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Polish April Constitution of 1935 and Constitution of the Fifth Republic of France of 1958. Apparent Affinity

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Słowa kluczowe: konstytucja kwietniowa, V Republika Francuska, autorytaryzm, dobre rządy, demokracja, stabilność konstytucji, instytucjonalizm, konsolidacja władzy wykonawczej, demokracja bezpośrednia

Abstract

A large number of authors, both academics and novelists, contend that there is an affinity between the Polish April Constitution of 1935 and that of the Fifth Republic of France. In their view, such an affinity results from the dominant political position of the president, his powers and general consolidation of the executive power². Another reason for such an assertion is a similar model of leadership adopted by Piłsudski and de Gaulle. Some authors even assert that “Polish Constitution was an inspiration for the constitutional thought of general de Gaulle”³. Special attention should be paid to the different ax-

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² D. Górecki, *Pozycja ustrojowa Prezydenta i rządu w ustawie zasadniczej z 23 kwietnia 1935 r.*, Łódź 1992, p. 281; H. Izdebski, *Les idées constitutionnelles du général de Gaulle et l'Europe d'aujourd'hui*, „Espoir” 1992, No. 85.

³ “Anyway, since that time de Gaulle undoubtedly showed huge interest in Marshall and even if he disliked a victorious commander from the Warsaw Battle of 1920, he was said to have

iology of the two constitutions, including rigidity of the April Constitution provisions, designed exclusively for the presidential system, and distrust of the Polish constitutional thought in direct democracy. Different leadership models adopted by Piłsudski and de Gaulle also contributed to the general disparities between Polish and French fundamental statutes discussed in this paper.

Streszczenie

Konstytucja kwietniowa z 1935 r. i Konstytucja V Republiki Francuskiej z 1958 r. Widoczne powinowactwo

Wielu autorów, zarówno naukowców, jak i powieściopisarzy, twierdzi, że istnieje podobieństwo między Konstytucją kwietniową Polski z 1935 r. a Konstytucją V Republiki Francuskiej. Ich zdaniem takie powinowactwo wynika z dominującej pozycji politycznej prezydenta, jego uprawnień i ogólnej konsolidacji władzy wykonawczej. Innym powodem takiego twierdzenia jest podobny model przywództwa przyjęty przez Piłsudskiego i de Gaulle'a. Niektórzy autorzy twierdzą nawet, że „polska konstytucja była inspiracją dla konstytucyjnej myśli generała de Gaulle'a”. Szczególną uwagę należy zwrócić na inną aksjologię obu konstytucji, w tym sztywność postanowień Konstytucji kwietniowej, przeznaczonych wyłącznie dla systemu prezydenckiego, oraz brak zaufania do polskiej myśli konstytucyjnej w demokracji bezpośredniej. Różne modele przywództwa przyjęte przez Piłsudskiego i de Gaulle'a również przyczyniły się do ogólnych rozbieżności między podstawowymi ustawami Polski i Francji analizowanymi w niniejszym artykule.

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A large number of authors, both academics and novelists, contend that there is an affinity between the Polish April Constitution of 1935 and that of the Fifth Republic of France. In their view, such an affinity results from the dominant political position of the president, his powers and general consolidation of the executive power. Another reason for such an assertion is a similar mod-

collected any information about Piłsudski. It is also said that his library contains a large number of works authored by Piłsudski. If rumours can be heard that de Gaulle ordered translation of a number of publications authored by Piłsudski, they seem to be absolutely plausible". H. Roos, *Józef Piłsudski i Charles de Gaulle*, „Kultura” 1960, No. 5, p. 17; B. Szlachta, *Polscy konserwatyści wobec ustroju politycznego do 1939 roku*, Cracov 2000.

el of leadership adopted by Piłsudski and de Gaulle. Some authors even assert that “Polish Constitution was an inspiration for the constitutional thought of general de Gaulle”. Yet an in-depth comparison of those constitutions denies such an interpretation and exhibits a substantial difference between the constitution of authoritarian state and governable democracy shaped by the French Constitution of 1958.

