

CONSTITUTION OF 3 MAY 1791

ENGLISH TRANSLATION FROM 1791
BY FRANCISZEK BUKATY



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FOREWORD

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The Constitution of 3 May is undoubtedly one of the most important symbols of Polish independence. The deputies present at the first Legislative Sejm to be held after Poland regained its independence in 1918 were very aware of this when they introduced a public holiday to celebrate it; members of parliament who participated in the Sejm in 1990, and who reinstated the holiday, were equally aware of this fact. The European Commission also appreciated its importance in 2015 when the constitution was awarded a European Heritage Label. However, the *Government Act* is not only a symbol; it is a valuable historical document, an important legal text, as well as a historical event which was so groundbreaking that the whole of Europe acclaimed it a revolution of its time. The English edition of the *Government Act* should therefore be preceded with a more in-depth analysis not only of the document itself and its contents and decisions, but also of the circumstances in which it was created.

POLISH REVOLUTION

‘When major incidents occur among nations, and revolutions, which lead to changes in their states, governments, laws and relationships with other nations, repercussions can be felt throughout Europe’.¹ In 1789, Piotr Świtkowski promised to describe all of this in his journal. The events which took place on Tuesday 3 May 1791 definitely constituted a ‘major incident’ of this kind, which was witnessed by the deputies and senators taking part in the debates at the Sejm in Warsaw, and later when the news became more widespread, initially by the whole of Poland and later by an astounded Europe. It was Europe which hailed it a revolution without doubt, albeit a peaceful, bloodless, and gentle one, but a revolution after all. English

¹ *Obwieszczenie względem Pamiętnika Historycznego-Politycznego-Ekonomicznego, na rok 1789*, [Warsaw] undated, unnumbered.

parliamentarians and members of the French National Constituent Assembly (*Assemblée nationale constituante*) were either critical of the constitution or full of praise for it; day after day the French, German and English press reported on the revolutionary events in Warsaw. The Poles themselves said the same. At the session of the Sejm held on 3 May, Jan Suchorzewski—who was against reform and a known heckler—already warned the deliberating members of the Sejm and members of the general public in attendance, about ‘revolutionary intrigues’.² Stanisław Małachowski, marshal of the Sejm, also announced a revolution although he did make it clear that he was talking about a ‘revolution in the government’.³ Today this term is associated with the major social upheavals initiated by the French Revolution, however, in the eighteenth century, as can be ascertained by Świtkowski’s proclamation, this term had a wider meaning and also referred to events which were perhaps not as groundbreaking, or perhaps not as bloody, but it cannot be denied that these changes were indeed a watershed in Polish history.

It is therefore worth taking a closer look at what was happening in the Polish-Lithuanian Commonwealth at that time from a ‘revolutionary’ perspective, especially since this definition as understood by people in those days was in the same spirit as the ‘series of revolutions’ begun by American colonists fighting for independence, then continued by revolutionary France, and also to some extent by the revolt of the Belgians against Habsburg rule, and the Hungarians resisting the reforms of Joseph II.⁴

² [A. Siarczyński], *Dzień 3 maja roku 1791*, Warsaw [1791], p. 14.

³ ‘today, which is a day of revolution in our government, and for the salvation of our country, all formalities must cease, in a sudden period of threat it is necessary to take remedial actions’, quoted after: [A. Siarczyński], *Dzień...*, p. 143.

⁴ In recent years scholars have been calling it a Polish revolution, including Richard Butterwick in his monumental book *The Polish Revolution and the Catholic Church 1788–1792*, Oxford 2012; see also A. Grześkowiak-Krwawicz, ‘3 maja 1791 – polska rewolucja’, in *Stanisław August i jego Rzeczpospolita. Dramat państwa, odrodzenie narodu*, eds. A. Sołtys, Z. Zielińska, Warsaw 2013, pp. 235–46.

Europe only became interested in Poland after the dramatic changes in the form of its government and the spectacular events which took place in May 1791. However, to fully comprehend what the Polish revolution entailed, we need to analyse in more detail the political decisions which were taken and the discussions that had taken place in Poland since the autumn of 1788, i.e. from the moment the Sejm was convened on 6 October—traditionally the first Monday after the Feast of St. Michael. The session was supposed to last for six weeks, but the members of the Sejm deliberated for four years, hence its name: The Great Sejm. It could be said the length of the deliberations was a revolution in itself, as well as the fact that the session not only exceeded the allocated time constraints, but that from December 1790 the Sejm functioned at twice the capacity—when former deputies were joined by those newly elected by the dietines in November that year for the next term of office.

When assessing great revolutions, not only those which took place at that time, three stages are usually distinguishable: **destruction – discussion – creation**. Thus the overthrowing of the existing order, disputes over what should replace it and finally attempts with varying degrees of success to create a new order. These different stages are also clearly visible in the Polish-Lithuanian Commonwealth. Destruction began almost immediately after the opening of the Sejm. The international situation had changed, given the Prussian declarations of friendship (12 October), Russian ineptitude—Stackelberg's note of 5 November—and also the waning interest of Russia, which had been engaged in a war against the Turks since August 1787; there were attacks on Russia's guarantee and the Permanent Council. The self-interests of the magnate leaders, who opposed the king, lay behind these attacks; it was, however, also an expression of the general mood among the *szlachta* which King Stanislaw August had underestimated. In autumn 1788 it became clear just how strong aversion to the Russian protectorate was—it was not only perceived as foreign domination but also, and perhaps above all, as a restriction, or

even a destruction of ‘Polish freedom’—for two centuries the citizens had been free to decide about themselves and the state. The Sejm’s first decisions were aimed directly at the Russian ‘protectorate’. The formation of a 100,000-strong army—albeit only on paper—(20 October 1788) and the disbanding of the Permanent Council established on the order of the Russians (19 January 1789) was considered a regaining of independence, and seen as a war against despotism. The enthusiasm which prevailed at that time is comparable only to the jubilant mood after the adoption of the Constitution. Rather like the American colonists, the *szlachta* claimed that from then on they would make their own decisions, although this was nothing new for them, only the restoration of a state that had existed previously. It is, of course, somewhat regrettable that the Permanent Council was dissolved since Stanislaw August had managed to transform it into a fairly efficient tool for administering the country, and one could express one’s sorrow that the realistic foreign policy adopted by the king collapsed since this would have tragic consequences in the future. However, it would seem that these events were inevitable, and without this destructive stage, the Polish ‘revolution’ would not have been possible.

However, this was only the initial stage. The next consisted of discussion. It could even rather loftily be called a ‘revolution of the minds’. There were heated exchanges in and out of the Sejm which lasted for two years (autumn 1788 – autumn 1790). Historiography, especially that of the past, emphasized that these two years of deliberations were close to being a complete waste of time since they were mired by futile conflicts and no constructive decisions were taken. This type of assessment is over simplistic. Above all, they were not entirely fruitless years from a legislative point of view: much needed taxes were introduced—the *podatek dziesiątego grosza* in March 1789 which was a tax on income from lands to be paid by the *szlachta* and the Church; various new, efficient local commissions were introduced—Komisje porządkowe cywilno-wojskowe—in November 1789. It is also

worth recalling that the Sejm which had been in session since 1788 was a Confederate Sejm, and therefore one in which the principle of *liberum veto* could not be used and decisions were taken by a majority vote. In other words, it was the first parliament for several years—since 1776—at which there was a chance of trying out some major reforms. It is not surprising that a huge debate began in and outside the Sejm about the form they should take. These purportedly futile disputes seemed to be of great importance for later events. On the one hand, as can be seen by the events which took place after the coup d'état in May 1791, it somehow led to shaping the *szlachta's* political attitude, and it should be added, not only that of the *szlachta*. On the other hand, during the course of this particular debate, a new vision of the state was formed which the leaders of the Polish 'revolution' would try to implement in 1791. The country was already inundated by not hundreds but thousands of writings proposing political changes which the authors deemed indispensable in the Polish-Lithuanian Commonwealth. In them, all types of problems were raised, from the smallest ones concerning local administrative matters, to basic issues concerning the political system. Economic and social problems were discussed—the situation of the peasantry, the rights of townspeople, the Church's place in the state, and finally the future structure of government—a hereditary or elected monarchy, the form and powers of the executive authorities. In fact, every single problem on the agenda of the Sejm debates was discussed, as well as those which, according to one author or another, should also have been included. These writings were not only distributed in Warsaw, where the Sejm was in session, but also in the provinces. The debates were attended by political leaders—Ignacy and Stanisław Potocki, Adam Czartoryski, and also Szczęsny Potocki and Seweryn Rzewuski; renowned ideologists and theorists such as Hugo Kołłątaj and Stanisław Staszic, as well as a collection of less well-known people who were involved in political life, or who were simply commenting on it from the sidelines. Representatives of the rural gentry—who had

remained passive for a very long time—became visibly and strongly motivated. These people were often politically inexperienced and made serious mistakes, especially when assessing the international situation, but they were full of enthusiasm, and as they became more independent of the magnate leaders, they were convinced of the need for change. Even representatives of the townspeople played an active role—they discussed their own demands (Town congress from November 1789), which they submitted to the Sejm (the famous Black Procession, 2 December 1789) and which they also had printed and distributed among the general public.

