

PIOTR WIŚNIEWSKI

THE PRINCIPLE OF SEPARATION AND BALANCE OF POWERS
IN POLISH CONSTITUTIONAL LAW:
A HISTORICAL VIEW

In the 18th century, the doctrine of separation of powers was established as a remedy for tyranny, according to John M. Kelly. A trace of this theory is already found in the philosophy of John Locke.¹ Locke distinguishes two powers: legislative and executive.² However, it is Montesquieu who is commonly regarded as the founder of the classic doctrine of separation and balance of powers. Later, attempts to create more or less original models were also made. Hubert Izdebski considers Benjamin Constant to be the most important author and creator of the theory of five powers. He supplemented the three distinguished by Montesquieu with two other powers: municipal and royal.³

In every government there are three sorts of power: the legislative; the executive, in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law. By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state. (. . .) When the legislative and executive powers are united in the same person, or in the same body of magistrates,

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¹ J. M. KELLY, *Historia zachodniej teorii prawa*, Kraków 2006, p. 306.

² H. IZDEBSKI, *Historia myśli politycznej i prawnej*, Warszawa 2001, p. 131.

³ H. IZDEBSKI, *Historia myśli*, p. 134.

there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor”⁴ – wrote Montesquieu.⁵

At the same time he remarked that: “Of the three powers above mentioned, the judiciary is in some measure next to nothing: there remain, therefore, only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose”.⁶ Therefore, it was Montesquieu who already argued that the separation of powers itself could not be a sufficient protection from the tyranny of the power. Those powers should remain in balance.

The postulate for trias politica gained wide acceptance very quickly and it was entered into constitutional acts and other documents. Paweł Sarnecki above all emphasizes the French Declaration of the Rights of Man and of the Citizen from 1789. Article 16 of that Declaration proclaims that: any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all. In the further order, there are the USA Constitution from 1787 and the first French constitution from 1791.⁷

The Polish Third of May Constitution is also mentioned in this context.⁸ The Government act from 3 May 1791 in Article five called “The Government or designation of public authorities” provided as follows: to secure the state’s integrity, civil freedom and order in the society “the government of the Polish nation ought to comprise three authorities”. These are: “legislative authority”⁹, “a supreme executive authority”¹⁰ and a judicial authority.¹¹ Hence, it should be noticed that the

⁴ MONTESQUIEU, *O duchu praw*, Kęty 1997, p. 137 [This is a fragment of Book eleven “Of the laws which establish political liberty, with regard to the Constitution”; chapter VI “Of the Constitution of England”]. Cf. also: J. M. KELLY, *Historia zachodniej*, p. 306; H. IZDEBSKI, *Historia myśli*, pp. 132-133.

⁵ Died in Paris on 10 February 1755.

⁶ MONTESQUIEU, *O duchu praw*, p. 140.

⁷ P. SARNECKI, *Prawo konstytucyjne RP*, Warszawa 2008, pp. 80-81. Cf. also: H. IZDEBSKI, *Historia myśli*, p. 133.

⁸ Cf. P. SARNECKI, *Prawo konstytucyjne*, p. 80; H. IZDEBSKI, *Historia myśli*, p. 133.

⁹ Sejm consisting of the chamber of deputies and the senate.

¹⁰ The King and the Guardian of Laws.

¹¹ J. KOWECKI (Ed.), *Konstytucja 3 Maja 1791. Statut Zgromadzenia Przyjaciół Konstytucji*, Warszawa 1991, p. 98.

reception of the principle of trias politica and equilibrium of powers in Poland proceeded very quickly. “The Spirit of the Laws” was published in 1748 while 43 years later the principle of separation of powers was introduced into the Polish Constitution.

There is no doubt about this reception being very fast. Here, a question arises: did it then permanently become the basis of the political system of the Polish State?

