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## Forming a new constitutional order in Poland in the years 1944-1952

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Czasy Nowożytne Vol.I, 9-18

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2000

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**Czasy Nowożytnie (Modern Times), vol. I/2000**  
A periodical devoted to Polish and world history  
from the fifteenth to the twentieth century

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**Forming a New Constitutional Order in Poland  
in the Years 1944-1952**

The time range of this text spans from 1944 to 1952, that is the period from the installation of the so-called Polish national liberation committee by Stalin (hereafter PKWN) till the adoption in July 1952 by the Constituent Sejm of the constitution with the new name of the state – the People's Republic of Poland.

In the meantime, an event very important from the point of view of our discussion took place. In February 1947 the Constituent Sejm, elected in the atmosphere of terror and repeated falsifying of election results, established two constitutive bills<sup>1</sup> that conveyed fundamental principles for the functioning of the state system. These regulations were of particular significance since their institution actually ended the full constitutional provisional period that had existed since July 1944. At that time a number of acts issued by the so-called national state council (hereafter called KRN) and PKWN, as well as a general political declaration of the new government (expressed in the so-called July PKWN manifesto regarding the application of democratic principles of the Republic's constitution of March 1921),<sup>2</sup> constituted the foundations of the state constitutional order.

I am convinced however that adopting the Constitution Minor was also a turning point of some sort which made significant progress in the creation of a whole new reality possible.

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<sup>1</sup> The constitutional bill concerning the election of the President of the Republic, of February 4, 1947 (Dziennik Ustaw, or Dz. U. [Promulgation Gazette] no. 9, pos. 43) and the constitution bill concerning the system and the range of responsibilities of the highest organs of the Republic, February 19, 1947 (Dz. U. No. 18, pos. 71). These regulations were supplemented with a Declaration of citizens' rights and liberties adopted by the Sejm on February 25, 1947 (Constituent Sejm. Stenographic report of the 8<sup>th</sup> session, col. 46)

<sup>2</sup> PKWN Manifesto of July 22, 1944 (Dz. U. No. 1, appendix)

The fundamental question in this context, a question that seems to have had no answer clear enough so far, is whether establishing the constitution of 1952 was a formal, constitutional sanctioning of the creation of the new order in Poland, or whether it was only the first step in constructing the socialist state, and what the role of the February 1947 regulation in this context was.

One can encounter views according to which the adoption of the 1952 constitution, which ended the constitutional provisional period based primarily upon the “bourgeois”, “liberal-democratic” constitution of 1921, was the starting point for the creation of the new reality. K. Kersten in her important book *Narodziny systemu władzy* indicating the elements of sovietization of Poland that were incorporated into the 1947 regulation (discussed in detail elsewhere), demonstrates that the basic goal of the government was:

“to denounce the importance of the Constitution Minor, to stress that *the basic foundations of the constitution of March 1921 have been retained, and the change is limited to reaffirming the order that emerged in the two-and-a-half years of practice in the form of a bill, and introducing such changes and additions that were proven necessary upon the dissolving of the National State Council and its Presidium. This way – concluded the author of this exposition, director of the KRN Presidium Office Department Izaak Klarnerman – peaceful transition to a new development phase before the eventual adoption of the Republic’s constitution by the Constituent Sejm would be guaranteed.* In reality, the constitutional bill of February 1947 was so flexible that the changes to the system of government projected by the communists could be fitted within it.”<sup>3</sup>

The author, while identifying the main element of constitutional sovietization in the State Council being created, seems to be making one basic mistake. She takes the text of the Constitution Minor as an indicator of progress in the creation of the new constitutional order. She also accepts the propaganda exposition of governmental intentions as trustworthy. It seems however that assurances of the intention to maintain as many of the March constitution regulations as possible were merely part of an attempt to cover the disastrous impression the evidently falsified January elections had on the public.

