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**Wojciech Bogumił Jastrzębowski's Draft European
Constitution Versus the Contemporary Realisation
of the Idea of Continental Unity**

Keywords: European Union, Europe, Lisbon Treaty, Wojciech Bogumił Jastrzębowski, draft constitution, Maastricht Treaty, European Congress, general disarmament

Słowa kluczowe: Unia Europejska, Europa, Wojciech Bogumił Jastrzębowski, projekt konstytucji, Traktat w Maastricht, Traktat z Lizbony, Kongres Europejski, powszechne rozbrojenie

Abstract

Wojciech Bogumił Jastrzęboski's draft of a Constitution for Europe is a vision of an ideal European social order, whose foundation is to be found, inter alia, in the citizen's universal right to freedom and independence, to diversity and individual identity, as well as the right to live in peace. It is thus highly apparent that a number of parallels exist between the alliance of nations postulated by Jastrzęboski and later forms of integration existing and still being developed in contemporary Europe. The aim of this article is to analyse and characterize the existing similarities, and also the most significant differences, between the monarchist vision of the European alliance of nations, as presented by the author of the Constitution for Europe, and the contemporary realisation of the idea of the unity of the continent.

Streszczenie**Projekt konstytucji europejskiej Wojciecha Bogumiła Jastrzęboskiego
a współczesna realizacja idei jedności kontynentu**

Projekt Konstytucji dla Europy Wojciecha Bogumiła Jastrzęboskiego stanowi wizję idealnego europejskiego ładu społecznego, którego fundament stanowić ma między innymi powszechne prawo obywatela do wolności i niezależności, do różnorodności i własnej indywidualnej tożsamości, a także prawo do życia w pokoju. Nad wyraz widoczny jest zatem szereg zbieżności, które istnieją pomiędzy przymierzem narodów postulowanym przez Jastrzęboskiego a późniejszymi formami zespolenia, funkcjonującymi i nadal rozwijanymi we współczesnej Europie. Warto zatem przedstawić kilka uwag na temat istniejących podobieństw, ale też i istotnych różnic, między monarchistyczną wizją europejskiego przymierza narodów, przedstawioną przez autora Konstytucji dla Europy, a współczesną realizacją idei jedności kontynentu. Celem niniejszego artykułu jest analiza i charakterystyka istniejących podobieństw, jak również najistotniejszych różnic, między monarchistyczną wizją europejskiego przymierza narodów, przedstawioną przez autora Konstytucji dla Europy, a współczesną realizacją idei jedności kontynentu.

I. Introduction

Wojciech Bogumił Jastrzębowski took an active part in the November Uprising of 1830–1831¹, serving as a volunteer in the artillery of the National Guard. According to legend, reiterated by his biographers, it was after the bloody battle of Olszynka Grochowska, in which he participated, that he wrote a treatise entitled: *The Polish soldier's spare time, thoughts on the eternal alliance of civilised nations. Constitution for Europe* (Polish: *Wolne chwile żołnierza polskiego, czyli myśli o wiecznym przymierzu między narodami ucywilizowanych. Konstytucja dla Europy*)². On 1 May 1831, he handed the text of the treatise to the secretary of the Royal Warsaw Society of the Friends of Science. He dated the preface to this treatise on 21 February 1831. It was a kind of introduction to the draft of the Basic Law. Wojciech Bogumił Jastrzębowski's vision, which today appears to be utopian, may have been the only hope for regaining independence and an independent national identity after the defeat of the November Uprising. As noted by T. Skoczek, "the proposals contained in the individual points of the *Constitution for Europe* remain relevant to this day. These are the vision of an ideal European social order, the citizen's universal right to freedom and independence, to diversity and individual identity, the right to live in peace"³. It is these suggestions that point to a number of parallels between the described alliance of nations postulated by Jastrzębowski and the later forms of unity, functioning and constantly being developed in contemporary Europe. The aim of this article is to analyse and characterize the existing similarities, and also the most significant differences, between

¹ The November Uprising (1830–31), also known as the Cadet Revolution, was an armed rebellion in the heartland of partitioned Poland against the Russian Empire. The trauma of the quashed insurgence and the repressions that followed made several generations of Poles have a preference for uprisings and consider Russia the cruellest of the partitioning powers. See more: P. Kuligowski, W. Marzec, *Who May Represent a Nation in Upheaval? The Concept of Representation during the Polish November Uprising, 1830–1831*, "Journal of Modern European History" 2023, no. 21(1), pp. 34–51.

