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**The draft Constitution of the Polish State of 1917, on the
idea of resurrecting the Polish state in 1918 as a mixed
(constitutional) monarchy and the main provisions
of the monarchical constitution for Poland**

Keywords: Mixed Monarchy, Poland, draft constitution, Regency Council, Temporary Council of State, First World War, Constitutional Law, regaining independence

Słowa kluczowe: monarchia mieszana, Polska, Konstytucja, projekt konstytucji, Rada Regencyjna, Tymczasowa Rada Stanu, pierwsza wojna światowa, prawo konstytucyjne, odzyskanie niepodległości

Abstract

The aim of this paper is to analyze the provisions of the “draft Constitution of the Polish State” of July 1917 – an original achievement of the Polish doctrine of state law. In the opinion of the majority of contemporary representatives of Polish constitutional law, the activities of the Provisional Council of State of the Kingdom of Poland, as well as the Regency Council – bodies composed of Poles, but appointed by the German occupation authorities in 1916–1917, were meaningless, and the bodies themselves were imposed from outside and pursuing foreign interests. As a consequence, the value of the systemic achievements of these bodies and its meaning is denied. However, the analyzed document developed under the auspices of the Provisional Council of State of the Kingdom of Poland was chronologically the first full draft constitution for Poland after the state re-

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gained its independence. It is an interesting and original testimony to the high substantive level of Polish science of constitutional law developing in the absence of Polish statehood. It is also a proof that a mixed (constitutional) monarchy was considered to be the optimal political system for rebuilding statehood after more than 120 years of non-existence. The fact of fully Polish authorship of the project (mainly in the persons of prominent professors of law) may be a counter-argument against the thesis that the idea of a monarchical system for the Polish state reactivated in 1918 was completely foreign and imposed from the outside. Although the Polish political elites in 1918 ultimately gave up the idea of introduction of a constitutional monarchy in Poland, some of the solutions contained in the 1917 draft constitution became an inspiration for later systemic projects, both submitted during the work on the first full constitution of an independent Polish state enacted in 1921 as well as during the subsequent discussions on its revision.

Streszczenie

Projekt Konstytucji Państwa Polskiego z 1917 roku, czyli o idei odbudowy państwa polskiego w 1918 roku jako monarchii mieszanej (konstytucyjnej) i o głównych postanowieniach monarchicznej konstytucji dla Polski

Celem niniejszego opracowania jest omówienie założeń Projektu Konstytucji Państwa Polskiego z lipca 1917 r. – prawie nieobecnego w literaturze naukowej z zakresu prawa konstytucyjnego dokumentu stanowiącego oryginalny element dorobku polskiej doktryny prawa państwowego. W opinii większości przedstawicieli polskiej nauki prawa konstytucyjnego działalność Tymczasowej Rady Stanu Królestwa Polskiego i Rady Regencyjnej – ciał złożonych z Polaków, ale powołanych przez okupacyjne władze niemieckie w latach 1916–1917 była pozbawiona znaczenia, a same organy narzucone z zewnątrz i realizujące obce interesy. W konsekwencji odmawia się znaczenia i neguje wartość dorobku ustrojowego tych ciał. Tymczasem, projekt z 1917 r. firmowany przez Tymczasową Radę Stanu Królestwa Polskiego był chronologicznie pierwszym, pełnym projektem konstytucji dla Polski po odzyskaniu przez nią niepodległości. Jest on ciekawym i oryginalnym świadectwem wysokiego poziomu polskiej nauki prawa konstytucyjnego rozwijającej się w warunkach braku własnej państwowości. Jest także dowodem na uznanie ustroju monarchii mieszanej (konstytucyjnej) za optymalny dla odbudowy państwowości po ponad 120 latach podziału terytorium i narodu na trzy części i ich pozostawiania pod obcymi wpływami. Całkowicie polskie autorstwo projektu może stanowić kontrargument wobec tezy o całkowicie obcej i narzuconej z zewnątrz idei ustroju monarchicznego dla reaktywowanego w 1918 r. państwa polskiego. Chociaż ostatecznie polskie elity zrezygnowały z wprowadzenia w Polsce ustroju monarchii konstytucyjnej, część rozwiązań zawartych w projekcie konstytucji z 1917 r. stała się inspiracją dla późniejszych

projektów ustrojowych, zarówno zgłaszanych w czasie prac nad pierwszą po zaborach, pełną konstytucją niepodległego państwa polskiego uchwaloną w 1921 r. jak również w czasie dyskusji nad jej rewizją.