Actually, there is some affinity with regard to the constitutional mission of the president, enshrined in the April Constitution as an overriding and superior factor that synchronizes activities of the top state organs (Art. 11) and the mission of the president of the Republic of France who ensures, by his arbitration, the proper functioning of the public authorities and the continuity of the State (Art. 5 of the Fifth Republic Constitution). Yet it should be emphasized that the consolidation of the French president’s position did not reach the point where all state authorities are supervised by the president (Art. 3 of the April Constitution). President of the Republic of France supervises judiciary system and military forces. In regard to judiciary, president was invested with relevant powers as the head of the Supreme Judiciary Council. Yet president in no way supervises the National Assembly and Senate. The Fifth Republic Constitution has developed as a system of checks and balances with the presidential supremacy, while the April Constitution challenged the principle of the separation of powers and followed the recommendations put forward by Stanisław Car, who reasoned that the six powers should be under the president’s supervision⁴. Therefore, the authors of the April Constitution did not provide for the formation of the parliamentary government against the president’s will. However, owing to Debré’s ingenuity, the Fifth Republic Constitution provided for such option. Presumably, a fact that the Constitution of 1935 did not provide the establishment of the constitutional court proved its closeness and incapability of their authors to take a risk of establishing an institution that could be granted an independent status. This is curious as a great number of the Polish lawyers of different political and ideological views, including Jan Bobrzyński, Stanisław Estreicher, Władysław Leopold Jaworski or the Parliamentary Club of National Democracy (the draft of 1928), prom-

⁴ S. Car, B. Podoski, *Główne wytyczne nowej konstytucji Rzeczypospolitej Polskiej*, Warsaw 1935.

ulgated an idea of establishing the Constitutional Tribunal⁵. Noteworthy, Estreicher's proposal to introduce the review of the constitutionality of bills was similar to that adopted in France in 2008⁶.

In my view, a thesis about a considerable affinity between April Constitution and de Gaulle's constitutional output is to a large extent oversimplified. The consolidation of the presidential position, including his powers, is just a part of the constitutional issues. Given all principles and crucial regulations enshrined in both constitutions, any analogy between them seems to be less obvious.

Firstly, the Fifth Republic was the product of the institutional republican revolution and a dogma of the sovereignty of nation as the foundation of the political system. A theoretical basis for the change effectuated by de Gaulle was a democratic interpretation of the nation's sovereignty. In the theoretical and legal dimension, it was framed in the writings of Raymond Carré de Malberg and René Capitant. This new interpretation of the republican foundation of the legal tradition allowed for establishing strong presidency, challenging parliamentary supremacy and introducing the institution of referendum. On the other side of the coin, the authors of the April Constitution intentionally rejected the notion of the nation's sovereignty as well as the heritage of the French Revolution. Adam Piasecki, one of the first commentators of the April Constitution, highlighted this aspect in his book *Zasady nowej konstytucji [Principles of New Constitution]*⁷. The Polish State, defined as the common good belonging to all citizens, was the key constitutional value. The April Constitution defined fundamental constitutional values in the way that was characteristic for authoritarianism and had rather more in common with

⁵ W.L. Jaworski, *Projekt konstytucji*, Cracov 1928; J. Bobrzyński, *O reformę ustroju*, "Nasza przyszłość" 1931, vol. 7, pp. 4–29; A. Piasecki, *W sprawie Trybunału Konstytucyjnego*, "Nasza Przyszłość" 1931, vol. 15, pp. 42–54; S. Estreicher, *Odpowiedź na ankietę Marszałka Sejmu*, "Nowe Państwo" 1931, vol. 3, p. 26; W. Komarnicki, *O praworządność i zdrowy ustrój państwowy*, Vilnius 1928. Establishment of the Constitutional Tribunal was discussed in the articles authored by Andrzej Gwiżdż and Adam Jankiewicz. A. Gwiżdż, *O Trybunale Konstytucyjnym w II RP*, [in:] *Konstytucja i gwarancje jej przestrzegania. Księga pamiątkowa ku czci profesora Janiny Zakrzewskiej*, Warsaw 1996, pp. 67–79.

