923)*, Książka i Wiedza, Warszawa 1961, pp. 103–187.

nings and teachings should go in that direction”<sup>15</sup>. In the article written in 1870 and entitled “What do we want?”, L. Bulewski explicitly states: “in Poland, we do not want a government other than a social and democratic republic in which the Polish people will be the only monarch, master and omnipotent ruler, i.e. the Polish King”<sup>16</sup>. In J. Hauke Bosak’s opinion the source and rationale of all evil from which Europe suffers in the 19th century is the monarchy, and overthrowing it is as important a goal as reducing working hours<sup>17</sup>. “A democratic programme which will not include these two slogans, however firm and fair it may be, must arouse mistrust and disagreement during the preparatory period and become the cause of a breakup during the action”<sup>18</sup>.

However the most distinct vision of the political system of the future Polish state can be found in the “Programme Outline of the Polish Socialist Party” prepared in 1892, where the future Poland was to be an independent democratic republic with a single-chamber parliament elected by a direct, secret and universal vote. The programme for the first time puts forward the slogans for equality of all citizens without distinction of gender, race, nationality or religion, providing for a wide range of civil liberties (freedom of speech, print, meetings and associations, compulsory and free education)<sup>19</sup>. As P. Samuś points out, “the programme could potentially initiate a breakthrough in the history of Polish socialism, in the event the slogans of independence and a social revolution were linked”<sup>20</sup>. A. Ajnenkiel points out that “the Paris programme corresponded, in terms of the range of concepts for the political systems, to the visions dominating in the programmes of Western European social democracy during the epoch in question. Its social and economic demands went beyond the formulas of minimum tasks proposed by some parties, which, acting in constitutional states, focused on slogans aimed mainly at democratizing the existing political relations”<sup>21</sup>. As we know, from the 1905 revolution onwards the differences of opinion in the Polish Socialist Party widened, which led to a split in November 1906 and

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<sup>15</sup> *Radykalni demokraci*, pp. 166–167.

<sup>16</sup> *Ibidem*, p. 192.

<sup>17</sup> *Ibidem*, p. 306.

<sup>18</sup> *Ibidem*, p. 307.

<sup>19</sup> H. Jabłoński, *Ze studiów nad początkami Narodowej Demokracji*, „Przegląd Historyczny” 4 (1953), pp. 527–528.

<sup>20</sup> P. Samuś, *Polski ruch*, p. 12.

<sup>21</sup> A. Ajnenkiel, *Polskie konstytucje*, pp. 206–207.

the creation of two separate parties: the Polish Socialist Party – Left and the Polish Socialist Party – Revolutionary Faction. The programme of the Polish Socialist Party – Left, adopted in 1908, provided for a joint fight with the Russian proletariat for a republican and democratic system and a Russian federal state was to ensure a broad autonomy to Poland, with a separate Legislative Sejm in Warsaw<sup>22</sup>. By contrast, the programme of the Polish Socialist Party – Revolutionary Faction, adopted in 1907, included a demand to fight for “the establishment of an independent Polish republic, completely and comprehensively democratic”, although, as P. Samuś emphasizes, “the programme did not play a major role in the practical activities of the PPS – Revolutionary Faction”<sup>23</sup>.

In the vision of the future contained in the programme of the National Democracy, originating from the Polish League created in 1887 by Zygmunt Fortunat Miłkowski<sup>24</sup> (the first Polish League operated between 1848 and 1850)<sup>25</sup>, one can notice tendencies towards the republican form of the independent state but the National Democracy did not specify its demands concerning the political system until Poland regained independence<sup>26</sup>. It should be emphasised that a significant change of views of the national-democratic camp occurred between 1904 and 1908, when it oriented itself towards Russia and the attitude towards Germany did not radically change, with one of the main reasons for considering Germany as the most dangerous enemy being not only in the sphere of politics, but also in the cultural and civilisa-

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<sup>22</sup> Cf. F. Tych, *Z dziejów PPS-Lewicy w latach wojny 1914-1918*, in: *Ruch robotniczy i ludowy w Polsce*, pp. 189–259.