The Third of May Constitution was abolished shortly after it was proclaimed, which was the result of the Polish-Russian war in 1792. Three years later, the third partitions of Poland (1795) took place and Poland disappeared from the map of Europe for 123 years, being divided between Prussia, Austria and Russia. This period will not be discussed in the present analysis.

Poland regained independence on 11 November 1918. That was connected with the necessity of establishing the legal basis for the revived state. The law from before the partitions could not constitute the basis for the State’s functioning.

The first legal act which requires discussion is the Decree from 22 November 1918 on the Highest Representative Authority in the Republic of Poland,¹² which determined the provisional political system till the calling of the Legislative Sejm. According to Art. 1 of the Decree, Józef Piłsudski took over the supreme power of the Republic of Poland as the Temporary Chief of State. The government consisting of the president of ministers (Prime Minister) and ministers was called and recalled by the Temporary Chief of State. It also bore responsibility before the latter (Art. 2 of the Decree). The legislative power was realized by the Council of Ministers and the Temporary Chief of State. Decrees issued by the Council of Ministers and acknowledged by the Temporary Chief of State lost their binding force if they were not submitted for approval during the first sitting of the Legislative Sejm. This temporary state lasted till 20 February 1919. On that day, Marshall Piłsudski – in accordance with the announcement of the Decree handed his power over to the Legislative Sejm.¹³

The next legal act establishing the political system of the revived state was the Act of the Sejm from 20 February 1919 on entrusting Józef Piłsudski, with the further execution of the office of Chief of State¹⁴ (called the Small Constitution). The Sejm entrusted Józef Piłsudski with the position of the Chief of State until the Constitution was passed according to the following conditions: the sovereign and

¹² “Dziennik Praw Państwa Polskiego” [Journal of Laws of the Polish State] 1918, item 41.

¹³ J. BARDACH, B. LEŚNODORSKI, M. PIETRZAK, *Historia ustroju i prawa polskiego*, Warszawa 2000, p. 479.

¹⁴ “Dziennik Praw Państwa Polskiego” [Journal of Laws of the Polish State] 1919, No. 53, item 226.

legislative power was exercised by the Legislative Sejm, although acts required countersignatures of the Prime Minister and “a respective expert minister” (item II.1 of the Act). The Chief of State was the State’s representative and the highest executor of the Sejm’s acts in civil and military matters (item II.2 of the Act). The Chief of State was called by the Government on the basis of an agreement with the Sejm (item II.3 of the Act). The Chief of State and the government were responsible before the Sejm (item II.4 of the Act). Each act of the Chief of State required a countersignature of the proper minister (item II.5 of the Act). The Small Constitution then adopted a position of concentration of the power in the state in the Legislative Sejm. This was expressed in equipping the Sejm with sovereign power. The Sejm became the source of all power. Its main task was to pass the principal act – the constitution (hence, the name of the Legislative Sejm, which is the Constituent Assembly). Those principles were subject to certain restrictions in connection with the Polish-Russian war of 1919-1920. In August 1920 the Red Army came to the outskirts of Warsaw. On 1 July 1920 the Sejm passed the act on establishing the Council of National Defense.¹⁵ The Head of the Council was the Chief of State (Art. 2, item “a”). The Council had the right to decide in all matters related to waging and finishing the war and concluding peace – to realize this task, it was given the right to issue ordinances and orders (Art. 3).¹⁶

In 1921, after the political situation became stabilized (concluding the war with Bolshevik Russia), the moment for closing the temporary state finally arrived. The Sejm passed the first constitution of the Second Republic of Poland (RP). The extensive work of the Constitutional Committee preceded that moment.

