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“Each one brings with his faith
and thought – even in chains –
thrones to the highs and down” –
on the European significance
of the Polish republican heritage

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With these lines from the prologue to the “Forefathers’ Eve” (*Dziady*) in 1832, Adam Mickiewicz¹ captured with poetic inspiration the core of patriotic Polish solidarity in exile in Paris. Whether during the stateless period or the divisions of Poland, freedom as a nation based on the republican heritage, as Mickiewicz indicated, remained a continuum of Polish history. The evidence for this position, both pre- and post-dating Mickiewicz, reads as an impressive litany, as Polish national-republican freedom influenced the debates about the May Constitution in 1791, the Czartoryski

¹ A. Mickiewicz, *Dziady* III (*Die Ahnenfeier*), Prolog, Zeilen 144–47, 154–55, ed. by S. Pigoń, Warschau 1974, p. 20. Cit. according to the German translation by W. Schamschula, Köln/Weimar/Wien, 1991, p. 205. (= Schriften d. Komitees d. Bundesrepublik Deutschland z. Förderung d. Slawischen Studien 14).

circles in the Parisian Hotel Lambert, the scepticism expressed by the opposition against the communists in 1947, the strikes of the workers of Poznań in 1956 and, again, those of the shipyard workers of 1970, the June 1976 protests, and, finally but arguably most prominently, *Solidarność*.

This essay traces the identification of Polish national freedom with its historical republican lineage. It does not claim that there is a direct line of continuity between the republican traditions of the Commonwealth of the Both Nations (*Rzeczpospolita Obojga Narodów*, 1569–1795, Polish-Lithuanian Commonwealth) and the latter twentieth century. However, it argues that Polish republicanism has a share in Poland's vital and leading role in the fall of communism from 1989 onwards. Commonly, Polish noble republicanism does not sit comfortably within the leading republican narrative of the Cambridge School narrative, even though its importance has more recently received some scholarly attention.² This attention underscores all the more the fact that the prevailing picture drawn by Pocock and Skinner of an Atlantic republican tradition stretching from Italy (Machiavelli and the Florentine Republic of the Renaissance) to England to North America is western-centric, linking republicanism as a general category with the development

² I have received many suggestions from reading A. Grześkowiak-Krwawicz, *Anti-monarchism in Polish Republicanism in the Seventeenth and Eighteenth Centuries*, in: *Republicanism. A Shared European Heritage, Vol. I (Republicanism and Constitutionalism in Early Modern Europe)*, ed. M. van Gelderen, Q. Skinner, Cambridge 2002, p. 43–60, and E. Opaliński, *Civic Humanism and Republican Citizenship in the Polish Renaissance*, in: *ibidem*, p. 147–168. More specified reading is provided by J. Adamus, *Monarchizm i republikanizm w syntezie dziejów Polski* (Monarchism and republicanism in the polish historical synthesis), Łódź 1961 and by M. Rysiewicz, *Monarchia – lud – religia. Monarchizm konserwatywnych środowisk politycznych Wielkiej Emigracji w latach 1831–1848* (Monarch – People – Religion. Monarchism of conservative political circles of the Great Emigration between 1831–1848), Kraków 2015, both out of the international loan service in the pandemic situation. Further research should also consult D. Pietrzyk-Reeves, *Polish Republican Discourse in the Sixteenth Century*, Cambridge 2020; A. Grześkowiak-Krwawicz, *The Political Discourse of the Polish-Lithuanian Commonwealth*, New York–London 2021,

of a specifically western European liberalism.³ The same is true with the traditional focus on Paris as the centre of social and political discussion in Europe by the end of the eighteenth century; nevertheless, the Polish May Constitution of 1791 in fact predated the French September Constitution by five months, and its formative discourse envisaged a “gentle revolution” shaped by both enlightened thinkers, determined to create new power structures, and old-style aristocratic republicans, struggling to maintain the ancient status quo.⁴ The latter’s impact is well-known. The traditional antimonarchism of the Polish noble traditions led to the blind alley of the Targowica Confederation, selling down the river any liberal enhancement of noble republican values.

Polish republicanism’s main hallmark was the representation of the commonwealth’s sovereignty by the nobility in its entirety. Three years before the publication of Bodin’s “Six Livres de la République” and its fanal to equate both the state and the nation under the umbrella of monarchical legislative sovereignty, the right to elect the Polish king was vested in the nobility in its entirety. After the death of the last Jagiellonian king in 1572, the jointly assembled nobility of Poland and Lithuania was able to avoid the disintegration of the multiethnic and multiconfessional “double state” in the

and R. Butterwick, *The Polish-Lithuanian Commonwealth, 1733–1795: Light and Flame*, New Haven-London 2021.

³ Also L. Hartz, *The Liberal Tradition in America. An Interpretation of American Political Thought since the Revolution*, Harcourt 1955.

⁴ For a recent detailed analysis see A. Tarnowska, *The Sovereignty Issue in the Public Discussion in the Era of the Polish 3rd May Constitution (1788–1792)*, in: *Reconsidering Constitutional Formation I: National Sovereignty, A Comparative Analysis of the Juridification by Constitution*, ed. U. Müßig, Cham 2016, 215–264. Cf. also the review by A. Dziadzio in “*Krakowskie Studia z Historii Państwa i Prawa*” 2017; 10 (2), p. 349–361, who has empowered the research work of ReConFort by his invaluable advice. Often the distinctiveness of the Polish republican monarchy from liberal Western (esp. French) political doctrines is highlighted (A. Tarnowska, op.cit., p. 258; E.Ł. Kasproicz, *Konstytucja 3 Maja 1791 roku, z uwagami podawanemi jej twórcom w 1789 roku*, Lipsk 1865, p. 58 f.). My warmest thanks are owed to A. Tarnowska for her efforts to check the correct Polish terminology and to provide the Polish translation of the summary and keywords.

Warsaw Confederation 1573⁵, by establishing and securing the right of that nobility to elect the possessor of the Polish crown through the representative body of the Sejm. Through this, all members of the Rzeczpospolita (*res publica*) (including the elected king) were bound and subject to the decisions of the Sejm, which interestingly enough began to publish its laws exclusively in Polish by this point. Thereby, Polish nobility set itself up as “the primary guardians of the freedom and the constitution”,⁶ as distinct from the liberal individualism of pre-statal rights that emerged from the American and French revolutions at the end of the eighteenth century. The equation of nobility with the nation made for only limited representation; nevertheless, by the terms in which it defined itself, the nation was an active participant, and the collective responsibility for the Rzeczpospolita demonstrates the self-understanding as noblemen *res publica*. The corporate responsibility for the nation continues to affect Polish society even after the era of that nobility has long passed. It is of no small interest, for example, that Polish men still address one another as *pan* (“master”) – a linguistic context of social solidarity tracing back to the noblemen republic. It is in this sense that the republican spirit not to be mastered as subjects, but to be governed as citizens became part of the commemorative collective Polish DNA.

