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*Was the Constitution of 3 May 1791 a Source of Inspiration for 19th Century Polish Constitutional Drafts? The Problem of Using Polish Constitutional Heritage in the Congress Kingdom of Poland in 1815 and 1831**

Abstract

The article focuses on the problem of using legal heritage based on the example of the Constitution of 3 May 1791. This issue is considered in relation to two selected moments in the history of the Congress Kingdom of Poland – 1814/1815 and 1831. What connects them and, at the same time, makes them unique periods in the political and constitutional history of Polish territories under the partitions is the relative freedom the Polish elites had in their right to decide on the constitutional foundations of their own statehood. In 1814/1815, Prince Adam Jerzy Czartoryski was granted the emperor's consent to prepare a draft which, after corrections, became the basis of the Constitutional Act granted by Alexander I on November 27, 1815. Similarly, in 1831, after the dethronement of Tsar Nicholas I, the insurgent elites were free to embark on an unfettered constitutional debate on the systemic reform of the state. Both in 1814/1815 and in 1831, Polish political and intellectual elites faced a dilemma as to whether the Constitution of 3 May could serve mainly as a monument to and symbol of Polish history, or whether it still had the potential to be directly applied; and if so, then to what extent and under what conditions? The publication is devoted to exploring the answers to these questions.

Keywords: Constitution of 3 May, legal heritage, Constitution of (Congress) Kingdom of Poland, November Uprising (1830–1831)

In an attempt to answer the question whether the Constitution (officially titled “Governance Act”) of 3 May 1791 was a source of inspiration for 19th-century Polish

* This article is an English translation of the paper published in Polish in *Cracow Studies of Constitutional and Legal History* in 2022. See: Gałędek, “Czy Konstytucja 3 maja.” The publication was prepared as part of the project “Dispute over the interpretation of the constitution of Kingdom of Poland as a formative element of Polish political liberalism”, financed by the National Science Centre (Narodowe Centrum Nauki) on the basis of agreements no. UMO-2018/29/B/HS5/01165.

constitutional drafts, the focus was, on the one hand, on the period of constitutional work for the Congress Kingdom of Poland that took place in 1814 and 1815, and on the other, on the plans for the political reorganization of the state related to the November Uprising of 1830. To a certain extent, these periods were exceptional moments in the post-partition Polish political history due to the freedom gained in the right to decide on the foundations of the political system of one's own state. In 1815, Prince Adam Jerzy Czartoryski, as still one of Tsar Alexander's closest associates, obtained consent to prepare a draft constitution for the Kingdom of Poland, which was preceded by work on the so-called Constitutional Principles conducted in 1814. The final draft, after some corrections, was accepted by the monarch and octroyed as the Constitutional Charter of the Kingdom of Poland on November 27, 1815. 15 years later, after the outbreak of the November Uprising, the Insurgent Sejm adopted on January 25, 1831, a resolution on the dethroning of Tsar Nicholas, which stirred a constitutional debate on the political systemic reform of the state. At these two moments in history – both in 1814/1815 and in 1830/1831 – the Polish political elite faced a dilemma as to whether the Constitution of 3 May 1791 could serve mainly as a monument to and symbol of Polish history, or whether it still has the potential to be applied directly, and if so, to what extent and on what conditions?

After the Constitution of the Kingdom of Poland was adopted, the topic of the adequacy of the Constitution of 3 May in the political reality of the early 19th century became irrelevant, along with the possibility of getting inspiration from its underlying ideas.¹ This was primarily due to the lack of freedom of expression, most vivid in the area of political systemic issues. The introduction of censorship in 1819 and further restrictive measures by the government had even prevented addressing this subject. However, in the earlier constitutional period of 1816–1819, the problem of the extent to which the Constitution of 3 May reflected the spirit of the new times and whether it could be used as a source of inspiration for the development of Polish constitutionalism under the Constitution of 1815 was also rarely addressed. The avoidance of this topic was particularly noticeable in the sphere of government debates on the development of constitutional provisions, which attracted the attention of the authorities in this period of the first months after the constitution was adopted. However, successive sessions of the Sejm in 1818, 1820, 1825 and 1830 did not undertake to discuss the reference to Polish political heritage symbolized by the Constitution of 3 May. It seems that there was a common view among the Polish political elite of the time that the situation should not be unnecessarily aggravated by reminiscences of the Polish pre-partition political tradition. Lieutenant Józef Zajączek and the informal viceroy of the Kingdom, Grand