The Committee gave up searching for original political solutions and based its project on the practically tested political model of the French Third Republic from 1875. The parliamentary system was adopted as the most adequate for the Polish society. Those assumptions gave rise to a heated discussion at the plenary session of the Sejm which – in the face of no possibility of any political camp enforcing their concepts – led to the passing of the constitution in a compromise version. Finally, the constitution was passed on 17 March 1921¹⁷ (which is why in Polish literature of the subject it commonly is referred to as the March Constitution). Chapter I of the Constitution entitled “Republic of Poland” contains two articles where a catalogue of the state’s political principles can be read. Those principles include the following: the republican form of the political system (Art. 1)¹⁸ and

¹⁵ “Dziennik Ustaw” [Journal of Laws] 1920, No. 53, item 327.

¹⁶ J. BARDACH, B. LEŚNODORSKI, M. PIETRZAK, *Historia ustroju*, pp. 480-482.

¹⁷ “Dziennik Ustaw” [Journal of Laws] 1921, No. 44, item 267, as amended.

¹⁸ “The Polish State is a Republic.”

the principle of separation of powers (Art. 2).¹⁹ This principle constituted the basis of the organizational structure of the state. The concept of separating the powers into the legislative, the executive and the judicial was understood by the authors of the March Constitution as dividing the state's competences between its various organs. They gave the organs – besides the principal functions – the rights belonging to other organs, as well. Legislative organs were equipped with certain executive competences, and the executive ones gained certain legislative rights as well as judicial ones. Separation of powers was supposed to enable a harmonious cooperation of legislative and executive organs apart from checking dictatorial tendencies. The political system introduced in the March Constitution is called a parliamentary system. The government held the power as long as it enjoyed the trust of the majority of deputies.²⁰

The March Constitution remained in place without any additional corrections for five years. In May 1926,²¹ events called the May revolution took place. In fact, it was an armed coup d'état organized by Marshall Józef Piłsudski against the binding law but with considerable social consent. The coup was legalized by the resignation of the President and the appointment (according to the March Constitution) of his successor in the person of Professor Ignacy Mościcki,²² as indicated by marshal Piłsudski.²³

Although the March Constitution gave rise to critical voices from the very beginning of its existence, it was only the May coup d'état of 1926 which became an impulse to amend it.

The new government put forward a project of changes and amendments to the constitution. That project provided for a new separation of competences between the organs of the legislative and the executive. The amendments were passed with a considerable majority of votes on 2 August 1926.²⁴ No changes were introduced in Articles 1 and 2 of the Constitution. Therefore, the principles of the political system of the state remained unchanged. Nevertheless, after the amendments were made, the political system of the Second Republic of Poland cannot be called parliamentary since the main changes aimed at strengthening the position of ex-

¹⁹ “[. . .] The organs of the Nation In the sphere of legislation are Sejm and Senate, in the scope of the executive – the President of the Republic of Poland jointly with proper minister, and In the scope of justice – independent Courts of Justice”.

²⁰ J. BARDACH, B. LEŚNODORSKI, M. PIETRZAK, *Historia ustroju*, pp. 479-480.

²¹ 12-15 May 1926.

²² [on-line]: http://pl.wikipedia.org/wiki/Przewr%C3%B3t_majowy

²³ The National Assembly first elected J. Piłsudski himself, who, however, did not accept this choice explaining it with too small presidential competences.

²⁴ “Dziennik Ustaw” [Journal of Laws] 1926, No. 78 item 442.

ecutive organs, namely the president and the Council of Ministers at the cost of the legislative rights of legislative organs – the Sejm and the Senate. The President was granted special rights in the sphere of legislative power. The President was given an independent right to dissolve the Sejm and the Senate before the end of their respective terms. The president's decision was made on the motion of the Council of Ministers. The Sejm simultaneously lost the right to dissolution by virtue of its own act. The president obtained the right to issue laws by decree (in defined cases). The amendment also granted the president special budgetary rights. If the Sejm and the Senate did not pass a project of the budget act within the period determined by the amendment, or did not reject it, the president could announce the government project as an act. The Sejm's rights to hold a vote of no-confidence for the government were limited.²⁵