The corporative understanding of the nobility as the nation-representing association provided the grounding rational legitimacy of the Lublin Union and created the blueprint for Polish republicanism that emerged in the sixteenth century. This became framed in the *articuli Henrici* tradition of electoral capitulations as

⁵ Later incorporated in the *articuli Henrici*, and thus became a constitutional provision alongside with the *pacta conventa*, also introduced in 1573. A. Zamoyski, *Poland, A History*, London 2009, p. 106 stresses the coincidence of dates between the Bartholomew’s Day Massacre of Protestants and the Confederation of Warsaw.

⁶ Art. 2 May Constitution 1791, cit. in: D. Willoweit, U. Seif (= Müßig) (eds.), *Europäische Verfassungsgeschichte*, München 2003, p. 283. According to my Polish colleagues it is crucial to realize that Polish nobility did not amount to a coherent homogeneous social group.

a contract between the king and the noble nation. Polish republicanism evolved on a common ground in the late sixteenth and early seventeenth centuries, when nobility was acquiring real power at the expense of royal prerogatives. The Polish-Lithuanian Commonwealth formed a union state that was the largest in Central and Eastern Europe, both in terms of territorial extent and population density.⁷ It covered Greater Poland, Lesser Poland, Royal Prussia (later known as West Prussia), South Prussia, West Galicia, Galicia and Lodomeria, Mazovia, New East Prussia (around Białystok), Volhynia, Podolia, the Grand Duchy of Lithuania with Samogitia and Polesia, Courland and Polish Livonia. As a multi-ethnic and multi-confessional union, the Rzeczpospolita had a polycentric structure, which fostered economic, social, and political interests to be organised in specific territorial contexts. The polycentric territorial dynamic was interconnected with the nobility's gain in power at the expense of royal prerogatives in the wake of Russian and Swedish expansionist tendencies. It was at this time that the foundations of Polish republicanism⁸ were laid; not surprisingly, given this context, liberty, and the sovereignty of the aristocratic republic (not of the crown) were the decisive notions.

Given the inconsistent perception of the Poland-Lithuanian Commonwealth as an electoral monarchy⁹ or a republic of nobility¹⁰, it is the thesis of this essay that at the heart of Polish republican

⁷ The Lublin Union of 12 August 1569 transformed the personal union between the Kingdom of Poland and the Grand Duchy of Lithuania, which had been created in the Union of Krewo, into a real union. In addition to the unified elected king (elective monarchy) and the common Reichstag (Sejm), there was a unified coinage system. The state parliaments remained separate, as did the courts and the army.

⁸ E. Opaliński, *Civic Humanism*, p. 147 ff.

⁹ Wolfgang Reinhard emphasises that even in the early 17th century the Polish electoral king identified himself with the state "in a way that is otherwise only attributed to Louis XIV". W. Reinhard, *Geschichte der Staatsgewalt. Eine Vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, München 1999, p. 78.

¹⁰ G. Vogler, *Europas Aufbruch in die Neuzeit 1500–1650 (Handbuch der Geschichte Europas; 5)*, Stuttgart 2003, p. 203.

tradition lies a stimulus of “non-domination”, in the sense pioneered by Philip Pettit in his writings on “neo-Roman republicanism.”¹¹ It seems worth considering whether the particular character of the Polish republican heritage further fuelled resistance to the postwar communist planned economy from above. Of course, the republican dignity not to be mastered has specific historical appearances, like the tradition of free speech and critique or the confederating arbitrariness, entrusting bottom-up associations with the “common good”. And indeed, the differences between a hereditary monarchy and communist Russian hegemony are more than obvious. In spite of the separateness by centuries, there were also commonalities in the responses to both. In June 1979, when Pope John Paul II visited his homeland, his address in Krakow “never to lose hope, give way to discouragement, or give up”¹² was a catalyst for a new-emerging national confidence and sense of solidarity. Even if his appeals to the republican dignity not to be mastered were shrouded in religious language, their relevance to the contemporary humiliation by communist “nannying” was lost neither on the listening hundreds of thousands nor on the authorities.

In this respect, existing research is lacking, and more is certainly necessary than can be achieved in this short piece, but there seems to be sufficient evidence that Poland’s unique republican traditions were crucial to the Polish vanguard opposition in the years leading towards 1989. The strike initiated by Lech Wałęsa at the Lenin shipyards in Gdańsk on the morning of 14 August 1980 set into motion a force of genuine people power that relied on nationwide strikes rather than mass street protests to encourage political change in conjunction with economic improvement.

¹¹ His calling for the interconnectedness of the non-interference approach and positive concepts of republican freedom godfathers the overcoming of the traditional differentiatedness of liberalism and republicanism (P. Pettit, *Two Republican Traditions*, in: *Republican Democracy*, ed. A. Niederberger, P. Schink, Edinburgh 2013, p. 173).

¹² http://www.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf_jp-ii_hom_19790610_polonia-cracovia-blonia-k.html (access: 3.01.2021).

It might be plausible that by this kind of protesting Solidarność made its struggle more effectively the struggle of all, thereby avoiding the charge of particularism, while striving for the general solidarity of the Polish to master themselves again and shake the Soviet yoke.¹³ Conveniently for the Kremlin though, Jaruzelski's martial law made it superfluous to intervene with a "disobedient ally", especially as it was already preoccupied with the disastrous invasion of Afghanistan. The Solidarność figures who had escaped through the cracks of Martial Law on 13 December 1981 continued in secrecy, often under the umbrella of the Catholic church, and took their chance when the leadership in Moscow shifted to the reformist Mikhail Gorbachev, particularly owing to his 1985 initiatives of openness (*glasnost'*) and reorganisation (*perestroika*). These twin principles appealed directly to Solidarność; whereas Jaruzelski's rule through a Military Council of National Defence lacked any consensual or participative elements, the Interim Council of Solidarność included regional committees and sought a broad consensus and dialogue with reform-minded Party *apparatchiks*. Further economic discontent, as well as a third visit by John Paul II in June 1987, culminated in roundtable talks from February to April 1989. Ultimately, the recognition of both Solidarność and the Catholic church spelled the death throes of the regime, whereby freedom of speech and association were guaranteed, as well as the independence of the judiciary, and a plan was made for free elections.

