

Jerzy Malec

THE COMMONWEALTH OF POLAND –
– LITHUANIA AT THE TIME OF THE NOBLE
DEMOCRACY, OR THE POLISH ANOMALY?

Today, when we ponder upon the essence of Polish democracy, we eagerly refer to our traditions in the area, namely the so-called the Nobles' Democracy, which was born at the turn of the 15th century. It is even used at times as justification of the deficiencies in our current democratic order, even though the characteristic traits of that democracy of the noble estate included the spread of anarchy and excessive decentralisation of the State. This is because after its fall, Polish Statehood came to an end and with the Partitions, Polish society was denied any element of democracy.

Did the Commonwealth of Poland – Lithuania (*Rzeczpospolita*) provide an imperfect standard of democratic order in the State in the days of the Nobles' Democracy? Or should we, rather, refer to this political structure of the state created in the 16th century as the Polish anomaly? What was the geopolitical reality that that system operated in? These are but a handful of questions that require answers.

The basic political system of modern Europe was beyond doubt absolutism: a political structure lying at the other extreme from what was built in Poland by the middle ranking nobility. These latter gathered

in the so-called Executive Movement and were hostile to the ideas of *absolutum dominium*.

The development of the absolutist form of the state was closely linked to the limiting of the political rights acquired by the estates at the time of an estate-based system. In most cases this was paralleled by the significant limitation, if not liquidation, of estate councils by the monarch and his takeover of absolute sovereign power.

The gathering of all power in a single hand was characteristic of absolute monarchy, much like the institutional personification of the highest state organ in the person of the ruler. The classic representative of this form of political structure, Louis XIV, is supposed to have expressed this principle in *l'Etat ce moi* ("the state is myself"). The absolute ruler was at the same time the supreme legislator, executor of laws and judge. The state administration apparatus subject to the will of the monarch played an immeasurably important role in the reinforcement and securing of the ruler's absolute power. This is why modern management structures adjusted to the needs were built both at central and local levels as part of the process of development and reinforcement of absolute power. At the same time, they were to provide the subjects with rational organisation, stability, order, and security.

The management of the state was based on two fundamental principles: centralism and bureaucracy. The first was linked to the lower-ranking organ's obligation to fall in line with the higher one, and eventually with the subordination of the entire structure of power to the monarch. The principle of bureaucracy in turn revolved around the professional character of the administration and its representatives, i.e. officers. With these in place, further organisation of the apparatus of power was gradually developing¹ based, among other things, on the principles of departmentalism, hierarchic subordination, and collegiality.

¹ D. Malec, J. Malec, *Historia administracji i myśli administracyjnej*, [History of administration and administrative thought], 2nd ed, Kraków 2003, pp. 15&ff, 31&ff.

Absolute monarchy was based on two principal pillars: powerful, centralised administration and a permanently increasing permanent professional military force. Although an essential element of stability in exercising power, they were uncommonly expensive to wield. In the absolute monarchies of the 18th century, maintenance of the army consumed nearly a half of the state's expenditure, while the successively developed administration accounted for not much less.

Absolutism went through various stages of development, and would assume different characters in different eras. From the early absolutism, via its classical form – the enlightened absolutism, to the final form of police monarchy². As a result, it survived in some states until the mid-19th century, and in Russia even to the early 20th.

It should be emphasised that enlightened absolutism was an attempt at modernising the old social and political order, and a fairly efficient one, should we take into account the robustness of centralist monarchies in Austria, Prussia, and Russia, as contrasted with a classic example of absolutist monarchy in France abolished towards the end of the 18th century in the bloodthirsty revolution³.

² S. Grodziski, *Porównawcza historia ustrojów państwowych*, [Comparative history of state systems], Kraków 1998, pp. 143&ff.

³ J. Malec, *Ustrój polityczny*, [Political system], [in:] *Encyklopedia historyczna świata*, [Historical encyclopaedia of the world], Vol. 5: *Historia nowożytna*, [Modern history], Kraków 2000, pp. 112&ff.