¹ One of exceptions is an article by Stanisław Węgrzecki, "Rys Ustawy Rządowej 3. Maja 1791. Roku uchwalonej, z niektórymi porównaniami do Ustawy Konstytucyjnej Xięstwa Warszawskiego i teraźniejszej Królestwa Polskiego." It seems that the very attempt to undertake a comparative analysis of the three constitutions with the Governance Act of May 3 in the foreground, done without any valuation judgments, may have been one of the main reasons that this journal was quickly closed down. It did not help that the editors had reserved in their introductory commentary that "The author has restricted his comparisons to the very particular differences and similarities in civil rights, representation, etc., without going into an analysis of the main principles of the three constitutions in terms of the external political relations of our country, in terms of the origin of laws adopted for our nation, etc." Węgrzecki, "Rys Ustawy Rządowej", 207.

Duke Konstantin, were particularly reluctant about this.² In this situation, the main actors on the Polish political scene believed that it was necessary to focus on the current Constitution and fight first for its observance and then for a liberal interpretation of its provisions. Western liberal thought, which was used much more often than Polish republican traditions, provided ready arguments.³

The political debate during the organizational period of the Congress Kingdom of Poland (1814–1815) took place in other circumstances. The progressive political and intellectual elite, certain of the need to modernize the country in the Western European spirit, were convinced that the Constitution of 3 May was of the past era. As early as in 1813, Stanisław Węgrzecki, an outstanding lawyer and at that time the President of Warsaw, pointed out that “we must [...] not to go back to the Constitution of 3 May 1791, because it was [only] good at that time, and today the Constitution granted to the Duchy [of Warsaw] is better.”⁴ A few years earlier, Hugo Kołłątaj, the co-author of the Governance Law of 1791, wrote something similarly, and his assessment is worth recalling because of the significant influence of this writer on Polish political thought. H. Kołłątaj explicitly admitted that while the Constitution of 3 May that he had drafted was a “great benefit” for its time, “it still adhered to the superstitions [of the time].”⁵

However, the awareness of progressive circles concerning the anachronism of many of the solutions adopted in the Constitution of 3 May did not rule out considering it as a bargaining chip in negotiations with the emperor over the vision of the future system of the Kingdom of Poland. Moreover, the undisputed authority of the Governance Law of 1791 and its popularity as a symbol of Polish political heritage did not allow this topic to be driven out of public debate. However, it is debatable whether it can be stated that “the fondness towards the system established by the Constitution of 3 May was seen”⁶ during this period. I am unable to answer the question to what extent the emphasizing of the Constitution of 3 May in the public debate was an expression of pragmatism in order to blunt Russian autocratic attempts, and to what extent was it actually an expression of respect for the achievements of the Four-Year Sejm. The sources – especially memoirs – that would allow us to diagnose this situation do not provide the necessary information. It can be assumed that the lack of any wider references to the Constitution of 3 May indicates that even the strength of sentimentality did not play as much of a role as it might seem. The view presented in older literature that the Governance Act of 1791 was the “constitutional ideal” of A.J. Czartoryski⁷ should also be definitely refuted. This opinion is not confirmed in the source material, which, although not directly, shows rather the opposite.

² Michałowski, “Współcześni i potomni”, 48–9; Mażewski, Szlachta, “Wielki Książę Konstanty”, 126–7. See also Mażewski, *Namiestnik Królestwa Polskiego*, 57.

³ Cf. Izdebski, “Instytucje przedstawicielskie”, 37–41; Izdebski, “Ustawa Konstytucyjna”, 217–8.

⁴ Węgrzecki, *Przestrogi do utworzenia Królestwa Polskiego*, 20 March 1813, BKC, 5242 V, 125.

⁵ Kołłątaj, *Uwagi nad teraźniejszym położeniem*.

⁶ Mycielski, *Rząd Królestwa Polskiego*, 51. Maciej Mycielski formulated his opinion about the sentiment for the Constitution of 3 May in relation to the discussions held in the Civil Reform Committee in the period 1814–1815. The examination of the documents of this team (BKC, 5233 IV and 5236 IV) shows that attempts were made to go back to some elements of the pre-partition political tradition, especially from the period of the Four-Year Sejm, but there was no open reference to the Constitution of 3 May.

⁷ Rembowski, “Nasze poglądy”, 84.