Work on the revision of the March Constitution already began in the Sejm elected in 1928. However, it was only after the 1930 elections during which the camp centred around marshal Piłsudski²⁶ won an independent majority in the Sejm when the work became accelerated. The constitutional theses prepared by BBWR deputy Stanisław Car in 1933 became the starting point for legislative work. Their characteristic feature was a complete departure from the principles on which the March Constitution was constructed and acceptance of new assumptions and political solutions. The theses caused a strong protest of the opposition who left the conference room. The majority – disregarding the binding procedure (and in fact breaking it) and in the absence of the opposition passed the constitutional theses on 26 January 1934 as a project of the constitution. Finally, the president signed the new constitution on 23 April 1935²⁷ (hence, it is also called the April Constitution). The April Constitution adopted the principle of concentration of the state's power in one person – the president. That was expressed in Art. 2, which read: “The President of the Republic of Poland stands at the head of the state” (item 1). “His person concentrates the state's uniform and indivisible power” (item 4). Therefore, the principle of separation of powers was rejected. The president bore neither constitutional nor political responsibility. Only responsibility towards God and history rested upon him (item 2). The concentration of the state's power in the person of the president did not mean that it was the president who – using the administrative apparatus – performed all functions of the state. Art. 3 of the constitution enumerated the following organs of the state: govern-

²⁵ J. BARDACH, B. LEŚNODORSKI, M. PIETRZAK, *Historia ustroju*, p. 496.

²⁶ BBWR – Non-Part Block of Cooperation with the Government, which was a federation of physical and legal persons, including political parties.

²⁷ “Dziennik Ustaw” [Journal of Laws] 1935, No. 30, item 227.

ment, Sejm, Senate, armed forces, courts of justice, state control. They remained under the supervision of the President of the Republic of Poland; however, each of those organs had its own range of competences determined in the Constitution. The Constitution also included a general competence clause – matters not reserved for other organs belonged to the government's competences. Summing up, it should be stated that the state model realized in the April Constitution can be called authoritarian (the Constitution's contemporaries named it caesaristic).²⁸

On 1 September 1939 the Second World War broke out. The RP authorities found themselves outside the border of the Second Republic of Poland, first in Paris and next in London. They acted on the basis of the April Constitution. The Polish lands were under the occupation of the Third Reich and the Soviet Union. As a result of historical processes, which due to the lack of space will not be discussed here, the Soviet Union found itself on the side of the anti-Nazi coalition. The events of war led to the fact that it was the armies of the Soviet Union that pushed out the German armies from the territory of Poland. The authorities of the Soviet Union intended to take advantage of those circumstances with the aim of subordinating the countries where the Red Army entered. Those countries included Poland. This subordination proceeded keeping the appearances of legality.

To this aim, the Polish Committee of National liberation (PKWN) was called into being on 21 July 1944 in Moscow. The official program of the communist camp called the PKWN Manifesto, printed and published in Moscow on 22 July 1944, rejected any legal bases to the Polish authorities in London on the grounds that they recognized the April Constitution. The Manifesto itself referred to the March Constitution, the fundamental assumptions of which were to be binding until a new constitution was established.²⁹ There is no place here to discuss in detail the successive stages of the communists subordinated to the Soviet Union (under the supervision of NKVD (The People's Commissariat for Internal Affairs) taking over control of the government in Poland. It suffices to say that the communist authorities in Poland in the years 1944-45 remained completely dependent on the Soviet Union. The then existing political system was the germ of the totalitarian state.³⁰ At this point, specific legal acts need to be discussed.

The first of these was the constitutional act from 19 February 1947 on the political system and the scope of activity of the highest organs of the Republic of Poland.³¹ Referring to the basic assumptions of the March Constitution, the

²⁸ J. BARDACH, B. LEŚNODORSKI, M. PIETRZAK, *Historia ustroju*, pp. 500-502.

²⁹ *Ibidem*, pp. 623-624.

³⁰ *Ibidem*, pp. 636-637.