HOW THEN WAS POLISH STATEHOOD MOULDED INTO ITS FINAL FORM?

Up until the end of the estate monarchy, the political structure of the Polish state did not differ significantly from the political structures that operated in other European states. The situation began to change though as a result of the exceptionally broad privileges acquired by the Polish nobility. The year 1454 is assumed to have brought an end to estate monarchy in Poland as the noble estate claimed and acquired the leading position in the state, depriving the king of the supreme legislative power, the right to levy extraordinary taxes, and raising the noble *pospolite ruszenie* (*levee-en-masse*) without the consent of noblemen's land assemblies (*sejmiki*). Unlike in most European countries, no absolutism developed in Poland. On the contrary, a peculiar form of political structure – *rzeczpospolita szlachecka*, or the Noble Republic – began to take shape.

The period of the Noble Republic continued until the demise of the state in 1795 and brought the transfer of power into the hands of a single estate: the nobility, and especially that part of the nobility which is defined as the propertied nobility. Until the early 17th century, power was held by the nobility as a single whole, later there came a shift towards the reinforcement of the position of magnates at the expense of all the other layers of the noble estate⁴.

In the Union of Lublin concluded in 1569, the Noble Republic became the commonwealth of two states – Poland (referred to as The Crown) and the Grand Duchy of Lithuania – united by the ties of a real union: a particular form of confederation. It assumed the existence of a single ruler and a single parliament, and common foreign policy,

⁴ Z. Kaczmarczyk, B. Leśnodorski, *Historia państwa i prawa Polski*, [History of Polish state and law], Vol. 2: *Od połowy XV wieku do r. 1795*, [From mid-15th century to 1795], ed. by J. Bardach, Warszawa 1966, pp. 31&ff, 189&ff, 474&ff.

while maintaining separate laws, offices, armies, treasury, and courts⁵. A characteristic trait of the Noble Democracy as a system was the weakness of royal power. Hence the conviction that the Polish state may not be considered a pure monarchy but rather a particular type of formal mixture: the so-called *republica mixta*. It involved the assumption of the republican terminology with simultaneous maintenance of the institution of monarchy. Yet, after the introduction of elections to the throne, the monarch was elected by the rank and file nobility, was subject to the law, and could even be dethroned via the power of the right of dissent. Such a law, the famous *articulus de non praestanda oboedientia* (the article on the right to pledge defiance), was taken down in the Henrician Articles approved in 1576 (though formulated three years earlier) and entered into the coronation pledge of Polish kings. The highest organ of power in the state was the Sejm (lower house of the parliament), where the monarch was only one of the three estates participating in the Sejm, besides the Senate and the Chamber of Envoys. The Full Sejm took shape in the latter half of the 15th century, and continued to broaden its competence for the two following centuries. It was believed that through the agency of the Sejm, the nobility exercises its sovereign power in the state. This is why it took over full legislative authority, approval of taxation, summoning the *levee-en-masse* and the mustering of mercenary troops, the right to wage war, and control over foreign policy. Furthermore, its prerogatives included ennoblement (granting nobility to non-nobles and naturalisation of foreign nobility through *indygenat*), and the exercising of the right of pardon.

The Sejm consisted of two chambers: the Senate and the Chamber of Envoys. The Senate evolved from the former royal council and consisted of Catholic archbishops and bishops, and senatorial officials tempo-

⁵ J. Malec, *Szkice z dziejów federalizmu i myśli federalistycznej w nowożytnej Europie*, [Essays from the history of federalism and the federalist thought in modern Europe], 2nd ed., Kraków 2003, pp. 39&ff.

rary: palatine governors (*województwie*) and castellans and a group of dignitaries known as ministers. Their number included the Chancellor, Deputy Chancellor, marshals (of court and of the crown), and the Grand Treasurer. After the Union of Lublin, their counterparts from the Grand Duchy of Lithuania and Royal Prussia entered the Senate. From 1505, the Chamber of Envoys only represented the nobility. Envoys were elected at land assemblies and equipped with instructions on how to vote at the Sejm, in line with the preferences of their electors. Later they were obliged to swear these instructions under oath, which made them represent the interest of their constituency (land) rather than the state. The sessions of the Chamber were chaired by the Marshal of the Sejm selected from among the envoys.

