

# **Legal Transfers and National Traditions: Patterns of Modernization of the Public Administration in Polish Lands At the Turn of the 18th and 19th Century**

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**Abstract:** The turn of the 18th and 19th century was a period of dynamic changes within the public administration of Poland. They resulted from political reconstruction and following establishment of various forms of state (after the fall of the Polish-Lithuanian Commonwealth, the Duchy of Warsaw was created and later a Kingdom of Poland) together with changing views on the shape of administration among Polish elites. These reasons enable to perceive Poland as a historical laboratory, an interesting case study on the circulation of legal models which was a dynamic phenomenon in the scope of administrative law and others. The unique environment of a very dynamic transformation from anachronic forms of state and law at the turn of 18<sup>th</sup> and 19<sup>th</sup> century can serve as an exceptional example of Great Narrative about the legal transfers. It has to be noted, however, that the previous solutions were not deprived of original elements, adapted to the ideas of the Enlightenment, liberalism and constitutionalism. West European ideas (mainly French) and particular legal solutions were a trigger for Polish development, though creatively adapted with the use of native legal culture and state tradition.

## **Introduction**

The purpose of this paper is to demonstrate the sources which the authors of the Polish administrative system drew on starting from late 18<sup>th</sup> century. The paper shows that in special political circumstances, during which the political elites are under a great modernization pressure both because of the intellectual influences and threat for the state welfare. They become prone to

quickly change their convictions and to conduct thorough structural reforms, at the same time focusing on the effectiveness of their solutions without abandoning the elements of their own tradition. On the other hand that period was conducive to comprehensive analyses of law and governance theories, which at that time were developing in Europe and with time took their classical shape, forming a certain canon used in contemporary models of administrative systems. Firstly, the fall of the Polish-Lithuanian Commonwealth in 1795 (a state possessing a number of particular administrative and legal institutions) in the period of comprehensive governance reforms (which consisted in adapting Polish traditions to the requirements of a modern state)<sup>1</sup>, secondly, the extending of solutions used by the partitioning powers, particularly Prussia, which were in place until 1806, onto the Polish territories (those solutions were then creatively used in later political systems), thirdly, the foundation of the Duchy of Warsaw in 1807 (which borrowed a number of institutions typical of Napoleon's France)<sup>2</sup> and finally the birth of the Kingdom of Poland (1815) under the rule of Alexander I, the Emperor of Russia<sup>3</sup> – all those factors informed the dynamically changing ideas about what principles an administrative system should be built on, as harbored by the Polish elites. Discussions held on the eve of the creation of the Kingdom of Poland and in the first years of its existence were the central part of the debate and are the main focus of research presented in this paper. The Polish elites at that time wielded significant influence on the development of the Kingdom's administrative system and were in a position to build on experience from different governance models, which had previously been in place in the Polish territories.

Based on the matters it dealt with, we can discern two main lines of development of the Polish

- 1 The Polish-Lithuanian Commonwealth was a dualistic state of Poland and Lithuania ruled by a common monarch. It was one of the largest and one of the most populous countries of 16<sup>th</sup> and 17<sup>th</sup> century Europe. It was established at the Union of Lublin in 1569 and disappeared as an independent state in 1795. See e.g.: Norman Davies, *God's Playground: A History of Poland* (New York: Columbia University Press, 1982), vol. 1 (*The Origins to 1795*), pp. 115-546; Józef Gierowski, *The Polish-Lithuanian Commonwealth in the XVIIIth Century : From Anarchy to Well-Organised State* (Kraków: Polska Akademia Umiejętności, 1996; Jean Fabre, *Stanislas-Auguste Poniatowski et L'Europe des lumieres* (Paris: Les Belles Lettres, 1952).
- 2 The Duchy of Warsaw was a Polish state established by Napoleon I in 1807 from the Polish lands ceded by the Kingdom of Prussia under the terms of the Treaties of Tilsit. The Duchy was held in personal union by one of Napoleon's allies - King Frederick Augustus I of Saxony. Following Napoleon's failed invasion of Russia, the Duchy was occupied by Prussian and Russian troops until 1815, when it was formally partitioned between the two countries at the Congress of Vienna. See e.g.: Norman Davies, *God's Playground*, vol. 2, pp. 295-305; Piotr Wandycz, *The Lands of Partitioned Poland* (Seattle-London: University of Washington Press, 1974), pp 43-64.
- 3 The Kingdom of Poland created in 1815 by the Congress of Vienna, was a personal union of the Russian parcel of Poland with the Russian Empire. It was gradually politically integrated into Russia over the course of the 19th century, made an official part of the Russian Empire in 1867, and finally replaced during the Great War by the Central Powers in 1915 with the theoretically existing Regency Kingdom of Poland. Though officially the Kingdom of Poland was a state with considerable political autonomy guaranteed by a liberal constitution, its rulers, the Russian Emperors, generally disregarded any restrictions on their power. Thus effectively it was little more than a puppet state of the Russian Empire. The autonomy was severely curtailed following uprisings in 1830-31. In effect from the start, Polish autonomy remained little more than fiction. Norman Davies, *God's Playground*, vol. 2, pp. 306-324; Wandycz, *The Lands*, pp. 65-91.