³¹ "Dziennik Ustaw" [Journal of Laws] 1947, No. 18, item 71.

PKWN Manifesto and other legal acts as well as a people's referendum from 30 June 1946,³² the Sejm decided to base the political system of the state on the separation of powers. The one-chamber Sejm held the legislative power, the executive – the President of the Republic of Poland, the Council of State³³ and the Government of the Republic of Poland. On the other hand, the judicial power was held by independent courts (Art. 2). The Constitution also provided for a situation in which the Cabinet Council or a sitting of the government was called on the RP President's request and under the latter's leadership. The Council was supposed to be called in matters "of grave importance" (Article 18, items 1 and 2). The Sejm could, by way of an act, authorize the government to issue laws by decree in definite cases (Art. 4). Each of the organs had its own competences.

On 22 July 1952 the Sejm passed the Constitution of the Polish People's Republic (PRL).³⁴ According to Article 1 item 1 of the Constitution, PRL was a state of people's democracy where the power lay within "the working people of the city and the country". The people exercised authority through their representatives elected to the PRL Sejm and the national councils. The Sejm was the supreme organ of the state's authority and it expressed the will of the working people of the city and the country. The Sejm passed the laws and had control over the activity of other organs of the state's power (Art. 15, items 1-3). The next supreme organ was the Council of State, which was endowed with the rights traditionally resting within the head of state such as appointing the ambassadors, applying the right of pardon or ratification of international agreements as well as the right to issue decree-laws between the sittings of the Sejm (Art. 25, item 1). However, in its activity, it was subordinated to the Sejm, which was clearly stated in the Constitution (Art. 25, item 2). On the other hand, the government was classified as the supreme organ of the state's administration, which followed from the title of chapter 4 of the Constitution. Article 30, item 1, however, stated that the Council of Ministers was "the supreme executive and governing organ of the state's authority" with its own competences.

³² Three questions, largely of general nature, were asked to the participants of the referendum: Are you in favor of abolishing the Senate? Do you want consolidation, in the future constitution of the economic system founded on agricultural reform and the nationalisation of basic national industries, including the preservation of the statutory rights of private enterprise? Do you want consolidation of the western border of the Polish State on the Baltic, Odra and Lusatian Neisse rivers?

³³ It consisted of the RP President as its chairman, the marshal and the vice-marshals of the Sejm as well as the chairman of the Supreme Chamber of Control. In case of war its composition was supplemented by the Chief Commander of the Polish Army (Art. 15 of the act).

³⁴ "Dziennik Ustaw" [Journal of Laws] 1952, No. 33, item 232.

The amendments from 1976 introduced very important changes into the PRL Constitution.³⁵ They defined the political system of PRL as a “socialist state” (Art. 1, item 1). The Constitution also included an entry stating that the Polish United Workers’ Party (PZPR) was the leading political power in building socialism (Art. 3, item 1). The Constitution provided for the existence of two political parties (United People’s Party and Democratic Party), which were obliged to cooperate with PZPR within the Front of National Unity (Art. 3, items 2 and 3).

Another change took place together with the process of democratization, passing from PRL to the Second RP.

In the act of 7 April 1989 the PRL Sejm – realizing the settlements established during the so-called round table talks – restored the second chamber of Parliament – the Senate, and the office of the President.³⁶

On 29 December 1989 the PRL Sejm made still another, more profound amendment to the Constitution. The changes included a different name of the state – the traditional one of the Republic of Poland was brought back and so was the image of an eagle in the national emblem. All of that was supposed to symbolically show the restoration of sovereignty in Poland. Significant changes also were made to the political system. “The Republic of Poland is a democratic legal state realizing the principles of social justice” – read the amended Art. 1 of the Constitution. The supreme power lay within the Nation – provided Art. 2, item 2 of the Constitution.