From the moment of assuming the Henrician Articles as the fundamental rights, the monarch was obliged to convene Sejm every alternate year. The summoning of extraordinary Sejms, between the ordinary sessions, was reserved for special situations. The brief and strictly defined duration of sessions (six weeks, and two in the case of extraordinary Sejms) could be extended only if the consent of all the envoys was achieved. The agenda of the proceedings was shaped through practice and was never sufficiently standardised. The acts of the Sejm were published as resolutions (*konstytucje*) in the name of the king.

For the Sejm to pass a resolution, not only was the unanimity of all the envoys required but also the consent of the Senate and king. This would later turn into one of the main reasons for the crisis of this institution, and consequently of the entire state. It is to be emphasised that in the practice of noble democracy, this principle was often suspended, and the dissent was disregarded. The right of dissent vested in every envoy, that is the infamous *liberum veto*, was initially treated as an absolutely extraordinary measure to guarantee and safeguard the noble

liberties. Until mid-17th century, it never happened that a single envoy would disrupt the session of the Sejm.

Early in the 16th century, the idea of the sovereignty of law in the state prevailed among the nobility. Now, even the ruler was subjected to the idea, following the principle of *in Polonia lex est rex* ("in Poland, law is the king")⁶. The constitution of Nihil Novi limited royal power, transferring legislation into the hands of the Sejm, where the monarch was only one of the three elements of the legislative process. He was left with the supreme administrative powers, which in practice was mostly limited, to the nomination of state officials, formal command of the army, and management of foreign policy between the sessions of the Sejm. This resulted in the institution of the king evolving rather towards the post of lifelong president of the noble 'republic'. Unlike in the absolutist model, where the monarch was law (*rex est lex*) and the supreme power, in Poland one could at most quote Jan Zamoyski's *rex regnat et non gubernat* ("the king reigns but does not rule"), with the reign being actually limited to the minimum.

The resident Senators formed the institution appointed to serve the king with counsel and exercise control over his policy. The 16 resident Senators were appointed at ordinary Sejms, of which four were to remain constantly by the monarch. They reported to the Sejm on their activity. Introduced on the power of the Henrician Articles, they were another element limiting the monarch's independence of action.

In the regions, the nobility exercised rule through land assemblies (*sejmiki*). Being organs of noblemen's local government, these were gaining in importance due to the anachronistic structure of local administration. It was here that the main substance of state power began to concentrate from the mid-17th century onwards, due to the weakening position of the Sejm and the progressive decentralisation

⁶ See: W. Uruszczak, "Sejm walny wszystkich państw naszych". *Konstytucja Nihil novi i sejm w Radomiu w 1505 roku*, ["The General Assembly of all our states". The *Nihil Novi* Constitution and the *Sejm* in Radom in 1505], Radom 2005, p. 5 (unpaginated).

of executive power. This brought about the peculiar form of “rule of land assemblies”⁷.

It is to be emphasised that the nobility exercising their political rights, e.g. through the election of the monarch, participation in land assemblies, and election of envoys, accounted for 8-10% of the country’s population: a most unusual phenomenon on a European scale. In comparison with this, in England, considered the cradle of democracy, such a high share of population had not acquired election rights until the 1st half of the 19th century.

All the positions in the state were lifelong tenures, without much attention paid to the competence of the candidates. A network of purely titular offices developed and included cup-bearers (*częśnicy*), masters of the pantry (*stolnicy*), sword-bearers (*miecznicy*), masters of the hunt (*łowczy*), etc. The utter lack of modern, bureaucratised forms of administration was quite an unpraiseworthy feature distinguishing Poland from other European states.