Undoubtedly, when Prince A.J. Czartoryski with his closest associates began elaborating upon the first constitutional drafts for the Kingdom of Poland in the middle of 1814⁸, he did not exclude the possibility that the Constitution of 3 May might become the main political system model to follow. The circle of people involved in the work was dominated by former high officials of the Duchy of Warsaw, led by former Treasury Minister Tadeusz Matuszewicz and influential State Counselor Aleksander Linowski. In the Duchy's governmental circles, the first plans to create the Kingdom of Poland with Alexander I as the king were already outlined at the end of 1812 by drawing up a new constitution for this. It was then that the Duchy's authorities attempted to establish contact with the tsar via A.J. Czartoryski. At that time, a proposal was made to base the new state system either simply on the Constitution of 3 May or, alternatively, on the Constitution of the Duchy of Warsaw, depending on the emperor's choice. It seems that the monarch's opinion was thereby tested. The Russian emperor was to rule the Kingdom of Poland either through a viceroy and the revised Constitution of 1791 or through the modified Constitution of the Duchy.⁹ However, at the time, Alexander avoided making any declarations and did not respond to the proposal made regarding Poland's future system at all. He consistently did so not only during the Napoleonic campaign in Russia but also throughout the following year of 1813.¹⁰

After the capture of the Duchy of Warsaw by the Russian army and over a year of occupation, in July 1814, the so-called Civil Reform Committee was established by Alexander I to prepare some elements of the political reorganization of the state and the legal system, though not to work on the constitutional draft. The tsar issued an instruction to the Committee, which generally defines the scope of the work entrusted and its directions. The content of this document was influenced primarily by the memorandums of A.J. Czartoryski and his personal audiences with the monarch.¹¹ It is significant that the instruction did not mention the Constitution of 3 May as a source of inspiration for the reformers,¹² although the need to direct them towards pre-partition institutions had been articulated several times in this document.¹³ For example, the guideline on the direction of the administrative reform was as follows:

Therefore, the civilian-military order commissions established by the Great Sejm and established by the Constitution of 3 May will serve as a model for the organization of local administration in the Kingdom of Poland, because (like some other pre-partition institutions) they are best suited to the national character and customs of the country.

⁸ For the prior stage of work on the so-called Lithuanian constitutional drafts, see Izdebski, "Litewskie projekty konstytucyjne", 93–136.

⁹ The proposal was made in a letter to A.J. Czartoryski as an intermediary in contacts with Alexander. See Tadeusz Mostowski, *Copie des pieces envoyées de Varsovie au prince Adam Czartoryski*, November 21, 1812, BKC, 5219 V, 106. The archival material from the Princes Czartoryski Library used in the study is of a subsidiary nature. It has been already referred to in the literature on the subject (including in the studies by Hubert Izdebski, Jacek Przygodzki and those authored by me) but in other contexts and for other purposes.

¹⁰ On the initiative and emperor's response, see Przygodzki, "Próby zmiany orientacji", 136–9; Przygodzki, *Rada Najwyższa Tymczasowa*, 25–8.

¹¹ On the circumstances of drafting the instruction, see: Gałędek, *Koncepcje i projekty*, 99; Gałędek, Klimaszewska, Pomianowski, "Prace Komitetu Cywilnego Reformy", 245–6.

¹² For the text of the instruction in the French original and Polish translation, see *ibid.*, 259–63.

¹³ For more detail on how the Committee took into account the pre-partition achievements in administration and justice system, see: Gałędek, *Koncepcje i projekty*, 109–22; Gałędek, "Dreams of moving", 79–86.

However – and this was also reflected in the discussions held within the Committee¹⁴ alongside with above mentioned views of H. Kołłątaj and S. Węgrzecki – the dynamics of change, which took place over just a few decades, was so great that some former institutions were assessed as anachronistic and thus were unsuited to the challenges of modernity and the transformations that had occurred in Polish society.

After two months of deliberations of the Civil Reform Committee, in late summer of 1814, several of its elected members, close associates of A.J. Czartoryski, including T. Matuszewicz and A. Linowski, prepared the first of a series of constitutional drafts – the already mentioned Constitutional Principles for the Kingdom of Poland. This was an act setting out the main guiding ideas for the future final constitutional act. The draft Principles were submitted to the emperor during the so-called Puławy meeting held on September 23, 1814. It included a paragraph about the need to “come closer” in the planned “improvements” to the political system to the Governance Act of 1791. This provision was one of the few that caused the monarch to object. The tsar noted that “one can come closer to the Constitution of 3 May, but it would be better not to mention that Constitution here for tactfulness towards Russia, as Russian people do not know it at all, or it sounds bad in the ears of those who know it or have heard about it in their time.”¹⁵ Despite this comment, the controversial reference was not withdrawn from the Constitutional Principles. The text approved by the emperor on May 20, 1815, began with the following statement (Article 1): “The new constitution for the Kingdom should be approximated to the Constitution of 3 May 1791, in so far as differences in circumstances and time permit.”¹⁶

