

## HISTORY OF THE POLISH CONSTITUTION BY MAREK ZEBROWSKI

### *Aliena laudatis, vestra ignoratis...*

Constitutions are documents containing basic principles and laws that govern a nation or a state, where the powers and duties of the government and guarantees of certain rights for the citizens are enumerated. During the past millennium, the institution of the feudal monarchy in the Western world gradually evolved towards an arrangement where various branches of government jointly undertake the task of governing. Such a transition created the need for a legal instrument that would regulate the functions of the state, delineate the rights of its citizens, and enshrine them in a form acceptable to all who were governed by it. The first such document was Britain's Magna Carta, first drafted in 1215 and substantially revised over the next one hundred years. Since that time, it has safeguarded—to a greater or lesser extent—the relationship between the English Crown and the Parliament, also serving as the foundation of a historical process that led to the development of constitutional law.

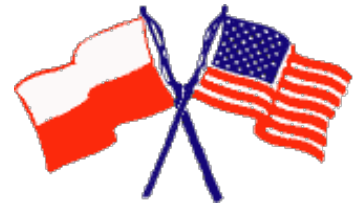
Written constitutions are a relatively modern phenomenon. The two earliest examples date only from the late eighteenth century, and come from two countries that were very far apart geographically, politically and historically. Separated by continents and oceans, one was a prestigious and great commonwealth undergoing a period of decline, the other a federation of newly independent colonies that would become the most powerful country in the modern world. The constitutions of these two countries not only shared many notable similarities in their development and their final form, but they were also ratified almost at the same time, the first on 17 September 1787, the other on 3 May 1791. They were the Constitution of the United States of America and the Constitution of the Commonwealth of Poland-Lithuania.

The historical lineage of the American Constitution has its roots in the Anglo-Saxon legal traditions enshrined in the Magna Carta and its provisions, which limited absolute monarchy by requiring the king to follow explicit legal procedures and obey certain laws. Magna Carta also introduced the concept of habeas corpus—the right of seeking remedy for an unlawful detention—which was a crucial historical step in securing individual liberty. This important document in the history of democratic governance was followed four centuries later by other acts that laid the foundation of English common law. The Petition of Right of 1628 and the English Bill of Rights of 1689 have provided for such privileges as fair taxation, free elections, guarantee of free speech in Parliament, freedom of carrying arms for self-defense, freedom from cruel and unusual punishment, freedom of fines and forfeiture without trial, and freedom of petitioning the monarch, among others.

The Mayflower Compact of 1620 was the first governing document of the Plymouth Colony, founded by Pilgrims arriving from England on American shores. The Compact formed the Colony's government which, in turn, derived its legitimacy from the consent of the governed. Such an approach of establishing a governmental charter was a continuation of applying English common law traditions in the New World. This trend culminated with the American Declaration of Independence of 1776, which affirmed the equality of man and his inalienable right to the right of life, liberty, and the pursuit of happiness. Only a decade later the Constitutional Convention in Philadelphia met and adopted the US Constitution on 17 September 1787. The process of ratification by individual states took over a year to complete, and the United States Government

officially began to operate under the US Constitution on 4 March 1789.

Just like its American contemporary, the origins of Poland's 1791 Constitution can be traced to several remarkable and innovative developments in Polish history. Like their English counterparts who drafted the Magna Carta, Polish subjects also sought to restrict the powers of the crown and protect the rights of the individual. Poland was a large and powerful country, steadily growing in influence on the European continent following its acceptance of Christianity in 966. Over the next few centuries, Poland's economic, political, and cultural position became widely known and respected throughout Europe. Alliances with major European ruling dynasties—especially the Habsburgs—and the two-state union of Poland-Lithuania dating from 1385 (it became the Commonwealth of Poland-Lithuania in 1569), made Poland a major player in the political arena of Europe. Growing trade with Poland's Baltic basin neighbors promoted Polish exports and successfully competed with other sea-powers of the times, especially England. Poland's extraordinarily large territory—stretching diagonally across from the shores of the Baltic in the north to the Black Sea in the south—also provided the rest of Europe with a useful buffer against Russian, Islamic, and other Asian influences.



Although long respected as the bulwark of Christianity, Poland scrupulously safeguarded the rights of religious minorities, embedding religious tolerance into the laws of the land in 1264, when King Bolesław the Pious placed Polish Jews under royal protection, assuring their right to settle and live without fear of persecution. This remarkable tradition was codified in the 1573 Warsaw Confederation and became the first document in European history to legally mandate religious tolerance. With such forward-looking concepts, Poland—the largest European country at that time—became the only area on the Continent where refugees of numerous religious and political groups could settle and practice their beliefs without fear of official retribution. The sixteenth-century Poland was universally admired for being the first state in Europe that exemplified religious tolerance, with mosques being built alongside churches and synagogues. Ominously, Poland's freedoms were seen as a dangerous political experiment by the absolute monarchs in neighboring Prussia, Russia and Austria-Hungary, whose strength and influence in the politics of Europe were steadily increasing.