modern administrative thought. The first involved considerations concerning the administrative system; the second – analyses of the importance of state and state administration in the shaping of social and economic relations. This presentation will not deal with the role and responsibilities of administration. One should, nevertheless, point out that in this area the Polish administrative thought was in practice under significant influence of the German cameralism and the police science (*Policewissenschaft*)<sup>4</sup>, which became gradually imbued with elements of physiocracy and (but mainly in theory) classical liberalism<sup>5</sup>. The authors of the first modern administrative reforms in the Polish-Lithuanian Commonwealth had been strongly influenced by cameralism, which assumed an increased role of the state in creation of conditions for economic development<sup>6</sup>. First ministries of modern Poland, established in 1764, in form of Commission of Crown Treasury were given the tasks not only of fiscal and budgetary nature, but also those of a wider economic context<sup>7</sup>. The Ministry of Interior in the Duchy of Warsaw and the Kingdom of Poland played a similar role and finally the police science and cameralistic assumptions of active state policy in the field of economy were executed in the operation of Government Commission of Revenue and Treasury. The latter was governed by Franciszek Ksawery Drucki-Lubecki between 1821 and 18308. The prevalent spirit of the time was a conviction that Poland was a backward country and it was necessary for the state and its administration – as “the whole of public services, assigned to participate in the execution of the thought of the Government”<sup>9</sup> directly responsible for groundbreaking modernizing changes – to actively and comprehensively implement its policies. The usual focus of studies was proper functioning of the administration as the fundamental instrument of change<sup>10</sup>. The role of administration was emphasized, which was why compared to previous periods there was a dramatic rise in interest in all matters related to its organization and operating mechanisms. Theoretical and practical achievements of Western Europe became the

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4 See e.g. Marc Raeff, *The Well Ordered Police State. Social and Institutional Change Through Law in the Germanies and Russia. 1600-1800* (New Haven: Yale University Press, 1983); David F. Lindenfeld, *The Practical Imagination: The German Sciences of State in the Nineteenth Century* (Chicago: University of Chicago Press, 1997); Andre Wakefield (2009), *The Disordered Police State: German Cameralism as Science and Practice* (Chicago: University of Chicago Press, 1997).

5 See e.g. Henry William Spiegel *The Growth of Economic Thought. Revised and Expanded Edition*, (Durham: Duke University Press, 1983); Alexander Gerschenkron, *Economic Backwardness in Historical Perspective, a Book of Essays* (Cambridge: Belknap Press, 1962).

6 Jerzy Malec, *Polska myśl administracyjna XVIII wieku* [Polish Administrative Thought in 18<sup>th</sup> Century] (Kraków: Wydawnictwo Akademia Frycza Modrzewskiego, 2008), pp. 102-107.

7 Grażyna Bałtruszajtys, „Komisja Skarbu Koronnego jako organ kolegialny (1764 – 1794)” [Commission of Crown Treasury as the Collegial Organ (1764 - 1798)], *Czasopismo Prawno-Historyczne* 1 (1988), pp. 103-112;

8 Stanisław Smolka, *Polityka Lubeckiego przed powstaniem listopadowym* [Politics of Lubecki before the November Uprising], (Kraków: Akademia Umiejętności, 1907), vol. 1, pp. 153-455.

9 Maurice Block, *Dictionnaire de l'Administration française*, (Paris-Strasbourg: Berger-Levrault, 1856), p. 14.

10 Malec, *Polska myśl administracyjna*; Paweł Cichoń, *Rozwój myśli administracyjnej w Księstwie Warszawskim (1807-1815)* [Development of the Polish Administrative Thought in the Duchy of Warsaw (1807-1815)] (Kraków: Wydawnictwo Księgarnia Akademicka, 2006).

main point of reference. Faced with an overwhelming influence of the Enlightenment tenets geared toward practicality and rationalization, pressure increased for the administration to progressively improve, that is become more and more capable of efficiently carrying out its duties. Practical considerations, which favored ample use of mechanisms and institutions tested in other countries started to visibly prevail over attachment to traditional Polish solutions, which, however, still remained strong. Indeed, that attachment was fueled by the dynamic process of Polish nation-building. During a time where the mere existence of the Polish state was threatened and subsequently where its political system was imposed on it by others – as in the Principality of Warsaw and Kingdom of Poland – was reflected in constant building on traditions of pre-partition Poland. Many a time found an outlet in glorification of certain achievements of Poland's state-building, with its foremost accomplishment - the Constitution of 3 May 1791<sup>11</sup>.

Moving on to the main topic of the paper, two major areas of focus can be distinguished in the administrative and political thought: that concerning the place of administration within the state system and that relating to internal administration organization. And while the sphere of state activity was at that time the subject of theoretical studies and university lectures, usually provided within so-called political economy courses, administration organization has never been subject to complex theoretical analysis in Poland. It was mainly commented on by political practitioners, and only on rare occasions was it studied in theory by circles uninvolved in administrative activities of the time, as was the case of one of Poland's most prominent representatives of the Enlightenment thought – Hugo Kołłątaj<sup>12</sup>.

### **The Emergence of Modern Administration in Polish-Lithuanian Commonwealth**

Polish-Lithuanian Commonwealth, compared to the European Enlightenment, particularly in France, held a very separate place of its own. It differed significantly from other European states in its political system, which had its roots in late 16<sup>th</sup> century tradition. It was then that a governance system was formed which gave nobles the central political role, with the king's powers severely limited. The system of government which emerged focused on nobility institutions: the Sejm (parliament), sejmiks (local parliaments), and other central and local institutions controlled by the nobility. The political system was created around a concept of "nobles' golden liberty" and its greatest enemy was the fear of *absolutum dominium* of the monarch Thus nobility thwarted any

11 Wandycz, *The Lands*, pp. 8-9, 51-52, 63-64, 79-82, 90-91. The text of the Constitution of 3 May 1791 – <http://www.polishconstitution.org/index1.html>.