The debate concerning the government was not only a theoretical discussion. Since autumn 1789 attempts were made in the Sejm to organize the political system legally. In September 1789 the deputies participating in the session appointed a Deputation for Establishing a Model of Government which was officially headed by Bishop Adam Krasiński, a ‘defender of freedom’ and participant in the Bar Confederation (1768–1772), however, *de facto* it was led by Ignacy Potocki. Although the propositions came to nothing, the projects they prepared: first the *Zasady do formy rządu* [Principles for a Model of Government] (December 1789), later *Projekt do formy rządu* [Draft bill for a model of Government] (August 1790) became the subject of heated political discussions which further raised the awareness of the participants of not only the need, but also of the possibility, of introducing significant political reforms.

The period of debates and disputes lasted rather a long time—in fact, viewed from an international perspective, it was excessively long because it was becoming less and less favourable for Poland. The conflict between the partitioning powers, which at the beginning of the session of the Sejm had opened up the possibility of more independent actions, was diffused, and the Congress of Reichenbach (now Dzierżoniów) (July 1790), which ended the conflict between the Prussians and the Austrians and abolished the threat of war, made Poland even less appealing for its new ally—Prussia, with whom it had made an alliance in March 1789.

However, from the perspective of the internal situation the great national debate was necessary, or perhaps even indispensable. For it was thanks to it that the final stage of the Polish revolution—‘the creation’ – a very rich legislative period from 1791–1792—was made possible.

It could be said that the groundwork for the changes was prepared within the entire noble society—and it should be remembered that this was the only class with political rights—although it was the specific actions of politicians which contributed to these changes, above all those of Stanisław August and Ignacy Potocki, who led the so-called ‘new patriotic party’, which at that time was undeniably the most powerful political force in the Sejm. Despite the serious conflict which divided the two politicians, and despite their different visions of foreign policy—Potocki was for the Prussian alliance, whereas the king traditionally counted on Russia—and their somewhat differing ideas regarding the state and necessary reforms, in December 1790 they were able to collaborate on the king’s draft constitution. This was probably caused by Potocki’s disappointment with the results of the November 1790 meetings of the dietines, whose conservatism convinced the Grand Marshal of Lithuania that any political changes should be less republican in spirit and more in favour of a stronger central government. The fact that adherents of Stanisław August won in these debates suggested to Potocki that the reforms should be carried out in consultation with the king. One has to admire the ability of these people to communicate because until then they had been hostile towards one another, and even enemies.

It was the king and Potocki, with the editorial assistance of the king’s secretary Scipione Piattoli, and in later stages of the works, also with Kołłątaj’s conceptual support, who prepared the draft *Government Act*.⁵ This took place in secret and outside the Sejm.

⁵ For a detailed description of the course of the work on preparing the *Act*, see E. Rostworowski, “‘Marzenie dobrego obywatela’ czyli królewski projekt konstytucji.” in: id., *Legends i fakty XVIII w.*, Warsaw 1963.

However, it should not be forgotten that before the quasi coup d'état in May, in April 1791, the Sejm debated and adopted in accordance with all legislative procedures, the law *Our royal free towns within the dominions of the Republic* [*Miasta nasze królewskie wolne w państwach Rzeczypospolitej*], better known as the Law on Royal Towns (18 April 1791). This law gave townspeople a range of civil rights which until then had been exclusively reserved for the *szlachta*, including the ban on imprisonment or confiscation of property without a court order, the right to acquire land under noble law, thus liberating the towns from the power of the detested starosts; it enabled townspeople to advance in the army and the Church, finally granting them certain minor political rights—i.e. influence on urban legislation. It was the first step towards extending the rights of the general populace, towards the transformation of a feudal society into a modern nation. It may seem a rather hesitant step forward, but at that time it was truly revolutionary and was perceived as such—for example the English press, and specifically *The Times*, when reporting on the events of 18 April, wrote about the revolution in Poland, emphasizing its superiority over the rather too violent, in its opinion, changes in France.⁶

However, the events which the whole of Europe were to acclaim a revolution, were to take place several days later, just after the Easter recess. This 'revolution in the government' took place on 3 May 1791. Prepared outside the Sejm and without its knowledge, the *Government Act* was put to the house for deliberation, setting off in the process a whole list of governmental procedures, including the order to print bills before a session and distribute them among the deputies so they could think about them. As well as that which foresaw that the preliminary sessions each month would be devoted to fiscal rather than political matters. 'It was as if a cannonball had been

⁶ 'Revolution in Poland on rational, practicable and liberal principles' *The Times*, 9 May 1791.

fred', wrote an anonymous correspondent to Szczęsny Potocki.⁷ The opponents were hugely surprised, and in any case they were in the minority, as some of them had not yet returned from the Easter break. They were also outraged by the revolution which disregarded time and parliamentary practices, as Tomasz Dłuski described.⁸ Indeed the 'time limit and form' of the session of the Sejm had been violated. Moreover, the debates had been carefully orchestrated by the authors of the Constitution—first creating an atmosphere of danger and presenting dispatches sent by Polish diplomatic representatives which threatened the danger of partition, and later, the bill of the Constitution was presented as being the only means of rescue, which had been prepared by a team of 'good citizens'. However, if it was a revolution, it was very Polish in spirit, within the bounds of the law, and at least within the limit of propriety. The whole event took place during the session—the debates lasted nearly seven hours—from eleven o'clock in the morning until six o'clock in the evening—the opponents could speak freely and repeatedly and despite their complaints there was no pressure or physical coercion; instead there was great enthusiasm in the Sejm and on the streets which were overspilling with townspeople.⁹ What is interesting is that the authors of the Constitution took the time to ensure that the procedural formalities which had been disregarded on 3 May, were completed two days later, when on 5 May among wide acclamation—as was the accepted practice—the order to sign the new law was given to the Constitutional Deputation, i.e.

⁷ Unsigned letter to Szczęsny Potocki from Warsaw dated 4/5/1791, MS Czartoryski Library 3473, item 74.

⁸ T. Dłuski, 'Usprawiedliwienie się przed publicznością z manifestu przeciwko Ustawie dnia 3 maja r[ok]u terażniejszego, (1791)', in: *Za czy przeciw Ustawie Rządowej. Walka publicystyczna o Konstytucję 3 Maja. Antologia*, ed. A. Grześkowiak-Krwawicz, Warsaw 1992, p. 53.

⁹ A detailed description of the 3 and 5 May can be found in the above-mentioned book published anonymously by Antoni Siarczyński, Secretary of the Sejm, probably at the king's behest, <http://www.starodruki.ihuw.pl/stWeb/thumbnails/608/> [accessed: 27/11/2017].

the body appointed by the Sejm for this purpose. It should be remembered that unlike France, Poland had a two-hundred-year-long unbroken tradition of parliamentary struggles, and its noble citizens had the deep conviction that all, even radical changes, could be instituted by parliamentary laws and there was no reason, therefore, to resort to any other means.

However it was not only—nor above all—the manner in which the law was instituted that caused both Polish and foreign observers at that time to acclaim 3 May a revolution. This was due to the contents of the Act. The very fact that it was a law which formed the basis for the entire state system was in itself revolutionary. The Enlightenment belief that it was possible to create ‘rational’ social order, and—above all—a rationally constructed state, coincided with the old-Polish trust in the power of legal norms. The authors of the Constitution were undoubtedly Enlightened individuals and people of that era; they were familiar with the most up-to-date political theories, as well as legal acts at the forefront with the American Constitution, the Declaration of the Rights of Man, and the draft French Constitution which was being debated in the National Assembly at that time. They were also people with excellent knowledge of Polish legislative practices and political traditions.

But were the changes they were proposing really that revolutionary? The answer to this question is unclear. The new *Act* dealt rather cautiously with regard to the social sphere—the nobility were granted all their privileges to date. The Constitution had little, if not to say nothing, to offer the peasantry, at least with regard to anything specific; on the other hand it was the first law to be enacted which acknowledged they were part of the national community, and that in itself, by Polish standards, was an absolute novelty. The townspeople reaped the most benefits because Article III of the Constitution included the newly enacted law concerning towns (“*Our royal free towns within the dominions of the Republic*”). Another article (Article 1) granted not only to individual social classes, but to ‘all people of whatever

persuasion, peace in matters of faith, and the protection of government' along with freedom of religion, although for those of the Catholic Faith, renouncing their religion was punishable. When evaluating the conciliatory, and constrained decisions contained in the *Government Act* one should remember the socio-political context in which it was created. The authors of the Constitution did not want to impose it by force—nor could they. They operated within a parliamentary system in which any political decisions were to be accepted by the nation. In the Polish-Lithuanian Commonwealth this nation, at least in the political sense, comprised the *szlachta*, and only the *szlachta*; without the acceptance of the members of this class they could not implement their plans which is why they refrained from any proposals which could provoke violent resistance, and any interference in the lord-vassal relationship would have undoubtedly been too far-reaching. They also realized that it was not possible to change the social structure with one law alone.

Besides, the main object of their interest were not social issues, but the political system—as in the case of the American Constitution. Imbued with the optimism of the Enlightenment era, they believed that creating an efficient form of government would not only strengthen Poland, but would also enable social reforms to be implemented in the future. It could be said that the model of government outlined in the Constitution was almost the perfect example of the combination of Enlightenment political ideals and Polish tradition. The ideas which derived from the philosophers of the Enlightenment were a kind of tool for providing a more up-to-date approach to the solutions and institutions so long rooted in Polish tradition. Although it may seem rather strange, some elements of these age-old traditions turned out to be surprisingly modern, particularly with regard to the conviction expressed in Article V of the Constitution—which was the basis for the whole structure of the political system: 'All power in civil society is derived from the will of the people'. In the words of Western thinkers, the authors of the Constitution

expressed the principle which was the basis for the functioning of the Polish-Lithuanian Commonwealth from the end of the sixteenth century. And although the *szlachta* had restricted the concept of ‘nation’ to their own class, this did not alter the fact that they considered it obvious that the nation was the only source of power in the state—many countries regarded this position as being truly revolutionary. One novelty was the introduction into the Constitution of Montesquieu’s separation of powers. However, traditional Polish political institutions—the Sejm and dietines (regional assemblies), the king and the somewhat reformed judicial authorities—were included in this modern framework.