² B. Dymek, *Wizja przymierza między narodami Europy z 1831 r. według Wojciecha Bogumiła Jastrzębowskiego*, Warszawa 2003, p. 7; J. Schiller-Walicka, *Wojciech Bogumił Jastrzębowski – biografia i działalność nauczycielska*, "Rocznik Towarzystwa Naukowego Warszawskiego" 2018, Y. LXXXI, p. 52.

³ W.B. Jastrzębowski, *Konstytucja dla Europy*, introd. by T. Skoczek, Kraków 2021, p. II.

the monarchist vision of the European alliance of nations, as presented by the author of the Constitution for Europe, and the contemporary realisation of the idea of the unity of the continent.

II. The monarchist vision of the European alliance of nations vs. the post-war concept of European integration

First of all, of course, it is necessary to point out the various conditions and circumstances that influenced the shape of Jastrzębowski's model of a united Europe, as well as the premises and foundations for the efforts which ultimately led to the creation and development of the European Union. In the case of the vision related to the bloody course of the November Uprising, the main factor was undoubtedly the desire to ensure peace between nations, and this was the issue that Jastrzębowski put forward at the forefront of his considerations in the work under review. He claimed that "people desire happiness, and happiness is the fruit of peace; peace is the natural result of the reign of truth"⁴. He believed that the history of mankind had been marked by wars and barbarism alone, which is why he appealed so earnestly to the peoples of Europe and to monarchs to reach an understanding and "abandon mutual and ineffective murders"⁵.

With regard to the European Union, on the other hand, it should be emphasized that, from the late 1940s onwards, the aim of the proponents of the idea of European integration was first and foremost a consistent effort to replace sovereign statehood on the European continent, initially mainly in the economic sphere, by international organizations and communities as a reaction to the causes, course, and catastrophic consequences of the Second World War. The meeting of over a thousand representatives of various movements in favour of a more united Europe was the second significant step towards integration. This meeting took place in The Hague in 1948 and is known as the Congress of Europe. Taking into account the whole package of resolutions adopted at the Congress and the developments in international politics at the time, European govern-

⁴ W.B. Jastrzębowski, *Traktat o wiecznym przymierzu między narodami ucywilizowanymi. Konstytucja dla Europy*, elaborated by F. Ramotowska, edition II, Warszawa 2021, p. 172.

⁵ *Ibidem*, p. 174.

ments began multilateral negotiations to define the shape of a new international organisation. Finally, in May 1949, the Statute of the new organisation was signed in London by representatives of ten Western European countries. This Statute established the Council of Europe as an international organisation of a sub-regional nature. The creation of the Council of Europe did not automatically rule out the possibility of another war. It was, however, the beginning of a process that would gain momentum in the years to come and would enable closer cooperation between the member states of the Council of Europe, an indispensable factor in maintaining peace on the continent. Furthermore, it was imperative to reconstruct the economic system of a Europe devastated by warfare⁶. It is often emphasized that, in line with the famous Schuman Declaration of 9 May 1950, the process of European integration was seen at first as a way of peacefully uniting countries through the economy⁷.

However, it is important to bear in mind that in post-war Europe, as a result of the change in the global balance of power in international relations and the division into opposing political blocs, a split into two competing political systems occurred. A consequence of this was the emergence of separate organizational structures of economic groupings – the Council for Mutual Economic Assistance⁸ (1949) and the European Economic Community (1957). Advocates of the integration of Western European states argued that, in addition to improving the efficiency of economic activities, it would bring about an improvement in the standard of social life following the war crisis, and that it would enable joint resistance to the political pressure of the USSR in Europe, its own internal political stabilisation, the possibility of integrating Germany into pan-European cooperation, and narrowing the distance between the United States and Europe.

It is important to note that considerable differences also exist between Jastrzębowski's vision of the creation of a common Europe and the manner

⁶ A. Wróbel [in:] *Wprowadzenie do prawa Wspólnot Europejskich (Unii Europejskiej)*, ed. A. Wróbel, Zakamycze 2004, pp. 27–28.

⁷ C. Mik, *Europejskie prawo wspólnotowe*, vol. I, Warszawa 2000, pp. 31–33.

⁸ According to K. Łastawski, in the eastern part of the European continent, it was not possible to develop equal integration processes, but there occurred Russian-controlled uniformisation measures, resulting in the creation of the Comecon in order to bring the dependent countries closer together: K. Łastawski, *Historia integracji europejskiej*, Toruń 2006, p. 87.

in which the European Communities and the European Union were established and their legal nature. In his treaty, Jastrzębowski held that all European peoples were to renounce their freedom and become slaves to laws, and that monarchs would be the guardians and executors of these laws (Art. 1). Nowadays, the member states of a united Europe, transfer only part of their sovereign powers to the pan-European structures of the Union and therefore do not fully surrender their sovereignty, as Jastrzębowski wanted.