However, as is apparent from the later course of events, documents prepared and discussions held on the draft of the final constitutional act, A.J. Czartoryski and his associates decided that the role of the basic model on which they would build the new state system will be played not by the Constitution of 3 May but by the Constitution of the Duchy of Warsaw.¹⁷ Therefore, unexpectedly and contrary to Alexander’s wishes, they first emphasized the Constitution of 3 May as a source of inspiration in the Constitutional Principles, and then they did not keep their own promise to bring the Constitution of the Kingdom of Poland closer to the Governance Act of 1791. On the contrary, as Stanisław Barzykowski noted in his diary, the Constitution of 1815 “was not at all influenced or a consequence of the Constitution of 3 May [...]. It did not inherit therefrom anything more than some guarantees taken from this constitution, and anything more than some names and words.”¹⁸ The list of borrowings and inspirations was a bit longer and included, for example, the collegiate nature of administrative offices or institutions of Sejm courts. This does not change the fact that modeling the 1815 Constitution on the

¹⁴ Cf. Gałędek, *Koncepcje i projekty*, 479–81.

¹⁵ “S.M. Remarque qu’on pouvait se rapprocher par le fait de la Constitution du 3 de Mai, mais qu’il valait mieux ne pas la nommer ici, surtout par ménagement pour la Russie, où les gens ne la connaissent pas du tout, et où elle sonne mal aux oreilles de ceux qui la connaissent, ou qui ont entendu parler dans le temps.” Askenazy, “Narada Aleksandra I”, 372.

¹⁶ “Bases de la Constitution de Pologne”, 55.

¹⁷ I formulate this conclusion based on, among other things, the analysis of the constitutional provisions conducted by H. Izdebski. See Izdebski, “Ustawa Konstytucyjna”, 198–209. See also Izdebski, “Litewskie projekty konstytucyjne”, 121–2.

¹⁸ Barzykowski, *Historia powstania listopadowego*, 69.

Constitution of 3 May was very limited, and moreover, no references to the Constitution of 3 May were included in the final text of the Constitution.¹⁹

It is impossible to determine, based on available sources, to what extent this situation was the result of political calculations and realistic assessment and to what extent it was the result of the doctrinal views of representatives of the Polish political elite. In his notes, A.J. Czartoryski only included a laconic comment that during the final work on the constitutional draft, “The main thought was to make this constitution more liberal than the provisions of the Constitution of the Duchy of Warsaw.”²⁰ However, there is no mention of the fact that the Constitution of 3 May served as a reference point to any extent. The draft originators focused on the acts that were contemporary to them. Elsewhere, A.J. Czartoryski noted: “Constitutions are now like shoes, after one fashion, anyone can hastily write a constitution.”²¹ This was inspired by new constitutional ideas that crystallized in the early 19th century.²² After several decades, the constitutional achievements of the previous century, even glorified and considered an unquestionable reason for national pride, were not used as a basic point of reference. To what extent did the conviction that the Constitution of 3 May was anachronistic affected that decision? Were their views concealed while recognizing that the political system determined in 1791 was in fact flawed? I am unable to provide an answer which would be documented in historical sources.

However, I can assume that the Polish side was fully aware that the role of representative institutions, especially the Sejm, should be, for political reasons, clearly less accentuated than in the Constitution of 3 May. It could not realistically be hoped that the fundamental elements of the republican political system of the Constitution of 3 May (such as the principle of national sovereignty, the relatively weak position of the monarch or the subordination of the Government to the Sejm) would be accepted by the tsar, the even more conservative political forces in Russia and on the international stage by “the concert of the powers”, which determined the policy pursued by the tsar. The new constitution had to head towards the principle of monarchical sovereignty and to distance itself from the “revolutionary” concept of sovereignty of the nation.²³ It was also difficult to give up the bureaucratic administration or professional judiciary inherited from the Duchy of Warsaw. The successful experiment with the State Council could also not be rejected.

¹⁹ Similarly, in the draft of the Constitutional Law by Ludwik Plater, which preceded the final draft of the Constitution, inspiration was sparingly drawn from particular institutional solutions determined in the Constitution of 3 May, and in the later comments on this draft formulated by I. Sobolewski and Józef Kalasanty Szaniawski, no objections were made with this regard. On the sources of inspiration for Plater’s draft, see Izdebski, “Litewskie projekty konstytucyjne”, 124–31. On the circumstances in which the draft was prepared and rejected, see Gałędek, “Zagadka projektu Platera”, 1285–95.