These former institutions, which had been improved, cleansed of anarchic procedures—e.g. *liberum veto*—with clearly separated competencies, were to—and could—become the basis of a modern parliamentary monarchy. A monarchy, with strong representative powers, consisting of deputies representing the entire nation, and not only their own voivodeships—by refraining from the use of binding instructions, or imperative mandates. A no-longer elective but hereditary monarchy of the Saxon ‘family’—in reality the ‘family’ of the future husband of the daughter of the Elector of Saxony, to whom the throne was passed, and who had not had any male issue. One indubitable novelty was the Council of Inspection (Straż Praw)—a government alongside the king. Despite certain structural weaknesses, it was the first modern and efficient executive body in the Polish-Lithuanian Commonwealth. What is interesting is that Poland was the first country in which parliamentary responsibility of the ministers was provided for by law.¹⁰

Although the Polish revolution was not based on the French model, it may be worth looking at the May events from a slightly different perspective—as a revolution which derived from the

¹⁰ Traditionally British ministers had such responsibility, however neither the Constitution of the United States nor the French Constitution contained such a provision, Z. Szcząska, ‘Ustawa Rządowa 3 maja’, *Niepodległość* 1991, nos. 3/4, p. 34.

spirit of the Enlightenment. Scholars have long argued as to whether the French Revolution resulted from changes in the manner of thinking about the state and society which derived from the Enlightenment, or because of a rejection of them. In the case of Poland, it is safe to say the Polish revolution was a ‘revolution of the men of the Enlightenment. The people who directed the events—Stanisław August, Ignacy Potocki, Hugo Kołłątaj, Stanisław Małachowski, were men of the Enlightenment in every sense of the word; they believed without any reservation in the power of reason. They did not want to force their fellow citizens to just accept any decisions; they wanted to convince them that they were the right ones, and they wanted to ‘enlighten’ the nation. They also strongly believed that the rational order of society, the rational structure of the state, ‘setting Poland free from the chains of lawlessness and disorder’, as they called it, would be enough to guarantee the country’s independent existence.¹¹ Based on their own traditions, and the latest political concepts, they drew up the first modern and fundamental act in Europe—the second in the world—with the conviction that it would be sufficient to defend Poland’s freedom. As they wrote in the preamble to the *Government Act*, it was passed: ‘for the sake of the public good, for securing our liberty, and maintaining our kingdom and our possessions (*sic*)’. ‘The homeland has been saved and our liberties guaranteed’ announced the Marshals of the Sejm on 7 May 1791, when informing the nation of the enactment of a new Constitution.¹² The announcement of the *Government Act* was accompanied by a huge publicity campaign in favour of the new law. Its authors endeavoured to create an atmosphere of popular support and enthusiasm for the

¹¹ J. Michalski writes in more detail about the optimistic atmosphere in May, ‘Wszystko pójdzie wyśmienicie’ (O politycznym optymizmie po 3 maja), in: *Losy Polaków w XIX–XX w. Studia ofiarowane profesorowi Stefanowi Kieniewiczowi w osiemdziesiątą rocznicę Jego urodzin*, eds. B. Grochulska, J. Skowronek, Warsaw 1987.

¹² ‘Uniwersał marszałków ... 7 maja 1791 ...’, in: *Za czy przeciw Ustawie Rządowej...*, p. 24.

Constitution and poems and songs were composed in praise of it. Its establishment was celebrated joyously and ceremoniously. Later, on the first anniversary of its enactment, Pamphlets and articles explaining the advantages of the new law were published and distributed in the provinces in the hope of winning over its opponents. These actions were carefully organized, and besides, they were a continuation of the Polish tradition of political struggle. They were also necessary actions. As has already been said, any changes in Poland could only be made with the acceptance of the political nation, hence the nobility/*szlachta*. In a sense they were faced with a very difficult task—the Sejm made up of the *szlachta* had to instigate changes, which were not in their own interest, and which in turn had to be passed by the wider *szlachta* community, and these were designed to constrain their anarchic freedoms and share their privileges with other social classes, at least with the townspeople. Furthermore they had to do so voluntarily—there were no administrative powers which could force the citizens to do so, and if we take into account how weak the townspeople were, and how numerous and powerful the nobility in contrast, there was also really nothing to fear on this front. Unlike other ‘revolutionaries’ of those times, the *szlachta* citizens did not fight outright for their rights or freedoms; they had to make decisions, which were of no direct benefit to them in the belief that they were doing so to safeguard the freedom of the Polish-Lithuanian Commonwealth, and, therefore, the freedom of its citizens. The propaganda did not let them down. The dietines held in February 1792, supported the *Government Act* almost unanimously in one form or another.¹³ This was not only the outcome of skilful propaganda, just as the enthusiasm after 3 May 1791 was not just political manipulation. It is worth noting that while the text of the Constitution could and did give rise to disputes, its very enactment was, in some sense, in the Polish political tradition, one of the underlying principles of

¹³ W. Szczygielski, *Referendum trzeciomajowe. Sejmiki lutowe 1792*, Łódź 1994.

the inclusion of political order in the legal norms, defining the laws which constituted the foundation of the political system. More importantly, a considerable proportion of the *szlachta* and townspeople shared with the authors of the Constitution, Enlightenment faith in the restorative power of the changes which took place on that day. The Constitution became a symbol of regained sovereignty.

From 3 May 1791, and in effect from the beginning of the spring of that year, we can confidently talk about the third stage of the revolution—i.e. the ‘creation’. During the year in which the *Government Act* was binding, endeavours were made to consistently build the foundations of the new system. It should not be forgotten that, as Bogusław Leśnodorski rightly stated, in the view of its authors, the *Government Act* was only the start of a reform programme, and not the end.¹⁴ May and June 1791 saw the beginning of the drawing-up of ‘executive laws’—the law on the Sejm, the Council of Inspection, and the major commissions (the Police, the Army, the Treasury) etc., either developing the provisions of the Constitution further, and sometimes modifying them in a more republican spirit, because the political struggle between the supporters of a stronger monarchy and its opponents had not ended. The May regime was taking on an increasingly distinct form. Further laws were prepared on economic and judicial matters. Preliminary work was undertaken on the preparation of unified civil codes and criminal laws—which had been provided for in the Constitution. In the final period of the Great Sejm (1791–1792), based on the new *Act*, the foundations of a modern, efficient state were created. By Polish standards, these changes were undoubtedly revolutionary. The Polish-Lithuanian Commonwealth joined the pan-European process of modernization; it would eventually cease to be a state of only one class, the *szlachta*. Moreover, and more importantly, the

¹⁴ B. Leśnodorski, *Wstęp do: Konstytucja 3 maja 1791*, ed. J. Kowecki, Warsaw 1981, p. 33.

foundations of an efficient political system were created with the possibility of further reforms.

The Polish ‘revolutionaries’, who believed rather too much in the force of reason, unfortunately omitted one important factor—armed force. The international situation of the Polish-Lithuanian Commonwealth which had been deteriorating since the summer of 1790 had become disastrous after the conclusion of peace between Russia and Turkey in January 1792. The Elector of Saxony, out of fear of the Prussians, did not accept the crown which had been offered to him without prior consultation. The Prussians were mainly interested in the occupation of Gdańsk and Toruń, and the Russians, having finally settled matters in the south, could finally take care of the protectorate which it was at risk of losing. Under the pretext of supporting the ‘last defenders of Polish freedom’, who sought help from their reliable ‘protector’, on 18 May 1792, Catherine II declared war on Poland and after a short campaign, she was victorious in July 1792. The Targowica Confederation began their rule; the second partition was imminent. If we are to adhere to the definitions of those times: if a ‘gentle revolution’ had taken place in Poland, the counter-revolution was by no means gentle.

FIRST IN EUROPE — SECOND IN THE WORLD

The fact that the Constitution ceased to be in force just under a year after having been enacted, and that it had acquired a mythical status and had become a symbol of independence and sovereignty, meant that not only were its decisions soon forgotten, but so was the fact that it is a highly interesting legal document both in content and form. Even the awareness that it was the first act containing fundamental principles in Europe and the second on a worldwide scale is more often a source of pride and less often an incentive to look more closely at the *Government Act*.