The estate-based judiciary structures continued to the end of the “Noble Republic”. For the nobility, the district courts administered by royal starosts, castellans, and chamberlains were the lower courts. The Crown Tribunal, a court of appellate jurisdiction was established in 1578, with its counterpart Lithuanian Tribunal established for Lithuania in 1581⁸. The courts of the municipal council and bench as well as

⁷ J. Malec, *Ustrój polityczny...*, pp. 126&ff.

⁸ VL, vol. 2, pp. 962–969. See also: A. Lisiecki, *Trybunał Główny Koronny siedmiu splendorów oświecony*, [The High Crown Court in the light of seven splendours], Kraków 1638, H. Rutkowski, *Trybunał Koronny w Piotrkowie*, [The Crown Court in Piotrków], [in:] *Dzieje Piotrkowa Trybunalskiego*, [History of Piotrków Trybunalski], Łódź 1989; W. Zarzycki, *Trybunał Koronny dawnej Rzeczypospolitej*, [The High Crown Court of the bygone Commonwealth], Piotrków Trybunalski 1993; I. Wierzbowiecka, *Uwagi do funkcjonowania Trybunału Litewskiego na tle przemian ustrojowych Rzeczypospolitej w drugiej połowie XVII wieku*, [Comments on the functioning of the Lithuanian Court against the systemic changes in the Commonwealth in the latter half of the 17th century], [in:] *Wielokulturowość polskiego pogranicza. Ludzie – Idee – Prawo*, [Multiculturalism of the Polish boarded marches. People – ideas – law], ed. by A. Lityński, P. Fiedorczyk, Białystok 2003, pp. 343–348; W. Witkowski, *Trybunał Koronny w Lublinie – organizacja i funkcjonowanie*,

some higher courts under the German Magdeburg Law, continued their operation in the cities. The last of these were losing their importance due to the establishment of the supreme court of appeal chaired by the Chancellor in the capacity of the appellate court in municipal matters. In villages, the judicial authority remained in the hands of landowners, who acquired the right to punish their subjects even with the death sentence. Such a practice was rarely resorted to, however, with the cases being rather transferred for consideration by the court of the nearest city or borough.

A major weakness in the organisation of the state was the weakness of the army. Treatment of the *levee-en-masse* of the nobility as the primary armed force helped to increase the threat that the neighbouring states posed for Poland.

The political structural model of the state did not change at the time of the oligarchy of the magnates. What nonetheless changed, due to the magnates capturing the structures of power, was the circle of persons deciding about the political life of the country. *Zebrzydowski's Rebellion* (1606–1607) when nobility for the last time took to arms to disrupt the alliance between the king and senators and to check the attempts to introduce absolute power, is assumed as the beginning of oligarchic rule. The defeat of the rebellion became the beginning of the reign of magnates who completely took over at the helm in the latter half of the 17th century, after the *Lubomirski Rebellion*. It was followed by a further decline in the position of the monarch and the decrease in the political importance of the middle nobility resulting from the economic crisis being the aftermath of the numerous wars conducted in that century. The middle nobility would ever more frequently become a compliant and obedient tool in the hands of magnates competing for power among themselves. References by

[The Crown Court in Lublin – organisation and operation], [in:] *400-lecie utworzenia Trybunału Koronnego w Lublinie*, [400 years of establishing the Crown Court in Lublin], Lublin 1982, p. 59.

the continuously governing elite to the, allegedly valid, principle of noble equality flattered the nobility, giving them with an illusory sense of participation in the exercise of power. This in turn favoured the stability of government by the magnatial oligarchy, contributing to the decomposition of state structures.

This was the time when the doctrine of the “Golden Freedom” of the nobility was spreading. This doctrine’s basic foci of attention was to be free elections and *liberum veto*. Moreover, it assumed that there was a need to acquire balance *inter maiestatem et libertatem* – between the king pursuing the strengthening of power at the cost of nobles, and the noble liberties leading to anarchy. The Senate, which was becoming ever more the symbol of oligarchic rule, was perceived to be the institution safeguarding this balance⁹.