In addition, they continue retaining their separate statehood, and not as Jastrzębowski saw it, proclaiming that “henceforth there will be no countries at all in Europe, but only nations” and “the hitherto boundaries between countries (the main cause of European bloodshed) are abolished forever” (Art. 9). It should be emphasized that in today’s united Europe, the Member States remain independent subjects of international law, even though their competences in the sphere of international law are limited by the competences of the European Union⁹. The European Union is not a state. It does not have the attributes of a state nor are its member states entitled to determine their own competences. It does, however, have legal personality as determined by its founding treaties, as well as legal capacity and the capacity to take legal action.

From a formal point of view, it is therefore a separate international organization. It is distinctive from other international organizations by virtue of its specific relationship to its member states and its supranational character. For the sake of order, however, it should be noted only that with the Maastricht Treaty of 7 February 1992 the European Union became one of the dynamically developing integration organizations. It was tasked with promoting steady and sustainable economic and social progress principally through the establishment of an economic and monetary union, the shaping of a common defence policy, the introduction of Union citizenship, the strengthening of the legal structures of integration, and the consolidation of its mechanisms and institutions, as well as the development of cooperation in the fields of justice and home affairs. Since its inception, integration has thus extended into new

⁹ A. Wróbel [in:] *Wprowadzenie...*, p. 57; for a discussion of the main problems of EU membership see A. Doliwa-Klepacka, Z.M. Doliwa-Klepacki, *Członkostwo Unii Europejskiej ze szczególnym uwzględnieniem Polski*, Białystok 2008, p. 12 et seq.

areas: legal, political, and social. Also, economic cooperation has deepened and the territorial scope of European integration has expanded¹⁰.

With reference to the issue of the nation raised by Jastrzębowski, by which he meant people speaking one language, regardless of their place of residence in Europe, and taking particular note of the content of the provision contained in his draft *Constitution for Europe* that “henceforth there shall be no countries in Europe but only nations” (Art. 9 and 11), it is appropriate to expound on the institution of Union citizenship adopted in today’s Europe. Citizenship of the Union refers to natural persons who are nationals of the Member States of the European Union. However, it is important to stress its accessory nature, as it does not replace, but complements, the citizenship of a Member State. Citizenship of the Union is a derived legal relationship in that it does not exist without the citizenship of a Member State¹¹. The bond that is created by this citizenship relationship is a personal one and concerns exclusively natural persons. Being a national of a Member State remains a prerequisite for being considered a citizen of the Union¹². There is, therefore, no coincidence between Jastrzębowski’s vision of nation and citizenship of the Union, as a citizen of a Member State possesses both the citizenship of his/her own state and that of the Union.

Consideration should also be given to Jastrzębowski’s forward-looking vision of the membership of other, non-European states in the so-called alliance between nations. It is notable that he did not close the way to nations that wished to ‘civilise themselves’ and join the European alliance. This could have been any nation ‘from whatever part of the earth.’ This would imply that Jastrzębowski’s vision did not apply only to Europe, but also to other continents. In other words, his vision was much more far-reaching than the current solutions in Europe, which deal solely with the affiliation of European states. Currently, only ‘European countries’ can apply to become members of the European Union, with no geographical meaning of the term, but rather the historical and cultural identity of countries belonging to a common Eu-

¹⁰ More broadly J. Barcz, *Unia Europejska na rozstajach: Traktat z Lizbony: dynamika i główne kierunki reformy ustrojowej*, Warszawa 2010.

¹¹ E. Skibińska [in:] *Wprowadzenie...*, p. 91.

¹² M. Serowaniec, W. Włoch, *Obywatelstwo Unii Europejskiej w świetle koncepcji dzielonej suwerenności ludu J. Habermasa*, “Przegląd Prawa Konstytucyjnego” 2014, no. 4.

ropean heritage¹³. Hence, *inter alia*, the understandable problems with Turkey's accession to the European Union.