<sup>23</sup> P. Samuś, *Polski ruch*, p. 14.

<sup>24</sup> The officially adopted programme of the new organisation, called the “Act of the Polish League”, stated *inter alia*, that “the task of the League is to prepare and bring together all national forces in order to regain the independence of Poland within the pre-partition boundaries on the basis of a federation and taking into account national differences, without losing sight of those parts of the former Republic of Poland that had previously fallen away from it”. The Polish League was reorganized into the National League in 1893 and began to create its openly representation in the form of the Democratic-National Party, H. Jabłoński, *Ze studiów*, p. 531; cf. A. Dawidowicz, *Droga do niepodległości Polski w myśli politycznej Narodowej Demokracji*, „Myśl Ludowa” 5 (2013), pp. 75–77.

<sup>25</sup> More about this organisation: W. Jakóbczyk, *Ciszkowski i Liga Polska*, „Przegląd Historyczny” 38 (1948), pp. 137–168.

<sup>26</sup> A. Ajnenkiel, *Polskie konstytucje*, p. 208; cf. W. Wapiński, *Problem państwa w koncepcjach politycznych obozu narodowego*, in: *Polska myśl polityczna XIX i XX wieku*, vol. VII: *Państwo w polskiej myśli politycznej*, ed. W. Wrzesiński, Zakład Narodowy im. Ossolińskich, Wrocław 1988, pp. 83–104.

tional field<sup>27</sup>. The same author points out that it was only the revolutionary events in Russia and the fall of the tsarist regime that enabled the National Democracy to introduce the demand for independence and shift the focus of its activities to the west, and “the main direction of Dmowski and his collaborators in a broad diplomatic campaign was to present Poland as a permanent, constant anti-German factor and an ally of Western states (before the revolution, also an ally of Russia) against Germany, both during and after the war”<sup>28</sup>.

Peasant movement – which was under the considerable influence of the National Democracy – was associated with the Galicia-based Polish People’s Party, which conducted mass awareness-raising work in the national spirit among peasants. However, it should be noted that the most important issues which dominated public life in Lviv and Kraków in the last years before the outbreak of World War I included first of all the Ukrainian issue and introducing a parliamentary electoral reform<sup>29</sup>. In addition, peasant parties obviously demanded a land reform, and thus peasants’ right to land<sup>30</sup>.

### III

It should be emphasised that, according to L. Grosfeld, “the Polish question was changing, transforming and fluctuating with the development war activities and the changes of the military, political and social situations of individual states and their groups”, and that “in the policy of individual states towards Poland – apart from permanent and long-term elements – also short-term interests and objectives played a role, directly related to the willingness and necessity to use Poland as a war area and war support area, and the population of these lands as actual or potential human material – cannon fodder”<sup>31</sup>. It was in this spirit that the partitioning powers issued – starting from 1914 – acts assuring Poles of their willingness to change the legal situation of Polish lands. Only with the development of events on the fronts,

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<sup>27</sup> See: T. Kurpierz, *Narodowa Demokracja wobec Niemiec (do 1918 roku): zagadnienia wybrane*, „Pisma Humanistyczne” 2 (2000), pp. 63–64, 68.

<sup>28</sup> Ibidem, p. 76.

<sup>29</sup> Cf. Idem, *Przed rozłamem: konflikty w galicyjskim ruchu ludowym w 1913 roku*, “Wieki Stare i Nowe” 6 (2009), pp. 174–201.

<sup>30</sup> Cf. A. Zakrzewski, *Państwo w programach stronnictw ludowych*, in: *Polska myśl polityczna*, pp. 121–136.

<sup>31</sup> L. Grosfeld, *Sprawa polska w pierwszej wojnie światowej*, in: *Ruch robotniczy i ludowy w Polsce*, p. 61.

the issue of independence of Poland became international and was finally settled on the international forum by the provisions of the Treaty of Versailles of 28 June 1919<sup>32</sup>. Let us try here to discuss the relevant acts that were issued after the beginning of the Great War.