⁶ A. Piasecki, *Sprawozdanie z ankiety przygotowawczej do reformy konstytucji odbytej w dniach 30, 31 lipca i 1 sierpnia w 1928 r. w Warszawie*, Warsaw 1928, p. 64.

⁷ A. Piasecki, *Zasady nowej konstytucji*, Cracov 1934.

the constitution of the Republic of Portugal⁸ or the constitutional draft of the French State (Vichy). Noteworthy, the axiological assumptions of the April Constitution were the product of the theoretical thought of its authors and guiding spirits: Stanisław Car, Władysław Leopold Jaworski and Waclaw Makowski. A common denominator of their theoretical thought was a rejection of an idea of the nation's superiority, which was, in their view, old-fashioned and leading to wrong political solutions.

This difference is also crucial because the April Constitution was preceded by a number of constitutional drafts providing a considerable consolidation of the executive power but sticking to the idea of the sovereignty of the nation. Importantly, a draft of the *Constitutional Survey* of March 1919 said in Art. 1 that the supreme power belonged to the nation and should be exercised by mutually independent organs: Sejm as a legislative branch of power, president as an executive power and independent judiciary system. Each of these organs is a holder of its own legitimization as an organ of the nation⁹. The draft authored by Michał Bobrzyński envisaged establishment of the presidential-parliamentary system. President was to be elected in the popular vote and directly by electors. Government appointed by president was politically accountable before Sejm. The proposal put forward by Bobrzyński and espoused by Piłsudski was not taken into account in the constitutional drafting of Legislative Sejm because the idea of parliamentary supremacy was ultimately abandoned. Stanisław Estreicher had no doubts that Michał Bobrzyński tried to challenge the primacy of Sejm due to the respect for the nation's superiority. This is what he wrote in the text *Sovereignty of Nation or Sejm?* [org. *Suwerenność narodu czy Sejmu*]:

“To challenge a demand for the “sovereignty of Sejm,” the authors of the Constitutional Survey sought a different slogan that would be clear to the people and believed that it could be found in the theory of the nation's sov-

⁸ Art. 4 of the Constitution of Portugal said that nation established sovereign state and the state's sovereignty is subject to the restrictions determined by morality and law. *Constitution politique De La République Portugaise*, [in:] *Les constitutions européennes*, ed. B. Mirkine-Guetzévitch, Paris 1951, pp. 612–643; T. Janasz, *Państwo Francuskie 1940–44*, Warsaw 1977.

⁹ M. Bobrzyński, *O potrzebie „silnego rządu” w Polsce*, Warsaw 2001, p. 144.

ereignty and by the establishment of the three mutually independent organs that would rule on behalf of the nation and control each other”¹⁰.

In his ideas Bobrzyński followed Carré de Malberg. Noteworthily, ten years later even S. Estreicher referred to the concepts put forward in the survey and proposed electing a president in the popular vote and by the electors appointed in the single-mandate districts¹¹.

A similar draft authored by Stanisław Bukowiecki was put forward in the preparatory Survey on the constitutional reform of 1928. Bukowiecki asserted that nation is the source of power and proposed *democratic dualism* (the same term Pierre Ardant applied in his study on the thought of Carré de Malberg and the Fifth Republic Constitution), where president and parliament members were elected in the popular vote¹². In Bukowiecki’s view, president would be elected in the plebiscite out of the two candidates appointed by Sejm. The official draft prepared in 1928 by the Parliamentary Club of the Nonpartisan Bloc for Cooperation with the Government (BBWR) included provisions similar to those in the Fifth Republic Constitution. Art. I of the draft said that “Nation is the source of power in the Republic of Poland and the good of the country is the supreme law”¹³. BBWR espoused presidential elections in the popular vote (voters would choose between a candidate proposed by the National Assembly and a candidate appointed by the outgoing president), president was to be invested with own powers (including a power to dissolve Sejm and Senate and power to appoint the Prime Minister)¹⁴, and

¹⁰ S. Estreicher, *Suwerenność Sejmu czy suwerenność narodu*, [in:] *O Konstytucji i polityce II Rzeczypospolitej*, introduction and selcction by A. Wolek, Warsaw 2001, p. 59.