The amendment from 27 September 1990 introduced the national election of the President of the Republic of Poland.³⁷

On 17 October 1992, a Constitutional Act was passed on mutual relations between the legislative and the executive as well as on the territorial government³⁸. That act, Art. 1 introduced the principle of separation of powers, stating that the legislative power is held by the Sejm and Senate, the executive – by the RP President and the Council of Ministers, while the judicial – by independent courts of justice.

³⁵ The act from 10 February 1976 on changing the Constitution of the Polish People’s Republic (“Dziennik Ustaw” [Journal of Laws] 1976, No. 5, item 29). The Chairman of the Council of State – basing on Article 5 of the aforementioned act – issued a uniform text of the Constitution keeping the numerical sequence of the articles and other editorial units, published in the “Dziennik Ustaw” [Journal of Laws] 1976, No. 7, item 36.

³⁶ “Dziennik Ustaw” [Journal of Laws] 1989, No. 19, item 101.

³⁷ The act from 27 September 1990 on changing the Constitution of the Republic of Poland (“Dziennik Ustaw” [Journal of Laws] 1990, No. 67, item 397).

³⁸ “Dziennik Ustaw” [Journal of Laws] 1992, No. 84, item 426.

On 2 April 1997 a new Constitution of the Republic of Poland³⁹ was passed and it is still binding until the present date. The analysis of its content will be analyzed elsewhere.

Summing up, it should be noticed that the reception of the principle of separation and balance of powers in Poland was very fast, relative to its formulation. This happened together with the establishment of the Third of May Constitution. Unfortunately, that Constitution was quickly abolished and Poland disappeared from the map of Europe for 123 years. The revived state – the Second Republic of Poland – had two constitutions, apart from provisional acts of constitutional rank. The first, March Constitution directly referred to the principle of separation of powers. The other, April Constitution was a contradiction of the former. The political system of the Second Republic of Poland in the years 1935-1939 was called authoritarian. The April Constitution directly speaks of a uniform authority of the state. PRL principally had one constitution (1952) – but we also have to consider the amendments of 1976. The political system of PRL was without any doubt a totalitarian one. The Third Republic of Poland returned to the system based on the separation of powers even before its own constitution was passed (1997). Hence, despite attempts to tear the Polish State from the principle of separation of powers, its perception in the society and attachment to it were so strong and permanent that Poland, especially in the periods when it regained full sovereignty, quickly returned to building its political system based on this very principle.

BIBLIOGRAPHY

LEGISLATIVE ACTS

A decree from 22 November 1918 on the supreme representative authority of the Republic of Poland (“Dziennik Praw Państwa Polskiego” [Journal of Laws of the Polish State] 1918, No. 17, item 41.

Government Act (Constitution) from 3 May 1791.

The act from 17 March 1921 – the Constitution of the Republic of Poland (“Dziennik Ustaw” [Journal of Laws] 1921, No. 44, item 267, as amended).

The act from 2 August 1926 changing and supplementing the Constitution of the Republic of Poland from 17 March 1921 (“Dziennik Ustaw” [Journal of Laws] 1926, No. 78, item 442).

The constitutional act from 23 April 1935 (“Dziennik Ustaw” [Journal of Laws] 1935, No. 30, item 227).

The Constitution of the Polish People’s Republic passed by the Legislative Sejm on 22 July 1952 (“Dziennik Ustaw” [Journal of Laws] 1952, No. 33, item 232).

³⁹ “Dziennik Ustaw” [Journal of Laws] 1997, No. 78, item 483, as amended.