In many respects it is an extremely interesting document—not only as an invaluable memento of ancestors, but also as a legal

document. When you pick up a copy of the Constitution, the first thing that strikes you is how concise it is. Eleven relatively short articles contain a complete outline of how society and the state should function. This succinct document makes it similar to the Constitution of the United States of America of 1787, which was also comparatively short, thus differing from the French Constitution of September 1791, which was an extensive document regulating many specific issues. The authors of the *Government Act* avoided such comparisons, clearly treating their work as the foundation of a new political system; more detailed descriptions of specific solutions and institutions were left to be dealt with later in subsequent laws, which would happen by chance or by referring to already existing ones—such as the law concerning towns and the law concerning dietines. The layout of the law was clear and logical. The *Preamble* and final *Declaration* had a specific framework and included precise legal decisions. The *Act* began with articles relating to the rights of community members—still divided into the different social groups—followed by a description of the political system, which was preceded by a specific ideological declaration in Article V, in which the functioning of the political community was based on the principles of the nation's sovereignty and division of powers. The latter contained articles devoted to legislative, executive and judicial authorities. The Constitution ended with an article concerning the army. Although this layout was not entirely consistent to the end because it was broken-up by some articles devoted to matters of regency and the education of royal children, it was still constructed in a clear and comprehensive manner. From a formal perspective, the Polish *Act* contained all the characteristics required from this type of law compiled during the Enlightenment—clarity, consistency, and comprehensiveness.¹⁵

¹⁵ Cf. H. Izdebski, 'Konstytucja 3 Maja na tle konstytucjonalizmu wieku oświecenia', in: *Konstytucja 3 Maja. Prawo – polityka – symbol. Materiały z Sesji Polskiego Towarzystwa Historycznego na Zamku Królewskim w Warszawie 6–7 maja 1991*, ed. A. Grześkowiak-Krwawicz, Warsaw 1992, p. 22.

The Constitution of 3 May was also an example of the widely prevalent codification trend of the Enlightenment. During this period there was a real belief in the possibility that society could be ordered in a rational manner and the means for achieving this was to be the law. It was in the eighteenth and early-nineteenth centuries that comprehensive legal codes were compiled and enacted—the Prussian *Landrecht*, Austrian ‘*Josephist laws*’ and others—a trend which culminated in the Napoleonic Code. There emerged also at that time the idea of a fundamental law to normalize the order of the state and be the basis for a thriving community. The first such attempts of this type were the Swedish form of government dating from 1720 and the so-called Corsican Constitution established in 1755, although they did not yet possess modern fundamental laws. And although the 1776 Constitution of Virginia contained established precedents, it was a local solution, relating to one state only. It was the Constitution of the United States ratified in 1787, then the Polish one and after that, the French, which contained all the requisite features of modern fundamental principles by which to govern the state.

The authors of the Constitution knew they were compiling a law unlike any other. They knew it was unique, and were aware of the particular importance of the solutions it contained—this was reflected in the provision prohibiting any revision to be made to it within the first twenty-five years, and also in its very name, which was intended to distinguish the *Government Act* from other decisions of the Sejm, since in Poland these had ‘always’ been called constitutions. At the same time they were also deeply convinced that their work was part of the Enlightenment trend of drawing-up constitutions. After 3 May 1791, the Polish constitution was readily placed alongside the American and French constitutions, although the ‘unwritten’ English constitution was also often added. As the anonymous author of *Kalendarzyk polityczny* [Political Diary] wrote ‘we are therefore adapting our *Government Act* to the governments of great and free nations. To this end we are including four constitutions: the English, which served as an

example for the others, the American which was modelled on it, the Polish, which combined the two—and finally, the French, which could draw upon all three before it.¹⁶

Scholars have at times questioned whether the *Government Act*—of May 1791—was indeed a constitution in the modern sense of the word. And whether it can be compared with the constitutions of the United States and France, which treated society as a community of more or less equal individuals—of course only the male gender—whereas the Polish *Act* still speaks of a structure of classes. In this context it is called a ‘Constitution of orders’.¹⁷ However, this does not seem entirely correct. The so-called constitution of orders was an agreement between the different classes and the authorities guaranteeing their privileges. Examples of this practice were the Henrician Articles of 1573 in Poland and the *Magna Carta* of 1215 in England, as well as the Golden Bull of 1356 of the Holy Roman Empire. The Constitution of 3 May was definitely something quite different—a set of fundamental principles adopted by the representative bodies, outlining the political foundations of the state. The aim of the authors was not to guarantee the privileges of one class or another, but—as in the case of the United States and France—to create political order which would ensure the good functioning of the state. Its lack of similarity to contemporary constitutions stemmed not from its character, but from the fact that Polish society, for whom it was intended, was structured differently. The American Constitution was drawn up for a community in which social class barriers had long been obliterated, and the French one for a nation which itself had abolished these barriers. The Polish legislators, like their French and American colleagues, had to adapt the laws being drawn-up to

¹⁶ *Kalendarzyk polityczny na rok przestępny 1792*, [Warsaw 1792], unnumbered.

¹⁷ Z. Szczańska, ‘Między konstytucjonalizmem stanowym a nowożytnym. Ustawa Rządowa na tle współczesnych ustaw zasadniczych’, in: *Ku reformie państwa i odrodzeniu moralnemu człowieka. Zbiór rozpraw poświęconych dwusetnej rocznicy ustanowienia Konstytucji 3 maja 1791 roku*, ed. P. Żbikowski, Rzeszów 1992, p. 163, the author asked a question rather than giving a clear answer to it.

the existing reality—in this way a modern constitution was created for a society which was not modern, but which was beginning to modernize timorously.

The *Government Act* was not perfect. It contains inconsistent legislation,¹⁸ because in the pursuit of a compromise, there were some solutions—particularly with regard to the organization of the executive authorities—which were over-complicated and, as a result, too many of them were probably left for later decision-making. This, combined with strong republican tendencies in the Sejm, meant that even before one month had elapsed since its enactment, revisions began to be introduced to the system it had created, including limiting the powers of the Council of Inspection and depriving the king of the royal right of pardon. This does not, however, alter the fact that it is one of the most interesting legal documents to be produced during the European Enlightenment. As Hubert Izdebski so aptly stated, when writing about the authors of the *Government Act*, ‘if they erred ... they did so beautifully’.¹⁹

However, the 3 May Constitution was not simply a law, it was also a form of political manifesto. Years earlier, Bogusław Leśnodorski, was right in pointing out that although it was a legal document, it also contained many journalistic features.²⁰ Not only did the authors suggest specific solutions, they also convincingly argued their case and explained their reasons for certain decisions. This sets the Constitution firmly apart from contemporary fundamental principles and also from the majority of legal texts. Similar statements can be found in the preambles of these types of documents, but not in the articles themselves. Nevertheless, in the Polish *Government Act* there is no article—apart from Article IX *Regency*—in which the authors adhere strictly to the letter of the law. For example: the Constitution not only abolished

¹⁸ This fact is pointed out by H. Izdebski, *Konstytucja 3 Maja na tle konstytucjonalizmu...*, p. 24.

¹⁹ *Ibid.*, p. 24.

²⁰ B. Leśnodorski, *Konstytucja 3 Maja jako dokument Oświecenia*, Łódź 1946, p. 9.

deputies' instructions, it also explained that 'the legislation cannot be exercised by everyone and that the nation devolves its responsibilities to its representatives, that is, its deputies' (Article VI); it not only set a time-limit of twenty-five years after which it would be possible to revise this, but it also stated that it was doing so to 'prevent [...] violent and frequent changes to the national constitution' (Article VI); the decision to introduce a hereditary throne was supplemented with an argument about the advantages of this type of solution and the danger for the country of an interregnum (Article VII). In some articles journalism seems to influence some of the decisions, as in Article IV, which, as has already been mentioned, did not give much to the peasantry, but contained a wonderful argument about their role in society, and the frequently cited Article XI, *National Force or the Army*, contained an apology for the civil army and civic responsibility for the defence of the homeland.

Leaving aside the specific propositions for a while, one could try to look-upon the *Government Act* as if it were a political treatise. The vision of the world it proposes seems to be far bolder than the decisions made in it. Above all, it changes the image of society; what emerges from behind the class structure is an image of society which is completely unified. This picture was outlined using other means than in the West. The Polish Constitution contains no concept regarding natural rights that are identical for all individuals who make up society, although the authors were well aware of this concept; however, they probably considered it too radical for Polish conditions. Nevertheless it is possible to discern Kołłątaj's vision of a 'whole nation'—a community of people living in one country, under one government, and, with time, under one law. And although political rights would still be granted according to the criterion of class,²¹ theoretically, so to

²¹ The role of property is starting to be perceived, although hesitantly, and moreover, not so much in the *Act* itself as in the *Law concerning Dietines* and the *Law concerning Towns and Citizens* appended to the *Government Act*.

speak, the homeland would be a single entity, common to all its inhabitants. Not just members of the ‘chivalric order’/*szlachta*, but all citizens irrespective of their social status, would be responsible for its defence. Not the *szlachta*, but the ‘agricultural people [...] make up the largest population in a nation, and therefore also the most courageous force in the land’, and townsmen’s rights constitute the basis for guaranteeing the privileges of the *szlachta* and the whole of the common homeland. The latter is the only guarantee of citizens’ freedoms, and as such, the object of their highest concern. The community’s independence was considered the most valuable asset, and was put ahead of individual freedoms and privileges. This was as much a reminder of the country’s Renaissance republican traditions, as a reference to Rousseau’s more contemporary ideas. Similarly, the vision of a political system was based, as already mentioned, as much on a traditional vision of the state as a community of citizens, as on Rousseau’s idea of the sovereignty of the nation and Montesquieu’s separation of powers. This was a vision of a state with a rational and efficient model of government. A government, whose aim was ‘the common good’, ‘consolidation of freedom’, ‘safeguarding the homeland’. Although not as obvious as in legal decisions, this is a picture that is no less consistent, demonstrating the authors’ clear and emphatic concept. It is worth remembering that there was not one single lawyer among the authors of the Constitution, although all of them had, among their accomplishments, published or unpublished political considerations, and they were also all seasoned participants in political and propagandist struggles.