12 But in his case only after the partitions, because before he was directly involved in Poland's political life and civil service activities. See: Waclaw Tokarz, *Ostatnie lata Hugona Kołłątaja (1794-1812)* [Last Years of Hugon Kołłątaj

attempts to strengthen the position of the king and to create a modern administration<sup>13</sup>. The public administration of the time, however, was already – particularly on the central level – obsolescent. Its institutions had been created in the Middle Ages and since then had not been considerably reformed. Stagnation in the development of government institutions was the main weakness of the Polish state, which became even more obvious as administrations of neighboring absolute monarchies grew and developed<sup>14</sup>. Added to that was the fact that there were no officials answering to central authorities and because the nobility had monopoly for holding public offices, officials were oftentimes not professionally skilled in the exercise of their administrative functions<sup>15</sup>. Because of these characteristics, still true until 18<sup>th</sup> century, Poland was closer to such states as Sweden or England and very different from systems, which at that time were evolving in absolute monarchies surrounding Poland (Prussia, Russia and Austria).

The Enlightenment aspirations to remedy that situation, which under the reign of the last king of the Polish-Lithuanian Commonwealth, Stanisław August Poniatowski (1764-1795), developed into a dynamic process of transformation of the state's governance system, could not help but include at least some particularities of Poland's previous system, combining it, however, with a number of features which at that time were viewed as modern. In other words in that era of transformation Poland combined traditional institutions, which dated back to the Middle Ages, with selected European arrangements, which on the one hand were closely related to absolute monarchies of the time (primarily as regards the internal administrative organization based on a bureaucratic system) and on the other hand drew on the contemporary state of the constitutional thought of the Enlightenment. First administrative reforms began after Stanisław Poniatowski had been appointed a king. At that time, first modern and central bodies of administration in the form of treasury and military commissions (1764), later also the Commission of National Education were established (1773). The formation of grand commissions started to shape the modern administration, which lead to the transformations characteristic for enlightenment period in a non-absolutist state. The process finished with the reforms of Four-Year Sejm (1788-1792)<sup>16</sup>.

Administrative changes, as well as economic and social, which occurred on a wider scale in the second half of 18<sup>th</sup> century were taken place in specific circumstances. Given the large number of nobles (approximately 8-10%) and the weakness of the bourgeoisie, which at that time was only

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(1794-1812)], vol. 2 (Kraków: Akademia Umiejętności, 1905), pp. 123-266.

13 Wojciech Witkowski, *Historia administracji w Polsce 1764-1989* [History of Administration in Poland 1764-1989] (Warszawa: Wydawnictwo Naukowe PWN, 2007), pp. 59-60.

14 Hubert Izdebski, *Historia administracji* [History of Administration] (Warszawa: Liber, 1996), p. 48.

15 Witkowski, *Historia administracji*, p. 66.

16 Witkowski, *Historia administracji*, p. 66.

beginning to grow, a bourgeois-nobility compromise was formed. This meant embarking on a different path than France, where the third estate claimed its rights and was able to obtain them on account of its strength, and different yet than in strong absolute monarchies such as Prussia and Austria, where the monarch based on its role as a mediator in social conflicts and the broad scope of its rights largely governed the mutual relations between the estates and their position. In Poland that compromise was largely due to the coming together of some nobles, who saw the development of a new relationship as profitable for them, and the enriched bourgeoisie. In that relationship the nobility became the dominant party and the main goal was attempting to have the governance system reformed in such a way as to create conditions favoring economic development and civilizational renewal, without undermining the basis of the feudal system. The reformist camp called "Familia" was centered around the aristocratic houses and the future king, Stanisław Poniatowski, was among its supporters as well<sup>17</sup>.

The internal organization of the administrative system, which was virtually completely new and which starting from late 1760s began to gradually replace the previous model of state government, at that time already obsolescent and entirely dysfunctional, was certainly one feature of state governance modeled on international experience. That feature mostly comprised the following components.

Firstly, during King Stanisław's reforms a system was put in place where the The Permanent Council founded in 1775 was on a personal level separated from the central administration as represented by the system of the collective nature ministries (so-called the grand commissions) which was subordinated to the Permanent Council. This principle of an actual, that is personal separation of government<sup>18</sup> and control functions (understood as direction and supervision of the administration) from executive and administrative functions represented by the grand commissions differed from arrangements applied in absolute monarchies and states modeled on them<sup>19</sup>.

The Permanent Council was independent of the king and constituted of members appointed by Sejm for a term. The king, who joined the Council only as *primus inter pares*, was subject to their decisions and lost his

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17 Witkowski, *Historia administracji*, p. 68.

18 The term 'government' refers, in the continental European meaning, to the highest level of the executive power. In this meaning „The Government relates to the supreme direction of the state's interests, in matters of the interior as well as in foreign ones; it gives an impulse to administration, and the judiciary is administrated on its behalf”. (cfr Block, *Dictionnaire de l'Administration française*, p. 14). As Wilson rightly remark: „Public administration is detailed and systematic execution of public law [...] The broad plans of governmental action are not administrative”, Woodrow Wilson, “The Study of Administration”, *Political Science Quarterly*, 2 (1887), p. 212. See also: Jerzy Stembrowicz, *Rząd w systemie parlamentarnym* [The Government in the Parliamentary System], Warszawa 1982.

19 Compare to the concept of Woodrow Wilson to separate the politics and the administration. Wilson, „The Study of Administration”, p. 198 sqq.

right to give orders to the administrative bodies. It was Sejm not the king, which dealt with the reports of the Permanent Council and their members could be held responsible for the abuse of power and summoned to the Sejm court, according to the same rules as those of English impeachment. The establishment of the Permanent Council meant that it was seen as necessary to create a central authority directing and supervising the administration which was represented by the state's central institutions. This involved giving reprimands and possibly taking legal action against guilty parties in the Sejm court. Officials were appointed by the king but out of three candidates presented by the Council. Essentially all state authorities and the general public were obliged to comply with the Council's directives. Violating officials could face suspension. The Council presented the Sejm with relevant draft laws and then implemented those laws. It was also given the right to construe law by presenting legal interpretations, which were binding on courts, government institutions and private individuals<sup>20</sup>. It was a crucial resolution, because in practice the Permanent Council had a possibility to extend the law established by Sejm. Their lawmaking ambitions were, however, curbed by Sejm, which on numerous occasions overruled resolutions of the Council that “included the legislation” or were “against the law”. This solution preserved Polish tradition of separating the executive powers from legislation and controlling .