On 9 November, the Berlin Wall came down, and the international attentiveness shifted towards the German unification process. Even so, my (thankful) proposition is that Poland played a leading role in the end of Soviet hegemony in Eastern Europe; the *decisive* element in this, however, was the continuity of a uniquely, "republican familiarity" with the collective responsibility for national sovereignty, reaffirmed by the papal catalyst of a new trust in spiritual and cultural common values.

¹³ As a bottom-up created social movement Solidarność was strongly connected to underground publishing houses that printed books criticizing authorities, but also literature and poetry, as well as translation of forbidden books from the western world.

1. Constituting the Polish republican citizenry as the Nobility in its entirety

One core element of republican self-rule, as contrasted to subjection under top-down power, is the logical coincidence of civil and political rights. In Poland, the civil liberties of the nobility started to be separately proclaimed as early as 1430, with the law *Neminem captivabimus nisi iure victum*.¹⁴ This law banned the imprisonment of any nobleman without a judicial sentence being issued; this substantiated the nobles' claim to be exempt from royal judicial power, which led to the creation of their own supreme court, independent from the king and sitting outside his presence. The Crown Tribunal (Trybunał Koronny) was established in 1578 and was copied by the Main Tribunal of the Grand Duchy of Lithuania in 1581.¹⁵ Another early mentioning of the *szlachta's* political precedence is found in the Privilege of Czerwińsk (1422), which protected good inheritances (*bona haereditaria*) of noblemen from arbitrary infringements.

Fifteenth-century sources demonstrate a remarkable interest in public affairs and government, often labelling with the republic in the title. This line began with Jan Ostroróg's "Monumentum pro Reipublicae Ordinatione" (ca 1460) and led to the utopian "De Republica Emendanda" (1554) by Andrzej Frycz-Modrewski, Zygmunt Augustus' commissioner to the Council of Trent in 1545 and a close friend of Melanchton. The latter's availability in Polish, as well as Czech, German, Dutch, French, and English, demonstrates Poland's integration into the Latin European community of ideas. Erasmus himself praised Kopernik's "De Revolutionibus Orbium

¹⁴ Or even earlier with the Czerwińsk privilege of the inviolability of property (1422).

¹⁵ Further details in esp. in regard to the distinctiveness from the royal sejm Court, U. Müßig, *Jurisdiction, Political Authority, and Territories*, in: *The Oxford Handbook of European Legal History*, eds. H. Pihlajamäki, M.D. Dubber, M. Godfrey, Oxford 2018, p. 701 ff.

Coelestium” of 1543.¹⁶ In the same year, however, the Sejm began to publish its decisions only in Polish, followed by the same move for all legal documents. This secession from the previous fifteenth century bilingual production of legal documents in both the Polish vernacular and the (international) Latin seemed to turn the Polish orbit into its own noblemen republican world.¹⁷

The effective political power shift towards the nobles’ democracy came with the *Nihil novi* act, adopted in Radom in 1505, which was a major step forward to the eventual dominant position of the Sejm’s legislative power. The bicameral Sejm comprised three political estates: the monarch, the senators (magnates), and the chamber of deputies of the entire nobility (Izba Poselska). Its promise that there would be “[n]othing new about us without us” (“Nic o nas bez nas”, the so-called liberum veto)¹⁸ shifted the political centre away from the senate of the magnates to the deputies in the lower Chamber. This so-called “Constitution of Nihil Novi” or “Radom Constitution” became one of the cornerstones not only of the Polish-Lithuanian republic but later of the Lublin Union as the nobility’s Rzeczpospolita. Henceforth, no king could initiate any bill without the Sejm’s consent, and his decrees were framed by the Sejm’s laws. As early as the 1590s the republican discourse in the Polish-Lithuanian Commonwealth highlighted its mixed government (*regimen mixtum*), whose three Polybian elements were the monarchical (the king), the aristocratic (the senate), and the democratic (the whole of the nobility); these would “govern *simul et semper*” (but not on equal terms, as we shall see in due course).¹⁹

¹⁶ For further international research relation of the Polish mastermind cf. U. Müßig, *Kopernik and ReConFort: A Copernican Turn in Comparative Constitutional History*, “Giornale di Storia Costituzionale” 2019, 37/1, p. 5 ff.

¹⁷ The szlachta continued with latin studies, but also German, another crucial link to the Western neighbours gradually dwindled in this early modern turn.

¹⁸ “ut deinceps futuris temporibus perpetuis, nihil novi constitui debeat per Nos et successores Nostros sine communi Consiliariorum et Nuntiorum Terrestrium consensu”.

¹⁹ *Naprawa Rzeczpospolitej* (1573), 18, cited according to A. Grześkowiak-Krwawicz, in: *Republicanism I*, p. 45 note 2. Within the sixteenth century

What is unique in this example is the rise of these noble liberties in a surrounding of specific religious tolerance, given Poland's special multiconfessionalism in the age of confessionalism,²⁰ after Protestantism in all its forms had gained a foothold in Poland.²¹ This interconnection can be found in the *Articuli Henriciani* of 1572, whereby Henry of Valois guaranteed the Polish nobility a right of resistance and religious freedom, even though the words "Si non iurabis, non regnabis" (attributed to Hetman Jan Zborowski) witnessed both the "French unwillingness" to have an oath standing in their way and the Polish steadfastness to determine the conditions for the accession to the throne. Their anchor in the articles of 1572 was the decisive turn to the enduring character of the elected Polish throne.

From 1573 onwards, the right to elect the king was vested in the nobility in its entirety. In our context, this was much more than an organisational move within the Polish-Lithuanian Rzeczpospolita. Rather, the corporative sovereignty entrusted in the nobility in its entirety represented nothing less than the founding rational legitimacy of the commonwealth itself. The Polish nobility amounted to eight to ten percent of the total population; while in absolute terms the nobility was clearly a minority, its proportion

discourse the arguments diverge about the elements of the mixed constitution and how the balance between them should be put into effect.

²⁰ It comprises of all creeds from Catholicism to Judaism to Greek Orthodox religion and Protestantism. Under the Catholic restoration efforts many nobles were able to benefit from the return to "monarchical Catholicism" after the re-strengthening of the Crown, which had remained Catholic. The Orthodox of the Ukraine were to be bound to Poland by the Union of Brest in 1596 against Russian expansion, but this failed. In Poland, the identification with Catholicism in 1648–67 gained hold, in contrast to Orthodox Russia, Lutheran Sweden and the rebellious Cossaks. Only Gdańsk, Elbląg and Toruń remained predominantly Protestant. After the expulsion of the Aryans (*Arianer*) in 1658 and the law on apostasy in 1668, the Reichstag finally abolished freedom of religion in 1717 and threatened apostasy from Catholicism with the death penalty. Dissidents were expelled from all offices in 1773.