The institutional issues are also worth referring to¹⁴. In his work, Jastrzębowski identified the Sejm as the body laying down national laws, and the Congress composed of representatives of all nations as the body enacting European laws (Art. 4)¹⁵. The custodian and executor of national rights was to be the patriarch elected by the people, and of European rights the Congress (Art. 8). The first responsibility of the Congress was to legislate on European laws (Art. 5). It should be noted that in today's Europe, the institutional structure of the European Union is much more developed, and the European Congress postulated by Jastrzębowski is replaced by the following EU bodies: the European Council, the European Parliament, the European Commission, the Council of the European Union, the Court of Justice of the EU, and the European Court of Auditors¹⁶.

Under the Lisbon Treaty, the Council of the European Union is the main law-making body, as it has decision-making competence and is composed of representatives of the Member States at ministerial level, who represent their interests. It can therefore be said that, in a sense, it fulfils the role of the European Congress envisaged by Jastrzębowski; however, it is not, in the literal sense of the word, its counterpart. The Lisbon Treaty formally recognises the European Council as an EU institution, whose role is to provide the Union with the 'impetus necessary for its development' and to define its 'general political directions and priorities.' The European Council, in turn, has no legislative functions¹⁷.

The founding treaties, by contrast, defined the Parliament's role as strictly advisory¹⁸. Presently, however, under the Lisbon Treaty, the role of the Eu-

¹³ A. Wróbel [in:] *Wprowadzenie...*, p. 58.

¹⁴ J. Barcz, M. Górka, A. Wyrozumsk, *Instytucje i prawo Unii Europejskiej*, Warszawa 2008, p. 113 et seq.

¹⁵ More on the contemporary role of national parliaments after the entry into force of the Lisbon Treaty, cf. inter alia C. Mik, *Pozycja prawna parlamentów narodowych w Unii Europejskiej w świetle Traktatu z Lizbony*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2010, no. 2.

¹⁶ A. Pudło, *Rola parlamentu narodowego w sprawach UE po wejściu w życie Traktatu z Lizbony*, Warszawa 2014, pp. 16–18.

¹⁷ J. Barcz, *Traktat z Lizbony. Wybrane aspekty prawne działań implementacyjnych*, Warszawa 2012.

¹⁸ J. Marszałek-Kawa, *Struktura i funkcjonowanie Parlamentu Europejskiego*, Toruń 2002, p. 77.

ropean Parliament has been enhanced. Parliament's legislative competence has been augmented with the new 'ordinary legislative procedure,' which replaced the former co-decision procedure¹⁹. It is worth noting here that this is the only body with representatives of the Member States who are elected by universal and direct suffrage²⁰. As mentioned in the previous section, Jastrzębowski's conception of representation in Congress was that 'each nation shall send an equal number of plenipotentiaries whom the national parliament shall elect, to the European Congress' (Art. 30). We should point out that currently the criterion for the distribution of seats in the European Parliament between the various states is the population, hence each state has a different number of representatives.

The European Commission, in turn, is the supranational decision-making and executive body of the European Union, independent of governments and Member States. It monitors compliance with EU law by the Member States, including lodging complaints and bringing actions before the Court of Justice of the EU. Hence, it is commonly referred to as the "guardian of the Treaty"²¹.

Jastrzębowski attached an important role to the observance of law. He believed that the 'universal law of nations' equal and free in civilised Europe should be introduced first, and then extended to other continents. It can therefore be assumed that he envisaged the very real possibility of a European system of law as it exists today in a united Europe, assuming the expansion of such a legal area to further continents. Currently, the EU legal system consists of primary (treaty law) and secondary (acts created by EU bodies) legal acts.

As indicated above, in Jastrzębowski's view, Congress was to be the 'guardian and executor of European rights' (Art. 8). At present, as far as the judicial review of compliance with the law is concerned, the system of EU legal protection is dualistic, as cases arising from the application and interpretation of Community law are heard by the EU court in the constitutional sense, i.e. the Court of Justice of the EU, established in accordance with the provisions of primary law, and the EU courts in the functional sense, i.e. the courts of the Member States founded on and acting in accordance with internal law.

¹⁹ M. Serowaniec, *Parlamentarne komisje do spraw europejskich*, Warszawa 2016, pp. 65–66.

²⁰ A. Szoplińska [in:] *Wprowadzenie...*, p. 242.

²¹ J. Galster, Z. Witkowski, K.M. Witkowska, *Kompendium wiedzy o Unii Europejskiej*, Toruń, 2006, p. 131.

In other words, in today's Europe, judicial review is undertaken by the courts and not by a body that also has legislative powers²².