²⁰ [Adam Jerzy Czartoryski], *Notatki o pracach nad konstytucją Królestwa Polskiego*. BKC, 5242 V, 343–4.

²¹ *Ibid.*, 344.

²² The first half of the 19th century is a transitional period in the history of constitutionalism, and to some extent, a peculiar one, especially after the Vienna Congress, because of the attempt to combine certain elements characteristic of modern constitutionalism with the elements of the system that are typical of the old post-absolutism order. See Tarnowska, “Idea konstytucjonalizmu”, 271–3.

²³ For more detail, see Gałędek, “Monarchical sovereignty”, 153–70.

The liberal system designed in the Constitution of the Kingdom differed significantly from the rules of the organization of the state provided for in the Governance Act of 1791. Moreover, the very fact that the Constitution of 1815 was referred to as a liberal constitution, whereas the Constitution of 3 May was rather equated with the implementation of republican ideas, is characteristic.²⁴ This is a manifestation of the orientation of the Polish elites in the early 19th century towards the newest political ideas of Western Europe and the search for these sources of inspiration there in the first place. Liberalism was perceived as a newly-consolidated ideological current, although deeply embedded in Enlightenment thought.

To sum up this course of reflection, it may be assumed, but without any source evidence for this (other than the statement made by Tsar Alexander during the Puławy meeting), that it was the lack of the tsar's enthusiasm about the concept to make more explicit reference to the Constitution of 3 May that could nip in the bud the ideas to try to base the system of the Polish Kingdom directly on its provisions. However, even without any interference from the monarch, the context of current political events affected the formulated proposals for the system of the government. The authors of the future system of the state, regardless of their personal views, had to be aware that in the real circumstances of the time, some concepts were impossible, and proposing these concepts could jeopardize the Polish cause and test the emperor's patience. In this context, the scarcity of direct references to the provisions of the Constitution of 3 May and the specific institutions and solutions designed in its content is emblematic.

It is worth juxtaposing these conclusions with those from an analysis of ideological currents of the November Uprising period. Tracing the public debate conducted during the Polish-Russian war of 1831 may, to some extent, make it possible to supplement the paucity of information from earlier times. In comparison with documentation on the Uprising, the surviving materials from constitutional work and discussions in 1814–1815 are poor.

The public debate, which faded out in the 1820s, flared up with redoubled intensity during the November Uprising. The Governance Act of 1791 became the subject of attention of newspapers and political periodicals, especially after Joachim Lelewel published in July 1831 his work *Trzy konstytucje polskie z 1791, 1807, 1815 (Three Polish Constitutions of 1791, 1807, 1815)*. This comparative analysis was intended to help the originators of the new constitution in choosing the most appropriate political forms for the future independent state. Of the constitutions covered by the comparison, publicists – both from the left and right sides of the political scene – unanimously favored the republican ideas of the Constitution of 3 May, which were lacking in the constitutional legislation of the Duchy of Warsaw and the Kingdom of Poland. They concluded from this that only the Governance Act was adapted to the national traits of Poles.

Especially in the conservative (conservative-liberal) press, opinions were expressed that the new constitution should first of all revive the spirit of the Constitution of 3 May, and the future system of the state should be based on its guiding ideas and selected institutional solutions. Cyprian Zaborowski, an outstanding lawyer, pointed out in 1831

²⁴ On the reasons why we cannot speak of a fully formed Polish liberal thought in the 18th century due to the lack of a modern state, see Janowski, *Polska myśl liberalna*, 15.

that: “A special feature of the political attitude of Poles has always been the fear of the [executive] authority, its constant limitation and [...] distrust of those in power.” In his opinion, this problem was noticed by the authors of the Constitution of 3 May, designing a system that would provide conditions for the creation of a strong government centered on the person of the king.²⁵ It seems that there was no reason not to use these solutions when reforming the constitutional system of the Kingdom of Poland.