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I.

The 100th anniversary of the establishment of the Polish Republic, celebrated on November 11, 2018, prompts us to reflect on its political origins, all the more so because in October and November 1918 the question of the future political form of the reactivated Polish state was not at all foregone. Among the new states formed in 1918 from the breakup of the Central European monarchies – Austro-Hungary, Germany, Russia and earlier – Turkey, nearly half were monarchies. Józef Piłsudski, considered one of the founding fathers of the renewed Polish state, did not choose the monarchical system for Poland, nor did he follow in the footsteps of Miklos Horthy, who declared himself regent of Hungary and held this function continuously from 1920 until 1944². However, it is a fact that Piłsudski formally owed his function to the monarchical body: the three-person Regency Council, established by the patent of September 12, 1917 by the German-Austrian occupation authorities³. The patent was in turn the implementation of the so-called Act of 5 November 1916⁴, in which the will to resurrect the Polish state was clearly stated and its monarchical form was clearly defined. On November 11, 1918 (today celebrated in Poland as Independence Day), the Regency Council still existed. Until November 14, 1918 (date of self-dissolution), the Council was the official and the highest authority in the territories of the then Kingdom of Poland. It can be concluded that the Polish state was reactivated after the 123-year period of partitions as a monarchy. Only then did Józef Piłsudski

² H. Donath, *Przemiany ustrojowo-prawne na Węgrzech 1939–1949*, Wrocław-Warsaw-Cracow-Gdańsk 1978, pp. 14–20, 67.

³ *Patent z 12 września 1917 r. w sprawie władzy państwowej w Królestwie Polskim*, [In:] M. Domagała, D. Górecki, *Wybór źródeł do nauki prawa konstytucyjnego*, Łódź 1997, pp. 19–20.

⁴ *Proklamacja z 5 listopada 1916 r.*, [In:] M. Domagała, D. Górecki, op.cit., p. 13.

radically change the course from monarchical to republican. In the scientific literature one can even find a thesis that during these four days Piłsudski served as the fourth regent⁵.

In the official version of the history of the beginnings of the renewed Polish state, the fact that the Regency Council declared independence on October 7, 1918⁶ is commonly disregarded. The opinion prevailing in Polish scientific literature is that the Council was an occupation body and at the same time deprived of any political significance⁷. There are authors who deny even the political status of the Council, whose “name did not correspond to the actual content of the regency institution”⁸. The significance of the fact that Józef Piłsudski received the state authority from the Regency Council is also negated (although such an act took place on November 14, 1918 on the basis of the Council’s proclamation⁹). The view is being promoted that Piłsudski gained power in a revolutionary way, regardless of the will of the Regency Council¹⁰. All this leads many authors to the conclusion that the Regency Council was not an organ that would serve as proof of the temporarily monarchical form of the Polish state¹¹. To such a radical and one-sided position, I am submitting my *votum separatum*, critically assessing both diminishing or even denying, as well as exaggerating the meaning and role of the Regency Council. Especially the first tendency, dominating among Polish researchers, made the systemic achievements of the Regency Council little known and underestimated. Meanwhile, under the auspices of the legal predecessor of the Regency Council, that is the Provisional Council of State of the Kingdom

⁵ See: W. Komarnicki, *Polskie prawo polityczne (Geneza i system)*, Warsaw 1922, p. 51, P. Kierończyk, *Nadrzędność parlament – mit czy realna alternatywa ustrojowa? Analiza wybranych przykładów*, Gdańsk 2009, p. 166.

⁶ Odezwa Rady Regencyjnej do Narodu Polskiego, “Monitor Polski” 1918, No. 168.