The Permanent Council resembles to a certain extent the English cabinet and a Swedish executive (which had similar system of separation between the main council and ministries), however, the source texts do not signify that the authors of the body drew directly from foreign examples<sup>21</sup>. The Permanent Council was the first government of that type in Poland while after its dissolution the entry into force of the Constitution of 3 May 1791 Constitution came into effect then institutionally similar Guard of the Laws briefly performed those functions. Their creation was also based on a principle of personal separation of government and control functions from executive and administrative functions represented by the grand commissions with ministries which were not the members of the Guard of the Laws. The coordination aspect was also not overlooked - care was taken to ensure substantive specialization of the government (both the Permanent Council and her successor the Guard of the Laws) and to create legal arrangements ensuring permanent contact between the ministers responsible for a given resort in these governing councils and the ministries representing relevant grand commission<sup>22</sup>.

Secondly, the partition of branches of the administration, close to the classical one in 19<sup>th</sup> century

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20 Władysław Konopczyński, *Geneza i ustanowienie Rady Nieustającej* [Genesis and Establishment of the Permanent Council] (Kraków: Akademia Umiejętności, 1917), pp. 336-361.

21 Konopczyński, *Geneza i ustanowienie*, pp. 212-214; Izdebski, *Historia administracji*, pp. 36.

22 Józef Wojakowski, *Straż Praw* [The Guard of the Laws] (Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 1982).

(involving ministries of foreign affairs, treasury, war, justice and interior) was implemented, which became crystallized as the Permanent Council was divided into 5 departments being the origin of modern ministries and in that form was legally established in the Constitution of 3 May. One should note, however, that the functions of the ministry of interior, whose "career" in continental Europe started only after the French Revolution, were performed by the Department of Police and subsequently the Great Commission of Police, a sort of ministry of ministries – at least in the assumption – As a rule the ministry of police in pre-partition Poland as well as the classical ministry of interior was responsible for the entire social and economic development of the country, in the spirit of the science of the police in its German version, which at that time was extremely popular in Poland<sup>23</sup>. Compared to other arrangements of the period as implemented in other countries, the Polish model of the separation of ministries was unique in that it featured a distinct Commission of National Education, which imitated the Austrian system. The Commission of National Education in charge of the Ministry of Education was responsible for the entire state and was considered the pride of the Polish Enlightenment. It was Europe's second - after the Austrian *Studienhofkommission* of 1760 - ministry of education<sup>24</sup>. The creation of both this commission and the others of more specialist or narrow scope of action was a visible sign of extending functions of the state in the cameralistic and science of police spirit.

Thirdly, modeled on arrangements used in 18<sup>th</sup> century Europe, a system of collective administrative authorities was implemented both in the form of great commissions on the central level and civil and military regulatory commissions on the local level. In both cases this meant an absolute breakthrough because Poland until the second half of 18<sup>th</sup> did not even so much as begin to develop a modern administration. In that context similarities to foreign arrangements, such as those applied in Prussia, were all too clear. Apart from that it has to be borne in mind that during the administrative development in the 19<sup>th</sup>-century Europe, the collective nature of the bodies encouraged widening the scope of administrative action, so attractive for absolutist states. It has to be noted, however, that contrary to the absolute system, the participation of different fractions in politically diversified parliament was possible.

Fourthly, the aim was to establish an administrative structure corresponding to canons of a

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23 Andrzej Zahorski, *Centralne instytucje policyjne w Polsce w dobie rozbiorów* [Central Police Institutions in Poland in the Partion Times] (Warszawa: Państwowe Wydawnictwo Naukowe, 1959), pp. 252-273.

24 The Commission of National Education was very autonomous. It answered only to the king and had its own education fund. It created a schooling system based on a uniform territorial division into so-called school districts. The entire school administration was supposed to be structured in a hierarchical way, i.e. the Commission oversaw universities (main schools) and they in turn oversaw subsequent schools of lower levels. The Commission of National Education is also credited for creating school curricula in the spirit of the Enlightenment and developing a uniform, modern education process using those curricula. See: Antoine Jobert, *La commission d'éducation nationale en Pologne: 1773-1794, son œuvre d'instruction civique* (Paris: Les Belles Lettres, 1941).

bureaucratic system, which included referencing the same models. This was radically opposed by the traditionalist circles, attached to the nobles' golden liberty, which in 18<sup>th</sup> century bred an almost complete anarchy and decay of the entire state government system<sup>25</sup>. Ultimately, however, the resistance was overcome, which was reflected in the achievements of the Four-Year Sejm and crowned by the Constitution of 3 May in 1791. As a result in King Stanisław's times the administration involved ministries (commissions) which were hierarchically subordinate to the government (the Permanent Council, and subsequently the Guard of the Laws) and the local administration (civil and military regulatory commissions) which was subordinate to the central administration. The aim was to gradually make the administration fully professional and to implement elements of a rational division of substantive responsibilities within it. Especially, the appointment of, mentioned above, commissions of treasury in 1764 (at that time separate for the Crown and Lithuania), had a significant meaning for the creation of a modern structure administering the state finances, together with formation of favorable conditions for state's economic development. The numerous, country-wide and well organized financial and economic apparatus of professional nature, subordinate to the commissions of treasury serves as an origin of Polish bureaucracy. The most important moment, however, for the formation of a whole administrative structure is the establishment of the Permanent Council, together with its internal organization and rules. Not only the first systematic division of the administration into ministries was conducted, but also the backbones of local administration were created and unified rules were set, which could be the basis for Polish administrative bodies and their staff.