The expression of the Russian policy concerning the Polish question was a proclamation to the Poles issued by the chief commander of the Russian Army, Grand Duke Nicholas Nikolaevich, of 14 August 1914, which announced Russia's intention to "blur the borders dividing the Polish nation into parts, which was to take place as a result of the unification of the Polish nation under the sceptre of the Russian Emperor and the rebirth of Poland under this sceptre, based on the freedom of religion, language and self-government, but not autonomy"<sup>33</sup>. It should be remembered that only just over 10 years earlier, at the turn of the 20th century, both in the Kingdom and in Taken Lands (Belarusian, Lithuanian and Ukrainian territories, officially called the Western *Krai*), the policy aimed at unifying these territories with the so-called internal part of the empire was generally continued. As L. Jaśkiewicz emphasizes, "having averted the threat of a national uprising, Russia aimed at permeating Polish society with the «spirit of Russian statehood». This policy, despite numerous Russification campaigns, was aimed not so much at denationalising the Polish element [...] as at imposing behaviour and a way of thinking that respected the principles of imperial unity and loyalty"<sup>34</sup>.

Then, on 30 March 1915, the act on municipal self-government was issued, which allowed limited use of the Polish language in local government bodies. Then on 1 August 1915, at the meeting of the State Duma, the president of Russian ministers made a statement "that its (i.e. Polish nation's) future organisation was finally and irrevocably decided by the manifesto of Duke Nicholas at the beginning of the war", and communicated the emperor's statement that the emperor "ordered the Council of Ministers to draft laws granting Poles the right to organize their national, social, and eco-

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<sup>32</sup> Cf. Treaty between the Main Allied and Associated Powers and Poland ("Journal of Laws of the Republic of Poland" of 1920, No. 110, item 728); Treaty of Peace between the Allied and Associated Powers and Germany ("Journal of Laws of the Republic of Poland" of 1920, No. 35, item 200).

<sup>33</sup> K.W. Kumaniecki, *Odbudowa państwowości polskiej*, Księgarnia J. Czarneckiego, Warszawa-Kraków 1924, p. 27.

<sup>34</sup> L. Jaśkiewicz, *Carat i kwestia polska na początku XX wieku*, „Przegląd Historyczny” 1 (1995), p. 29.

conomic lives freely after the war on the basis of autonomy under the rule of the Russian emperor, while maintaining statehood”<sup>35</sup>. After the outbreak of the revolution in Russia and the overthrow of the tsarist government, the interim Russian government, elected by the members of the State Duma, issued an appeal to the Polish nation on 29 (16) March 1917, at the request of the Polish members, announcing assistance in establishing an “independent Polish state from all the territories in which Poles form the majority”<sup>36</sup>. Although the Interim Government’s appeal referred to an independent Polish state, as H. Jabłoński rightly points out, “it was nevertheless full of ambiguities, above all regarding the nature of Poland’s «free military relationship» with Russia, elsewhere also referred to as the «fraternal relationship», to be approved by the Russian Constituent Assembly”<sup>37</sup>. Obviously, this vague appeal was merely an inept attempt to respond to the Proclamation to the Polish Nation by the Petrograd Soviet of Workers’ and Soldiers’ Deputies, which had been announced a few days earlier on 27 (14) March 1917. This proclamation states that “democracy in Russia supports recognition of the political self-determination of nations, and declares that Poland has the right to complete independence in terms of state and international affairs”<sup>38</sup>. It

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<sup>35</sup> W. Komarnicki, *Polskie prawo polityczne (geneza i system)*, Wydawnictwo Sejmowe, Warszawa 1922 (reprint edition, Warszawa 2008), p. 13.

