

## Some thoughts on the March 1921 Constitution.

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**Abstract:** The essay examines the relevance of the 1921 Constitution in the framework of both Polish and European constitutionalism. Particular attention is paid to the historical genesis of the constitutional text, after the First World War, as well as to the stage of preparatory work. The difficulties of implementing the constitutional text are also analyzed.

**Keywords:** Polish Constitution of 1921, European constitutionalism, historical evolution, preparatory work, implementation difficulties.

The constitution of 1921 has been truly considered to be one of the most democratic constitutions written in the immediate years after the First World War Europe. It stands also as a great example of the Polish constitutional tradition extending well into the Middle Ages with the first<sup>1</sup> parliamentary estate assembly, the Sejm Walny /Diet/, established in 1468. The March 1921 Constitution in its preamble listed basic constitutional norms upon which the new fundamental law was to be based. It recalled the long and tortuous road to independence and affirmed a continuity of the Polish state reborn in 1918 after a long period of partitions. It referred to the crowning achievement of a distinctive Polish Enlightenment, that is

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<sup>1</sup> As the only one in Europe, with a sole exception of England, it was a truly working representative institution from the beginning to the end of the Polish state partitioned in the 18th century by Russia, Prussia and Austria. All other estate parliaments ended very quickly being subordinated to the absolutist king's rule. But the Polish Diet was effectively checking the king's power and was truly considered to be the preeminent republican institution.

the 3rd.May Constitution of 1791<sup>2</sup>. It was the first European constitution and the second one after the American of 1787<sup>3</sup>.

*In the Name of Almighty God! We, the Polish Nation, thanking Providence for liberating us from one and a half centuries of captivity, remembering with gratitude the valour and perseverance of the self-sacrificing struggle of the generations which unceasingly devoted their best efforts to the cause of independence, evoking the splendid tradition of the memorable Constitution of 3 May – seeking to ensure the good of the entire united and sovereign Motherland and wishing to establish Her independent existence, power and safety, as well the social order on the eternal principles of law and liberty, desiring at the same time to ensure the development of all Her moral and material forces for the good of entire renascent humanity, and to securing equality to all citizens of the Republic, and respect, due rights and special protection of labour by the State - we hereby adopt and enact this Constitutional Act at the Legislative Assembly of the Republic of Poland.*

The constitution had an extensive list of rights , some of them like suffrage to women rooted in the long tradition of their high social status in Polish history , It also provided wide-ranging rights to the national and ethnic minorities living in the Republic. But its construction had many flaws and did not necessarily suit the immediate needs of a new state. Poland regained independence in 1918 and the 18th of November is considered to be its symbolic beginning . From the onset the question of constitutional and legal foundations of the newly reborn state began to be a pressing issue .Discussions about this problem lasted over two years because of the highly volatile international situation due mainly to grave military threats to Polish independence as well as different models of constitutional arrangements hotly debated in the extremely politically divided country

<sup>2</sup> It was still a feudal constitution as far as its social construction was concerned , with different political rights given to separate estates . In this sense formally it did not accept the universal idea of citizenship like the American Constitution (except of course slaves) and the second of European Constitution , the French one of September of 1791. But the Polish Constitution was the most modern in its political construction introducing for the first time in the world, in a written form a cabinet-parliamentary system with a political and constitutional responsibility . England had political responsibility as a matter of practice , but not written anywhere into a single document. See on the Polish 3rd of May 1791 Constitution and its brilliant novelty , immediately noticed , for instance by Edmund Burke, R.R.Palmer „The Age of the Democratic Revolution :A Political History of Europe and America , 1760-1800”, Princeton University Press, Princeton 2014 (new editio); also a good account of the May Constitution novelty see Richard Butterwick „The Constitution of 3 May 1791.Testament of the Polish- Lithuanian Commonwealth”, <https://polishhistory.pl/the-constitution-of-3-may-1791/>