Fifthly, the traditionally Polish model of self-government was maintained in the local governance system, with some of its institutional forms kept but with its overall importance diminished compared to the preceding period<sup>26</sup>. Self-government was no longer to be a manifestation of anarchistic lawlessness undermining the state's cohesion but instead an actual support for government, so typical of ideas which in Europe did not gain widespread popularity for nearly another 100 years<sup>27</sup>.

On the external level the Polish political relationships were particular in that the administration was heavily dependent on the Sejm. The Constitution of 3 May implemented the principles of

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25 Maciej Forycki, *Anarchia polska w myśli Oświecenia. Francuski obraz Rzeczypospolitej szlacheckiej u progu czasów stanisławowskich* [Anarchy in Poland. The French Image of the Polish-Lithuanian Commonwealth at the Beginning of Stanisław's Times], (Poznań: Wydawnictwo Poznańskie, 2004).

26 Józef Gierowski, *Na szlakach Rzeczypospolitej w nowożytnej Europie* [On the Path of the Polish-Lithuanian Commonwealth in the Modern Europe] (Kraków: Wydawnictwo Księgarnia Akademicka, 2008), pp. 127-135.

27 The modern principles of local self-government was formulated by Heinrich Rudolf von Gneist and subsequently established in different states of continental Europe, especially in Prussia in 1872-1875. See: Jan Palmowski, „Liberalism and Local Government in Late Nineteenth Century Germany and England”, *The Historical Journal*, 45, 2 (2002), pp. 381-409.

constitutional and parliamentary responsibility. The position of a non-responsible king - based on the English model - who exercised his powers by countersignature was reminiscent of the presidential model which at the time taking shape in the United States. As it appears, those similarities were partly coincidental and partly due to the fact that the same inspirations were used, in an attempt to achieve a situation closely resembling Montesquieu's separation of powers<sup>28</sup>. On the other hand, the fact that the above-mentioned principles of countersignature, of legal and parliamentary responsibility as well as of king's non-responsibility were put in place meant that the authors of the Constitution were heavily inspired by 18<sup>th</sup> century British solutions<sup>29</sup>. However, neither the organization of the administration nor that of the Guard of the Laws drew on British models. The Guard of the Laws was not a cabinet and a parliamentary system was never developed in Poland of that period. It did, however, seem quite likely that the government s in Poland would move in that direction<sup>30</sup>. Political elites also took a keen interest in political system transformations which took place in France. As a result, both the Polish and the French constitution of 1791 provide an interesting field for comparative research, even if the organization of administration in both countries was in essence different<sup>31</sup>.

### **The Evolution of the Theory of Public Administration under the Influence of Napoleonic System**

The fall of the Polish-Lithuanian Commonwealth, which finally came in 1795, did not yet mean the end of the state-building achievements of the Polish administrative thought, however, it did quite radically change the political environment in which that thought developed in 19<sup>th</sup> century. The two subsequent forms of the Polish statehood - the Duchy of Warsaw, Napoleon's protectorate created in 1807 within the territories of the Prussian part of the former Polish-Lithuanian Commonwealth, and the Kingdom of Poland founded in 1814 under Russia's supervision - adopted a limited monarchy model, which involved exempting the executive branch of government from public control and subjecting it fully to the monarch. Those arrangements did not correspond to Polish governance traditions. Both states offered constitutionally guaranteed national

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28 The research of Władysław Smoleński, Władysław Konopczyński and Bogusław Leśnodorski proofs the Charles Louis de Montesqui was alongside Jean Jacques Rousseau the most well-known and influencable political thinker among polish elits, especially his thought was the inspiration to the king Stanisław August Poniatowski. See: Władysław Smoleński, *Monteskiusz w Polsce wieku XVIII* (Montesqui in Poland in 18<sup>th</sup> Century), Warszawa, Kasa Mianowskiego 1927, pp. 10-54 sqq.; Konopczyński, *Geneza*, p. 232; Bogusław Leśnodorski, *Dzieło Sejmu Czteroletniego (1788-1792)* [The Composition of Four-Year Sejm (1788-1792)] (Wrocław: Wydawnictwo Zakładu Narodowego im. Ossolińskich, 1951), pp. 98-99, 112 sqq., 188,

29 Leśnodorski, *Dzieło*, pp. 59-64, 188 sqq.

30 Leśnodorski, *Dzieło*, pp. 318 sqq.

31 Leśnodorski, *Dzieło*, pp. 67-70.

representations in the form of the Sejm dominated by the nobles, but its importance was severely limited compared to traditions and expectations. As a result attempts soon began in the Sejm (both in the Duchy and - later on - in the Kingdom), following the spirit of pre-partition traditions, to establish control - even if partial - over the executive, in an effort to exercise to the largest possible extent the extremely limited rights that the representative body had been given in that regard. Members of the Sejm elected by the nobles and the bourgeoisie attempted to gain an actual influence on developments in the state and on the administration in particular. That was supported by a broad spectrum of Poland's intellectual elites, even if in general it was not enthusiastically embraced by civil servants and among those activists (realists and loyalists), who believed such ideas negatively affected the general political situation of the Polish state institutions, which were indeed dependent on foreign powers and which opposed submitting the executive to the control of representatives of the "Polish nation".