⁷ K. Prokop, *Pozycja ustrojowa Tymczasowego Naczelnika Państwa (1918–1919)*, [In:] *Potentia non est nisi da bonum, Księga Jubileuszowa dedykowana Profesorowi Zbigniewowi Witkowskiemu*, eds. M. Serwaniec, A. Bień-Kacała, A. Kustra-Rogatka, Toruń 2018, pp. 628–630.

⁸ See: W. Wołpiuk, *Naczelnik Państwa 1918–1922. Przedprezydencka forma władzy państwowej*, “Przegląd Sejmowy” 2005, No. 6, p. 20.

⁹ Orędzie Rady Regencyjnej z 14 listopada 1918 w przedmiocie rozwiązania Rady Regencyjnej i przekazania Najwyższej Władzy Państwowej naczelnemu dowódcy wojsk polskich Józefowi Piłsudskiemu, “Dziennik Praw Królestwa Polskiego” 1918, No. 17, item 38.

¹⁰ K. Prokop, op.cit., p. 631.

¹¹ Ibidem, p. 628.

of Poland¹², one of the most interesting acts in the Polish constitutional output has been elaborated in 1917: “The draft Constitution of the Polish State”. This document, adopted on July 28, 1917 by the Parliamentary-Constitutional Commission of the former Provisional Council of State, was a project of the full, first from 1791, monarchical constitution for the future, reactivated Polish state. The text of the project was published in 1917, causing a wide response in the then Polish and foreign press. In 1918, the project was republished by the “Polish government”, this time with a broad, contained in 4 volumes, review by prof. Józef Buzek from the University of Lwów (today Lviv), developed in May 1918¹³.

It is worth adding that on July 3, 1917, the Provisional Council of State adopted a draft regulation of temporary authorities, which included a proposal to alternatively appoint a regent or a three-person regency council with the participation of the Archbishop of Warsaw as the Primate¹⁴. This act was defined in the literature as a project of the monarchical so called “little constitution”, which was to shape the system of the Polish state temporarily, until the adoption of a full constitution. The project became the basis for the establishment of a three-person Regency Council¹⁵.

The aim of this study is to discuss the provisions of the draft Polish Constitution of 1917 – a document almost absent from the academic literature in the field of constitutional law, constituting an original element of the Pol-

¹² The Council was established on the basis of the Decree of December 6, 1916. It was to be an opinion-giving body for the occupying authorities in the area of their founding the Kingdom of Poland.

¹³ J. Buzek, *Projekt konstytucji Państwa Polskiego i ordynacji wyborczej oraz uzasadnienie i porównanie projektu konstytucji Państwa Polskiego z innymi konstytucjami*, vol. 1–4, Warsaw 1918.

¹⁴ According to the Polish monarchical tradition of the political system, the Primate of Poland played the role of interrex, the highest official of the state in the interregnum period. The first time he was called after the death of King Sigismund II Augustus in 1572. Traditionally, the function of the primate and interrex was held by the Archbishop of Gniezno. Because one of the three members of the Regency Council appointed in 1917, Primate Aleksander Kakowski was the Archbishop of Warsaw, and not Gniezno, his title to perform the function of interrex was undermined. The dispute between the archbishops of Warsaw and Gniezno for the right to the title of the Primate of Poland was resolved in 1925 for the benefit of the latter.

¹⁵ W. Jakubowski, K. Jajecznik, *Polska debata ustrojowa w latach 1917–1921. Perspektywa politologiczna*, Warsaw 2010, pp. 21–23.

ish doctrine of state law and being a testimony of its high quality in the years preceding the reactivation of the Polish state.

II.

On January 17, 1917, at the request of reverend father Henryk Przeździecki, the Provisional Council of State of the Kingdom of Poland appointed a Parliamentary-Constitutional Committee¹⁶ later divided into two groups: the parliamentary subcommittee and the constitutional subcommittee. The parliamentary sub-committee was to prepare a draft of electoral law and systemic regulation regarding the parliament. The constitutional subcommittee – was to prepare a draft regulation for other constitutional issues. The President of the Commission was *ex officio* the Crown Marshal of the Provisional Council of State Mr. Waław Niemojowski, the vice-president was Fr. Przeździecki, and the general commissioner – professor Józef Buzek, then dean of the law faculty of the University of Lwów¹⁷. The Commission included a group of outstanding representatives of science¹⁸ and politics. Most of them took part in the work of the Committee in person, some in correspondence.