In his draft of the Constitution, Jastrzębowski indicated that “the life, liberty, property, and honour of each member of a nation shall be the subject of special care by national laws,” while “the existence, independence, property, and honour of each shall be the subject of special care by European laws” (Art. 70). In contemporary Europe, the Treaty of Amsterdam reinforced the meaning and function of human rights by defining the protection of human rights as the principle on which the European Union is founded, and established the Union's obligation to respect and protect human rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, alongside the human rights derived from constitutional traditions²³. In this context, it is worth mentioning that in December 2000, the Charter of Fundamental Rights of the European Union, which indicates in its Preamble that “The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values”²⁴, was proclaimed in Nice. The Charter refers to such fundamental rights as dignity, freedom, equality, solidarity, and citizens' rights²⁵. It is the first official ideological manifesto in the history of the European integration process by the Union's key decision-making bodies on the role and importance of the individual in this process²⁶. It should also be added that the legal nature of the Charter has changed over the years, from a political document (after the Nice Treaty) to a legally binding act (after the Lisbon Treaty).

Jastrzębowski also raised the matter of universal disarmament. Weapons were to be used solely for the defence of the alliance. They were to be stored in places of ‘bloodshed’ (Art. 48). It also pointed out that “an injury done to the rights of one nation belonging to the covenant by another nation, whether

²² It can therefore be assumed that this body acts as the guardian of Community law with regard to the failure of Member States to fulfil their Treaty obligations. *Ibidem*, p. 137.

²³ A. Wróbel [in:] *Wprowadzenie...*, pp. 38–40.

²⁴ *Prawo Unii Europejskiej*, elaborated by A. Barcik, P. Dziwiński, Bielsko-Biała 2010, p. 385.

²⁵ A. Łazowski, A. Łabędzka, M. Szpunar, *Prawo Unii Europejskiej*, Warszawa 2004, p. 224.

²⁶ C. Mik, *Karta Praw Podstawowych Unii Europejskiej. Zagadnienia podstawowe* [in:] *Traktat Nicejski*, ed. A. Podrazy, Lublin 2001, p. 43.

European or barbarian, shall be regarded as an injury to the rights of all Europe” (Art. 44). The internal order was to be guarded by the guard of rights as a military formation headed by a patriarch, but “the guardians of rights of the nations mixed with each other shall also remain under the command of their respective patriarchs, but the chief command shall belong to another every year in succession” (Art. 53).

Comparing these issues to the current arrangements, it should be pointed out that the changes in the Lisbon Treaty provided an opportunity to politically align the Common Foreign and Security Policy and the Common Security and Defence Policy. The Lisbon Treaty introduced the concept of a European capabilities and armaments policy (Art. 42(3) TEU). Furthermore, Art. 21 TEU reiterates that multilateralism is the basis of EU foreign policy. The EU is actively involved in various structures of closer coordination and cooperation, notably the UN and the North Atlantic Treaty Organization (NATO)²⁷.

Finally, as discussed above, Jastrzębowski defined the concept of unlawful plunder, distinguishing between the case of the taking of private property and that of national property. In the event that the governments “of the nations in dispute were unable to settle a similar matter by mild measures,” the European Congress would be empowered to settle the dispute (Art. 66). In turn, disagreements between members of the respective nations were to be settled and punished by judicial commissions (Art. 67).

In order to make a comparison with contemporary developments, it should be stressed that the Lisbon Treaty has provided a stronger basis for the evolution of the criminal justice area. To meet the challenge posed by cross-border crime, measures to promote judicial cooperation in criminal matters between Member States have been incorporated into the area of freedom, security, and justice. The starting point is the principle of mutual recognition. Specific measures have also been adopted to combat transnational crime and terrorism and to ensure that the rights of victims, suspects and prisoners throughout the EU are protected.

²⁷ M. Serowaniec, *Europeizacja tradycyjnych funkcji polskiego parlamentu w świetle postanowień traktatu z Lizbony oraz ustawy kooperacyjnej z 8 października 2010 roku*, “*Studia Iuridica Toruniensia*” 2014, vol. 14, pp. 339–340.

III. Conclusions

Finally, it is important to emphasize that Jastrzębowski, writing his draft Constitution for Europe in the first half of the 19th century, was more than a century ahead of the idea of European integration in its contemporary form. We should agree with Z. Czachór, who stated that: “European integration (...) unquestionably leads to a remodelling of the international geopolitical landscape and, in particular, to the formation of a new European configuration, a new model, a pattern for contemporary international relations”²⁸. Of course, in the course of the last seventy years we have repeatedly seen that the process of integration of our continent is in fact very complex and difficult. Nonetheless, it seems that the “spirit of a common Europe,” which found expression in Jastrzębowski’s draft Constitution, continues to be alive.

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