²¹ In the Consensus of Sandomir in 1570 Calvinists, Lutherans and Bohemian Brethren agreed on mutual tolerance.

was hardly negligible.²² The group as a whole was particularly heterogeneous, ranging from highly aristocratic magnates to the lower *szlachta*. Their disparateness on the one hand, coupled with the corporative feeling of togetherness on the other hand, fostered a Polish affinity for ancient Rome and its republican principles. The reverence of Sallust and Cicero is one example; another is the consequent attentiveness to antique republican virtues. The good (aristocratic) citizen was “distinguished by caution in the council chamber”; a *sopraporte* referencing this can be visited even today in the Council’s Grand Chamber in Gdańsk Main Town Hall, after the royal trading concessions by King Stephen laid the ground for Gdańsk’s ascension as both the wealthiest and historically the largest city in Poland. Such a prominence attributed to republican virtues made the Poles committed republicans. On the other hand, it also resulted in the very particular consequence that the virtues themselves were held to be the “gold standard” of republicanism. Because of this, any failure of Polish republicanism was deemed not to be a systemic problem but a personal one. This stifled any perceived need for political reform at the outset, while also fostering the myth of an idealised Polish national identity that was rooted in “flawless” republicanism.²³

Even in the later non-state period after the Polish partitions, ancient republican principles continuously served as legitimacy narratives and shaped the *ex-post* perspective after the Warsaw uprisings of 1830. Instead of the “erased” state, the Polish nation remained the point of reference of legitimacy. National legitimation

²² A. Wyczański, *Szlachta Polska XVI wieku*, Warszawa 2001, p. 17; A. Tarnowska, *op.cit.*, p. 215, 217.

²³ Against the reform plans of Stanisław II. August not only large parts of the aristocratic nation opposed, but also Russia and Prussia. Stanisław II. August tried to increase tax revenues by setting up a treasury commission and to raise the economic power of the cities and their citizens. His aims of reforming the Chamber of Deputies was to disempower the dispossessed nobility and to no longer allow Reichstag’s decisions and elections to be blocked by the need of unanimity. A revised liberum veto should be restrict – was to be used only for important issues such as war and peace.

became synonymous with republican legitimation, as exemplified in *Légitimité de la Nation Polonaise* (1836), written by the Vilnius professor of history Joachim Lelewel.²⁴ As an important voice in the *Grande Emigration* after the Warsaw upheaval in 1830, Lelewel published widely, including a comparative history of Spain and Poland, as well as a comparative analysis of all Polish constitutions. Lelewel's affiliation to the immigrants placed him amid the intellectual milieu of his compatriots Adam Jerzy Czartoryski,²⁵ Frédéric Chopin, and Adam Mickiewicz; for him, the "coutumes publiques de l'ancienne Pologne" ("political habits of the ancient Poland"),²⁶ which followed the pattern of the great ancient republics,²⁷ were the decisive legitimatory reference points of the historically grown unerasable identification with the Polish nation that was not dependent on the existence of a Polish state. In the Greek *eleutheria* style, just as Herodotus had used the personification of liberty, *eleutheria*, in order to ground his comparison between the Greeks and the Persians, and thereby had emphasised the former's virtue, Lelewel's praise of the old Polish republicanism stressed that the Slavic languages knew only the expression for subject (*poddany*), but not for slave.²⁸ Even when written some three hundred years

²⁴ Polish Library, Paris, Lelewel, Joachim, *Légitimité de la Nation Polonaise*, Rouen. B.r. Imp. D. Brière. 8°. He uses "nation" instead of "state" (*ibidem*, p. 12).

²⁵ On the advice of Eugène Delacroix he bought the hotel Lambert auf der Île Saint-Louis, where the Polish Library is still situated.

²⁶ Polish Library Paris, Lelewel, Joachim, *Légitimité de la Nation Polonaise*, Rouen. B.r. Imp. D. Brière. 8°, p. 5.

²⁷ "Là est la légitimité de la Pologne; et si les Polonais combattent légitimement pour son existence et leur propre indépendance, c'est encore un devoir légitime pour eux que de rechercher ces mêmes principes républicains que leurs ancêtres leur ont laissés en heritage." Translation by the author: "There is the legitimacy of Poland; and if the Polish legitimately fight for their existence and their own independence, then that is still a legitimate goal for them as it is to look for their own Republican principles that they inherited from their ancestors." (*ibidem*, p. 8). Cf. also page 12 of the Parisian manuscript, where Lelewel refers to the legitimation by means of the old Republican principles.

²⁸ His comparative analysis of the constitutions of 1791, 1814 etc. and a comparative constitutional history of Poland-Spain will be analysed in future publications.

later on the eve of nationalism in the long nineteenth century, it makes clear how aristocratic liberties became a core element of Polish republicanism in early modern times.

2. The noble trustees of the national sovereignty

The Polish-Lithuanian Commonwealth was proud to differ from the surrounding monarchies as “one of the three” free republics (*respublica libera*) – Rome, Venice, and the Rzeczpospolita²⁹ – and claimed to precede the Swiss and Dutch “newcomers”, and later the eighteenth-century Swedish “era of freedom” (1718–72) as well as, above all, the United States of America.³⁰ This was especially notable owing to the attention afforded America within the discourse around the Great Sejm, which the European Research Council-funded Advanced Grant project ReConFort has recently brought to light.³¹ Indeed, the “[l]iberty and independence” enjoyed in Poland were so unique to the Polish eye that “the freedoms [of] other countries... are... but an unbearable yoke.”³² The foundation of this freedom is peculiar: it was the aristocratic Republic and not the crown that held supreme power. Arising from the noble liberties of the fifteenth century, the reference point for the founding rational legitimacy was the Rzeczpospolita, not royal power. The latter’s divine source was never a *topos* in the Polish monarchical

²⁹ “And there is the proper form of that Republic which we call free and [...] of which there have only been three in the world: Rome, [...] from which it passed to the Venetians, Where it has lasted until our time. Our ancestors ad normam that of Venice have set up the third for us [...]” *Libera respublica* 1606, 407 cited according to A. Grześkowiak-Krwawicz, in: *Republicanism* I, p. 44.

³⁰ A. Grześkowiak-Krwawicz, in: *ibidem*, p. 45.

³¹ U. Müßig, *Juridification by Constitution. National Sovereignty in Eighteenth and Nineteenth Century Europe*, in: *Reconsidering Constitutional Formation I National Sovereignty. A Comparative Analysis of the Juridification by Constitution*, ed. U. Müßig, Cham 2016, p. 1–92, esp. 9.12.