Zygmunt Cybichowski, professor of law at the University of Lwów and later at the University of Warsaw, is considered to be the main author of the “Constitution of the Polish State” draft-project. Indeed, the basis for the work of the Commission were two projects presented by Z. Cybichowski and J. Buzek. During the work of the commission with the participation of a wide range of legal specialists and politicians, the projects were subjected to editorial work and merged into one¹⁹. Among the co-authors of the project and at the same time advocates of the monarchical system are also mentioned: Stanisław Starzyński, professor of constitutional law at the University of Lwów²⁰ and in

¹⁶ H. Przeździecki, *Wstęp*, [In:] J. Buzek, op.cit., vol. 1, p. V.

¹⁷ W. Jakubowski, K. Jajecznyk, op.cit., pp. 19–20.

¹⁸ Among the representatives of legal science, the Commission included Professors: Parczewski, Cybichowski, Siemieński, Ochimowski, Buzek, Starzyński, Balcer, Kutrzeba and Jaworski (H. Przeździecki, op.cit., p. VI).

¹⁹ H. Przeździecki, op.cit., pp. VI–VII.

²⁰ M. Jurecki, *Stanisław Starzyński (1853–1935)*, [In:] *Polski Słownik Biograficzny*, vol. XLII/IV, No. 175, Cracow 2005, p. 483.

relation to the royal oath – prof. A. Parczewski from the University of Warsaw and priest Zygmunt Chelmski, later a secretary of the Regency Council²¹. It is worth emphasizing the very high substantive level of the project resulting from the fact that, apart from politicians, its authors were also members of the then academic elites of Krakow, Lwów and Warsaw. In the design and commentary on its provisions, one can find numerous references to the system of contemporary European countries and to the leading positions of the then world scientific literature on the subject²².

In “*Kurier Warszawski*” from November 1, 1917, an interview with prof. Cybichowski was published, in which he explained the most important assumptions of the draft constitution²³. The text of the draft constitution was divided into 151 articles grouped in 9 chapters devoted to: general determination of the form of state, the king, regency and custody, the Parliament (Sejm), ministers, courts, local government, citizens’ rights and obligations, and finally – transitional provisions. The project established a Roman Catholic religion as a state religion (the king and queen had to be Catholics – Art. 4). Z. Cybichowski referred to this wording in an interview explaining that the incorrect name “religion of the state” suggests that the state has a religion. Therefore, the term “state religion” was used, in other words, in which the rite is held religious acts accompanying state celebrations. In addition to the privileged position of Roman Catholicism, the project envisaged the freedom of religious denominations and the autonomy of churches and religious associations in the state. The first king of Poland was to be elected by the parliament. Within three months, the coronation and the king’s oath were to take place. According to J. Buzek, this resolution divided the members of the commission. Some thought that coronation and swearing were unnecessary and would not stop the cynical king (if such a king would happen) from breaking the constitution. The others, along with the author of the comment, acknowledged that swearing the king into constitution is one of the most important

²¹ H. Przeździecki, *op.cit.*, p. VII.

²² A. Kulig, *Kształtowanie formy rządów u progu niepodległej Polski (1917–1926)*, Warsaw 2013, p. 125.

²³ *Projekt konstytucji Królestwa Polskiego. Wywiad u profesora Cybichowskiego*, “*Kurjer Warszawski*”, 1 November 1917.

constitutional guarantees²⁴. The parliament also had the right to decide on the monarch's spouse under the sanction of losing the crown by the king who would enter into marriage without consent or against the will of the parliament. The consent for the marriage of the heir to the throne was to be granted by the monarch (Art. 20). The king was to have a permanent seat in the country, and without the consent of the parliament he could not simultaneously sit on a foreign throne (Art. 6). The monarch had the right of legislative sanction, dissolution of the parliament, issuance of executive ordinances to the laws, command over the army (Art. 13), appointing ministers and other state officials, concluding and terminating international agreements, a right to pardon (including – discontinuing the court proceedings, i.e. individual abolition – Art. 16), awarding orders and titles (Art. 8, 10, 12–17). The coin was to be minted on behalf of the king. In exceptional situations, when the parliament was not in session, and there was a need to issue a statute for public security or to remedy the natural disaster, the king could issue a decree equal to the power of the statute.