Yet since June 1944 the process of the consequent creation of the “new order” was underway, I believe. Still in 1945 Gomułka declared straightforwardly at the PPS Congress that the new state being created was

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<sup>3</sup> K. Kersten, *Narodziny systemu władzy* (*The Birth of the System of Government*), Warsaw 1985, p. 249

supposed to be a socialist state,<sup>4</sup> and, as a consequence, it was to follow appropriate constitutional principles put forward in the first socialist country, namely in the Soviet Union. Even though PPS resistance as well as the need to be more civilized in the confrontation with the PSL blunted the sword of ideological proposals in 1946,<sup>5</sup> just after the Sejm assembled and opposition was marginalized the PPR recommenced its constitutional reform program with new energy.

From this perspective, the Constitution Minor with its “flexible” regulations, as rightly pointed out by K. Kersten, played an important role in making the changes legitimate. As the chief constitutional lawyer of the PRL A. Burda noticed, the generality and flexibility of the constitutional bill were to allow unconstrained evolution of the political system according to the needs of developing socialist relations in economics and politics.<sup>6</sup> Naturally, constitutional regulation is just one of the many levels of the process of gradual totalization of the Polish reality. There is no doubt however that it was a key area, although paradoxically, in its significant part, it was taking place outside the legal sphere.

For a proper understanding of the issue, it is a key conclusion that the process was determined mostly by the shape of fundamental constitutional measures, characteristic of the new order. We need to establish what the most important principles of the Soviet-based system introduced in Poland were and how they were put into practice.

Even though these principles were formally stated as late as in the constitution of 1952, undoubtedly they set the primary direction for the activities of the PPR, the party playing the key role in the process. This formation, describing itself as following a Marxist-Leninist ideology, did not try to hide the fact that the Soviet constitutional model was the archetype of and point of reference for all actions,<sup>7</sup> even if some elements of the program were dropped temporarily.<sup>8</sup>

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<sup>4</sup> W. Gomułka’s speech made during the 26<sup>th</sup> Congress of the PPS on June 1945, in: W. Gomułka, *Artykuły i przemówienia*, (*Articles and Speeches*), vol. 1, Warsaw 1962, p. 298-299

<sup>5</sup> K. Działocha and J. Trzciniński describe the conditions of this process, *Zagadnienie obowiązywania Konstytucji marcowej w Polsce Ludowej 1944-1952*, (*The Problem of the Validity of the March Constitution in People’s Poland 1944-1952*), Warsaw 1977

<sup>6</sup> A. Burda, *Rozwój ustroju politycznego Polski Ludowej*, (*The Development of the Political System in People’s Poland*), Warsaw 1967, p. 47

<sup>7</sup> For the PPR, the Soviet state was the model of a constitutional system, wrote on p. 37 of their thesis K. Działocha and J. Trzciniński referring to the work of Fr. Ryszko, “Ideowo-polityczne podstawy przemian” (“Ideological and political

Among others, four principles can be considered basic marks of the so-called socialist constitutional order:<sup>9</sup>

1. **Sovereignty of the working people of the country and the city**
2. **The leading role of the communist party**
3. **A representative form of government**
4. **Public ownership of means of production.**

Constitutional lawyers of the PRL pointed out the significance of the principle of the uniformity of government<sup>10</sup> being a fundamental rejection of the principle of division of government that was the foundation of democratic systems.<sup>11</sup> I believe however that, as far as our interest is

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grounds for change") in: *Polska Ludowa 1944-1950, Wrocław-Warsaw-Cracow-Gdańsk 1974*, p. 31

<sup>8</sup> The PPR, contrary to its predecessor, the KPP, abandoned the program of giving up even formal independence of Poland. Temporarily they stopped advocating for collective agriculture and pretended to be neutral to the Catholic Church. It was "scientifically" justified in the work of N. Kołomejczyk and M. Malinowski, *Polska Partia Robotnicza 1942-1948 (Polish Workers' Party 1942-1948)*, Warsaw 1986, p. 340: "*An exaggerated exposition of PPR's long term goals, or unnatural speeding up of their realization, could cause a negative reaction in society. It could increase hesitation and indecision even among the most revolutionary groups. It would scare populous groups of the undecided off the people's authority.*" It is a surprising conclusion. It shows that even among the party elite it was clear the real PPR program could not gain any acceptance in society, and for this reason utter lies were used to gain support.