³² *Krótkie rzeczy* 1859, 11, cit. according to A. Grześkowiak-Krwawicz, in: *Republicanism* I, p. 45, note 2.

discourse. Even Piotr Skarga, the sermoniser of royal power, did not speak of the divinity of the royal majesty.³³

The trustees of the founding rational legitimacy were the politically active citizens in their entirety, and therefore the nobility in its entirety, since the Polish conceptualisation of the republic relied upon the conflation of the nation with the noblemen.³⁴ These played a role largely analogous to the electoral princes as cooperative bearers of the *honor imperii*. Therefore, the Polish king was addressed as the “king of kings” (*rex regum*), but not the king of Poland.³⁵ The Polish nobility in its entirety was not only the crown elector, but juridified as contracting party in the *pacta conventa*. The Polish nobles in sum represented the nation and the nation, in turn, cooperated with the king in the *pacta conventa*; the opening of the May Constitution of 1791 makes it very clear that it stayed within this continuous tradition.³⁶ The 1791 text formulated a constitutional contract between the estates’ assembly, which represented the nation, and the king Stanisław August. While the introduction to the constitution appears paradoxical at first glance, as it refers to the king maintaining his role “by the Grace of God”, it immediately reasserts the leading position of the nobility in relation to the crown, by specifying that this “Grace” is performed “through the will of the nation.”³⁷ The constituent Polish nation could not be thought of as a sovereign people of free and equal citizens; rather, the nobility

³³ Skarga 1972, sermon 6, cit. according to A. Grzeškowiak-Krwawicz, in: *Republicanism I*, 45, note 9.

³⁴ E. Opaliński, *Kultura polityczna szlachty polskiej w latach 1587–1652*, Warszawa 1995, p. 40, 108. The Polish text was accessible with the help of Dr. Marcin Byczyk.

³⁵ A. Grzeškowiak-Krwawicz, in: *Republicanism I*, p. 48.

³⁶ Together with Sejm Marshall Stanisław Małachowski (1736–1809) protagonists of the May constitution were Scipione Piattoli, royal secretary, Ignacy Potocki, spokesman of the patriots in the Sejm, and Hugo Kołłątaj, since 1791 royal vice chancellor and the monarch himself (cf. A. Tarnowska, op.cit., p. 215–264).

³⁷ This passage is a precision of U. Müßig, *Reconsidering Constitutional Formation – The Polish May Constitution 1791 as a masterpiece of constitutional communication*, “Czasopismo Prawno-Historyczne” 2015, 67, p. 75–93. It elaborates the first delineation in U. Müßig, *Reconsidering Constitutional*

remained “the furthermost pillar of liberty and the contemporary constitution”;³⁸ the nation, therefore, was merely the nation of the nobility.³⁹ The affirmation of the old-Republican *pacta conventa* in Art. 7 of the May Constitution perfectly fits into the picture.⁴⁰

Consequently, the Polish king could never be the source of law and, as a result, there could be no framing of royal sovereignty similar to that of Bodin. The article *de non praestanda oboedientia*, initially promulgated in the permanent electoral capitulations of 1573, and receiving its definitive version in 1609, guaranteed the nobility the right to disobey royal orders and the right to denounce any threat aimed at the Republic and its liberties, even to the point of permitting an armed alliance against the king (*rokosz*). Though the alliance of the Calvinist nobility ended in 1607 with defeat, the king could not afford a criminal court and reassuringly declared he was not striving for the *absolutum dominium*. The subsequent legalisation of the *rokosz* was representative of the anti-monarchism of Polish republicanism in the decline of the Golden Age of Rzeczpospolita Obojga Narodów in 1594, when King Zygmunt II Waza (Sigismund Wasa, 1587–1632) also had himself crowned Swedish king in Uppsala.⁴¹ From this anti-monarchical stress test onwards, the defence of freedom was identified with the defence of the public good: it was the common goal of the nobles to “refrain [the king] from breaking the law”⁴², but not to get rid of the monarchy.

Formation – Research challenges of Comparative Constitutional History, “Journal of Constitutional History” / “Giornale di Storia Costituzionale” 2014, 27, p. 107–131. D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte* (n. 6), p. 281.

³⁸ Art. 2 at the end, cited in D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte* (n. 6), p. 283.

³⁹ In the introduction and Art. 2 of the May constitution, the meaning of nation is equivalent to nobility.

⁴⁰ Art. 7, cited in D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte* (n. 6), p. 287.

⁴¹ After the death of his father, King John III of Sweden (1568–1592).

⁴² Cit. according to S. Orzechowski, *Wzór Korony Polskiej na cynku wystawiony*, Kraków 1858, p. 60. Digitalisat of the Bavarian state library, <https://>

The salient point in this tradition of electoral capitulations and *pacta conventa* is the fact that the crown was the necessary counterpart to the aristocratic rational legitimisation of the common good to keep the king from breaking the laws and infringing the nobles' liberties. As Jan Zamoyski declared in his speech to the Sejm in 1605, "I do not separate Your Majesty from the Republic because they must be united; there is always *conjunctim* here..."⁴³ It is a paradox of Polish republican anti-monarchism that no king was no option, regardless of the fears that every king was a danger to liberty. The free election of the king was so much "a beneficial market for liberty"⁴⁴ for the entire politically active nation that, regardless the nobility's distrust towards monarchical rule, the crown's abolition was never on the table. Any attempt to propose reforms was nipped in the bud at the outset: "malo periculosam libertatem quam quietum servitium" ("I prefer perilous freedom to peaceful servitude")⁴⁵ addressed the paralysed Polish republican thought between Jan Sobieski's support of the Holy League and the Polish-Saxon engagement in the Great Northern War against the Swedish *dominium maris baltici*. It ended with the rise of Russia as a predominant power in the Baltic region and the Polish-Lithuanian Rzeczpospolita falling under Russian influence.⁴⁶ After August III's death in 1763, the common interest of the neighbouring powers Russia, Prussia, and Austria was to ensure that the shattered Polish state remained politically impotent. This meant preserving the noble republican constitution and electing a king acceptable to them. The interregnum provided the opportunity to have Stanisław August Poniatowski, a favourite of the Russian

opacplus.bsb-muenchen.de/Vta2/bsb10026660/bsb:BV020345132?page=3 (access: 3.01.2021).

⁴³ Cited according to A. Grzeškowiak-Krwawicz, in: *Republicanism I*, p. 48, note 12.

⁴⁴ *Ibidem*, p. 54, note 19.

⁴⁵ *Ibidem*, p. 54.

⁴⁶ In 1717, the Russian emperor guaranteed the Golden Freedom of the Polish nobility and thus the king's inability to act; Russian troops remained in the country as protection against confederations.

Tsarina Catherine II, to be king, and he was duly elected by the Convocation Sejm of 1764.