¹¹ A. Piasecki, op.cit., p. 18.

¹² A. Piasecki, op.cit., pp. 15–16.

¹³ *Wniosek posła Walerego Sławka i kolegów z Klubu Bezpartyjnego Bloku Współpracy z Rządem w sprawie zmiany niektórych postanowień Ustawy Konstytucyjnej w trybie, przewidzianym dla jej rewizji*, Sejm Rzeczypospolitej Polskiej (period II), Report No. 444, p. 1.

¹⁴ The Art. XLI of the draft tabled by BBWR said that “Official acts issued by the President shall be countersigned by the Prime Minister and competent Minister to become effective. By countersigning an act, they assume responsibility for such act. The documents that shall not have to be countersigned include a) addresses and any act concerning Sejm and Senate; b) appointment or dismissal of the Prime Minister, General Inspector of the Military Forces, President of the Supreme Audit Office and officials from the Civil Office of the President of the Republic of Poland; c) nomination or dismissal of officers of all ranks and any acts of the president as the Commander-in-Chief of the Military Forces; d) presidential pardons and acts

the council of ministers was to be accountable before parliament. The mentioned drafts may prove that Polish politicians and constitutionalists examined the possibility of the fundamental constitutional reform with respect for the nation's sovereignty.

Yet the April Constitution led to the essential shift in the axiology as it was aimed to break off with the liberal vision of the state and individual rights. Stanisław Car and Waclaw Makowski called for the need to depart from the heritage of the French Revolution and challenged such definition of relations between an individual and the state, enshrined in the Declaration of Human and Civil Rights of 1789¹⁵. According to the authors of the April Constitution, it should be an act of a new type. Therefore, the primary message of the Constitution of 1935 was that social life develops within the state's framework and is based on the state. The state organs should provide conditions for the free development of society and, when this is required by the common good, the state should determine its direction or conditions. Activities of an individual were seen in the community perspective (Art. 5 Item 1 said that "activities of an individual are the driving force of the community life") and – contrary to the liberal perspective – said that the freedom's boundaries are determined by the common good. Moreover, the April Constitution declared that the right to influence public issues depended on the citizens' efforts and merits in their strive for the common good. In the new social state individual's rights were not recognized as "impassable demarcation line," as Jelinek put it¹⁶. Adam Piasecki was right to assert that it was the original specification of the state's tasks, a critical response to the liberal approach as well as totalitarian systems¹⁷. On the other hand, the Constitution of the Fifth Republic did not introduce significant changes in this respect. De Gaulle's constitutional stance in the dispute with Vichy did not raise doubts about the heritage of the French Revolution. Actually, they consolidated a republican tradition and

of legal care transferred by bills; e) nomination of judges; f) nomination of the president and members of the Tribunal of State". *Wniosek posła Walerego Sławka...*, op.cit.

¹⁵ W. Makowski, *O naprawie konstytucji po raz drugi – zmiany. Przemówienie Sejmowe z 17 lipca 1926 r.*, [in:] *O państwie społecznym*, introduction, selection and edition by W. T. Kulesza, Warsaw 1998, p. 71.

¹⁶ G. Jelinek, *Deklaracja praw człowieka i obywatela*, transl. Z. Libkund-Lubodzicka, Warsaw 1905, p. 21.

¹⁷ A. Piasecki, op.cit., p. 16.

supplemented a liberal approach to the individual's rights, enshrined in the Declaration of 1789, with the social obligation of the state.