<sup>3</sup> On this unique Polish Enlightenment which could be ranked next to the American, Scottish and the French ones see Richard Butterwick „ The Polish Revolution and the Catholic Church: A Political History”, Oxford 2011; also Richard Butterwick , Simon Davies, Gabriel Sanchez Espinoza/Ed./ , „Peripheries of the Enlightenment”, Voltaire Foundation, Oxford 2008]

.Everybody agreed that Poland has to be rebuilt from scratch since the First World War activities on the eastern front devastated its territory that the new constitution should also be a legal tool aiding such a recovery as quickly as possible. Although no political force denied a need for a constitution a consensus as far as its nature was concerned could not be easily found. For the time being in February 1919, the single-chamber parliament, the Legislative Sejm elected in January adopted the so-called Little Constitution. For the time being it defined the main, operating principles of Poland's state institutions. But every political option agreed that this was just a provisional solution. Finally the March Constitution of 1921 was adopted with borders still unsettled. True, the Bolsheviks invasion was defeated in two great battles :at the gates of Warsaw in August and at Niemen river in September of 1920 with the Treaty of Riga to be signed with Soviet Russia the next day after the adoption of the March Constitution. But the Constitution's adoption happened still three days before the Upper Silesia plebiscite. Its outcome was to decide whether this important industrial region would go to Poland or Germany determining the very ability of Poland to develop economically within a hostile international environment. Two overtly revisionists from the beginning states :the Soviet Russia and Germany never in fact accepted the very existence of an independent Polish state and focused on its liquidation which eventually happened in 1939. They also rejected the terms of the Versailles Treaty. The Treaty based the European post First World War order on three premises : to keep the Germans permanently down, to keep the Soviet Russia out and to create a bastion of independent nation states in East-Central Europe on the ruins of the former empires, which together with Western powers, especially the main victor France, were going to stabilize the European continent<sup>4</sup>.

These principles were untenable since it was impossible to keep temporarily defeated superpowers permanently isolated and kept out of the European politics, the superpowers which were bent on destruction of the Versailles Treaty with the East Central-European newly created nation states too weak to provide a firm basis of stability. Soon the Rapallo treaty of 1922 between Germany and the Soviet Russia overtly aimed at demolishing the Treaty arrangements especially its East –Central European pillar mainly Poland. In such a situation a permanent ominous international situation combined with a question of economic viability of the Polish state definitely should have influenced constitutional discussions. They should have been aware of real challenges thus making all political options focused on strengthening potential assets and neutralizing weak points of the reborn

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<sup>4</sup> A good overview of the post First World War situation in East Central Europe see for instance Piotr Wandycz *France and her Eastern Allies 1919-1925. French-Czechoslovak-Polish Relations from the Paris Peace Conference to Locarno*, Minneapolis: The University of Minnesota Press 1962.

Polish state. Alas the Polish political scene was too hererogenous and infused with bitter political conflicts exluding any chance of even basic consensus. Thus the March Constitution of 1921 despite its indisputably great features was a compromise not necessarily best suited for challenges awaiting Poland. One could recall in this context a wise remark attributed to Solon (c. 635 – c.. 560B.C.) a politician and a great legislator in Ancient Athens . Asked what should be the best regime for any country he allegedly responded „*It depends for which country and when*”. This dictum may be applied to the March Constitution of 1921 as well.,

Devastated after the First World War Poland , with three different parts originally taken during partitions in the 18th c. and sewn together in 1918 faced not only international but also structurally enormous internalproblems. It inherited different legal systems , political traditions, administrative as well as infrastructural networks and its political elite deeply divided against itself as far as the very nature of the prospective constitutional system was concerned. It was also a very multiethnic country, 1/3 of the total population, with loyalties towards the new state of many ethnic minorities in doubt. Some were very tenuously conneceted emotionally with it trying to secure their constitutional rights against real or alleged danger of Polish nationalism . No wonder that in such a situation the nature of the prospective constitution provoked a heated debate. Every member of the political elite of Poland understood that the state needed to be consolidated. But here the consensus ended . The actual legal work on the constitution was also turbulent, with all sides putting forward their own ideas. In addition dramatic external situation exacerbated internal political fights within legal committees making it difficult to reach an agreement.