Therefore, the journalistic fragments of the Constitution are not only an expression of the political views and ideals professed by its authors; they are also a tool of propaganda, an attempt to convince people about the benefits of the new *Act*, and to allay their fears and encourage them to support it. This is the nature of the statements contained in the preamble regarding the taking advantage of the ‘opportune moment’, which is conducive to regaining independence, or contained in the long argument in the

Declaration, which comes at the end of the Constitution, about the benefits the new law will bring to Poland. These benefits were to be considerable—freedom, integrity and respect in Europe. The long description of the misfortunes of an interregnum in Article VII and several others is sheer propaganda. Article II ends with a straightforward appeal to the *szlachta* to support the Constitution, because they were entrusted with its care: ‘It is in this order that we repose the defence of the present constitution: to their virtue, valour, honour ... as the only bulwark of our liberty and existence.’ Contemporaries took notice of this aspect of the Act, while its opponents engaged in debate not only with the decisions made, but also the arguments they contained.²² These debates were not easy because the authors of the Constitution were perfectly capable of using propaganda tools of sorts. When necessary they did not back away from any form of manipulation. Otherwise it would be difficult to call the definition contained in Article VI of the Constitution on the law concerning the Dietines, ‘the most essential foundation of civil liberty’, since the law deprived the minor *szlachta* of the possibility of participating at these sessions, and therefore of basic ‘civil liberty’. Aware of the power of words, they were able to use such a term and not a different one, to dispel the fears, or perhaps to dull the senses of their opponents. The lack of the use of the word ‘heritage’ or ‘succession’ in the part of Article VII introducing this very solution was a masterful stroke. It states that the Crown of Poland shall be ‘elective in regard to families’. *De facto* this meant a hereditary throne, but because this word had terrible connotations, its use was skilfully omitted,²³ using the word ‘election’ which had far better associations; the

²² E.g. Dyzma Bończa Tomaszewski argues with the criticism of the confederation contained in the Constitution, ‘Nad Konstytucją i rewolucją dnia 3 maja roku 1791 uwagi’, (1791), in: *Za czy przeciw...*, p. 174.

²³ What is interesting is the fact that it was present in the English translation of the Constitution. The translator, Franciszek Bukaty must have realized that for foreign readers it would not be such a controversial problem as it was for the Polish *szlachta*.

fact that it related to a dynasty, not a specific candidate, and that such a selection had already been made in the *Act*, is an altogether different matter.

The conscious use of a word was far more than just linguistic manipulation. An analysis of the *Government Act* shows that in this respect it is also a very interesting document. This is not about the quality of the authors' Polish—which is elegant and lucid, but about the political language. In it can be seen what is evident in the Constitution as a whole: a combination of tradition and new trends. Inasmuch as it was a political and social compromise, it was also a form of linguistic compromise. It includes a lot of new terminology such as: executive powers, personal freedom, human society. The Constitution is not the first Polish text in which these concepts were invoked—they had existed since the 1770s, but they were still a novelty. They enabled the various solutions to be described more accurately, separating the various spheres of political and social reality more precisely. Alongside them appear the traditional: 'homeland', 'nation' 'citizen' which had been in use for a very long time. It is worth remembering that the political discourse of the *szlachta* from the sixteenth century onwards was based on concepts which were eagerly used during the Enlightenment—citizen, will of the nation, the common good—even if they were understood differently from how Western philosophers perceived them. In the Constitution they were used variously. Some terms were given their traditional meanings, while others, sometimes very important ones, acquire new meanings, although the authors are not always consistent with their usage. Perhaps the most interesting fluctuation in meaning and a conflict between the old and the new was the term 'nation'.²⁴ Traditionally it referred

²⁴ Richard Butterwick-Pawlikowski gives an in-depth analysis of the meaning and function of this concept in the Constitution, 'Koncepcja narodu w polskim dyskursie końca XVIII wieku. Rozważania nad Konstytucją 3 maja', in: *O ziemię naszą, nie waszą. Ideowe aspekty procesów narodotwórczych w Europie Środkowej i Wschodniej*, ed. Ł. Adamski, Warsaw 2017, pp. 135–51.

only to the noble order (*szlachta*), and this usage appears several times in the Constitution (in the *Preamble* and in Articles VI and VII), but alongside this the authors used it in the sense of an entire community inhabiting a common homeland (also in the *Preamble*, and Articles I, IV, XI, as well as the *Declaration*). This fluctuation means that in some places, the meaning of the word is not precisely defined, it is ‘left open’. By way of an example—the affirmation that power originates in the ‘will of the nation’ (Article V) at the time of proclaiming constitutions which *de facto* relate to the noble/*szlachta* order, could, after extending political rights, without changing the terminology, encompass a broader spectrum of society. The same applies in other places. However, the most significant change in the discourse can be seen not in the introduction of new concepts, not even in the change in meaning of old ones, but in the absence of one key word—Rzeczpospolita—Republic/Commonwealth. This was the most important and most popular word in the political language of the *szlachta*. It lost some of its significance at the end of the eighteenth century, but it was still an essential component of all political statements and legal texts. However, in the Constitution of 3 May it barely appears.²⁵ It is replaced, depending on the context, by the terms ‘government’, ‘nation’, ‘homeland’, ‘Poland’ and ultimately ‘society’. This seems to have been a conscious decision. It allowed a more precise description of the fundamental principles of the government they were proposing for their state, and the avoidance of traps resulting from unclear boundaries, and also, from the understanding of the concept of Republic, which signified not only the actual Polish-Lithuanian state, but also the people who inhabited it, albeit—more often—just the *szlachta* community, finally it came to mean the political

²⁵ This only appears in Article IV, as confirmation that ‘każdy człowiek do państw Rzeczypospolitej nowo z którejkolwiek strony przybyły [any person coming into the Republic from whatever part of the world], and in Article III, in the title of the Law concerning Towns (*Our royal free towns within the dominions of the Republic*).

structure of this state. Avoiding its use made it possible to shift the pressure from defending the liberty of the Polish-Lithuanian Commonwealth—understood as the freedom of the *szlachta*—to the defence of national independence, and also to explain that changing the form of government was not a question of destroying the Polish-Lithuanian Commonwealth, nor treason. However, it seems there was yet another essential reason for this omission. It concerned a change in the political language to include the whole of society. The term ‘Rzeczpospolita’ was not a good tool for this. Although it could potentially refer to the whole community and the entire state, and it had even performed such a function in the statements of some Polish humanists in the sixteenth century, with time it gradually became associated with the *szlachta* community so much so that using it almost automatically excluded the other inhabitants of the country. This understanding of the term became so firmly established not only in the Polish language, but—so it would seem—in the consciousness of the *szlachta* that if one wanted to include the other social classes in the national community, it was far easier to omit its use than to engage in a debate about it. Incidentally, opponents of the Constitution were fully aware of this omission and expressed their indignation.²⁶

The solutions in the *Government Act* were a revolution in the Polish political system. The text, as has been shown, was an extremely interesting document, but in society’s memory its contents and decisions were soon eclipsed by the myth of the Constitution of 3 May. This myth was cultivated almost at the same time as the Constitution itself. For one year it was legally binding and a symbol of regained sovereignty. As the document of the Marshals of the Sejm proclaimed shortly after its enactment ‘henceforth we are a free and independent nation.’²⁷ The combination of the

²⁶ Cf.: A. Grześkowiak-Krwawicz, ‘Spór o Ustawę Rządową jako zderzenie dwóch dyskursów politycznych’, *Wiek Oświecenia* 2015, vol. 31, p. 198.

²⁷ *Uniwersał marszałków...*, p. 24.

Constitution and the liberty of the nation survived its downfall. Had there been no act of betrayal, the Constitution could have safeguarded the country's independence and ennobled the demise of the Polish-Lithuanian Commonwealth. The authors of the book *O ustanowieniu i upadku Konstytucji 3 maja* [On the enactment and collapse of the Constitution of 3 May] explained to the nation: 'When you [the nation] were subjected to the greed of your neighbours under the reign of Stanisław, remember kindly the deeds of the Constitutional Sejm, which made your downfall more noble thanks to its understanding, virtue and real love of the homeland.'²⁸ If we are to measure the revolutionary events of 1791 against their symbolic meaning, they would be no less significant than those of the French Revolution. To future generations living in captivity the Constitution was seen as one thanks to which 'The Poles threw off the shackles of foreign influence and improved the disorder of the state.'²⁹ Therefore, it is little wonder that after regaining independence in 1918, on 29 April 1919 the first legislative assembly in a free Poland declared the anniversary of the adoption of the Constitution an official national holiday.

DOCUMENT

For Poles, the Constitution of 3 May is just as important a document as is the Declaration of Independence for Americans. Despite the partitions, wars, and the destruction of Warsaw by the Germans in 1944, the original was not destroyed. In reality we should speak of originals because there are three copies of the Constitution.

²⁸ *O ustanowieniu i upadku Konstytucji polskiej 3-go Maja*, Lwów 1793, p. 302.

²⁹ [J. Jasiński?], *Wiersz obywatelski z okazji listu Igelströma do ministra wojennego 1794 r.*, in: *Poezja powstania kościuszkowskiego*, ed. J. Nowak-Dłużewski, Kielce 1946, p. 69.