Secondly, unlike the Fifth Republic Constitution, a number of provisions of the Polish Constitution of 1935 were quite rigid, which, however, turned out to be sensible in the late 1930s and after World War II broke out: president was empowered to appoint successor for the war time, which ensured continuity of the state's functioning after German and Soviet aggression in 1939. This advantage was appreciated even by the fervent critics of the April Constitution, including Edward Dubanowicz¹⁸. Yet in ordinary times constitution could be applied for the state's benefit on condition that political lines of the president coincided with those of the parliamentary majority. Apart from the fact that president was empowered to dismiss government at any time, which was not enshrined in the Fifth Republic Constitution, prime minister had no effective instruments to govern if he had to seek support only from the parliamentary majority. The April Constitution placed trust in the presidency and, consequently, excluded flexible application of the regulations if the government majority opposed the president's policy. The act allowed either for the presidential governments enjoying support from Sejm and Senate or the presidential minority governments able to function by means of the effective use of a vote of distrust. In other words, the April Constitution did not provide conditions for *cohabitation* and formation of the parliamentary government in opposition to the president's will. Prime Minister was not invested with the same powers as his counterpart in the Fifth Republic. The Polish Constitution of 1935 lacked a coherent model of the rationalized parliamentarism. Prime Minister was not empowered to decide on the parliamentary agenda and his few prerogatives included the use of the regulations rationalizing the procedure of passing the budget. Government had no instruments such as own legislation¹⁹. Moreover, the authors of the April Constitution intentionally eliminated the possibility of any political competition by enacting the electoral law that ensured *Sanacja* (political followers of Józef Piłsudski) a political majority in Sejm and Senate. Thus, the lower and higher chamber did not reflect the real differences dividing public opinion. Similarly, regu-

¹⁸ E. Dubanowicz, *Nauka obywatelska*, London 1943.

¹⁹ Noteworthy, Art. 55, Item 3 of the April Constitution said that decrees shall be issued by the President upon the motion of the Prime Minister.

lations concerning election of the president aimed to ensure *Sanacja* political power. A concept of the national elite that was to establish foundations of the Senate and an assembly of electors choosing president was subjected to the particularistic goals of the government and its political background. All these factors made that the Constitution of 1935 could not be a long-lasting political solution.

Thirdly, unlike the Fifth Republic Constitution, the April Constitution was critical toward an extensive application of the institution of popular vote and rejected institutions of direct democracy. Noteworthy, that act expressed distrust in the institution of referendum and other instruments of direct democracy, which was typical for the Polish constitutional thought in the interwar years. Interestingly, the only party that espoused the introduction of the institution of referendum was Polish Socialist Party (March Constitution drafting, 1921)²⁰. Regardless of their attitude toward Piłsudski, an overwhelming majority of political groups and parties, remained critical toward such an institution. Stanisław Estreicher, like other Polish conservatives, asserted that referendum was the wrong solution given poor education of the society and low level of public education. Other critics included moderate representatives of National Democracy, such as Edward Dubanowicz who, in his book *Rewizja konstytucji* [org. *Revision of Constitution*] referred to Esmein's argumentation that "popular vote is capable of undermining the representative system but incapable of substituting this system"²¹. Prof. Dubanowicz asserted that popular vote did not meet minimum substantive requirements and led to random decisions, depending on totally external circumstances. Like Esmein, he rejected constitutional referendum: "Introduction of the popular voting in the area of constitutional legislation would be a dangerous and grotesque recklessness. Legislation should remain as a prerogative of the legislative bodies"²².

Due to the same reasons Polish constitutional thought was critical toward the institution of general and direct presidential elections. Antoni Peretiatkiewicz, who espoused the idea of extended presidential powers, was a strong

²⁰ A. Ajnenkiel, *Spór o model parlamentaryzmu polskiego do r. 1926*, Warsaw 1972; K. Kawalec, *Wizje ustroju państwa w polskiej myśli politycznej lat 1918–39*, Wrocław 1995, p. 52; M. Śliwa, *Polska myśl socjalistyczna*, Wrocław 1988, pp. 42–49.

²¹ E. Dubanowicz, *Rewizja konstytucji*, Poznań 1926, p. 41.