Besides the laws on freedom of worship, other edicts defining the role of the monarch and extending rights to the citizens of Poland would follow. The 1374 Koszyce Privilege reduced taxes to a single remit that szlachta (the landed gentry) were expected to pay to the crown. Its other important provisions included the right of compensation from the crown for losses in war or captivity, and a restriction on appointing foreigners to official posts. Further privileges granted by the crown between 1425 and 1447 established the legal principle of *Neminem captivabimus nisi iure victum*, which prevented the gentry from being arrested without a guilty conviction, giving Polish citizens an unprecedented right to due process that did not exist in any other European jurisdiction for another three centuries. The Wilno Privilege, also dating from this era, extended to Lithuanian nobility the same civil liberties that applied to the Polish szlachta. In the 1454 Cerkwica and Nieszawa Privileges, King Casimir IV agreed to laws that restricted the crown in setting new taxes, promulgating new laws and drafting nobles for military service without the consent of the local assemblies (*sejmiki*). Poland's strong parliamentary tradition originated in the fourteenth century, and the history of Sejm (Parliament) is essential in considering the development of Poland's constitutional path. The 1505 Nihil novi Act, signed by Alexander Jagiellonian during the Sejm session in Radom, provided that “nothing new” could be legislated without the agreement of the nobles, officially transferring the legislative power from the crown to the Sejm, which was composed of the landed gentry. This date is generally accepted as the beginning of Poland's First Republic, also known because of the Nihil novi Act as “the Republic of Nobles.”

When the last king of the Jagiellonian dynasty, Sigismund II Augustus, died without issue in 1572, the institution of Elective Monarchy was introduced in Poland. Up to this point (just like everywhere else in Europe) royal succession could come only from within the royal family. The ground-breaking Polish move to abolish the hereditary monarchy in favor of with an elected one. It meant that from 1573 any Pole or foreigner of royal blood could compete for the crown of the Commonwealth of Poland-Lithuania. Furthermore, the newly elected king had to agree to a set of specific requests submitted by the Sejm (the so-called *Pacta conventa*) and adhere to the *Acta Henriciana*, named after Henri III Valois (the youngest son of Catherine de Medici and Henri II, King of France) who was Poland's first freely elected monarch. The *Acta Henriciana* were an important precursor to the Polish Constitution, as they contained the basic laws of the Commonwealth, including the free election of kings, a guarantee of religious tolerance, and the granting of a wide-ranging powers to the legislative branch. These laws also stipulated the obligation of the crown to convene the Sejm every two years, vesting it with formulating foreign policy, selecting the Royal Advisory Council, promulgating tax laws, and reserving the right of the nobility to disobey the crown should the king breach any of these laws.

Another Polish innovation (which would later prove fatal to the Commonwealth) was a parliamentary procedure called *liberum veto*. Rooted in the political and administrative set-up (in essence a federation of two countries), the Commonwealth of Poland-Lithuania was a novel and politically untested alliance that, as it later turned out, was far ahead of its time. The American model for the Federation of States laid out in the Constitution succeeded in full only in the second half of the nineteenth century, after the tragedy and destruction of the Civil War. Poland's Republic of Nobles lasted almost three centuries, but only during its last century it was overshadowed by a widespread and often destructive use of *liberum veto*. The *liberum veto* called for unanimous consent; without it any legislation passed by the Sejm would be nullified and the parliamentary session would end. The nature of this seemingly paradoxical requirement originated in the role of the regional assembly (*sejmik*) which sent its representative to the Polish Parliament, the Sejm. Each elected *sejmik* deputy had specific voting instructions from his constituency and assumed responsibility for the decisions made by the Sejm. Thus, if the local *sejmik* that he represented could not agree with the decisions passed by the Sejm, he had to veto the proposed legislation, as it would violate the principle of political equality. Such decentralizing force in Poland's parliamentary democracy was in stark contrast to the rigidly centralized and absolute monarchies of Poland's neighbors, Russia, Prussia and Austria.