Until recently, there were two known copies which undoubtedly bore the features of an original, and somewhat official, document. They contain signatures of marshals of the Sejm and members of the Constitutional Deputation—a parliamentary body which oversaw the formal and legal aspect of the adopted laws. These two texts are now housed in the Central Archives of Historical Records (Archiwum Głównie Akt Dawnych – AGAD) in Warsaw—one in the *Archiwum Publiczne Potockich* [Potocki Family Fonds – Public Archives] (APP, ref. 100, vol. 2, pp. 74–84), the other in the so-called *Metryka Litewska* [Lithuanian Metrica] (ML, ref. VII 4, pp. 75–82). Despite their official nature, there is something lacking in these documents. None of them is the document which was read out in the Senators' Chamber at the Royal Castle in Warsaw on 3 May 1791. Both versions were transcribed after the adoption of the *Government Act*, most probably on 4 May. And judging from the very careful handwriting, they were transcribed by royal clerks as part of the preparations for the session on 5 May, at which the Constitutional Deputation was required to sign the new law. We do not know however, whether these were the only two copies. Perhaps there were more but only these have survived.

Recently, however, one more copy of the *Government Act* has come to light, also in the Central Archives of Historical Records [AGAD], in a collection called *Archiwum Sejmu Czteroletniego* [Archives of the Four Year Sejm]. This is a major collection of twenty-five weighty volumes containing materials concerning the debates of the Four-Year Sejm, which were amassed by the parliamentary secretaries, first Jan Paweł Łuszczewski, and later Antoni Siarczyński. These include minutes of the debates, records of the votes, documents, bills and adopted laws. The text of the Constitution can also be found in volume 20, on pages 91–101. In essence the document is no different from the later versions, only its form differs. The text only took up the right side of the page, leaving a very wide margin on the left. This is how drafts of laws were written up, so there was space

to add any subsequent revisions. However, this text is not only a draft; it is a draft approved by the Sejm, because the signatures of Stanisław Małachowski, Marshal of the Sejm and of the Crown Confederation, and Kazimierz Nestor Sapieha, Marshal of the Lithuanian Confederation can be found at the end—both signatures give the document the characteristics of an officially accepted act, which is in accordance with the official account of 3 May published by Siarczyński: ‘having signed the *Government Act*, the marshals of the confederations immediately made their way to the Palace of the Republic ...’.³⁰ There is no doubt whatsoever that the text from the Sejm Archives is the actual one which Antoni Siarczyński held in his hand, when, at the king’s behest, he read out the text of the new law to the members of the Sejm. It is the one which lay on the table while a heated debate concerning the bill took place and when Stanisław August swore an oath ‘on the Constitution’ ending it with the words ‘*Juravi Domino, non me paenitebit*. [I swear to God I shall not regret this]’.³¹ It is this very copy of the *Government Act* which was recently studied and published.³²

In addition to what is in all certainty the most valuable and unique handwritten copy, many printed texts have also survived. During the one year of its existence, there were many editions of the Constitution, as well as foreign language versions. It appeared in French, German and in English. It is this latter translation which has been included here. Its history is interesting in itself. Moreover, it is part of a broader subject concerning the propaganda disseminated about the new *Government Act*, which was consistently and diligently carried out in Europe by Stanisław August. From the very outset, the king endeavoured

³⁰ [A. Siarczyński], *Dzień...*, Warsaw [1791], p. 171.

³¹ [A. Siarczyński], *Dzień...*, p. 160.

³² *Konstytucja 3 maja 1791*. Based on the *Government Act* in the Archives of the Four Year Sejm housed in the Central Archives of Historical Records in Warsaw, edited and with an introduction by Anna Grześkowiak-Krwawicz, Royal Łazienki Museum, Warsaw, AGAD, 2018.

to gain the goodwill not only of the courts of Europe, but also European public opinion in general. He inspired publications in the international press, he also compelled Polish diplomats to spread news about the new law. This request was also received by Franciszek Bukaty—the Polish representative in London. As soon as he received the king's letter sent on 7 May, which was accompanied by the text of the *Government Act*,³³ Bukaty hastily proceeded to translate it; not only did he want to fulfil the monarch's request, but also to satisfy the curiosity of English public opinion, which was following the events in Poland with great interest. The first mention of these arrived in London via a dispatch sent on 3 May to the Foreign Minister, William Granville, by Daniel Hailes, the English representative in Warsaw. Reports on the sensational events taking place in Warsaw appeared on 21 May in the official London Gazette.³⁴ After a few days, the whole of the London press was writing about them, relaying news about the most important decisions of the Constitution, in the same way as international newspapers were doing. Not only the Polish 'revolution' but also the text of the new *Government Act* aroused great interest. No wonder Bukaty tried to publish his English translation as soon as possible. And indeed, as disclosed by a press advertisement, the translation of the Constitution was published in Debrett's already on 31 May.³⁵ A measure of the interest of English public opinion is possibly the fact that it was reprinted by several newspapers, and a few published extensive summaries, while its second edition was also published soon thereafter.

³³ Stanisław August to F. Bukaty, Warsaw, 7 May 1791, in: W. Kalinka, *Ostatnie lata panowania Stanisława Augusta*, part 2, Poznań 1868, p. 187.

³⁴ D. Hailes to W. Grenville, dispatch no. 17/ 3 May 1791, National Archives, Foreign Office 62, Poland, p. 120; *The London Gazette* 17–21 v 1791.

³⁵ Announcement 'Tomorrow will be published an authentic copy of the new constitution of Poland, established by the Revolution May 3, 1791, translated from the Polish', *The Morning Chronicle* 30 May 1791.

Bukaty made a faithful translation of the Constitution, but one which was according to eighteenth-century standards, hence a far more liberal one than one which would be made today. The translator accurately and precisely rendered all the decisions of the new law, in places perhaps doing so even more precisely than in the original (Art. V; the passage about the ‘sejm gotowy’ in Article VI). Nowhere did he change the sense of the Polish text. However, from time to time, he slightly changed the wording of the argumentation which accompanied the political resolutions. In the preamble he added a reference to natural rights which did not appear in the Polish version. He also significantly shortened the argument underlying how essential it was to introduce a hereditary throne in Art. VII—probably being aware that it was unnecessary for English readers. In the final *Declaration* he also left out some of the words of gratitude to Providence for the ‘zdarzona pomyślna chwila’ [successful moment] and also the related masses of thanksgiving which were to be said. In this instance, it may have been of some significance that the translation was intended for people who were averse to Catholic rites. It is possible that this also motivated a rather surprising omission in the English text of the *Declaration* which stated that ‘we appoint a day, *N. N.*’ for the commemoration of the new Act; the Polish original clearly states that it will be on the feast day of ‘St. Stanisław, bishop, martyr, Patron saint of Poland’ (and so on 8 May). It is difficult to ascertain whether the translator did not want to irritate Anglicans with a reference to a Catholic saint or whether he was guided by other considerations; notwithstanding, it is Bukaty’s only, more serious inaccuracy. His translation, though not a literal one, is nevertheless faithful to the original.

It has been decided to include his text here, rather than perhaps a more precise contemporary translation of the Constitution. There are several reasons for this. The Constitution is written in beautiful eighteenth-century Polish which would be difficult to translate. The translator would have to choose between two variants; either a completely modernized text or

a form of artificial, archaic language. Neither would be a good solution. However, thanks to Bukaty, who was probably assisted by an English friend, we have a translation which is of its time, moreover one which matches the charm of the original. It can be said that it not only reflects the content, but also the spirit of the *Government Act*. Furthermore it is a translation which functioned in an English-speaking environment, it was understandable and, judging by how enthusiastically it was received by the public, it was also read and accepted by English readers. In this case it also seems to be the best means of acquainting contemporary English-speaking readers with the text of the *Government Act*.

NEW CONSTITUTION

OF THE
GOVERNMENT OF POLAND

ESTABLISHED
BY THE REVOLUTION
THE THIRD OF MAY, 1791

THE SECOND EDITION

LONDON:
PRINTED FOR J. DEBRETT,
OPPOSITE BURLINGTON HOUSE, PICCADILLY.
M. D. CC. XCI.

NEW CONSTITUTION

OF THE
GOVERNMENT OF POLAND
&c. &c.

In the name of God, one in the Holy Trinity!

Stanislaus Augustus, by the grace of God, and the will of the Nation, King of Poland, Grand Duke of Lithuania, Russia, Prussia, Masovia, Samogitia, *&c. &c. &c.* together with the Confederate States assembled in double number to represent the Polish nation.

PERSUADED that our common fate depends entirely upon the establishing and rendering perfect a national constitution; convinced by a long train of experience of many defects in our government, and willing to profit by the present circumstances of Europe, and by the favourable moment which has restored us to ourselves; free from the disgraceful shackles of foreign influence, prizing more than life, and every personal consideration, the political existence,

external independence, and internal liberty of the nation, whose care is entrusted to us; desirous, moreover, to deserve the blessing and gratitude, not only of our contemporaries, but also of future generations; for the sake of the public good, for securing our liberty, and maintaining our kingdom and our possessions; in order to exert our natural rights with zeal and firmness, we *do solemnly establish the present Constitution*, which we declare wholly inviolable in every part, till such period as shall be prescribed by law, when the nation, if it should think fit, and deem it necessary, may alter by its express will such articles therein as shall be found inadequate. And this present Constitution shall be the standard of all laws and statutes for the future Diets.

ARTICLE I.

The Dominant National Religion

The Holy Roman-Catholic Faith, with all its privileges and immunities, shall be the dominant national religion. The changing of it for any other persuasion is forbidden under the penalties of apostasy: but as the same holy religion commands us to love our neighbours, we therefore owe to all people of whatever persuasion, peace in matters of faith, and the protection of government; consequently we assure, to all persuasions and religions, freedom and liberty, according to the laws of the country, and in all dominions of the Republic.