3. Peculiarities of Polish republican parliamentarism

The sovereign commonwealth of the Both Nations from 1569 onwards was represented by the nobility in its entirety, meeting in the Sejm, formed by the union of the Polish and Lithuanian general assemblies. Its bicameral structure out of the Senate (Royal Council) and the Chamber of deputies as representatives of the regional assemblies (*sejmiks*, *the Dietines*) knew the superiority of the house of deputies, to which the representatives of the whole nobility had access.

Whereas the essence of public liberty was the participation in self-determining the nationwide “common” law,⁴⁷ the republican preoccupation with the nation’s sovereignty kept the *deputies* as plenipotentiaries, representing the corporate electorate of the whole Commonwealth, not merely the provincial *sejmiks*. On the other hand, each deputy was subject to the instructions of their local electorate: often written instructions were handed over before the departure for Warsaw, containing more general instructions, specific voting “orders”, or even the prohibition against voting on certain issues without prior consultation with the local constituency. This practical electorate’s participation in the Commonwealth’s government was exemplified in the words of the Volynian nobles, just ten days after the publication of the May Constitution in 1791:

⁴⁷ “they govern in the name of the common law, referred to as common because everyone constitutes it *ratione* for themselves, so that the law does not weigh on him who institutes it for himself.” (Libera respublica 1606, 407 cited according to A. Grześkowiak-Krwawicz, in: *Republicanism I*, p. 45 note 3). Virtually the same definition can be found in the time of the May Constitution 1791: “Political liberty is the state of the nation which prescribes laws for itself.” (*Katechizm narodowy*, 1791, cited according to A. Grześkowiak-Krwawicz, in: *Republicanism I*, p. 45 note 4). Not to be confused with the specific English common law.

“The nation is not in Warsaw but in the whole country, and its will is not in its representatives, but in the instructions issued by the voivodeships.”⁴⁸

Such an extension of the dictated superiority of the local Dietines over parliament was based on the republican idea that a single “virtuous” Pole could defy a corrupt parliament and safeguard liberty from abuse by the monarch: the *liberum veto*. There is no sense, though, in relying on practical virtuousness, when they lack a corresponding set of procedures that could ensure “correct” behaviours. Thus, the Sejm marshal had neither the authority nor the official competence to govern the orderly conduct the debates; his success in guiding a constructive parliamentarianism relied almost entirely upon his force of personality to mediate conflicts or steer attention back to issues of substance. The figure of the Sejm marshal is therefore paradigmatic for the idealistic mentality behind the evolving practice of noble republican parliamentarism, most conspicuous in regard of the ambiguities expectable for the marshal’s mandate resulting from the tensions of his electors – the deputies of the *sejmiks*.

Once again, the extent of the local magnates’ individual impacts can be explained by Poland’s unique, republican understanding that the nation was comprised of and represented by the Polish nobility in its entirety. This culminated in the organisation of the legality of the Rzeczpospolita in a kind of “negative” parliamentarism. Such a terminology is not meant in a pejorative or judgemental sense, but rather in the metaphorical manner akin to magnetism or electricity; just as positive and negative charges attract each other, the steadfast Polish credo “whatever strength of the throne must be taken from liberty” necessitated that the Sejm would be weakened, be it by the instructive mandates of the Deputies or by the obstructive abuse of the *liberum veto*. The latter became the symbol of the vulnerability of the Polish parliamentary system, though in its republican origins it simply expressed the republican responsibility of all for all, that a measure not freely assented to by all lacks full authority, and that therefore the majority should be

⁴⁸ Cited according to A. Grześkowiak-Krwawicz, in: *Republicanism I*, p. 52, note 17.

barred from disregarding dissenting minorities. From its maiden use, though, by the deputy Siciński in 1652 onwards, the Polish practice of the *liberum veto* seemed to pervert this “bastion of noble Polish freedom.” Montesquieu has noted in his “Spirit of the Laws” that “the independence of everybody is the object of the Polish laws; and result from this is the oppression of all.”⁴⁹ The Rzeczpospolita became completely incapacitated by the principle of *liberum veto*, which allowed any nobleman to “tear up” Sejm decisions that had not been unanimously adopted. The demand for unanimity and the corruption of many petty nobles led to there being more disrupted Sejm assemblies than quorate ones. Together with the further weakness of underrepresentation of towns, the nobility’s confederate right in an emergency (death of monarch, foreign invasion), amounting to the unilateral competence even for foreign policy, hamstrung Polish aristocratic parliamentarism. Thus confederations – associations of nobles for the enforcement of their own interests, even by force – became increasingly important in domestic politics, undermining the collective underpinning of the Polish-Lithuanian Commonwealth and therefore fatally weakening the state itself. The confederations acted as a kind of plebiscite, strictly seeking majorities (and ignoring the freedom of *liberum veto*), and in turn blithely ignoring minorities. Consequently, the confederation of Bar (Konfederacja barska 1768–1772), which proclaimed the dethronement of Stanisław Augustus Poniatowski, may also be held responsible for having triggered the first partition of Poland in 1772.

4. Republican Continuities in the May Constitution

The emphasis of the nation is on the collective. In the light of the “shock effect of 1772”⁵⁰ the sovereignty of the Polish nation ad-

⁴⁹ Esprit des lois, book XI, chapt. 5, Pleiade-edition, vol. II, p. 396.

⁵⁰ K. Zernack, *Polen in der Geschichte Preußens*, in: *Handbuch der preußischen Geschichte*. Bd. II: *Das 19. Jahrhundert und Große Themen der Geschichte Preußens*, O. Büsch (Hrsg.), Berlin–New York 1992, p. 424

dressed both the external independence from foreign interventions and internal freedom.⁵¹ Progressive voices like Hugo Kołłątaj, Piotr Świtkowski, Ignacy Potocki and Stanisław (Wawrzyniec) Staszic enriched the former nobility ideals of liberty and equality in a modern republican sense: liberty now contained the respect for self-imposed laws, decided by representatives in a constituted legislative, and equality extended political participation beyond local aristocratic communities. Kołłątaj, who had served as the dean of the Academy of Krakow before later becoming a royal vice-chancellor, hearkened back to the democratic ideas of both Benjamin Franklin and George Washington⁵² to campaign to have the Polish cities represented in the Sejm.⁵³ The enlightened enhancement of the old ideals, though, or – the other way round – the placing of ancient values (bravery in war and wisdom in council) “on the same footing as liberty”⁵⁴ differentiated the reform minds in the Great Sejm between 1788 and 1792 from the revolutionary pioneers in Paris or across the Atlantic. Far away from any egalitarian broad-based *fraternité* similar to that which would be (unevenly) applied by the French revolutionaries after 1789, Polish reform minds borrowed from an nobility “brotherhood”, which was seen not simply as a check and balance on arbitrary monarchical power (as was the contention in England after the signing of the *Magna Carta*), but in fact was recognised as the constituted Polish nation in and of itself. At no point within their discourse and under no circumstances did the liberal

⁵¹ Cited in D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte*, (n. 6), p. 281.