According to the draft-project, the Kingdom of Poland was to be hereditary monarchy with the succession of royal power based on the semi-Salic rule, modeled on the original version of the regulation contained in the constitution of Belgium. The authors of the constitution stipulated that the king was to rule under constitutional provisions, not under the dynastic power. Regarding the rules of succession, the possibility of referring to the statute of the ruling family (the House Law) was rejected²⁵. The rules of succession were later to be clarified by a special law with a force equal to the constitution as its component part (Art. 19). With the change of the dynasty, the principles of succession to the throne had to be regulated again. In the absence of the heir to the throne during the life of the king, he was to designate another monarch with the consent of the parliament. After the death of the king and the expiration of the dynasty, the new monarch was to be elected by both houses of parliament (Art. 23). All acts of the monarch would require countersignature (Art. 93, 94). The king was politically and legally irresponsible, “sanctified and untouchable” (Art. 3). The only exception, mentioned above, was

²⁴ J. Buzek, *op.cit.*, vol. 3, p. 28.

²⁵ *Ibidem*, pp. 18–22.

the norm of Art. 20, which provided for the loss of the throne in the event of the king's marriage being done against the will of the parliament. The matter of pronouncing the war by the king only with the consent of the government, repeatedly returned in the discussion in the forum of the commission. It was definitively concluded that although such solutions create a risk of state involvement in the war (for example due to the king's enormous ambition), a greater danger would threaten the state if the king bound by the obligation to get a war (eg from the parliament) forfeited his chances for victory. It was not without significance that in the neighboring countries the monarchs did not have to obtain such consent²⁶.

Both Z. Cybichowski and J. Buzek admitted that the constitutional commission took the most time to work out a common position on the principles of selecting the composition of both parliament chambers, ie the electoral law²⁷. The draft electoral law for the parliament had 239 articles. It was finally agreed that the Chamber of Deputies should come from 5-adjective elections: proportional (d'Hondt's method), equal, common, direct and in secret ballot, in 3-seat electoral districts and with closed lists of candidates. The term of office of the Chamber was to be 5 years. The Act granted the active electoral rights to male citizens (and if that was the case for the parliament – including the females) who were at least 25 years of age (passive right: 30 years) and lived for at least 3 months in the place of voting. Due to the high percentage of illiterates, electoral law was not dependent on the ability to write and read.

The discussion about the Senate was even more difficult. The electoral bill assumed that half of its composition would come from elections that could be described as curial. The elected part of the Senate was to be occupied by larger landowners, larger entrepreneurs, persons sitting in the municipal self-government bodies and scientific institutions in a ratio of 6: 5: 1: 4 (Art. 47). The second half of the Senate was to be joined by so-called "virilists" enumerated in the project, including hierarchs of churches, presidents of the highest judicial bodies, adult royal princes (members of the ruling house), representatives of professional and social organizations, cooperatives, experts in the fields of the state, social sciences and art (Art. 48). Some of the non-elected members

²⁶ H. Przeździecki, *op.cit.*, p. XXII.