The Constitution of 3 May was frequently referred to during the dispute over the reform of the government which broke out in June 1831. Arguments referring to national heritage were used not only by conservatives but also by democrats supporting a collegiate government and who were against monarchy. The argument of the reform advocates that the collegial National Government puts the November Uprising at a disadvantage because it is associated with the Jacobin republican governments was answered by the fact that Poles had proved, by passing the Constitution of 3 May, to be far from having French republican sympathies. Polish republicanism, to which it was intended to refer, was a completely different thing. This view was supported by Jan Olrych Szaniecki, a Sejm deputy and another eminent lawyer. In his opinion, “a permanent Sejm, exercising sovereignty of the nation” and “a national government elected from among compatriots [...]” are “features of republican principles [...], but these principles are not the result of our revolution, they are not a new phenomenon on the political horizon of Europe. They are the legacy of our fathers.”²⁶ From this point of view, an achievement of the Constitution of 1791 was the “strengthening of republican freedoms” and the “strengthening of the throne”, and the “May 3rd Revolution” was nothing but “a revolution of improvement and progress.” Similarly, in an article published in the journal *Niepodległość. Pamiętnik Polityczny i Naukowy*, the Constitution of 3 May was presented as a work that “had wiped mistakes and superstitions” from “the ancient [republican] wisdom of Polish constitutions.” It served as a remedy for the traditional Polish republican doctrine, which used to be contrasted with “the monarchical-constitutional theory, based on the struggle and balance of power, according to which the Constitution of 1815 is drafted.”²⁷ In view of the above, the Governance Act of 1791 should serve as a monument to its own constitutional tradition, and at the same time, as the most important determinant and model for the new constitution. As J.O. Szaniecki argued, this time at the parliamentary forum, “we should not build this [new] constitution, this representation, based on English, French examples, let alone that of the neighboring powers. We ourselves have materials for it.”²⁸

Such statements confirm the thesis that the Governance Act of 1791 could be an important source of inspiration for new systemic projects at the time of the November Uprising.²⁹ However, at the most important constitutional moment after the decision to dethrone Nicholas I on January 25, 1831, this idea was rejected despite the subject being proposed for discussion. This was done by Roman Sołtyk, a democrat known for

²⁵ Zaborowski, “O rządzie”, 23.

²⁶ Speech delivered at the meeting of June 9. See Rostworowski, *Dyariusz*, vol. 4, 311; *Nasza Polska* 157 (June 13, 1831): 2.

²⁷ *Niepodległość* 12 (July 31, 1831): 190–4, as cited in: Żurawski vel Grajewski, “Tradycje Konstytucji 3 Maja”, 95.

²⁸ Speech delivered at the meeting of June 9. *Nasza Polska* 157 (June 13, 1831): 3.

²⁹ See Żurawski vel Grajewski, “Tradycje Konstytucji 3 Maja”, 45–100.

his uncompromising attitude.³⁰ In his speech, he seemed to set out a new path for the planned reorganization of the state's political system, adopting the following assumption: "When the past government has gone down, I myself and every Pole feel that we should go back to the past. Our last fundamental law was the Constitution of 3 May: I consider all the changes that took place thereafter as illegal." But he immediately added: "It is impossible to repeal everything, because acting like this, we would fall into endless contradictions."³¹ It may be thought that he primarily meant the feudal social system abolished by the Constitution of the Duchy of Warsaw. This aspect of the problem was highlighted by another speaker, Walenty Zwierkowski, a liberal deputy linked with the Kalisz Opposition political group, pointing out that: "We cannot go back to the Constitution of 3 May, because it did not know equality before law."³² However, R. Sołtyk's reservation did not necessarily mean abandoning attempts to thoroughly revise the current political system of the Polish Kingdom in the spirit of the Governance Act of 1791 or even attempting to re-implement the then applicable model of organization of public authority. Meanwhile, W. Zwierkowski drew a completely different conclusion from his statement: "Our duty is to stand by the constitution that has existed so far."³³ This was the point of view that won total approval in the Sejm.

Not only had efforts been made in the insurgent Sejm of 1831 to restore the political system established by the Constitution on 3 May, opposing the proposal to declare the Constitution of 1815 as not binding, but it did not even make the Governance Act an important reference point in the ongoing debates on constitutional reform of the state. However, the use of the models derived from the achievements of the Four-Year Sejm may seem attractive, even because, in this way, the constitutional system could be based on the principle of the sovereignty of the nation, which was lacking in the Constitution of 1815, and the government could be subordinated to the Sejm.³⁴ Moreover, given the popularity and authority enjoyed by the Constitution of 3 May, the slogan of restoring the political order of 1791 could have become a political manifesto to gain a large number of supporters in wider social circles. But this did not happen. The decision to uphold the Constitution of 1815 automatically meant that it continued to remain the main reference point in subsequent political debates, and other constitutional models, including the Constitution of 1791, were of a secondary nature. The debate on the scope of powers of the insurgent Sejm was essentially cut short by Józef Świrski, who concluded that although due to the dethronement of the tsar, "the Constitution no longer applies to those who violated it, [but] still applies to the Representation. [For this reason], the Representation should continue to proceed in accordance with the constitutional rules [in force since 1815]."³⁵ In other words, by legitimizing the constitution granted by Tsar Alexander, J. Świrski applied for recognizing that the insurgent Sejm cannot claim the right to obtain a status comparable to that stipulated in the Constitution of 3 May

³⁰ The debate was held due to proceeding a bill on legislative initiative aimed at depriving the monarch of exclusive legislative initiative.