Because of the fact that appointed Sejm was a legislative body, organized differently than in France, it is assumed that the system of the Duchy of Warsaw was a result of a compromise. The system had notably French character, but with a limited reference to the Polish tradition. Most importantly, visible concession to the Poles in form of Sejm, was not an attempt to change the autocratic governance model. Both in France and in the Duchy, Sejm was supposed to play a limited, if not superficial role of a representative body, deprived of the right to intervene with the sphere reserved for the executive. As a result, contrary to the pre-partition Commonwealth tradition, Sejm, at least formally, could not intervene with administration, which was only in competence of the monarchy. Despite a slight resemblance in functional aspects, this solution was drastically different from traditional Polish model, as well as from its creative modification accounted for in the Constitution of 3 May 1791<sup>32</sup>. It quickly became criticized, at first very cautiously, not to annoy the powerful French protector, perceived as a reviver of Polish state. With time, however, the criticism became heavy and more open. It was a gradual process, resulting from loopholes and inefficiencies of Duchy's administrative system. The dispute on systemic reform in the Duchy took place mainly, but not only, in Sejm (especially in 1811 and 1812). The members of parliament claimed the right, according to the Polish tradition, to control the government and administration, point out the flaws and demand their correction. The most spectacular example of criticism was an elaborate, complex and thoroughly prepared speech of Józef Godlewski<sup>33</sup>.

As far as internal organization of the administration was concerned, the administrative system of

32 Władysław Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego* [History of the System and Law of Duchy of Warsaw] (Toruń: Towzystwo Naukowe Toruńskie, 1964), pp. 133-134.

33 [Józef Godlewski], *Głosy posła mariampolskiego na Sejmie roku 1811 w Warszawie* [The Voice of Mariampol Deputy at Sejm in 1811 in Warsaw] (Warsaw, 1814), p. 44.

the Duchy of Warsaw, based on Napoleon's Constitution of 1807<sup>34</sup>, heavily referenced and sometimes directly imitated solutions used in France.

The political elites of the Duchy (which largely comprised the same people who played a key role in the Polish-Lithuanian Commonwealth) included staunch supporters of those solutions with the most important person in the government at the forefront — minister of justice, Feliks Łubieński<sup>35</sup>. Even before the Duchy was founded, suggestions, prevailing especially among the so called Jacobins<sup>36</sup>, were made in debates on the preferred governance system to - inasmuch as possible - fully adopt the French model, which for one was manifested in requests for Napoleon to impose the entire French constitution on the future state (for example the proposal of Ignacy Zajączek)<sup>37</sup> It is difficult to say to what extent support for those requests at that initial stage was driven by political opportunism and to what extent by actual belief in the universal qualities of the French system.

The Duchy's administration based on the principles laid down in Napoleon's constitution followed the French model in that it was fully bureaucratic and centralized. Administrative authorities of different levels were entirely dependent on each other and followed rules of hierarchy subordination. As in France and unlike in the Polish-Lithuanian Commonwealth single-person institutions were of key importance. On the central level the administration was divided among ministers, who at the same time were members of the State Council and of the Council of Ministers, the latter unknown in the Napoleonic system. Separate Ministries of Internal Affairs, Police, Justice, Treasury and War were created. Those solutions did not bear any resemblance to the 18<sup>th</sup> century Polish model either. The most fundamental forms of local administration also imitated the French model. It was headed by department prefects, who, just as subprefects in powiats (administrative counties), their subordinates, were expected to integrate the entire local self-government.

One should emphasize, however, that the French administrative system adopted in the Duchy only extended to the most fundamental arrangements and did not involve the adoption of detailed solutions and that the organizational foundation also featured certain differences, both on the formal, legally sanctioned level (for example appointing the Council of Ministers, organization of

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34 German text of the constitution of Duchy of Warsaw: <http://www.verfassungen.eu/pl/verf07-i.htm>.

35 Tadeusz Mencil, *Feliks Łubieński minister sprawiedliwości Księstwa Warszawskiego (1758-1848)* [Feliks Łubieński the Ministry of Justice of the Duchy of Warsaw (1758-1848)] (Warszawa: Towarzystwo Naukowe Warszawskie, 1952), pp. 103-107, 212-213.

36 Bogusław Leśnodorski, *Polscy Jakobini: karta z dziejów insurekcji 1794 roku* [Polish Jacobins: the Chart of History of Uprising in 1794] (Warszawa: Książka i Wiedza, 1960), pp. 303-311.

37 Marian Kallas, *Konstytucja Księstwa Warszawskiego* [The Constitution of the Duchy of Warsaw] (Toruń: Państwowe Wydawnictwo Naukowe, 1970), pp. 27-30.

commune and urban administration) and in real life (informal separation of the Ministry of Education, extensive limitation of unification rule on the departmental level or mixed – visibly different characteristic of the Council of State).

Sometimes the differences went further, they started even to collide with the quasi Napoleonic system that was introduced in the Principality. It was inviolable, especially in the scope that had been established by Napoleon and Maret in the constitutional provisions. At that time, their maintenance had very weak legal basis and was treated as valid and at the same time as short term. The gaps were mended with native solutions, referring to the Polish reformatory heritage. The elements of the system accepted and tested by the traditionalists, which shaped in the end of the previous century, was consciously interwoven with the French system. It is worth paying attention especially to the education system of that period which was organized on the basis of the model established during the reign of S.A. Poniatowski. The institutions, mechanisms and procedures, however, were not native — they at most referred to the previous habits. In the 18<sup>th</sup> century, the state did not manage to fully crystallize the legal and administrative system with research of this area being in a very early stage. In such situation, neither Polish nor French solutions became a point of reference, but Prussian did. The Principality of Warsaw was founded on the ruins of former Prussian partition, where rules of local governance stood on a high level for years. They remained valid as interim measures also in the Principality. The authorities were not very prone to remove them gradually, not only because the creation of the alternative system was quite problematic, but also because there was no real reason for the removal of foreign and not popular institutions, which were, however, familiar and proven. Similarly, but to a much smaller extent, the administration apparatus of the Principality was under the influence of Austria, which remained valid on the area of Galicia, joined to the Principality in 1809. As a result, not French (with some exceptions), but Prussian and to a lesser extent Polish and Austrian methods of modern administration management influenced the final shape of the Polish administration machinery<sup>38</sup>.