²² *Ibidem*, p. 46.

opponent of the general and direct presidential elections. In his view, they could lead to *coup d'état*. This is what he wrote in his *Reform of Polish Constitution* [org. *Reforma konstytucji polskiej*]:

“Certainly, election of the president by the whole nation may result in the establishment of Bonapartism and *coup d'états*, as we can see in Central or South America. This is a probable scenario when active, politically engaged individuals become leaders, provoke conflicts with the parliament and frequently decide to undertake radical, even illegal measures”²³.

Authors writing about the affinities between the April Constitution and Fifth Republic Constitution highlighted a number of the common features of the political output of Piłsudski and de Gaulle. Political position of both statesmen was based on their exceptional historical merits: they were military professionals attaining national goals. Piłsudski played a key role in the restoration of independence by Poland and de Gaulle saved the honour and legality of France in 1940 and ensured his country a strong position among the war victors. They were not exponents of any political party and had a negative attitude toward parliamentary supremacy. They espoused consolidation of the executive power and a fundamental constitutional reform.

Józef Czapski, who had direct contact with de Gaulle, could not resist comparing the General to Marshal Piłsudski in his article published in the Parisian “Kultura” soon after death of the president of France²⁴.

“For every Pole this is not only a glorious president of France who has passed away. This is also a young captain, teacher of military tactics in Rembertów, who experienced – along with our army and nation – a looming defeat that finally turned into the glorious victory of 1920. Young de Gaulle, who was an eye-witness of the fate of Poland and its Commander, kept in Colombey-les-Deux-Églises all the texts of the speeches and writings of Piłsudski and read them much later, in the years that he called “a journey through the desert””.

Speaking about de Gaulle one cannot forget about Marshal Piłsudski: the same passionate and bitter love for the homeland, the same devotion to the cause until the very end, solitude and pride, Sulejówek – Colombey-les-Deux-Églises, struggle for the real power, never an appearance of power, struggle

²³ A. Peretiatkowicz, *Reforma konstytucji polskiej*, Warsaw 1929, p. 29.

²⁴ J. Giedroyc, *Autobiografia na cztery ręce*, Warsaw 2006, p. 117.

against exponents of foreign interests and disdain for meanness, disdain for everything that was humiliating for their homelands from their perspective, the same combination of dreams and astonishing realism, flair for game and tactics, the same attitude toward parliament and political parties, struggle for the new constitution, reconstruction of the country from scratch²⁵.

It seems that the affinities between two leaders cannot veil considerable differences manifested primarily in their attitude toward state institutions and law. De Gaulle had respect for the state institutions and was willing to build a new political model that would strengthen France for many years. He did not subordinate the overriding goal to the interests of his political background. He had no intention to build up a system that would invest his political supporters with some special powers. On the contrary, he was capable of self-restriction and establishment of the balanced system where government retained accountability before parliament. De Gaulle restored France a strong legitimization, extending the scope of a popular vote and opening it to the institution of referendum. He never considered adopting any electoral law that would eliminate political competition. Unlike Piłsudski, he performed a presidential function and prevented an emergence of gaps between real power and official power. He restored constitutional institutions their significance and legitimacy. Resignation from presidency after the referendum defeat of 1969 consolidated the Fifth Republic and its founder showed a particular respect for the spirit of the Constitution. Meanwhile, Piłsudski and his successors were incapable of building any long-lasting political institutions. They rejected the thought of the synthesis of order and freedom. Instead, they sought to eliminate political competitors and, consequently, abandoned parliamentary dimension of the Constitution and condemned this act to impermanence²⁶. Although soft authoritarianism of the post-1926 governments protected Poland against totalitarian solutions, it failed to build any permanent institutional heritage²⁷.

²⁵ J. Czapski, *De Gaulle*, "Kultura" 1970, No. 12.

²⁶ H. Roos, *op.cit.*, p. 19.

²⁷ See the insights on relations between authoritarianism and fascism in: W.T. Kulesza, *Koncepcje ideowo-polityczne obozu rządzącego w Polsce w latach 1926–1935*, Wrocław 1985, pp. 266–286.

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