ARTICLE II.

Nobility, or the Equestrian Order.

REvering the memory of our ancestors with gratitude, and the first founders of our liberties, it is but just to acknowledge, in a most solemn manner, that all the pre-eminence and prerogatives of liberty, both in public and private life, should be insured to this order; especially laws, statutes, and privileges, granted to this order by Casimir the Great, Lewis of Hungary, Ladislaus Jagellon, and his brother Witoldus, Grand Duke of Lithuania; also by Ladislaus and Casimirus, both Jagellons; by John Albertus, Alexander, Sigismundus the First, and Sigimundus Augustus (the last of the Jagellonic race) are by the present act renewed, confirmed, and declared to be inviolable. We acknowledge the rank of the noble Equestrian order in Poland to be equal to all degrees of nobility—all persons of that order to be equal among themselves, not only in the eligibility to all posts of honour, trust, or emolument, but in the enjoyment of all privileges and prerogatives appertaining to the said order: and in particular, we preserve and guarantee to every individual thereof personal liberty and security of territorial and moveable property, as they were formerly enjoyed; nor shall we even suffer the least encroachment on either by the supreme national power (on which the present form of government is established), under any pretext whatsoever, contrary to private rights, either in part, or in the whole; consequently we regard the preservation of personal security and property, as by law ascertained, to be a tie of society, and the very essence of civil liberty, which ought to be considered and respected for ever. It is in this order that we repose the

defence of our liberties and the present constitution: it is to their virtue, valour, honour, and patriotism, we recommend its dignity to venerate, and its stability to defend, as the only bulwark of our liberty and existence.

ARTICLE III.

Towns and Citizens.

The law made by the present Diet, entitled, *Our royal free towns within the dominions of the Republic*, we mean to consider as a part of the present constitution, and promise to maintain it as a new, additional, true, and effectual support, of our common liberties, and our mutual defence.

ARTICLE IV.

Peasants and Villagers.

This agricultural class of people, the most numerous in the nation, consequently forming the most considerable part of its force, from whose hands flows the source of our riches, we receive under the protection of national law and government, from the motives of justice, humanity, Christianity, and our own interest well understood: enacting, that whatever liberties, grants, and conventions, between the proprietors and villages, either individually or collectively, may be allowed in future, and entered authentically into; such agreements, according to their true meaning, shall import mutual and reciprocal

obligations, binding not only the present contracting parties, but even their successors by inheritance or acquisition—so far that it shall not be in the power of either party to alter at pleasure such contracts, importing grants on one side, and voluntarily promise of duties, labour, or payments on the other, according to the manner and conditions therein expressed, whether they are to last perpetually, or for a fixed period. Thus having insured to the proprietors every advantage they have a right to from their villagers, and willing to encourage most effectually the population of our country, *we publish and proclaim a perfect and entire liberty to all people*, either who may be newly coming to settle, or those who, having emigrated, would return to their native country; and we declare most solemnly, that any person coming into Poland, from whatever part of the world, or returning from abroad, as soon as he sets his foot on the territory of the Republic, becomes free and at liberty to exercise his industry, wherever and in whatever manner he pleases, to settle either in towns or villages, to farm and rent lands and houses, on tenures and contracts, for as long a term as may be agreed on; with liberty to remain, or to remove, after having fulfilled the obligations he may have voluntarily entered into.

ARTICLE V.

Form of Government, or the Definition of Public Powers.

All power in civil society should be derived from the will of the people, its end and object being the preservation and integrity of the State, the civil liberty, and the good order of society, on an equal scale, and on a lasting foundation.

Three distinct powers shall compose the government of the Polish nation, according to the present constitution; viz.

1st. *Legislative* power in the States assembled.

2d. *Executive* power of the King and the Council of Inspection.

3d. *Judicial* power in Jurisdictions existing, or to be established.

ARTICLE VI.

The Diet, or the Legislative Power.

The Diet, or the Assembly of States, shall be divided into two Houses; viz. *the House of Nuncios*, or Deputies, and *the House of Senate*, where the King is to preside. The *former* being the representative and central point of supreme national authority, shall possess the pre-eminence in the Legislature; therefore, all bills are to be decided first in this House.

1st. *All General Laws*, viz. constitutional, civil, criminal, and perpetual taxes; concerning which matters, the King is to issue his propositions by the circular letters sent before the Dietines to every palatinate and to every district for deliberation, which coming before the House with the opinion expressed in the instructions given to their representatives, shall be taken the first for decision.

2d. *Particular Laws*, viz. temporal taxes; regulations of the mint; contracting public debts; creating nobles, and other casual recompences; reparation of public expences, both ordinary and extraordinary; concerning war; peace;

ratification of treaties, both political and commercial; all diplomatic acts and conventions relative to the laws of nations; examining and acquitting different executive departments, and similar subjects arising from the accidental exigencies and circumstances of the State; in which the propositions, coming directly from the Throne into the House of Nuncios, are to have preference in discussion before the private bills.

In regard to the House of *Senate*, it is to consist of Bishops, Palatines, Castellans, and Ministers, under the presidency of the King, who shall have but one vote, and the casting voice in case of parity, which he may give either personally, or by a message to the House. Its power and duty shall be,

Ist. *Every General Law* that passes formally through the House of Nuncios is to be sent immediately to this, which is either accepted, or suspended till farther national deliberation, by a majority of votes, as prescribed by law. If accepted, it becomes a law in all its force; if suspended, it shall be resumed at the next Diet; and if it is then agreed to again by the House of Nuncios, the Senate must submit to it.

3d. (*sic*) *Every Particular Law* or statute of the Diet in matters above specified, as soon as it has been determined by the House of Nuncios, and sent up to the Senate, the votes of both Houses shall be jointly computed, and the majority, as described by law, shall be considered as a decree and the will of the Nation.

Those Senators and Ministers who, from their share in executive power, are accountable to the Republic, cannot have an active voice in the Diet, but may be present in order to give necessary explanations to the States.

These ordinary legislative Diets shall have their uninterrupted existence, and be always *ready* to meet; renewable every two years. The length of sessions shall be determined by the law concerning Diets. If convened out of ordinary session upon some urgent occasion, they shall only deliberate on the subject which occasioned such a call, or on circumstances which may arise out of it.

No law or statute enacted by such ordinary Diet can be altered or annulled by the same.

The compliment of the Diet shall be composed of the number of persons in both Houses, to be determined hereafter.

The law concerning the Dietines, or primary elections, as established by the present Diet, shall be regarded as a most essential foundation of civil liberty.

The majority of votes shall decide every thing, and every where; therefore we abolish, and utterly annihilate, *liberum veto*, all sorts of confederacies and confederate Diets, as contrary to the spirit of the present constitution, as undermining the government, and as being ruinous to society.

Willing to prevent, on one hand, violent and frequent changes in the national constitution, yet, considering on the other, the necessity of perfecting it, after experiencing its effects on public prosperity, we determine the period of every twenty-five years for an *Extraordinary Constitutional Diet*, to be held purposely for the revision and such alterations of the constitution as may be found requisite; which Diet shall be circumscribed by a separate law hereafter.

ARTICLE VII.

The King, or Executive Power.

The most perfect government cannot exist or last without an effectual executive power. The happiness of the nation depends on just laws, but the good effects of laws flow only from their execution. Experience has taught us that the neglecting this essential part of government has overwhelmed Poland with disasters.

Having, therefore, secured to the free Polish nation the right of enacting laws for themselves, the supreme inspection over the executive power, and the choice of their magistrates, *we entrust to the King, and his Council, the highest power of executing the laws.*

This Council shall be called *Straz*, or the Council of Inspection.

The duty of such *executive power* shall be to watch over the laws, and to see them strictly executed according to their import, even by the means of public force, should it be necessary.

All departments and magistracies are bound to obey its directions. To this power we leave the right of controlling such as are refractory, or of punishing such as are negligent in the execution of their respective offices.

This executive power cannot assume the right of making laws, or of their interpretation. It is expressly forbidden to

contract public debts; to alter the repartition of the national income, as fixed by the Diet; to declare war; to conclude definitely any treaty, or any diplomatic act; it is only allowed to carry on negotiations with foreign Courts, and facilitate temporary occurrences, always with reference to the Diet.

The Crown of Poland we declare to be *elective* in regard to families, and it is settled so for ever.

Having experienced the fatal effects of interregna, periodically subverting government, and being desirous of preventing for ever all foreign influence, as well as of insuring to every citizen a perfect tranquillity, we have, from prudent motives, *resolved* to adopt *hereditary succession* to our Throne: therefore we enact and declare, that, after the expiration of our life, according to the gracious will of the Almighty, the present Elector of Saxony shall reign over Poland.

The dynasty of future Kings of Poland shall begin in the person of Frederic Augustus, Elector of Saxony, with the right of inheritance to the Crown to his male descendants. The eldest son of the reigning King is to succeed his father; and in case the present Elector of Saxony has no male issue, a husband chosen by him (with the consent and approbation of the Republic) for his daughter, shall begin the said dynasty. Hence we declare the Princess Mary-Augusta Nepomucena, only daughter of the Elector of Saxony, to be *Infanta* of Poland.

We reserve to the nation, however, the right of electing to the Throne any other house or family, after the extinction of the first.

Every King, on his accession to the Throne, shall take a solemn oath to God and the Nation, to support the present constitution, to fulfil the *pacta conventa*, which will be settled with the present Elector of Saxony, as appointed to the Crown, and which shall bind him in the same manner as former ones.