Serious defects quite soon manifested themselves in the administrative system of the Duchy, and these obviously resulted on the one hand – something that critics were all too eager to point out – from the lack of proper control over the administration's proceedings and on the other hand were caused - rather than by some significant systemic shortcomings of the Napoleonic model - by the fact that some of its elements had been incorrectly transplanted into Poland.

Main flaw of the administrative system in the Principality was caused by inefficient organization of

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38 Marian Kallas, *Organy administracji terytorialnej w Księstwie Warszawskim* [The Organs of the Local Administration in the Duchy of Warsaw], (Toruń: Uniwersytet Mikołaja Kopernika, 1975).

the management, which was not a result of systemic disadvantages of the French model, but incorrect correlation of these elements which were different. It was characteristic for Napoleon to personally exercise the authority and be constantly present in the centre of administrative events. In the Principality, joined with Saxony in a personal union, the permanent absence of a monarch in Dresden was increasingly becoming a problem. In addition, despite the possibility granted by the Constitution, Fryderyk August (jealous of his prerogatives and trying to execute his power at a distance), consciously did not establish a substitute centre of power. As a result, single ministers gained great power as sole administrative bodies. They lost real control of their own ministries. Their decisions and actions were not only excluded from jurisdiction of Sejm and the Council of State (acting as the administrative court), but also resulted from the weaknesses of general state management. Two bodies wanted to take control over the state — the Council of Ministers and Council of State. The former, consisting only of ministers, the latter enlarged in 1808 by the state counselors, which became the reason of its emancipation. The Council of Ministers was, however, deprived of the right to establish main provisions of the state policy, which would enable to order and coordinate the actions of the administration. It was supposed to serve solely as a communication platform, a place of non-final ministerial agreements. With time, at the end of Principality's existence (1812), the Council of Ministers gained almost all the monarch privileges. The Council of State started to lose its importance with weakening influence on the administration<sup>39</sup>. This field of independent, uncontrolled power of ministers over their ministries underwent the strongest criticism. Concerns expressed in Sejm (aforementioned speech of Józef Godlewski), concepts included in private undertakings<sup>40</sup> and a special 20. deputation appointed by the king to prepare a complex systemic reform in the Duchy of Warsaw<sup>41</sup> drew attention to the problem. Often, especially when concern was expressed by someone from the outside, a broader aspect of the needed change was mentioned — a comeback to the Polish tradition of Sejm's real control over the administrative powers. This feeling was strong because of the Polish elites' conviction that the executive power had to be subordinate to the rule of law. The lack of control over the administration, no possibility of ministers and other officials being held responsible for their actions was perceived as a situation, in which the rule of law could not be respected. Insufficient incorporation of local authorities was yet another result of inefficient organization of

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39 Michał Rostworowski, *Rada Ministrów i Rada Stanu Księstwa Warszawskiego* [The Council of Ministers and the State Council in the Duchy of Warsaw] (Kraków: Drukarnia Uniwersytetu Jagiellońskiego, 1911).

40 Cichoń, *Rozwój myśli administracyjnej*, pp. 67-112.

41 Marian Kallas, „Projekt reform ustrojowych w Księstwie Warszawskim (1810-1811)” [The Project of the Organisational Reforms in the Duchy of Warsaw], *Zeszyty Naukowe UMK, Nauki Humanistyczno-Społeczne, Prawo X* 42 (1971), pp. 76-92.

the ministerial system. The agendas of particular ministries were out of prefect's control, unlike in the French model, who was treated as a representative of the Ministry of Interior. On top of that, the problems with setting the boundaries between particular ministries arose, which were especially visible in the case of the Ministry of Interior and Ministry of Police. This came in for heavy criticism and demands, among which the most popular was the postulate to dissolve the Ministry of Police. It had been treated as a foreign and redundant solution adopted by Napoleon, hardly accepted due to its repressive character inconsistent with the Polish tradition of nobility freedom.

Excessive bureaucracy, resulting in numerous organizational forms and growing costs was another reason to criticize the administrative structure. This accusation, however, was far from reality with Poland, compared to the other states, being characterized by rather moderate state apparatus<sup>42</sup>. Such a situation resulted from a poor financial situation of the Duchy of Warsaw<sup>43</sup>, but it also showed that Polish elites were not accustomed to the fact that extended and professional administrative activity required excessive funding. It contrasted with the vision of economical state, which was closer to both the traditional circles, requiring a comeback of Polish rules of local governments and honorary offices and liberals, who demanded less administration in certain aspects of social and economic life, especially limiting the police function of the state. The common conviction of executive powers' inefficiencies increased the popularity of the postulates among the opposition. This concern was justified, because of the numerous flaws in the organization of administration apparatus, improper preparation of clerical staff, especially noticeable in the country's poor situation. The problems included the lack of coordination, competence disputes, lack of appropriate procedures, inefficiencies of the legal system, no habits and standards in clerical work and lacks in internal and external control systems. The Duchy of Warsaw served as an example of a state built from scratch with the process being severely impaired by a difficult financial and political situation.

