

NOTES

ON THE SENATE



**SENATE
OF THE REPUBLIC
OF POLAND**

Early Polish Constitutional Acts

THE TERM “CONSTITUTION” WAS USED IN POLAND FROM THE LATE 15TH CENTURY ONWARDS TO REFER TO THE RESOLUTIONS OF THE GENERAL SEJM. The oldest constitutions date back to 1493. They were drafted in the Chamber of Deputies and their content was often agreed with the senators and the King by representatives of deputies sent to the Senate. Laws (constitutions) were approved at a joint final sitting of both Chambers, held in the Upper Chamber in the presence of the King. **UNDER THE “NIHIL NOVI” CONSTITUTION OF 1505**, an act passed by the Sejm had to be jointly agreed by the three Sejm estates – the King, the lords of the council (the Senate) and deputies representing landed gentry (Chamber of Deputies). From the mid-17th century onwards, any objection to a Sejm resolution from either a deputy or a senator automatically caused other, previously adopted resolutions to be rejected. This was due to the fact that all resolutions passed by a given Sejm formed a whole and were published as constitutions of the Sejm e.g. *Anno Domini* 1667.

The final version of adopted acts, which from the late 15th century until the early 16th century were divided into perpetual and temporary constitutions (*constitutiones perpetuae* and *constitutiones temporales*), was drawn up at the so-called sealing sessions, held after the close of the Sejm debate. These sessions were attended by the Chancellor, the Marshal of the Chamber of Deputies and representatives of the Chamber of Deputies and the Senate. From the end of the 16th century, the constitutions they signed were printed and – stamped with the royal seal and bearing the signatures of the Marshal of the Sejm and the Chancellor – sent to the chancelleries of the municipal councils of all provinces and lands of the Crown and the Grand Duchy of Lithuania. Resolutions were written in Latin until 1543 and in Polish thereafter.

Under the Act of 1613, immediately after the close of Sejm debates, the constitutions passed by the Sejm were published by being entered in the municipal registers of the town where the Sejm held its debate. Copies of these constitutions still had to be sent to municipal councils throughout the country, where they were entered or – more commonly – incorporated in their printed form in the municipal registers.

IN THE 17TH CENTURY, THE FIRST PRINTED SETS OF ACTS BEGAN TO APPEAR. In the 18th century (1732–1782), all the Sejm constitutions were published in eight volumes under the general title of “*Volumina Legum*” (The Books of Laws), at the initiative of Stanisław Konarski and Józef Załuski. In 1889, during the partitions of Poland, the ninth volume was published, covering the Sejm constitutions of 1782–1792. The tenth volume, which was published only in 1952, contained the constitutions of the Grodno Sejm of 1793. In the 18th century, during Sejms which lasted several years (e.g. those of 1773–1775 and 1788–1792) and not six weeks as stipulated by King Henry’s Articles (also known as Henrician Articles) of 1573, only individual, separately adopted, resolutions were recorded and not their entire legislative work.

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Early Polish Constitutional Acts

USTAWA RZĄDOWA.

PRAWO UCHWALONE.

Dnia 3 Maja, Roku 1791.



w WARSZAWIE,

u P. Druku Konjkt: Nadw: J. K. Mci
i Dyrektora Druk: Korp: Kraj.

The Constitution of 3 May 1791,
titled "The Government Act"

IN THE SECOND HALF OF THE 18TH CENTURY, THE TERM "CONSTITUTION" BEGAN TO TAKE ON ADDITIONAL MEANINGS. Besides the traditional meaning of each resolution or all the resolutions passed by a given Sejm, "constitution" meant the State system, the form of government (constitution in the material sense) or the basic act (constitution in the formal sense). This ambiguity was the reason for calling the basic act passed on 3 May 1791 the Government Act and not the "Constitution". Although its formal name was the Government Act (at the time, the word "government" was used to mean the political system, the organization of state authority), it went down in history as the **CONSTITUTION OF MAY 3**, and was the second modern world's constitution after the American Constitution of 1787.

The Polish basic law was mostly inspired by the political and social thinking of the European Enlightenment. It displayed similarities with the American Constitution of 1787 and drew from the work of the French Constituent Assembly, which produced the Declaration of Human and Civil Rights of 26 August 1789 and the Constitution of 3 September 1791, and also from the system in Great Britain, where a parliamentary monarchy was taking shape. At the same time, it took account of the Polish parliamentary democracy traditions.

The Government Act had a remarkably logical and clear structure. **ITS FIRST PART, CONCERNING THE SOCIAL SYSTEM**, contained articles on the social classes that existed in Poland at that time. Although the Act retained the class structure of the State, it sought to find a compromise between nobility and townspeople. It failed to improve the situation of peasants though, as only minor changes were introduced. The Constitution confirmed the dominant role of nobility in the political life of the country, upholding all its previous rights and privileges. **THE SECOND PART, CONCERNING THE POLITICAL SYSTEM, DIVIDES POWER INTO LEGISLATIVE, EXECUTIVE AND JUDICIAL BRANCHES.** The vast range of issues covered here made it necessary to deal with the problems of the regency, the education of the heirs to the throne and the armed forces in separate Articles. An integral part of the Constitution is the Law on Towns of 18 April 1791.

In terms of political reforms, the Government Act was also the result of personal compromise and various political trends and programmes. Its authors were Stanisław August Poniatowski, a great admirer of the English constitutional monarchy; Ignacy Potocki, the Lithuanian Grand Marshal, who strove to ensure the supremacy of an efficient and sovereign Sejm of the nobility in the State; and Hugo Kołłątaj, who favoured a compromise between nobility and townspeople and further progression of the "gentle revolution" in Poland.

Article V of the Government Act based the system of government on Rousseau's **DOCTRINE OF THE SOVEREIGNTY OF THE NATION** and on Montesquieu's **CONCEPT OF DIVIDING POWER INTO LEGISLATIVE, EXECUTIVE AND JUDICIAL BRANCHES.** **THE "LIBERUM VETO" WAS ABOLISHED**, and all issues were to be decided by a majority vote. The formation of confederations was banned, too. After the death of King Stanisław August Poniatowski, **MEMBERS OF THE SENATE, just as hitherto the Chamber of Deputies, WERE TO BE ELECTED.** The King appointed 1 life senator from 2 candidates chosen by the regional assembly. The King was now merely the leader of the Senate, without the right of legislative sanction, ceasing to be a Sejm estate.

EXECUTIVE POWER was vested in the King and the newly established Guard of the Laws. The monarchy was henceforth to be hereditary and was to pass to the Saxon Wettin dynasty after King Stanisław August's death. As in England, the King was no longer responsible for his actions, as that responsibility was now handed over to the ministers countersigning his decisions. The King chaired the Guard of the Laws, which was made up of the Primate, as chairman of the National Education Commission, and 5 ministers appointed by the King: of the treasury, the army, the police, foreign affairs and seals. The Sejm elected collegiate ministerial bodies – commissions of national education, treasury, military and of the police, which came under the authority of the Guard of the Laws.

THE JUDICIAL POWER was vested in independent courts.

THE CONSTITUTION OF MAY 3 REMAINED IN FORCE FOR JUST OVER A YEAR. Overthrown by foreign intervention and Polish traitors, it remained, after the fall of the independent Republic, during the years of partition, the symbol of the struggle to regain Poland's sovereignty. In the words of two of its co-authors, Potocki and Kołłątaj, it was "the last will and testament of the dying Homeland".