⁵² Hugo Kołłątaj (1750–1812), Former dean of the University of Krakau and later royal vice chancellor in 1791, had great influence on the Sejmmarshall Stanisław Małachowski. Concerning Kołłątaj’s person and oeuvre compare M. Pasztor, *Hugo Kołłątaj na Sejmie Wielkim w latach 1791–1792*, Warszawa 1991. H. Kołłątaj, the spiritual cornerstone of the “forge” (Kuznica), became the reform motor due to its *Listy Anonima* (1788/90) and a constitutional draft (*prawo polityczne narodu polskiego*, 1790). The Polish writings of Kołłątaj were newly edited during the 50s by Bogusław Leśnodorski.

⁵³ H. Kołłątaj, *Uwagi nad pismem... Seweryna Rzewuskiego... o sukcesyi tronu w Polsce rzecz krótka* [Remarks about Seweryn Rzewuski’s short essay on the throne succession in Poland], Warszawa 1790, pp. 71–77.

⁵⁴ A. Grześkowiak-Krwawicz, in: *Republicanism I*, p. 57.

vanguard Kołłątaj, Potocki and Staszic⁵⁵ claim to establish a new rational legitimization as “the basis and foundation of government” (as the Virginia Bill of Rights has in 1776), or as “le but de toute institution politique” (as per the declaration of civil rights within the September Constitution of 1791).⁵⁶ Instead of a revolutionary break with inherited power structures the reform masterminds sought to coopt extant or previously extant legitimacy models into the practice of power. A further indicator of a “gentle” clothing of traditional power patterns by constitutional elements could be the lack of any declaration of rights in the May document; only religious and cultural freedom was mentioned in the context of the fixing of Catholicism as the state religion in Art. 1 of the first Polish constitution 1791. Nevertheless, the Polish May Constitution fixed a core part of normativity, and was the only constitutional document of the revolutionary era which expressly states the precedence of the constitution, declaring that “all consecutive resolutions of the current Sejm are to be consistent with the constitution in all respects”⁵⁷. Though the May constitution collapsed only a year after enactment it remained a point of identificatory reference which sits comfortably within the republican lineage due to the equation of the nobility and the nation. Such a constitutionalization of the nation as the legitimacy and legitimizing collective body with electoral powers tied not only the monarch to the nobles but insisted on the indigenous *conjunctim* between the ruler and the ruled, which was designed to exclude infringements by foreign-imposed autocracies. It is in this sense, that Świtkowski insisted that a strong executive power would serve the nation because its power would safeguard the nation.

The specific Polish preference for “continuation within change” can be felt in the vagueness which marks the Polish term of the “nation” around the Great Sejm between 1788 and 1792. Assessing

⁵⁵ For more information see reconfort.sources.eu (access: 3.01.2021).

⁵⁶ Cited in: D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte* (n. 6), p. 251.

⁵⁷ Ending of the introduction, cit. in: D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte* (n. 6), p. 281.

the constitutional formation up to the May Constitution of 1791, five months ahead of the French September Constitution of 1791, notable parallel paths and ambiguity exist between the sense of the old aristocratic Republic and the opening towards an understanding of a general political body.⁵⁸ The “thousand-year-old” freedom of the republican heritage remained a formative element, even in the flashing alliance of the nobility and the bourgeoisie. The law on “Our Free Royal Cities in the States of the Rzeczpospolita” (18 April 1791) was adopted unanimously and received the constitutional rank as a law in article III of the May Constitution; this law gave the free Polish nobility a new, true and powerful force for the guarantee of its freedoms, as well as the inalienability of the common fatherland.⁵⁹ There seem to be two ideas behind this prudent yet rather confusing formulation: firstly, that this law was not intended to restrict the aristocrats’ privileges in any way; and secondly, that the foundations of the “Republic” were to be found in *both* the Polish aristocracy *and* the citizenry. More leaping than lurching, it can be read as the liberal precaution not to risk the granting of civil and political ideas to the citizenry (and perhaps also to the farming class) to be denounced as hidden supporters for the king in the event of an absolutist *coup d’état*. The uneven usage of the term “nation” within the May Constitution fits into this picture. In Art. II of the May Constitution, the nation (defined noblesse) provided the point of reference⁶⁰, while Art. IV seemed to include even the “farming class”.⁶¹ Distinction existed

⁵⁸ In length, U. Müßig, *Juridification by Constitution*, p. 16, 1–92, 29 ff.

⁵⁹ Therefore, ReConFort I has offered the first English translation of the law of the free royal cities of the republic (*Miasta nasze królewskie wolne w Rzeczypospolitej*, in: *Konstytucja 3 maja 1791*, edited by J. Kowecki, Warsaw 2014, p. 125–136), done by the author on the basis of the German translation by Dr. Inge Bily with assistance of Prof. Dr. Danuta Janicka (Toruń) und Prof. Dr. Zygfryd Rymaszewski (Łódź).

⁶⁰ M. Handelsman, *Konstytucja Trzeciego Maja roku 1791* [Die Konstitution vom 3. Mai 1791; The Constitution of May 3, 1791], Warszawa 1907, pp. 58 et seq.

⁶¹ Wording of Article IV according to D. Willoweit, U. Seif (= Müßig), *Europäische Verfassungsgeschichte*, (n. 6), p. 283: “ Das Landvolk, unter dessen Händen die fruchtbarste Quelle der Reichstümer des Landes hervorfleißt, das

even in unity; the renewed union on October 20, 1791 was named Rzeczpospolita Obojga Narodów, the Republic of two nations. The sovereignty of the nation was claimed to be the origin of all state authority (Art. V), even though since the second and third division of Poland a nation in the sense of a politically mobilized people was conspicuously lacking.⁶²

Such an indecisiveness offered home also to the reactionary *targowiczanin*⁶³ whose mystification of the “ancient republican liberties” refused any reform approach to constitute the Polish throne. Seweryn Rzewuski was their standard-bearer and his title on the succession to the throne in Poland (*O sukcesyi tronu w Polsce rzecz krótka*, 1789) equated “traditional old republicanism” with the elective monarchy and a *liberum veto*.⁶⁴ All reforms proposals, be it the drafted succession to the throne, the modernisation of the army or the lengthening of the parliamentary sessions, became discredited as “restful servitude under a yoke of despotism”. In the end, the conservative blockage of the May Constitution resulted in

den zahlreichsten Teil der Nation ausmacht und folglich der mächtigste Schutz für das Land ist, nehmen wir sowohl aus Gerechtigkeit und Christenpflicht als auch um unseres eigenen wohlverstandenen Interesses willen unter den Schutz des Gesetzes...” (“The land people under the hands of which flows the most fertile source of the belongings of the Empire that makes up the greatest part of the nation and consequently is the most powerful protection for the country – that we protect by the law both from the point of justice and Christianity as well as our own, well understood interest”).