Deficiencies of the administrative system became the subject of numerous debates on the improvement of the administrative system, which were permanently taking place in the declining years of the Duchy. They had not, however, brought any change — the elaborate and complex report of the Deputation was only partially realized. A part of their work was used during the organization of administrative system of the Kingdom of Poland and the discussions held in the Polish political circles in the organization stage of the Kingdom of Poland, became a natural

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42 Marek Krzymkowski, *Rada Stanu Księstwa Warszawskiego* [The State Council of the Duchy of Warsaw](Poznań: Ars Boni et Aequi, 2011), pp. 115-127.

43 Kallas, *Projekt*, p. 82.

continuation of the debates and proposals that surfaced in the Duchy of Warsaw. The same people participated in the works for most of the time. Here and there proposals were revived to return to traditional arrangements, meaning those laid down in the Constitution of 3 May. This was, however, never treated seriously by political decision-makers and the mainstream Polish governance and administrative thought. It became common to appreciate at least certain components of the French system and to transplant the core of that system more or less openly into the new state. Consequently, it might be argued that the Kingdom's administrative system, despite several ostensibly dramatic differences, such as the merely formal replacement of single-person institutions with collective ones, drew heavily on the Duchy's model and in reality only altered those components of that model which in previous times were clearly failing (e.g. the shutting down of the Ministry of Police, separate from the Ministry of Internal Affairs).

### **Summary**

In summary, the following trends were observed in the Polish administrative thought. Firstly, it was characteristically eager to adopt organizational principles of modern bureaucratic administration, even if it was based on foreign solutions. Indeed, practical concerns prevailed. All those, who were considering the choice of optimal administration system, were rather prone to adapt West-European ideas. They were commonly considered as more efficient in an active state of the Enlightenment period. The need of fully developed bureaucratic system was not questioned, despite the lack of native traditions and long-lasting concerns for strengthening the executive power in the state. In the new reality of the beginning of the 19th century, centralized Napoleonic model was rather moderately criticized even though the heritage of pre-partition Poland based on contrasting solutions — extended self-governance of the nobility, perpetuity of the offices, lack of professionalism. Certain influences of the previous époque were also present there. There was an eagerness to maintain the influences of the pre-partition Poland, which were considered as originally Polish, efficient and proven. The attachment to the education system governed by the Commission of National Education, dating back to the reforms of Poniatowski was especially emphasized. As a result the Polish administration in its most mature form in the Kingdom of Poland referenced - in its general principles - mostly the Napoleonic model, however partly altered, and as far as details were concerned it borrowed from different solutions, not only French ones but also Prussian ones, and embraced some local Polish traditions.

Secondly, as far as the place of administration in the political system was concerned - the Polish

thought was typically prone to subject the administration and the entire executive as much as possible to an external control system based on governance institutions and beginnings of the system of administrative law which was enacted by a representative body. Therefore in Poland a matter of big interest was the administration's dependence on social representation (most of all, Sejm acquiring an influence on the organization of social representation, its direction, methods of operation and personnel selection), legal boundaries, expansion of administrative courts and financial control system. This was reflected in the opposition to and increasing criticism of other forms of governance adopted in the Duchy and in the Kingdom which originated from absolute monarchies. The strength of that opposition derived from two sources - on the one hand from the conservative attachment to national solutions and on the other hand it gained support from the ever more stronger liberal circles. Both trends were able to rather freely invoke the traditions of their respective versions of constitutionalism symbolized by the Constitution of 3 May.

The impact of pre-partition Poland's accomplishments, mainly the Constitution of 3 May 1791, on the awareness of Poland's political elites at the turn of 18<sup>th</sup> and 19<sup>th</sup> century was quite noticeable, mainly in proposals that focused on setting a place for administration within state structures and, to a lesser extent, in the system of internal organization of that administration, which was in many respects still very underdeveloped. It was against this backdrop – combined with Western European ideas – that the Polish version of constitutionalism took its shape, which also determined the particular place of administration within government authorities. Polish concepts of political systems were based on solutions developed during reforms undertaken by the Four-Year Sejm, which culminated in the drafting of said Constitution. Polish reformist elites had already incorporated a number of Western European ideas of the Age of Enlightenment into the political system which came into being back then. These had been transplanted to Poland and inserted into the new system, but the main foundation of that system remained intrinsically Polish, if thoroughly reformed and devoid of certain elements which were extremely anachronistic (central administration organization) and caused chaos in state governance as in the case of the organization of the central and local administration which was in 17<sup>th</sup> and the first part of the 18<sup>th</sup> century almost completely paralyzed.

When considering the influence of native and foreign tradition on the development of Polish administrative thought, the following issues have to be noted. The representatives of the thought were aware of the deficiencies on the stages of Polish development, as well as in the sphere of social and economic relations. They were sure that Western Europe was much ahead with greater experience in the field. Therefore, the works of West European thought gained so much popularity.

They were read and often served as a natural point of reference. The reforms conducted at the final period of the Commonwealth and especially the Constitution of 3 May were even more attractive and appealing. The attachment to the Polish structural tradition prevailed, because of the growing need to protect own national identity in the difficult times. It did not stop, however, from rejecting all the elements of national heritage, which had not withstood the test of time. As a result, the choice of the system was a process of adapting the foreign solutions under the guise of nativity. This was especially the case with the collective model of administrative bodies. It referred to the internal sphere of administrative organization, which was perceived as defective. In the external sphere, the tendency to control the administration extensively by Sejm and bind with its legal solutions was not only a symbolic move. It was considered as modern and consistent with the doctrine of political liberalism which assumptions were adapted and implemented with reference to very popular in Poland both an English system and French revolutionary constitutionalism. On the other hand, however, the necessity of extensive state's participation was fulfilled by the police science.