<sup>9</sup> It is worth mentioning here that because of the clearly visible incoherence between the post-war systems in the Soviet Union and European countries subservient to Moscow, Soviet constitutional lawyers invented the idea of a "people's democracy". For thirty years onward, these countries had people's democracy in their constitutions. In reality, it was an artificial construction, since apart from the ideology there were no significant differences from the Soviet model. The construction was at the same time to stress the "leading role" of the Soviet Union in building communism. The countries of people's democracy became socialist in the middle of 1970s, when the Soviet Union was already "the all-national state", that is, it had reached the last phase before communism. The PRL constitution was amended in 1976 in relation to this.

<sup>10</sup> K. Działocha, J. Trzeciński, op. cit., p. 36

<sup>11</sup> It is worth reminding the reader of the fragment of the speech by one of the leading "ideologists" of the change, J. Jodłowski, during the discussion of the constitutional placement of the State Council: "*The PSL lawyers do not like the fact that the House Speaker and his Deputies should have their seats in the State Council as the representatives of the law-making authority, and that we want to mix law-making with executing law. We know what the point is. It is the issue of the clarity of the so-called Montesquieu theory of the division of government. If you, Gentlemen, do not have bigger worries and raise such doubts, then we are*

concerned, putting this principle into effect was not of great importance, since it was contained in the principle of the leading role of the communist party, which was undoubtedly reaffirmed in 1948. From this perspective, the creation of the State Council in the Constitution Minor was undoubtedly the first serious step towards putting this principle into effect, but, as it turned out later, it did not have consequences comparable to those resulting from putting into effect the other principles.

The first of these principles is a specific adaptation for the Soviet-style constitutional system of the generally accepted principle of the sovereignty of the nation or of the people. It was specific because it had been said that

*the principle of the sovereignty of the working people of the country and the city is in its essence different from, and thus in conflict with the principle of the sovereignty of the nation, it indicates clearly the class character of the state and legitimizes restrictions in political rights of particular groups of citizens*<sup>12</sup> (emphasis mine – G. G.)

While identifying internal sovereignty (different from external sovereignty) with dictatorship, Marxist constitutional lawyers defined it based on Lenin's instructions:

*Dictatorship means unlimited authority based on force, not on law. (...) A scientific definition of dictatorship does not mean anything else than authority unlimited by anything, not bound with any laws or any regulations, based on violence.*<sup>13</sup>

Before the issue was formulated "scientifically" in a textbook, this ruthless Soviet-style constitutional principle was presented more explicitly in the heat of parliamentary discussions by the seemingly most important PPR "ideologist" of the matter, Representative S. Gross. In the spring of 1946, at the 11<sup>th</sup> session of the KRN, defending the authorities of that time from the accusations of the PSL representatives that imposing censorship was in conflict with the 1921 Constitution, he said:

*We do not understand democracy in such a way that its primary role is to create conditions for unlimited freedom to act for those that make their general negation the key to their approach to the Polish*

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*sorry to say you still remain in the Montesqueiu era when we have moved further.*" Stenographic report of the 6<sup>th</sup> session of the Constituent Sejm, col. 55-56

<sup>12</sup> F. Siemieński, *Prawo konstytucyjne, (Constitutional Law)*, Warsaw-Poznań 1980, p. 77-78. To illustrate the contents of constitutional principles I used Siemieński's thesis that in a way was the top interpretative achievement in the study of constitutional law at the end of the 1970s. His thesis translated the "achievements" of the Soviet science in this field to the Polish system in the highest degree.

<sup>13</sup> V. I. Lenin, *A Contribution to the Studies of the History of Dictatorship, Works*, vol. 31. Quoted according to F. Siemieński, op. cit., p. 72-73.