²⁷ *Ibidem*, p. XXII; *Projekt konstytucji Królestwa Polskiego. Wywiad...*

would be appointed by a monarch for a 10-year term, others would be in the Senate for life, *ex officio*. The mandate of the deputy and senator was to be free (Art. 36). Among the original solutions, it is worth indicating a different wording of the oath for members of electoral commissions as well as deputies and senators of Christian and Jewish religions. The parliament was to perform the typical legislative functions – legislative and control. The project regulated the detailed rules for adopting the budget act and regulated the rules of operation in the event of failure to budget in due time. Z. Cybichowski emphasized in his interview that the budget crisis is always a serious threat to the constitutional system. The Chamber of Deputies had the right to direct the interpellation to the ministers and to decide on a motion of censure against the minister. Each of the chambers could set up a commission of inquiry. In the event of a lack of correspondence between the chambers, an arbitration committee could be established, consisting of members of both chambers. Judges, appointed for life by the king, were guaranteed independence and immunity (Art. 101–102). The Tribunal of State was to decide on the criminal and constitutional responsibility of the ministers. The ministers were responsible for the political responsibility of the ministers before the king and the parliament. The members of the ruling family were not allowed to enter the Council of Ministers (consisting of ministers headed by the “first minister”). The constitution also included a standard set of citizens’ rights, including: legal equality, personal inviolability, inviolability of property, housing, correspondence, freedom of conscience, expression, teaching and association. Interestingly, the project assumed the abolition of all feudal (noble) privileges (Art. 111). Among the civic duties, general military service was indicated.

Other monarchical institutions listed in the draft constitution include the regency established in the event of temporal inability to perform the function of the king or his minority, but also in the absence of a monarch (temporary interregnum)²⁸. An adult heir to the throne became *ex officio* regent. In the absence of him – the parliament appointed a Roman Catholic person as a regent (Art. 24–25). In the case of a minor heir, his guardian was additionally appointed. This function was entrusted to the king’s mother or a person appointed in the late monarch’s will (Art. 33). The guardian of the minor mon-

²⁸ J. Buzek, *op.cit.*, vol. 3, p. 59.

arch was supported by a five-person Board of Education (Art. 34). The government, headed by the king, became the Crown Council. Its membership was to include the adult heir to the throne, and at the request of the king – the speakers of both chambers of parliament (Art. 96). The king, the ruling family and the court were to be financed from the state budget in the amount and on the terms set out in a special statute passed for the time of each monarch's rule (Art. 18). As J. Buzek stressed in the commentary, this provision should be understood in such a way that the act would determine the amount of remuneration for each member of the ruling family, making him independent of the discretionary decision of the monarch. It is not a monarch, but the parliament was to determine the salary of each authorized member of the ruling family²⁹. The Constitution also defined the remuneration of the regent at 1/3 of the monarch's salary (Art. 30). The constitution stipulated the content of the oaths of the king, minor king, successor to the throne and regent. The issues of the coat of arms of the state, national colors, the official titles of the monarch and the capital of the state were deliberately abandoned in the constitution. However, no reason was given in the project's justification³⁰.

The analysis of the political position and the content of the oath made by the king leads to the conclusion that the system designed in the discussed document can be described as a mixed (constitutional) monarchy with relatively broad powers of the monarch. The king, however, was limited by the provisions of the constitution, which he had to commit to during the coronation. The project envisaged a division of power, from which the monarch was excluded in the sense that he partially held all the powers. Legislative power was to be exercised by the king along with the parliament, executive power – alone through the ministers responsible before him, and the judiciary power – on his behalf, by the “constitutionally independent” courts (Art. 2). The constitution did not explicitly specify the manner of adopting a new constitution, but, as rightly stated by J. Buzek in his commentary – from the content of Art. 146 (the first king was to be indicated by the parliament), it appears that the constitution was not to be octroyed by the king³¹. The draft also

²⁹ Ibidem, p. 42.

³⁰ J. Buzek, *op.cit.*, vol. 2, p. 131.

³¹ Ibidem, p. 125.

contained a general derogation clause: “As soon as this constitution enters into force, all provisions incompatible with it will be terminated” (Art. 151).