The King's person is sacred and inviolable; as not act can proceed immediately from him, he cannot be in any manner responsible to the nation; he is not an absolute monarch, but the father and the head of the people; his revenues, as fixed by the *pacta conventa*, shall be sacredly preserved. All public acts, the acts of magistracies, and the coin of the kingdom, shall bear his name.

The King, who ought to possess every power of doing good, shall have the right of pardoning those that are condemned to death, except the crimes be against the state.

In time of war he shall have the supreme command of the national forces—he may appoint the commanders of the army, however, by the will of the States. It shall be his province to patentee officers in the army, and other dignitaries, consonant to the regulations hereafter to be expressed, to appoint Bishops, Senators, and Ministers, as members of the executive power.

The King's Council of Inspection is to consist,

Ist. Of the Primate, as the head of the Clergy, and the President of the Commission of Education, or the first Bishop in Ordine.

2d. Of five Ministers, viz. the Minister of Police, Minister of Justice, Minister of War, Minister of Finances, and Minister for the Foreign Affairs.

3d. Of two Secretaries to keep the Protocols, one for the Council, another for the Foreign Department; both however, without decisive vote.

The hereditary Prince coming of age, and having taken the oath to preserve the constitution, may assist at all sessions of the Council, but shall have no vote therein.

The Marshal of the Diet, being chosen for two years, has also a right to sit in this Council, without taking any share in its resolves; for the end only to call together the Diet, always existing, in the following case: Should he deem, from the emergencies hereunder specified, the convocation of the Diet absolutely necessary, and the King refusing to do it, the Marshal is bound to issue his circular letters to all Nuncios and Senators, adducing real motives for such meeting.

The cases demanding such convocation of the Diet are the following:

1st. In a pressing necessity concerning the law of nations, and particularly in case of a neighbouring war.

2d. In case of an internal commotion, menacing with the revolution of the country, or of a collision between Magistratures.

3d. In an evident danger of general famine.

4th. In the orphan state of the country, by demise of the King, or in case of the King's dangerous illness.

All the resolutions of the Council of Inspection are to be examined by the rules above mentioned.

The King's opinion, after that of every Member in the Council has been heard, shall decisively prevail.

Every resolution of this Council shall be issued under the King's signature, countersigned by one of the Ministers sitting therein; and thus signed, shall be obeyed by all executive departments, except in cases expressly exempted by the present constitution.

Should all the Members refuse their countersign to any resolution, the King is obliged to forego his opinion; but if he should persist in it, the Marshal of the Diet may demand the convocation of the Diet; and if the King will not, the Marshal himself shall send his circular letters as above.

Ministers composing this Council cannot be employed at the same time in any other commission or department.

If it should happen that two-thirds of secret votes in both Houses demand the changing of any person, either in the Council, or any executive department, the King is bound to nominate another.

Willing that the Council of Inspection should be responsible to the nation for their actions, we decree that, when these Ministers are denounced and accused before the Diet (by the special Committee appointed for examining their

proceedings) of any transgression of positive law, they are answerable with their persons and fortunes.

Such impeachments being determined by a simple majority of votes, collected jointly from both Houses, shall be tried immediately by the comitial tribunal, where the accused are to receive their final judgement and punishment, if found guilty; or to be honourably acquitted, on sufficient proof of innocence.

In order to form a necessary organization of the executive power, we establish hereby separate commissions, connected with the above Council, and subjected to obey its ordinations.

These commissions are, 1st. of Education; 2d. of Police; 3d. of War; 4th of Treasury.

It is through the medium of these four departments that all the particular *orderly* commissions, as established by the present Diet, in every palatinate and district, shall depend on, and receive all orders from, the Council of Inspection, in their respective duties and occurrences.

ARTICLE VIII.

Judicial Power.

As judicial power is incompatible with the legislative, nor can be administered by the King, therefore tribunals and magistratures ought to be established and elected. It ought to have local existence, that every citizen should know

where to seek justice, and every transgressor can discern the hand of national government. We establish, therefore,

1st. Primary Courts of Justice for each palatinate and district, composed of Judges chosen at the Dietine, which are always to be ready to administer justice. From these Courts appeals are allowed to the high tribunals, erected one for each of three provinces, in which the kingdom is divided. Those Courts, both primary and final, shall be for the class of nobles, or equestrian order, and all the proprietors of landed property.

2dly. We determine separate Courts and Jurisdictions for the free royal towns, according to the law fixed by the present Diet.

3dly. Each province shall have a Court of Referendaries for the trial of causes relating to the peasantry, who are all hereby declared *free*, and in the same manner as those who were so before.

4thly. Courts, curial and assessorial, tribunals for Courland, and relational, are hereby confirmed.

5thly. Executive commissions shall have judicial power in the matters relative to their administration.

6thly. Besides all these civil and criminal Courts, there shall be one supreme general tribunal for all classes, called a Comitial Tribunal or Court, composed of persons chosen at the opening of every Diet. This tribunal is to try all the persons accused of crimes against the State.

Lastly, we shall appoint a Committee for the forming a civil and criminal code of laws, by persons whom the Diet shall elect for that purpose.

ARTICLE IX.

Regency

The same Council of Inspection is to compose the Regency, with the Queen at their head, or, in her absence, with the Primate of the kingdom. The Regency may take place only,

1st. During the King's minority.

2d. In case of the King's settled alienation of reason.

3d. In case of the King's being made a prisoner of war.

Minority is to be considered till eighteen years are completed, and the malady must be declared in the existing Diet by the plurality of three-fourths of votes of both combined Houses against one-fourth.

When the King comes of age, or recovers his health, or returns from captivity, the Regency shall cease, and shall be accountable to him, and responsible to the nation in their persons and fortunes, for their actions during their office.

ARTICLE X.

Education of King's Children.

The King's sons being designed successors to the Crown, and the first children of the country. Thence the care of their proper education, without encroaching, however, on the right of their parents, devolves naturally upon the nation.

During the King's life, the King himself, with the council, and a Tutor, appointed by the States, shall superintend the education of the Princes.

In time of a Regency, it shall be entrusted with this direction, jointly with the above-mentioned Tutor.

In both cases this Tutor, named by the States, is to make his report before each ordinary Diet of the education and progress of the Princes. The Commission, or Board of Education, is obliged to bring before the Diet, for the approbation, an instruction of plan for the education of the Princes, founded on religion, love of virtue, of country, of liberty, and the constitution.

ARTICLE XI.

National Force, or the Army.

The nation is bound to preserve its possessions against invasion; therefore all inhabitants are natural defenders of their country and its liberties.

The army is only an extract of defensive regular force, from the general mass of national strength.

The nation owes to the army reward and respect, because of its devoting itself wholly for the defence of the country.

The army owes to the nation, to guard the frontiers against enemies, and to maintain public tranquillity within; in a word, it ought to be the strongest shield in the nation.

That these ends may be fully answered, the army should ever remain under the subordination and obedience to the executive power, it shall therefore take an oath, according

to law, of fidelity to the nation, and to the King, and to maintain the national constitution. This national force, therefore, shall be employed for the general defence of the country, for garrisoning fortresses, guarding frontiers, and assisting the civil power in the execution of the law against those that are refractory.

DECLARATION OF THE STATES ASSEMBLED.

All laws and statues, old and new, contrary to the present constitution, or to any part thereof, are hereby abolished; and every paragraph in the foregoing articles, to be a competent part of the present constitution is acknowledged. We recommend to the executive power to see the Council of Inspection immediately begin its office under the eye of the Diet and continue its duties without the least interruption.

We swear before God and the country to maintain and defend, with all possible human power, the present constitution; and considering this oath as a proof of real love of our country, we command all magistrates and troops here present to take it immediately. The commission of war shall issue orders to the rest of the army, quartered in the kingdom, and in the grand duchy of Lithuania, to do the same within one month at farthest from the date of the present law.

We recommend to our Bishops to appoint one and the same day of public thanksgiving to God Almighty, in all churches over the kingdom; also, we appoint a day, *N. N.* for the solemn celebrating by us and our posterity,

of a commemoration anniversary for the mercies of the Supreme Being shown to us after so many public calamities.

And that future ages may know and feel that it is by the assistance of the Supreme Disposer of nations we have surmounted the greatest difficulties and obstacles, and effected this happy Revolution, we decree, that a church shall be erected and consecrated to Divine Providence in memory of this event, and at the expense of the States.

Having thus satisfied our general feelings on this event, we turn our attention towards securing the same constitution, by declaring and enacting that *whoever* should dare to oppose it, or to disturb the public tranquillity, either by exciting mistrust or by perverse interpretation of this constitution, and much more by forming insurrections and confederacies, either openly or secretly, such person or persons are declared to be *enemies and traitors to their country*, and shall be punished as such with the utmost rigour by the Comitial Tribunal. For this purpose we order this tribunal to sit uninterruptedly at Warsaw, proroguing their sessions from day to day, and to try all persons so accused by any citizen of property, with the assistance of the Attorneys General of Poland and Lithuania, seizing all indicted persons, with the aid of the national troops, which shall be ready to act on the first order from the executive power as they shall be directed, and occasion may require.

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Project co-financed by the Executive Director of the State Archives

The Constitution of 3 May 1791 was awarded a European Heritage Label in 2015



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© by Archiwum Główne Akt Dawnych, Warsaw 2018

ISBN 978-83-950783-8-5

ISBN 978-83-64178-57-3



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