⁶² Only the Polish nobility was inhibited by liberal reform ideas. Accordingly, the Polish Constitution of 1791 regulated no Polish civil rights.

⁶³ The term *targowiczanin*, which historically applies to each member and supporter of the Targowica Confederation, became a synonym for a traitor, just as *targowica* is synonymous with treason. P.M. Dabrowski, *Commemorations and the Shaping of Modern Poland*, Bloomington–Indianapolis 2004, p. 101.

⁶⁴ S. Rzewuski, *O sukcesyi tronu w Polsce rzecz krótka* [A short essay on the throne succession in Poland] Kraków 1789. Compare Z. Zielińska, *Republikanizm spod znaku buławy. Publicystyka Seweryna Rzewuskiego z lat 1788–1790* [Republicanism under Feldhetmans Streitkolben. Political articles of Seweryn Rzewuski 1788–1790], Warszawa 1991, pp. 57 et seq.; “O sukcesyi tronu w Polsce 1787–1790” [About the succession to the throne in Poland 1787–1790], Warszawa 1991.

one thing: to ask the Russian Empress Catherine II as the “faithful guarantor of Polish liberties”⁶⁵ to assist the Confederation of Targowica out of Polish and Lithuanian magnates to restore the *status quo ante* that had preceded the May Constitution. Four days after the Act of the General Confederation, the Russians invaded the Polish-Lithuanian Commonwealth without a formal declaration of war. The victory of the Targowica Confederation over the troops of the Sejm and King Stanisław August Poniatowski was a pyrrhic one, as it led to the Second Partition and set the stage for the Third in 1795.⁶⁶

5. Conclusion: Continuities beyond

Much more research on Polish republicanism is an urgent desideratum. This essay cannot do more than to raise the question whether the sense of solidarity together with longstanding history of republican identification might have caused the decisive crack in the wall which had kept eastern Europe since 1945. Poland’s republican traditions had an impact on its leading role in the end of Soviet hegemony in Eastern Europe; concluding this research sketch, the *decisive* moment seems to be the continuity of the “republican familiarity” with direct democratic patterns, a “republican subversiveness” towards any state authority which is better controlled than trusted, and the “republican reputation” of property rights. These elements have historical precedents stretching back centuries. It is in this sense, then, that the third Polish Republic was not installed on a blank slate, but instead on a people and land that had a kind of familiarity with democracy, property rights, the rule of law and personal accountability since the earliest shaping of nobility republican ideas.

⁶⁵ Act of the General Confederation 1792 on 14 May 1792.

⁶⁶ T.M. Fazal, *State Death: The Politics and Geography of Conquest, Occupation, and Annexation*, Princeton 2011, pp. 107–108.

STRESZCZENIE

„Każdy z was mógłby, samotny, więziony,
myślą i wiarą zwałać i podźwigać trony”.

O europejskim znaczeniu
polskiego dziedzictwa republikańskiego

Badania nad historią konstytucjonalizmu mogą być prowadzone w skali krajowej lub porównawczej. To drugie wymaga spojrzenia z zewnątrz na historyczny system prawny, jest ono tym dokładniejsze, im bardziej uwzględnia kulturę i ducha prawa. Jako niemiecki historyk prawa uznałam, że warto zdystansować się od heglowskiego myślenia *Volksgeist*. Moje zainteresowanie polską tradycją kształtowania pamięci narodowej w latach bezpieczeństwa i narzuconego autorytaryzmu sytuuje się raczej w tradycji Burckhardtowskiej. Podobnie jak autor ten odczytywał *Cywilizację renesansu we Włoszech* (1860) w kategoriach rozwoju jednostki, tak też przyjąć można, że istnieje polska kultura prawna stymulowana przez republikańską ideę „niedominacji”. W artykule tym argumentuje się, że polski republikanizm ma udział w żywotnej i wiodącej roli Polski w upadku komunizmu od 1989 r., i nie jest to naiwne założenie o prostej ewolucji tej myśli od końca XVI i początku XVII w., kiedy szlachta zdobywała realną władzę kosztem królewskich prerogatyw, do XX w. Jest to raczej wizyta w paryskim Musée Marmottan, by zobaczyć *Bassin aux nymphéas* Moneta: kwiaty malowane są na płótnie grubymi pociągnięciami, łączącymi kolory, a lilie wodne są rozpoznawalne tylko dla obserwatora, który z dystansu podziwia cały obraz. W podobny sposób polski republikanizm ma znaczenie nie tylko dla Polski, ale i dla Europy.

Słowa kluczowe: godność republikańska; republikańskie samostanowienie; zbieżność praw obywatelskich i politycznych; suwerenność powierzona szlachcie; republikańska ciągłość w Konstytucji 3 Maja

SUMMARY

“Each one brings with his faith and thought –
even in chains – thrones to the highs and down” –
on the European significance
of the Polish republican heritage

Constitutional history may be done on national or on comparative scale. If approached comparatively, it requires an external look to a historical legal system. This look, though, is the more accurate the more one considers the legal cultural spirit. As a German legal historian, it is decisive to distance myself from any Hegelian *Volksgeist*-thinking. Rather, my interest in the Polish republican tradition forging the national memory in the years of statelessness and imposed authoritarianism is guided by a Burckhardtian way. As he read the *Civilisation of the Renaissance in Italy* (1860) in terms of the rise of the individual, there seems to be a Polish legal culture in terms of a republican stimulus of “non-domination”. If this paper argues that Polish republicanism has a share in Poland’s vital and leading role in the fall of communism from 1989 onwards, it is not so naïve to assume a direct line from the late sixteenth and early seventeenth centuries, when nobility was acquiring real power at the expense of royal prerogatives, to the twentieth century. It is more like a visit to Monet’s *Bassin aux nymphéas in the Parisian Musée Marmottan*: Blossoms are placed on the canvas in thick strokes, merging colours into another. The water lilies are only recognizable, if you stand back from the painting and admire the whole picture. It is in this way that Polish Republicanism matters, not only for Poland, but also for Europe.

Keywords: republican dignity not to be mastered; republican self-rule; coincidence of civil and political rights; corporative sovereignty entrusted in the nobility in its entirety; republican continuities in the May Constitution

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