³¹ Rostworowski, *Dyariusz*, vol. 1, 119.

³² *Ibid.*, 132.

³³ *Ibid.*

³⁴ Izdebski, "Instytucje przedstawicielskie", 28.

³⁵ Rostworowski, *Dyariusz*, vol. 1, 120.

and continue to confine itself to exercising its powers within the limits set out in the Constitutional Act of 1815. None of the deputies were against.

In this context, it is worth noting the statement of J. Lelewel presented in the aforementioned brochure *Three Polish Constitutions of 1791, 1807, 1815*. As a democratic historian, he supported republicanism and was the first to look for inspiration in the national heritage to revitalize the existing order. This, however, was not the case of the Constitution of 3 May. He wrote about this in a similar progressive tone as H. Kołłątaj and S. Węgrzecki referred to above. He did indeed see that “the Constitution of 3 May 1791, while praised by many 18th-century journalists as a work of wisdom and moderation, continues to incite pleasant and sweet memories in the nation.” However, he did so only in order to substantiate his argument with the following words: “[...] today, this Constitution of Poland cannot be considered as nothing but a historical monument deserving respect. Indeed, who today wants, with good faith, to bring it back to life, as meeting the requirements of the world and contemporary ideas?”³⁶ This was not an isolated opinion. He was accompanied by both his political allies and opponents, such as the aforementioned S. Barzykowski, one of the leaders of the liberal-conservative camp in the Uprising associated with A.J. Czartoryski. S. Barzykowski noted that now “the spirit, time, idea, place, situation, everything” had changed. This complete change in the socio-political reality, the ideological climate of the era, the progress of political and legal sciences, all of this, would have had a profound impact on the transformation of the Constitution of 3 May if a decision had been made to adopt it as the basis for constitutional change in the Kingdom of Poland.³⁷

Does this mean that at the time of the November Uprising, both representatives of the intellectual elite and parliamentarians came to the conclusion that “the tradition of the Great Sejm and the Constitution of 3 May can only be a *decorum*, not a genuine source of ideas?”³⁸ It seems that this recapitulation by historian Małgorzata Karpińska is too far-reaching, primarily due to the above-mentioned examples of statements by C. Zaborowski and J.O. Szaniecki. They prove that the Governance Act of 1791 played a relatively important role in the political-systemic discussions that took place in 1831. Parliamentarians and political columnists eagerly referred not only to the republican spirit of the Constitution of 1791 or to the way the government was organized but also to its particular provisions. In one parliamentary debate, a proposal was approved to borrow from the Governance Act of 1791 the idea of cyclical revision of the Constitution because of its timeless usefulness.³⁹ There was also a dispute as to whether, following the example of the Constitution of 3 May, the Sejm should be given the right to dismiss ministers. In this case, the demands to reject this solution as impractical were prevailing.⁴⁰ In turn, at the end of the insurrection, the Commander of the Uprising, Jan Krukowiecki, decided to include in the Cabinet the Marshal of the Chamber of Deputies and the President of the Senate, following the tradition of the Constitution of 3 May.⁴¹

³⁶ [Lelewel], *Trzy konstytucje polskie*, 11.

³⁷ Barzykowski, *Historia powstania listopadowego*, 69.

³⁸ Karpińska, “*Nie ma Mikołaja!*”, 304.

³⁹ Żurawski vel Grajewski, “Tradycje Konstytucji 3 Maja”, 91–2.

⁴⁰ Rostworowski, *Dyariusz*, vol. 1, 351, 356.

⁴¹ Gołba, *Rozwój władz Królestwa Polskiego*, 204.

These examples prove that, after setting free the public debate during the November Uprising, the search for incidental but by no means mass and systemic inspirations in the national legal tradition was on the agenda.