Some Polish philosophers, intellectuals and politicians sensed the danger of *liberum veto* politics to the future of the Commonwealth. One of the most influential voices in the debate on responsible governance was Wawrzyniec Goślicki (1533-1607), a Polish diplomat, high church official, Crown Chancellor and philosopher, who was also known as Laurentius Grimaldus Goslicius. Born near the town of Płock, Goślicki studied at the Jagiellonian University in Kraków and received his doctorate in canon law in Italy. Goślicki's remarkable treatise, *De optimo senatore* (The Counselor in the English translation), was written in Italy and was based on the Platonic and Aristotelian ideals of democracy. First published in Venice in 1568, then in Basel in 1593 and translated into English for the 1598 and the 1607 editions, it portrays the ideal statesman who is well-versed in the humanities, economy, politics, and law. Goślicki's influential essay on the art of ruling placed the Senate as an agent of balance, mediating between the crown's absolutist tendencies and the noble class' attempts to acquire more power. It also debated the issue of human rights of citizens vis-à-vis the policies of a just and responsible government. *De optimo senatore* quickly became one of the most popular books on the subject of political and social issues and its influence reached far and wide across Europe for centuries.

Not surprisingly, Goślicki's ideas were seen as political dynamite by Europe's hereditary monarchs. *De optimo senatore* caused widespread panic, among Poland's neighbors and in England, where Queen Elizabeth ordered the destruction of all existing copies of Goślicki's essay.

His suggestions that all citizens are born equal, possess equal rights, and that monarchs rule in the interest of their subjects, were seen as pure heresy. Goślicki's description of an open struggle of oppressed people frustrated by the excessive power of the crown was seen as particularly dangerous. Unsurprisingly, the English reformists found Goślicki's ideas inspiring, and the 1648 Cromwell Revolution manifesto quoted directly from the English translation of *De optimo senatore* in order to justify its political ideology. With the arrival of English Civil War refugees at the Plymouth Colony in Massachusetts in the 1640s, Goślicki's views reached the American Continent. It would take another century or so for the American Colonists to follow-up on Goślicki's suggestion of shaking off the tyranny of the monarch in favor of the democratic state, which led to the birth of the United States of America.

Meanwhile, Poland continued to be a country of fascinating paradoxes throughout the eighteenth century. Politics became increasingly more contentious as Poland's international position began to wane. The authority of the crown receded in direct proportion to the increase in the power of the Sejm, which did not always follow coherently laid-out policies. Inexorably, the Commonwealth of Poland-Lithuania became politically paralyzed and vulnerable to its absolutist neighbors. Against this background, many luminaries, patriots and progressive thinkers tried to reverse Poland's continuing decline. Believing that only radical reforms could save Poland, they turned to the leading French philosophers, including Jean-Jacques Rousseau, with a request of drafting a constitution for Poland. Unfortunately, by the time Rousseau had finished *The Considerations on the Government of Poland* in 1772, the First Partition of Poland was already underway.

Poland's partitions were an unprecedented act of political aggression carried out by her neighbors. In response to the 1768 Bar Confederation—a movement that sought to reduce the growing Russian influence in Polish affairs—the triumvirate of Russia, Prussia, and Austria, convened in St. Petersburg in August of 1772. They annexed about 30,000 square miles of the Commonwealth—approximately one third of Poland's territory and of her population. This unprecedented action was justified by the tendentious finding that the Commonwealth of Poland-Lithuania was in a state of anarchy and that it refused to impose order on its internal affairs. The three powers not only demanded an agreement from the Sejm to the Act of Partition but also threatened further action should the Polish Parliament refuse to accept the Act's humiliating conditions. The Polish King, Stanisław August reluctantly consented and called the Sejm into an emergency session. In spite of widespread protests (including Tadeusz Rejtan's memorable stand) and the fact that only a small fraction of deputies were in attendance, the First Partition of Poland was ratified in 1773.

Amidst serious political setbacks and a climate of uncertainty, reforms in Poland continued. Stanisław August Poniatowski, elected in 1764, was an intelligent and well-educated monarch who supported many progressive ideas. In 1765 he founded the Cadet School (the first secular school in Poland), collaborated with Count Andrzej Zamoyski on restricting the liberum veto statute, and spearheaded the parliamentary initiative to establish in 1773 the first Ministry of Public Education in the world, the *Komisja Edukacji Narodowej*. The Enlightenment Era in Poland brought an economic revival as well flourishing of arts and literature. Writers such as Hugo Kollataj and Stanisław Staszic postulated far-reaching political and social reforms and laid the groundwork for the Polish Constitution. The process was officially launched in 1787, when Ignacy Potocki was selected to coordinate the project. A lively constitutional debate ensued and lasted almost four years. It pitted two camps against each other—the reformists who wanted to strengthen the government and extend voting rights beyond the landed gentry, and the powerful landowning class that was loath to relinquish their cherished privileges.