<sup>36</sup> Ibidem, s. 14; K.W. Kumaniecki, *Odbudowa państwowości*, p. 67; cf. I. Paderewski’s declaration on the programme announced by the Russian Interim Government and I. Paderewski’s Telegram to G.Y. Lvov with information on the attitude of the Polish community in the USA to the declaration of the Russian Interim Government on Poland, the Telegram of Polish organizations in the United States to G.Y. Lvov on their attitude to the declarations of the Russian Interim Government on Poland and P.N. Milyukov’s Telegram to J.F. Smulski with thanks for the congratulations sent to the Interim Government, *Archiwum Polityczne Ignacego Paderewskiego*, vol. I: 1890-1918, prepared by W. Stankiewicz, A. Piber, Zakład Narodowy im. Ossolińskich, Wrocław 1973, pp. 115–116, 122, 124; the Declaration of the Interim Council of State of 6 April 1917 in connection of the proclamation of the Russian Interim Government, K.W. Kumaniecki, *Odbudowa państwowości*, pp. 68–69.

S. Kutrzeba points out that in the West a call for the reconstruction of the Polish state was first issued in Italy, where on 7 December 1916 the Italian Chamber of Deputies accepted Deputy Montresor’s proposal concerning the revival of Poland. Obviously this call gained strength only when it was raised in America. S. Kutrzeba, *Polska Odrodzona 1914-1928*, Gebethner i Wolff, Warszawa 1935, p. 67.

<sup>37</sup> H. Jabłoński, *Międzynarodowe warunki odbudowy niepodległości Polski w 1918 r.*, in: *Ruch robotniczy i ludowy w Polsce*, p. 20.

<sup>38</sup> *W XXXV Rocznice Wielkiej Październikowej Rewolucji Socjalistycznej. Materiały – dokumenty*, Książka i Wiedza, Warszawa 1952, p. 134; *Dokumenty i materiały do historii stosunków polsko-radzieckich*, vol. I, Książka i Wiedza, Warszawa 1962, pp. 8–9; cf. L. Grosfeld, *Sprawa polska*, pp. 92–93.

should be noted that as early as in 1914 V.I. Lenin wrote as follows: “self-determination of nations means the political separation of these nations from alien national bodies, and the formation of an independent national state”<sup>39</sup>.

After the outbreak of the October Revolution and Russia’s withdrawal from the anti-German coalition, a peace treaty was signed in Brest-Litovsk, under which territories to the west of the treaty line were separated from Russia, which meant that the territory of the former Republic of Poland was divided into the part left to the Russian Soviet republic and the part put at the disposal of the Central Powers and containing proper Poland, with Russia relinquishing any claims to it<sup>40</sup>. Of particular importance for the issue of Poland’s independence, for giving it a solid international law basis, was the decree of the Council of People’s Commissars of 29 August 1918, which annulled treaties concluded by the former Russian Empire with the governments of, *inter alia*, the Kingdom of Prussia and the Austro-Hungarian Empire. The decree was the basis to cancel the treaties and agreements concerning the first partition of Poland in 1772, second partition of Poland in 1793, third partition of Poland in 1795, the Congress of Vienna pact on the Kingdom of Poland and the agreement of 1833, under which the partitioning powers undertook to act jointly against the Polish national liberation movement. These treaties were deemed contrary to the principle of the self-determination of peoples and to the “revolutionary-legal conceptions of the Russian people, which recognized the inalienable right of the Polish nation to independence and unity”<sup>41</sup>.

As far as the policy of Germany and Austria-Hungary towards the Polish question is concerned, it is first of all worth noting the “Act of 5 November 2016”, i.e. the proclamation of Karl von Kuk, issued to the inhabitants of the General Government of Lublin on behalf of Austro-Hungarian Emperor Franz I, on the establishment of the new Kingdom of Poland<sup>42</sup>, which annou-

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<sup>39</sup> W.I. Lenin, *O prawie narodów do samookreślenia*, in: Idem, *Pisma wybrane. Rola świadomości w procesie rozwoju społecznego*, Państwowe Wydawnictwo Naukowe, Warszawa 1980, p. 497.

<sup>40</sup> W. Komarnicki, *Polskie prawo*, p. 16. For more about the attitude of the Polish Socialist Party to the socialist revolution in Russia see: J. Holzer, *Polska Partia Socjalistyczna w latach 1914-1918*, in: *Ruch robotniczy i ludowy w Polsce*, pp. 332–338.