- The act from 10 February 1976 on changing the Constitution of the Polish People's Republic ("Dziennik Ustaw" [Journal of Laws] 1976, No. 5, item 29).
- The act from 7 April 1989 on changing the Constitution of the Polish People's Republic ("Dziennik Ustaw" [Journal of Laws] 1989, No. 19, item 101).
- The act from 27 September 1990 on changing the Constitution of the Republic of Poland ("Dziennik Ustaw" [Journal of Laws] 1990, No. 67, item 397).
- The Constitution of the Republic of Poland from 2 April 1997 ("Dziennik Ustaw" [Journal of Laws], No. 78, item 483, as amended).
- The act of the Sejm from 20 February 1919 on entrusting Józef Piłsudski with the further execution of the office of Chief of State ("Dziennik Praw Państwa Polskiego" [Journal of Laws of the Polish State] 1919, No. 19, item 226).
- The act from 1 July 1920 on the formation of the Council of National Defense ("Dziennik Ustaw" [Journal of Laws] 1920, No. 53, item 327).
- The Constitutional act from 19 February 1947 on the political system and the scope of activity of the highest organs of the Republic of Poland ("Dziennik Ustaw" [Journal of Laws] 1947, No. 18, item 71).
- The Constitutional act from 17 October 1992 on mutual relations between the legislative and the executive powers of the Republic of Poland and the territorial government ("Dziennik Ustaw" [Journal of Laws] 1992, No. 84, item 426).

LITERATURE

- BARDACH J., LEŚNODORSKI B., PIETRZAK M., *Historia ustroju i prawa polskiego*, Warszawa 2000.
- IZDEBSKI H., *Historia myśli politycznej i prawnej*, Warszawa 2001.
- KELLY J. M., *Historia zachodniej teorii prawa*, Kraków 2006.
- KOWECKI J., *Konstytucja 3 maja 1791. Statut Zgromadzenia Przyjaciół Konstytucji*. Warszawa 1991, p. 98.
- MONTESKIUSZ [MONTESKIEU Ch. M. de], *O duchu praw*, Kęty 1997.
- SARNECKI P., *Prawo konstytucyjne RP*, Warszawa 2008.

THE PRINCIPLE OF SEPARATION AND BALANCE OF POWERS IN POLISH CONSTITUTIONAL LAW: A HISTORICAL VIEW

S u m m a r y

In the 18th century, the doctrine of separation of powers was established as a remedy for tyranny. The reception of the principle of separation and balance of powers in Poland was very fast, relative to its formulation. This happened together with the establishment of the Third of May Constitution. The Second Republic of Poland had two constitutions, apart from provisional acts of constitutional rank. The first, March Constitution directly referred to the principle of separation of powers. The other, April Constitution was a contradiction of the former. The political system of the PRL was without any doubt a totalitarian one. The Third Republic of Poland returned to a system based on

the separation of powers, especially in the period when it regained full sovereignty and it quickly returned to building its political system based on this very principle.

Key words: separation and balance of powers; Montesquieu; Second Republic of Poland; the Third of May Constitution.

ZASADA SEPARACJI I RÓWNOWAGI WŁADZ
W POLSKIM PRAWIE KONSTITUCYJNYM:
SPOJRZENIE HISTORYCZNE

Streszczenie

W XVIII w. doktryna separacji władz została wprowadzona jako środek przeciw tyranii. Recepcja zasady separacji i równowagi władz dokonała się w Polsce bardzo szybko, tak jak jej sformułowanie. Stało się to wraz z uchwaleniem Konstytucji Trzeciego Maja. Druga Republika Polska miała dwie konstytucje, nie licząc tymczasowych aktów o randze konstytucji. Pierwsza, Konstytucja Marcowa, wprost odnosiła się do zasady separacji władz. Druga, Konstytucja Kwietniowa, była zaprzeczeniem poprzedniej. Ustrój polityczny PRL był niewątpliwie ustrojem totalitarnym. Trzecia Republika Polska powróciła do systemu opartego na separacji władz, zwłaszcza w okresie, kiedy odzyskała ona pełną suwerenność i szybko powróciła do budowania swego ustroju politycznego w oparciu o tę zasadę.

Słowa kluczowe: separacja i równowaga władz; Montesquieu; Druga Republika Polska; Konstytucja Trzeciego Maja.

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