In conclusion, in the conditions of essentially free and unfettered public debate in 1831 during the November Uprising, relatively frequent references to the Constitution of 3 May were made. Could a similar situation have occurred at the time of the preparation of the Constitution of the Kingdom of Poland between 1814 and 1815 and later during the period of further development of its provisions after the adoption of the Constitutional Act? Answering this question, it should be stated, first of all, that the freedom enjoyed by the Polish elites before the introduction of censorship in 1819 was, for political reasons, relative or even apparent. As early as 1814, the message from the emperor and the signals coming from the Vienna Congress were clear: open reference to the Constitution on 3 May was not advisable and exposing this achievement would harm the Polish cause. The matter was mostly avoided in official conversations and documents. The Governance Act of 1791 could undoubtedly be regarded as Polish legal heritage, which could or even should directly be the main source of inspiration for Polish drafts of the system of government for the Polish Kingdom. This is directly evidenced by the declaration already made in Article 1 of the Constitutional Principles of May 25, 1815. However, this is contradicted by the results of further constitutional work, during which there were no signals that the authors of the Polish draft of constitutional system of 1815 intended to take the political system set out in the Constitution on 3 May as their main source of inspiration. This function was fulfilled by the Constitution of the Duchy of Warsaw. This was not only determined by the specific political circumstances but also by the belief that the Napoleonic text prevailed in many respects over the Polish constitutional monument. For the progressive elites, the Constitution on 3 May was a diary of the past era, no longer conforming to the notion of a modern constitution from the beginning of the 19th century. In turn, after the granting of the Constitutional Act by Alexander, the public debate was dominated by the paradigm of Western liberal thinking concerning the system and governance of the public sphere. After 1815, it replaced the whole topic of drawing inspiration from the Polish republican achievements symbolized by the Governance Act of 1791.

However, traditional Polish republican ideas were revived and gained popularity in 1831, in contrast to liberalism, which, as an emblem of modernity, had almost completely dominated the public debate in the Constitutional Kingdom of Poland until it completely died down in the 1820s. In the period of the November Uprising, these proportions were balanced, and thus the popularity of ideas and the attractiveness of specific institutions from the era of King Stanisław August Poniatowski's reforms (1764–1792) increased, not only in the historical but also practical dimension. Perhaps the Constitution of 3 May was not at the very center of the insurrectionary political debate, but it was a frequently used model. The Governance Act could be an important source of inspiration in the search for a national spirit when elaborating upon new political institutions. In both conservative and democratic milieus (and to a lesser extent liberal), they did not hesitate to use it as an argument to push through their own views, and it even drew directly upon some specific solutions set out therein. This does not change the fact that not only the social system but also certain important elements of the political system were

considered anachronistic. Any broader use of that system of governance model in the sphere of state organization required its thorough revitalization. It is not without reason that the Sejm deputies did not follow R. Sołtyk's suggestion to make the Constitution of 3 May the main point of reference for the transformation of public governance, while J. Lelewel's opinion was in line with the assessments of the Governance Act expressed several years earlier by H. Kołłątaj and S. Węgrzecki. The prevailing belief was that the solutions designed in the Governance Act of 1791 were too firmly embedded in the past era to be used more widely in the new realities of the 19th century. The provisions concerning the social system and some of the regulations defining the sphere of civil rights and freedoms were not suitable for use. The restitution of the judiciary and pre-partition civilian-military order commissions as local administration bodies would be highly problematic. There are more similar examples.

The enlightenment republican thought and the Constitution of 3 May as an act rooted in this thought were used as an instrument of political struggle. The Polish political tradition was interpreted in various ways, serving current political goals and the solutions promoted with a view of these goals. Disputes were fought even over such fundamental issues as whether the Constitution of 3 May expressed the republican idea that the primacy of the Sejm should be absolute, or whether, on the contrary, it was a significant correction of the earlier tradition, aiming to ensure that, in accordance with the spirit of the Enlightenment, it was the executive branch equipped with sufficient power to govern the country effectively.

However, referring to the Governance Act had a common denominator. Both conservatives and democrats pointed out that the republican Four-Year Sejm's draft governance system was a successful attempt to repair and modernize the political system of the Polish-Lithuanian Commonwealth. It reflected the spirit of the Polish republican tradition and, at the same time, sought to eliminate the distortions which led to the decline of the system of government in the era before the reign of Stanisław August Poniatowski. Therefore, the achievements of the authors of the Constitution of 3 May could have served, to some extent, as a timeless source of inspiration. However, this was used selectively. There was no comprehensive discussion on the possibility of using the Polish republican thought, which underpinned the reforms of the Great Sejm, although the dethronement of Nicholas I on January 25, 1831, provided a natural opportunity for this. Nor can one say that this issue was subject to in-depth analysis in the public discourse. Instead, the superficial knowledge of the Constitution on 3 May and the ideas expressed by it were rather instrumentally used for achieving current political goals. The Governance Act of 1791 served more as a weapon in the political struggle and a source of argument to support claims made by the fighting political camps and press. This led to paradoxical situations in which the political concept allegedly shared by the authors of the Constitution of 3 May were presented in various ways, sometimes even opposite to one another.

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