There were two committees working on the text of the constitution. In January 1919 a government committee was set up, the so called the Convention on the Assessment of Constitutional Drafts. It consisted of distinguished lawyers ,political leaders, historians and members of the clergy comprising different parts of Poland so to be truly representative after the years of partitions. The majority of the Convention consisted of people of conservative disposition and rather traditionalist point of view representing people much more characteristic of the pre First World War elites , not quite aware of the fact how the Great War itself as well as fights for independence of Poland altered the public mood while at the very same time radicalized it. Thus there was a strong pressure for democratic and social reforms coming especially from a strong agrarian movement and the socialist movement, both at the same time strongly patriotic.

The head of the Convention was Michał Bobrzyński, a historian and conservative activist and professor of law at the Jagiellonian University and

Governor of Galicia in the last stage of the Austro-Hungarian empire. The Convention produced a draft gaining wide support from constitutional specialists and a portion of parliamentary deputies. It was influenced by the American and French constitutional traditions giving strong executive power to the president independent from a bicameral parliament. The proposed draft of the constitution wanted a government efficient enough to consolidate, the goal which could be done only with a strong executive. But the draft was rejected.

In the meantime another constitutional committee was set up by the Sejm in February of 1919, although it began truly its work only in September of 1919 when the Bolshevik invasion was repelled at the gates of Warsaw. It was headed by Władysław Sejda, an outstanding lawyer and a prominent member of the right wing People's National Union but other parliamentary political groups were included in it as well. The Sejm Committee members were sharply divided against themselves and debating hotly such issues as whether the second chamber of the Sejm was to be created. Once the second Committee was created a feud over competences with the government Committee immediately began. The Sejm Committee declared that debates about the prospective constitution and the final draft of it should originate in the Sejm as representative of the people who were to be, nobody disputed this, fully sovereign to form the final form of government. The Committee headed by Bobrzyński was thought by the Sejm Committee to be elitist, somehow secretive and set up by the government with its own hidden aims in mind. One of them was allegedly a plan for a very strong executive. Despite its indisputably impeccable professional skills to draft the new constitution the Committee set by the government was treated both as a competitive and somehow illegitimate body.

Finally it was the Right camp which had a majority in the Sejm which had its way. Its vision was most fully represented in the text of the March Constitution of 1921. The Right was of course afraid that a strong executive would give more power to Marshall Józef Piłsudski, its formidable enemy, who in such a case would definitely run for and win the presidency<sup>5</sup>. But there was also another consideration. The constitution accepted cabinet-parliamentary system modelled on the French constitutional system regulated by three independent laws of 1875. This model was considered to be the best one for political as well as constitutional reasons. Politically many politicians of the Right were very much familiar with the French system being part of its elite as well. France was considered to have the most developed republican model, its culture was the leading culture of Europe

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<sup>5</sup> A detailed discussion of weaknesses and positive aspects of the Constitution see Maria Kruk „Strengths and weaknesses of the Constitution of the Republic of Poland of 17 March 1921”, <https://iusnovum.lazarski.pl/iusnovum/article/view/1233>

and last but not the least it was the most important victor of the just finished war . Finally France was also thought to be the surest ally of Poland guaranteeing the stability of the Versailles treaty. French culture was a culture of the Polish elites and there was a positive sentiment going back to the Napoleon's time which made France especially attractive in all its dimensions , also constitutional ones.