H. Przeździecki explained in the introduction to the draft that the Committee was conducting the work under the slogan “strong government, strong parliament” combining the need for a strong and lasting government for Poland, reborn after over a hundred years from non-existence, with rich traditions of parliamentarism. As he explained: “the representation of the nation in the parliament must have a serious and decisive voice, decisive in national matters”³². H. Przeździecki also admitted that initially the project “considered the constitutional monarchy for Poland as its starting point. Members of the Constitutional Committee did not differ in their views from the society in which support for the idea of a monarchical-constitutional system prevailed. Only later, under the influence of the Russian Revolution, began to speak louder, not only among left-wing parties, but also conservatives, about the republic. However, the Committee decided not to go down once, knowing that it was not her, but the will of the nation would decide on the form of government. The Committee did not want to be influenced by a theory that was not known to be shared by the nation, to interrupt work and to conduct a fundamental discussion”³³. Elsewhere, prof. Buzek broadly described the advantages of monarchical rule for a resurgent Poland, and their superiority over republican rule in a country whose inhabitants lacked political development and whose existence is threatened and requires consolidation³⁴. With regard to the specific form of the monarchy, Buzek unequivocally rejected the absolute monarchy as “completely impossible” because “it does not know [...] the rational division of powers and is contrary to the idea of civil liberty.” The question of whether to “give precedence to the form of parliamentary rule or the monarchic rule” divided the members of the Constitutional Committee. Ultimately, it was considered that the constitution should not prevent any of these forms, but life and history would decide about a specific choice³⁵.

Not all participants of the committee’s work shared the positive assessment of J. Buzek regarding the harmonious reconciliation of monarchical and par-

³² H. Przeździecki, *op.cit.*, p. VIII.

³³ *Ibidem*, p. VIII.

³⁴ J. Buzek, *op.cit.*, vol. 2, pp. 119–127.

³⁵ *Ibidem*, pp. 124–125.

liamentary elements in the proposed system. In his *votum separatum* submitted to the draft Committee, a lawyer, prof. Józef Siemieński described the monarch's position as "masked absolutism" and reported a number of evidence in support of his claim and proposals for appropriate changes. In addition to the above-mentioned arguments regarding the King's dangerous discretion in matters of war, the analysis of J. Siemieński shows that in accordance with the constitution, the king could effectively limit the power of the Sejm by recalling him shortly after convening, setting the calendar of sessions, rejecting parliamentary projects that could not be brought back during the same session, or limiting the control powers of the Sejm. Siemieński also drew attention to the problem of insufficient guarantee of the rights of national minorities and too high a percentage of senators appointed by the king. Siemieński opted for a 1/3 to 2/3 relation instead of the projected 1/2 to 1/2 and he proposed that the parliament should consist of 1/3 of the royal nominees, representatives of "social groups at a higher economic level" and "social groups at higher level of education". He lamented the lack of representation of the intelligentsia, coming largely from small and medium nobility, as an important component of the nation, with a rich culture, other than bourgeois and peasant³⁶.

III.

The "draft Constitution for the Polish State" of July 1917 should be considered chronologically the first, full draft constitution for an independent state after the period of partitions. It is an interesting and original testimony to the high substantive level of Polish science of constitutional law developing in the conditions of the lack of its own statehood. It is also proof of recognition of the monarchical system as optimal for the reconstruction

³⁶ *Votum separatum* Józefa Siemieńskiego zgłoszone do projektu Konstytucji uchwalonego przez Komisję Rady Stanu, 1917 (Polish Central Archives of Modern Records -- Archiwum Akt Nowych (AAN), Zespół 2/2/0: Gabinet Cywilny Rady Regencyjnej Królestwa Polskiego w Warszawie, Seria 16.1: Akta Referendarza, jedn. 287: Projekty Konstytucji Państwa Polskiego, k. 65–71).

of statehood³⁷ after more than 120 years of division of territory and nation into three parts and their remaining under foreign occupation. The fully Polish authorship of the draft-project may be a counter-argument against the thesis that that the idea of a monarchical system for the Polish state re-activated in 1918 was completely foreign and imposed from the outside. Although at the end of November 1918 the Polish elite resigned from introducing a constitutional monarchy in Poland, some of the solutions contained in the draft constitution of 1917 became an inspiration for later systemic projects – both those reported during the work on the first and republican constitution of an independent Polish state enacted in 1921 as well as during subsequent discussions on its revision.

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³⁷ It is worth recalling the example of Finland and Lithuania, which have chosen a similar path to independence. Initially, it was a monarchical and then republican path (more on this subject: M.M. Wiszowaty, *W poszukiwaniu optymalnej formy państwa u progu niepodległości. Królestwo Finlandii i Królestwo Litwy z 1918 r.*, “Studia Iuridica Toruniensia” 2012, No. 11).

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