

J. Patrick Higgins

Summary of the PhD Dissertation

***The Spirit of Laws in the Polish-Lithuanian Commonwealth, 1573-1791:
Continuity, Change, and Conservative Jurisprudence***

***Duch Praw w Rzeczypospolitej Obojga Narodów: 1573-1791: kontynuacja,
zmiana i konserwatywna jurysprudencja***

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The subject of this study is the evolution of the ideas, practices, and institutions of the constitutionalism of the Polish-Lithuanian Commonwealth, which seeks to properly ground them in their own historical context before then presenting them as vital areas of research for contemporary comparative law and constitutional theory.

The introductory chapter, “A Prolegomena to Polish-Lithuanian Constitutionalism,” presents the importance of Polish-Lithuanian constitutionalism and also provides the outline of the whole study. Polish-Lithuanian constitutionalism is a unique character within the debates around the history and historiography of the Commonwealth, which having been weighed by the collapse of the Commonwealth in the 18th century. Essentially, the trauma of the Commonwealth’s collapse have created a schizophrenia of sorts within historical reflection as well as historiographic method, with camps trying to answer the rhetorical question of whether the “death” of the Commonwealth was either a “murder” or a “suicide.” It is often the political or ideological views of the authors that has governed the instrumentalization of how the Commonwealth’s death has been perceived as part of this greater debate, rather than a more neutral, contextualist recovery of the Commonwealth on its own grounds *a la* the Cambridge school of historiography. This study is intended as just such a neutral attempt, one restricted within the domain of constitutionalism as a more simplified and manageable recovery project, using textualist methods to “let the words of the Commonwealth speak for themselves”, forwarded for a more modern audience. Accordingly, the chapter briefly summarizes the relative lack of English-language literature discussing political and constitutional theory of the Polish-Lithuanian Commonwealth and how the study intends to fill the gap. The introduction concludes by clarifying the concept of constitutionalism as well as the specific Polish terms that will be used throughout, e.g. *szlachta*, *magnat*, *konstytucja*, *Seym*, etc.

The next chapter, “‘Constitutions’ before Constitutionalism” establishes a genealogy of the concept of a “modern constitution” by problematizing the concepts of “modernness” and “constitutionalness”. It decontextualizes the concept of “constitutionalism” from its emergence in the 18th century with the enactment of the American, Polish, and French constitutions and instead abstracts a constitution as any legal act that serves as a foundation

for the political and legal order, i.e. an architectonic sense of constitutionalism. This architectonic sense of “modern” constitutionalism is then used to contrast constitutional archetypes and phenomena, which creates a common theoretical language that will be used throughout the study. The chapter then discusses pre-modern constitutions, specifically the discussion of *politeia* vs *constitutio* in Greek and Roman legal and political thought. Furthermore, the modern distinction of a written vs unwritten as well as common law vs continental law constitutions are discussed. 15th and 16th century Polish-Lithuanian constitutionalism is briefly contrasted with these distinctions and the difficulty of simply translating a *konstytucja* as “constitution” is discussed. The chapter concludes with a discussion of constitutional exegesis as a hermeneutic process that will guide further investigations into analysis and discussion of Polish-Lithuanian Constitutionalism. Constitutional exegesis is synthesized by a variety of approaches to constitutional law including Heidegger, Montesquieu, and the original-law originalism of contemporary scholars Stephen E. Sachs and William Baude.

The next chapter, “Constitution Lost, Constitution Regained: From Constitutionalist Hermeneutics to Constitutionalist Exegesis,” puts the theory of constitutional exegesis into practice. The 3 May, 1791 Constitution is identified as the starting point of exegetical reflection, and is accordingly contrasted with the 1573 Henrician Articles, which Dariusz Makieła, *inter alia*, contests are to be understood as the “first” constitution of Poland-Lithuania. The text of the 3 May, 1791 Constitution is used to establish a set of constitutional archetypes for the Polish-Lithuanian constitutional system, which are then briefly discussed and contrasted with elements of modern constitutionalism.

The following three chapters provide the evidence to support the understanding of how Polish-Lithuanian constitutionalism evolved, and are divided into the broad periods of constitutional construction (1374-1609), constitutional maintenance (1609-1717), and constitutional renaissance (1764-1791). These periods are ideal types and not mutually exclusive, i.e. in the period of constitutional maintenance some construction may be required and a variety of possible combinations of the ideal types.

The chapter “The Period of Constitutional Construction: The Henrician Articles as Culmination of Centuries of Struggle (1374 – 1609)” attempts to unravel the origins of the

ideas, practices, and institutions of Polish-Lithuanian constitutionalism. It begins with a brief evaluation of the Piast period and the emergence of the *szlachta* and the *magnaci*. There is a discussion of the difficulty in conceptualizing “Poland” or “Poland-Lithuania” due to the complex changes in geography, ethnicity, language, and religion, as well as the overlapping legal systems and political jurisdictions at the time. The text of Article II of the 3 May Constitution allows for the simplification of this process by concretely acknowledging a list of laws, statutes, and privileges produced from the Piast period until the 3 May Constitution itself. The long process towards the unification of the Crown of Poland and the Grand Duchy of Lithuania is discussed, including the common enemies in the German Teutonic Order, Muscovy, the Ottoman Turks *inter alia*, as well as the emergence of the Jagiellonian dynasty, and the Union of Mielnik. The laws, statutes, and privileges leading up to the Henrician Articles are discussed as a constitutional background to it. The chapter next discusses the executionist movement and how it impacted: financial and administrative reform, limited the political and judicial role of the Catholic Church, strengthened the Izba Poselska, as well as strengthening the legal and political culture of the *szlachta* and promoting classical republican and democratic ideals. The chapter discusses how these republican ideals solidified, evidenced by the works of Andrzej Frycz Modrzewski and Stanisław Orzechowski. The Union of Lublin, the Great Interregnum, Konfederacja Warszawska, and the election of Henryk Walezy are discussed as important precursors that set the stage of the Henrician Articles. The Henrician Articles are then presented and the text is then thoroughly analyzed. The establishment of the 1578 Trybunał Koronny and its consequences on Polish-Lithuanian constitutionalism are then addressed. The Rokosz Zebrzydowskiego is then addressed as the mechanism that fully solidified the principles of the 1573 Henrician Articles: that even though the rebellion was technically defeated, King Zygmunt III Waza had to essentially give into the demands of the rebels, including the establishment of the *senatorowie rezydenci* and the clarification of the principle *de non praestanda oboedientia*. The chapter then concludes by returning to the constitutional archetypes presented in the chapter “Constitution Lost, Constitution Regained” with some slight modification: the division of epistemological reflections into *praxis* and *poiesis*.