As far as the organisation of state authorities was concerned, this was the time of significant limitation of royal prerogatives and further decentralisation of the state. In the year 1652, the dissent of a single envoy was recognised as valid for the first time when making resolutions concerning the limitation of the session of the Sejm. *Liberum veto* was slowly becoming a means frequently resorted to in the interest of individual magnate dynasties, and often also of foreign powers. This stymied the sessions of the Sejm, and consequently paralysed the entire state. The Saxon Era (1697–1762) was the time of the worst decline, with only five Sejms managing to complete their sessions. Parallel to the progressive disorganisation of the state apparatus, the importance of the private magnate ‘estates’, frequently featuring developed structures of bureaucratic administration closer in character to absolute monarchies, continued to grow.

This is how the model of the state defined in the 16th century as modern and capable of being a counterweight, if not competitor, to ab-

⁹ S. Grodziski, *Porównawcza historia ustrojów państwowych*, [Comparative history of state systems], Kraków 1998, pp. 152&ff.

solutist tendencies began to degenerate and consequently weaken the structures of the state itself. The peculiar anomaly of Polish political structures that had most positive connotations even during the “Golden Age” began to acquire an increasingly negative sense throughout the 17th and especially during the 18th century.

Under the reign of the Saxon kings, with the ideas of enlightenment penetrating to Poland the primal modern concepts postulating full reform of the political order in the Commonwealth began to surface. The danger resulting from the conviction popular among the majority of the nobility that “it is by lack of rule that Poland stands” guaranteeing the promising future of the state and its inviolable *status quo*, begun to be noticed. The political reality was entirely different. The decrease of Poland’s standing on the international scene, the permanent disruptions of Sejms and land assemblies, the lack of strong central power, and the local administration being taken over by an inefficient and formally anachronistic nobles’ government, not to mention the meagre army – all these brought about the final fall of the Commonwealth. At the same time, the presence of strong absolute powers as neighbours equipped with efficient, centralised apparatus of power made the threat very real. The reform of the state undertaken in the years 1764–1792 was to counter such a state of affairs. Its high point was the time of the Four Years’ Sejm, when the Assembly adopted the Constitution of 3rd May – Europe’s first, and the world’s second written constitution – in order to build modern structures of public authority.

All in all, the reforms embarked on came too late. Unfortunately, the political model of the political structure of the state defined in the “Governing Act” (*Ustawa Rządowa*) did not last long. Its final demise was caused by the events that occurred soon after 1792: the Confederation of Targowica, the Sejm of Grodno, and the Third Partitioning of Poland. Yet it would be impossible to only look for the reasons of the fall of the Commonwealth in external factors, in the decomposition of state

institutions and the escalation of anarchy under the Saxon reign, and in the peculiarly Polish anomaly of political order that did not stand the test when confronted with the centralised absolute monarchies of the neighbouring powers. Contributions to such a fall must have included the still premature attempt to build a democratic state based on the rule of law in Poland¹⁰.



¹⁰ *Ibidem*. For more information on the political structure and order of the Noble Republic, see: T. Maciejewski, *Historia ustroju i prawa sądowego Polski*, [History of Polish political system and judicial law], Warszawa 1999, pp. 34&ff; R. Łaszewski, S. Salmonowicz, *Historia ustroju Polski*, [History of Polish political system], Toruń 1995, pp. 37&ff; A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772-1918)*, [History of Polish political system and law 1772-1918], Kraków 1998, pp. 15&ff. On the reforms of the Four Years' Sejm, see: B. Leśnodorski, *Dzieło Sejmu Czteroletniego (1788-1792). Studium historycznoprawne*, [The achievements of the Four Years's Sejm 1788-1792. A study in history and law], Wrocław 1951.