Sejm's committee also properly recognized the real, not just declared on paper in 1875 , nature of the French constitutional structure a.d 1921 in which the preeminent role of parliament, with many political parties still with roots in the French Revolution, made it impossible to consider created in 1875 French presidency as the major executive power. This mistake was probably committed by the Bobrzyński's Committee since the original French constitution located strong executive in the presidential office. But one of the peculiarities of the French political system was its internal evolution which slowly moved the executive power from the office of the president to the prime minister nominated by the majority of parliament . But with many political parties represented in it and incapable of forming stable coalitions it was impossible to form strong governments. France experienced thus in the interwar period a merry –go-round of incessantly changing governments. This was to be the reality of the Polish system under the March 1921 constitution. But, and here the Solon's observation was especially pertinent , the French could allow itself to do this . Not only they had a state historically never in danger of extinction. Its long continuity was taken for granted. But the main reason France could allow itself governments' instability and could be governed effectively was a very extensive, efficient and professional bureaucracy created first by the absolutist state and then strengthened by Napoleon's reforms. The governments could change constantly but this did not subvert effectiveness of day to day governance. In Poland the situation was dramatically different. Poland did not have after 1918 any effective , centralized bureaucracy, the only impulse which could direct the state and enact necessary reforms could come from the strong executive power , in conditions when the Sejm , like the French parliament was permanently incapable of forming a stable government<sup>6</sup>. What could work in France within the context of the cabinet-parliamentary model and within a system splintered politically to numerous political parties could not work in Poland devastated after the Great War and in need of sure governance. This caused total instability of the political system, which eventually reached a crisis stage and resulted with march towards a mild form of authoritarianism of Marshall Józef Piłsudski

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<sup>6</sup> A discussion of some aspects of this problem see Dorota Malec „The Issues of Administration in the March Constitution: Remarks on the Occasion of the 90th Anniversary of the Enactment of the Constitution of 17 March 1921” , *Przegląd Sejmowy* , 1(102) 2011, pp. 11-25.



frustrated by debilitating inconclusive debates in the bitterly divided Sejm. The 1921 constitution was amended in 1926 after Piłsudski's May Coup. The Sejm position, that is its legislative power was reduced, the executive was strengthened. Such an amended constitution remained in force until April of 1935, when the new constitution was enacted with very strong, in certain aspects uncontrolled executive power and extensive powers granted to the president. In 1944, the communists taking power in Poland under the umbrella of Soviet power and not having any legitimacy to govern in the country nullified the April Constitution of 1935 formally returning to the March 1921 Constitution. This was a formality without any substance since all basic liberties were not observed under the communist growing totalitarian power. Finally gaining total control of Poland the communist government nullified the March 1921 Constitution enacting its own provisional one in 1947 which legitimized the communist total power even if formal lists of rights was extensive, but this, as was the case with the Stalinist constitution of 1935 in the Soviet Union, was pure propaganda.

The March 1921 Constitution although great in terms of its many objective characteristics turned out in practice to be not well suited to the very volatile Polish political scene unable to form a system of government capable of preventing destabilisation. This was the case which applied to all new Eastern European states created after the First World War, all in need of strong executive power. Nearly all, with a notable exception of Czechoslovakia, slid into one or another form of authoritarian government<sup>7</sup>.

Nevertheless the March Constitution was a great achievement, one of the stellar constitutional examples of the best tradition of European and Polish constitutionalism, greeted with joy by the people of reborn Poland. With all its shortcomings the March 1921 Constitution due to its democratic, republican features has, till today, been recognized in the Polish and European constitutional history as one of the most outstanding achievements. It testified to the fact that the new, reborn in dramatic circumstances one of the ancient European states was immediately able to form a modern constitutional document synthesizing the best traditions of the European as well as Polish constitutional thinking and practice.

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<sup>7</sup> But Czechoslovakia having a more limited range of rights and freedoms accorded to minorities for historical and also security reasons also got into trouble. The issue eventually gave a pretext for German demands eventually leading to the Munich Conference in 1938 and in fact dismembering of the country.