<sup>41</sup> See: W.I. Lenin, *O Polsce i polskim ruchu robotniczym. Artykuły, przemówienia, dokumenty, listy*, Książka i Wiedza, Warszawa 1954, p. 439; cf. L. Grosfeld, *Sprawa polska*, pp. 99–100; H. Jabłoński, *Międzynarodowe warunki odbudowy*, p. 40.

<sup>42</sup> See: M. Sioma, *Akt 5 listopada w Lublinie*, in: *Akt 5 listopada 1916 roku i jego konsekwencje dla Polski i Europy*, eds. J. Kłaczek, K. Kania, Z. Girzyński, Wydawnictwo Adam Mar-

nced the creation of a Polish state as a hereditary monarchy based on constitutional system, called self-governed but not independent<sup>43</sup>. W. Komarnicki emphasises that “the declaration only announced the creation of a new state and it was not its creative act as it did appoint any bodies that would represent the will of a new sovereign state”<sup>44</sup>. However, one should stress that proclamation had no basis in international law because military occupation does not give the occupants the right to change the state affiliation of occupied territories<sup>45</sup>. 12 November 1916 saw the publication of a decree of German general-governor Hans Hartwig von Beseler on the Council of State and the Sejm in the Kingdom of Poland, which, however, never entered into force<sup>46</sup>. Less than a month later, on 6 December 1916, the ordinance on the Provisional Council of State in the Kingdom of Poland with its seat in Warsaw was issued by the order of the emperors of Austria and Germany. Its scope of activities included issuing opinions, motions and drafts in domestic matters at the request of the occupation authorities, cooperating with the chief military commander of the Central Powers in the formation of the Po-

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szalek, Toruń 2016, pp. 94–112.

<sup>43</sup> K.W. Kumaniecki, *Odbudowa państwowości*, p. 48. T. Kurpierz points out that this act was negatively evaluated by the National Democracy, which announced that “the Polish nation’s aspiration for independence cannot be satisfied by creating a state organisation on an unknown Polish territory already now during the war”, Idem, *Narodowa Demokracja*, pp. 79–80; cf. the Declaration of Polish politicians of 11 November 1916, made after the Act of 5 November, the so-called R. Dmowski’s Lausanne protest, in: *Powstanie II Rzeczypospolitej. Wybór dokumentów 1866-1925*, eds. H. Janowska, T. Jędruszczak, Ludowa Spółdzielnia Wydawnicza, Warszawa 1981, p. 301. By contrast, the Polish Socialist Party did not present any specific positive programme in response to the Act of 5 November 1916, “although the situation increasingly required it” P. Samuś, *Polski ruch*, p. 17. H. Jabłoński points out that the workers’ left considered the proclamation of 5 November as a manoeuvre aimed only at acquiring Polish recruits from the Kingdom, i.e. drawing attention first of all to the military side of the proclamation, taking much less into account its general political aspects, Idem, *Międzynarodowe warunki odbudowy*, p. 15; see: The proclamation of ZG SDKPiL in connection with Act of 5 November 1916, *Powstanie II Rzeczypospolitej*, pp. 295–297; cf. the Protest of the Polish Central Relief Committee condemning the Act of 5 November of 1916, I. Paderewski’s letter to A. Briand with the protest of the Polish Central Relief Committee against the Act of 5 November of 1916 and H.H. Asquith’s letter to I. Paderewski on the attitude of the British Government to the Act of 5 November of 1916. *Archiwum Polityczne Ignacego Paderewskiego*, vol. I, pp. 91–94, 97.

<sup>44</sup> W. Komarnicki, *Polskie prawo*, p. 21.

<sup>45</sup> J. Kolasa, *Odzyskanie przez Polskę niepodległości w 1918 r. w świetle prawa międzynarodowego*, „Przegląd Sejmowy” 5 (2008), p. 13; cf. G. Górski, *Prawno-międzynarodowe uwarunkowania Aktu 5 listopada*, in: *Akt 5 listopada 1916 roku i jego konsekwencje*, pp. 421–430.