The successful vote for the 1791 Constitution was a result of a carefully planned surprise, practically tantamount to a constitutional coup d'état. Most of the Sejm's deputies were on holiday and procedural calls for a quorum were ignored. Supporters of the Constitution occupied the chambers and the public gallery, and their



Constitution occupied the chambers and the public gallery, and their overwhelming presence secured a passing vote. Since saving Poland's uncertain future was paramount in the minds of its drafters, the new Constitution was a pragmatic mixture of progressive and conservative ideas. It called for a return of the hereditary monarchy and it restricted some privileges previously granted to religious minorities. On the other hand it abolished the liberum veto law, extended legal protection to a wider sector of Poland's citizens, and restored the right of the monarch to nominate ministers that would be responsible to the Sejm. The progressive features of the 1791 Constitution, such as the habeas corpus provision that covered all property owners and a clear statement that all power emanates from the will of the people, were clearly rooted in sixteenth-century legislation and political theories of such reformists as Andrzej Frycz-Modrzewski (1503-1572) and Wawrzyniec Gościński.

The 1791 Constitution remained in force for only a little over a year. In January 1793, Russia and Prussia partitioned Poland yet again. By then Russia saw Poland as its de facto protectorate and considered all political and social reforms in Poland seditious and highly dangerous, since Poland dared to act without Russian consent. Furious to see the Polish Constitution become the law of the land, Empress Catherine of Russia decided to intervene in Poland's internal affairs. As soon as Russia's wars with Sweden and Turkey were over, Poland became an easy next door target. The Russian argument for invading Poland in 1792 was that Poland had succumbed to the ideas of French Revolution and this threat had to be liquidated. Catherine found a willing partner in the Emperor of Prussia, who viewed political experiments in Poland with similar contempt. In an ironic twist, Catherine's skillful intrigue convinced Polish nobles to persist in their naïve belief that Russian intervention would only restore the ancient Polish liberties. The so-called Confederation of Targowica that eventually aligned the King Stanisław August and a substantial number of large landowning gentry with the Russian invaders sealed the fate of Poland. The Second Partition of Poland left only a third of the once vast country under Polish administration—Russia and Prussia took most of the northern and eastern territories respectively, whilst Austria (who did not participate in the Second Partition) still gained additional acreage in the south and southeast.

The tragic postscript to the Polish Constitution took place a year after Poland's Second Partition. In March 1794, Tadeusz Kościuszko—a hero of the American Revolution and a Brigadier-General in the United States Army—called all Poles to fight against the partitioning powers. In his famous Połaniec Manifesto, Kościuszko extended civil rights to peasants, which assured their massive participation in his uprising. A series of victories led to the liberation of several major Polish cities and gave rise to the hopes of winning political independence. But Kościuszko's insurrection could not withstand the military forces of Poland's powerful neighbors. Shocked by their initial defeats, the partitioning powers carefully regrouped for a well-planned attack. The October 1794 battle at Maciejowice near Warsaw ended with Kościuszko wounded and a total defeat of the Polish cause. The Third Partition of Poland was officially signed by Russia, Prussia, and Austria in 1797. It erased Poland's territory from the map of Europe and stipulated that the name of the Kingdom of Poland will never again exist in history. From that point onwards until the end of World War I, Poles became subjects of the three neighboring foreign powers.

The political achievement that the May 1791 Constitution represented in the history of Poland became an important factor for all Polish citizens living in their occupied homeland. Recognized as an expression of remarkable political will in times of great adversity, the memory of the 1791 Constitution nurtured political aspirations of many successive generations of Poland's citizens. The flame of democracy was kept alive and eventually led to the restoration of Poland's independence in 1918, when the May 1791 Constitution was revisited, updated and revised.

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The 3 May Constitution is universally acknowledged as a revolutionary document in the political history of the world. It was the second written constitution in the world and—just like the American Constitution—it represented an important milestone in the development of democratic ideals in the western world. At the end of the eighteenth century, America and Poland became the only two democratic countries in the world of absolute monarchies. Enfranchising townspeople and the nobility, Poland's Constitution covered about the same percentage of the population as the American Constitution, which limited rights and privileges to male property owners.

Poland's democratic struggle during the second half of the eighteenth century also kept Russia, Prussia and Austria from intervening in the 1789 French Revolution, thus allowing for a dramatic political change in France to take place. The May 1791 Constitution was translated into French, German, and English and many prominent figures, including Thomas Paine and Edmund Burke, praised Poland's progressive thinking and democratic spirit. Once again Poland's political vision was proven to be well ahead of its time—it took another century for the European monarchies to collapse in the ashes of the Great War. Fittingly, the end of absolutism in Europe also brought the resurrection of independent Poland. The so-called Second Republic of Poland (with its two Constitutions, passed in 1921 and 1935) lasted until the outbreak of World War II, when yet another partition of Poland by Hitler's Germany and Stalin's Soviet Union took place. After the war ended, almost half a century of communist rule had to pass before Poland became independent once again. During those dark years the law of the land was provided by the Soviet-style Constitution of 1952 that was amended in 1976 and 1982. The current Polish Constitution was passed on May 25, 1997, almost exactly two centuries after its most famous predecessor.

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