The next chapter, “The Period of Constitutional Maintenance: Weathering Internal and External Crises (1609-1717)” attempts to examine how well the ideas, practices, and

institutions of Polish-Lithuanian constitutionalism did under various crises and to summarize how those crises as well as the response to them were manifested in changes to the constitutional structure. The chapter begins with a reevaluation of the “Golden Age” of Poland-Lithuania, specifically how a Golden Age of Constitutionalism may be slightly different than the traditional historical narrative. The chapter explores the distinction between *praxis* and *poiesis* in further depth and uses it as a lens with which to clarify 17th century Polish-Lithuanian constitutionalism: that it moved away from questions of constitutional architecture to questions of political and legal procedure. The chapter enumerates several *konstytucje* passed during the second half of Zygmunt III Waza’s reign as well as those of his son Władysław IV Waza, which was a period of relative stability within Polish-Lithuanian constitutionalism, but not one of great change. The chapter then discusses the various crises that emerged in the middle of the 17th century: the collapse of religious toleration and violation of the Warszawa Konfederacja in context with wars against the Orthodox Cossacks and Muscovites as well as the Protestant Swedes during the Deluge, the creation of the *liberum veto* as a kind of parliamentary *rokosz*, and failure of the Uгода Hadziacka that would have transformed the Polish-Lithuanian Commonwealth into the Polish-Lithuanian-Ruthenian Commonwealth. The political and legal thought of the time is exemplified by examining the works of Kasper Siemek, Łukasz Opaliński, Andrzej Maksymilian Fredro, and Samuel Przypkowski. The chapter then examines the increasing importance of *poietic* concerns including the complex relationship between the seymiki and the Seymy. Next, the study presents the sub-thesis that the crises on the national level and the breakdown of *szlachta* consensus produced a period of political decentralization, with much of the task of governance falling to the seymiki. The chapter then examines the role of the Wettin dynasty and how the 1717 Silent Sejm precipitated the collapse of both the national Seymy as well as the seymiki and the virtual halting of all processes of maintaining the constitutional system within the Commonwealth. The chapter concludes by returning to the constitutional archetypes and produces further clarification of the distinction by *praxis* and *poiesis*.

The last evidentiary chapter, “The Period of Constitutional Renaissance: Between a Rock and a Hard Place (1764-1791)” sets the stage for the 3 May, 1791 Constitution as the last attempt at saving the Polish-Lithuanian political and constitutional system. The chapter begins with an exploration of the vast period wherein the Seymy almost never met, with the times that it did meet being prevented from passing any real legislation by the *liberum veto* (1717-1764). The chapter discusses how during this period there was a gradual process of *szlachta* political reawakening to the need to overhaul the constitutional and political system, inspired by greater discourse with Enlightenment thought, particularly Anglo-American and French ideas. The chapter discusses the difficult circumstances of the election of Stanisław August Poniatowski and his incremental attempts at reform in the beginning of his reign. The political and legal thought of the time is exemplified by examining the works of Montesquieu, Rousseau, Stanisław August Poniatowski and Teodor Ostrowski, as well as Hugo Kołłątaj and Stanisław Staszic. The chapter then explores the interconnectedness of reformist thought among American, British, and Polish-Lithuanian thinkers, especially the American Revolution, the failures of the Articles of Confederation, and the 1787 United States Constitution. Accordingly, the chapter also presents written correspondence between Americans and Poles-Lithuanians as well as British and Polish-Lithuanian thinkers. The chapter also presents daily newspapers following the events of the other countries. The combination of Enlightenment theorists as well as Anglo-American and Polish-Lithuanian correspondences produces an intellectual milieu that serves to ground the 3 May Constitution. The 3 May Constitution and a variety of constitutional acts established around the same time, known in the literature as ustawy okołokonstytucyjne (around-the-constitution acts) are presented and discussed as creating a complex constitutional system, rather than simply a single, coherent “3 May Constitution”. An in-depth, textual analysis of the 3 May Constitution is made, examining each act in detail with discussion as to the intention and implementation of each. The chapter ends with a final reflection on the constitutional archetypes, suggesting that what is perhaps needed more is not a further refinement of the archetypes themselves, but rather a typology of constitutionalisms is itself in need of further clarification.

The concluding chapter synthesizes the evolution of Polish-Lithuanian constitutionalism, with the 3 May Constitution not quite fitting into either category of

“modern” or “constitution” as both are employed in “modern constitutionalism”. The study outlines some key components specific to Polish-Lithuanian constitutionalism and then presents future avenues for research and exploration by contemporary, comparative, constitutional scholars.