<sup>46</sup> K.W. Kumaniecki, *Odbudowa państwowości*, pp. 55–56.

lish army, adopting decisions on the war damage and on the economic revival of the country<sup>47</sup>. However, as W. Komarnicki emphasises “The Provisional Council of State was to develop the basis for the creation of the Polish State, therefore it precedes its creation and is not a Polish state organization and does not constitute a legal beginning of the Polish government”<sup>48</sup>.

#### IV

On 25 August 1917, as a result of intensifying conflicts between the occupation authorities, the Provisional Council of State finally resigned. 12 September 1917 saw the publication of H. H. Beseler’s patent on the state authority in the Kingdom of Poland, issued on behalf of both emperors. The highest authority in the Kingdom of Poland was assumed by the Regency Council which was supposed to stay in office until a monarch or a regent would be appointed, subject to the position of the occupying powers in accordance with international law<sup>49</sup>. The patent provided that the Regency Council would be composed of three members [Article 1(2)] and that its official acts would require the countersignature of the responsible President of the Ministers [Article 1(3)]. The Central Powers reserved clear influence in this regard in two ways: by taking up their positions under international law as occupying states and by introducing the Regency Council into the office by their monarchs [Article 1(1)], and also by approving the President of the Ministers. According to Article 2 (1), the legislative authority was entrusted to the Regency Council with the participation of the Council of State of the Kingdom of Poland. Laws and ordinances of the Polish state authority which were the basis for the rights and duties of the population, before they were issued, had to be communicated to the general-governor of this occupying power in whose area they were to apply and within 14 days of the submission of a normative act he could file an objection. In the area of justice and administration, individual cases were implemented by Polish courts and authorities only to the extent that they had already been surrendered to the Polish state authority [Article 4(1)]. As W. Komarnicki points out, “at the time of the occupation we can identify only certain beginnings of Polish statehood, certain fragments of statehood, and thus we cannot refer to the Sep-

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<sup>47</sup> Ibidem, pp. 71–72.

<sup>48</sup> W. Komarnicki, *Polskie prawo*, p. 25.

<sup>49</sup> K.W. Kumaniecki, *Odbudowa państwowości*, p. 88.

tember patent as the beginning of the independent existence of the Polish State. [...] It was only with the collapse of the power of the partitioners that the Polish nation was able to regain its state independence”<sup>50</sup>.

J. Kolasa points out that “by taking advantage of the conditions that were created by the victory of the Allied Powers in the First World War, Polish nation itself rebuilt its statehood after more than a century of subjugation. Not a single constitutive act, either of international or even domestic legal nature underlay the reborn Republic of Poland. Neither the Allied States, which generally supported the Polish nation nor the hostile Central Powers played any direct role in the creation of the Polish state in 1918. The rebuilding of statehood was done by the will and deed of the Polish nation itself”<sup>51</sup>. Poland thus entered a new stage of building sovereign statehood.

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<sup>50</sup> W. Komarnicki, *Polskie prawo*, pp. 33–34.

<sup>51</sup> J. Kolasa, *Odzyskanie przez Polskę niepodległości*, p. 38.

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

**Streszczenie.** Setna rocznica odzyskania przez Polskę niepodległości w 1918 r. stanowi okoliczność, obok której jurysta nie może przejść obojętnie. Wysiłek intelektualny i militarny wielu pokoleń polskich działaczy niepodległościowych przerodził się wraz z konsekwencjami I wojny światowej w długo wyczekiwany fakt odrodzenia państwowości polskiej po okresie 126 lat niewoli. Przedmiotem niniejszych rozważań jest analiza normatywnych aspektów odbudowy państwa polskiego jeszcze w okresie trwania działań wojennych na frontach Wielkiej Wojny oraz tuż po jej zakończeniu. Nie sposób przeprowadzić podobnej analizy bez uwzględnienia wpływu decyzji o charakterze politycznym na ukształtowanie się formy ustroju państwa polskiego, wobec czego autor wielokrotnie odwołuje się do zagadnień leżących u ich przyczyn.

**Słowa kluczowe:** Polska pod zaborami, I wojna światowa, Akt 5 listopada 1918, niepodległość