*reality and wish to turn the freedom of democracy into a means to undermine the foundations of people's democracy. We do not understand liberty and freedom in such a way that it should give freedom to those that want to destroy the foundations on which the working world in Poland wishes to lay freedom and social justice.*<sup>14</sup>

Discussing the Constitution Minor, the same Representative concluded:

*The bill that will be adopted at the threshold of the period of political stability after the inevitable post-war temporariness constitutes the beginning of the new period of revolutionary legitimacy.*<sup>15</sup>

The principle of the sovereignty of the working people of the country and the city so perceived was in a way an indispensable condition for formulating two other principles. F. Siemieński, quoted earlier, points out that

*the principle of the leading role of the communist (workers) party in the process of building socialism, for other political and social organizations and for the state, is derived irrevocably from the principle of the sovereignty of the working people of the country and the city. (...) Without retaining the leading role of the communist party to the working class and other classes of the working people the government of the people cannot be either taken over or subsequently executed.*<sup>16</sup> (emphasis mine – G.G.)

According to the same author

*The representative form of people's government generally means that the people do not govern directly, but through their representative organs. This means that 1. representative organs, i.e. those perceived as such by the constitution, to be such genuinely, and not only formally, must express the interest and will of the people; 2. they should at the same time be the organs of state government, i.e. be situated in such a way within the state machinery to be its core, to make its political foundation, to create the crucial group of organs; 3. decisions made by the organs perceived by the constitution as the representative organs of the people should be treated by the citizens and other public organs as the decisions of the people.*<sup>17</sup> (emphasis mine – G.G.)

The last of the above principles was of primary significance from the point of view of creating a whole new socioeconomic system. The

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<sup>14</sup> Stenographic report of the 11<sup>th</sup> session of the KRN, col. 443

<sup>15</sup> Stenographic report of the 5<sup>th</sup> session of the Constituent Sejm, col. 47

<sup>16</sup> F. Siemieński, op. cit., p. 86-87

<sup>17</sup> Ibidem, p. 97

principle of the domination of public ownership, and in reality state ownership, had been one of the most basic proposals of Marxist-Leninist organizations from the very start.

As mentioned earlier, these principles were formally expressed in the constitution of 1952, and their “scientific” justification was presented in accordance with Soviet textbooks even later. This does not change the matter however. Adopted by the formation installed in Poland as a government were regulations and rules of conduct that formed the so-called actual constitution<sup>18</sup> and were based on the foundations described above.

I shall not elaborate extensively on the fact that the years of 1944-1956 were the period in which the principle of “the sovereignty of the working people of the county and the city” together with the “scientific definition of dictatorship” as defined above were put into practice ruthlessly. The crackdown on the official and underground opposition, even though not fully clear till now, has been the subject of various works and analyses in the past few years. I wish to draw attention to one issue. What the entire civilized world has always considered a violation of basic constitutional norms and human rights was merely the enforcement of the basic constitutional directive for the political parties under the PPR leadership. The construction of “the sovereignty of the working people of the country and the city” made it possible to exercise “restrictions in political rights of particular groups of citizens.” Lenin’s “scientific definition of dictatorship” served as justification for all actions of all organs of power, actions not only illegal, but stretching beyond legal ramifications. This authority was supposed to be “unlimited” and “based on force, not on law”.

The situation in Poland in the years of 1944-1956 can therefore be treated as the process of formation of government institutions with methods that were terrorist in character. The institutions already formed had a similar character – the tasks before them were realized with such methods, and it was made a constitutional principle.

Introducing this principle could only be realized with methods out of the legal ramifications. The same applies to the principle of “the leading role of the communist party.” In fact, the processes of putting these principles into effect were parallel, except that it was even more visible with the latter.

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<sup>18</sup> PRL constitutional lawyers used the term “actual constitution” to describe the character of regulations imposed by the KRN, i.e. between January 1944 and February 1947.

On the one hand, we experienced – at least in the second half of 1948 – a process of erasing identities. The PPR and its leaders put much effort in convincing the Polish society that their party had nothing in common with the KPP, they would even turn away from this disastrous heritage. “The return to the roots” would take place in 1949 as part of Gomułka’s fight with “the right-wing nationalist deviation.”

On the other hand, the process of liquidation and integration was underway. In the first place, the political scene was “cleared” of any potential elements that could not have been penetrated and made subservient. It was here that brutal terrorist methods were used in their entirety and euphemistically called “a heated political fight.” As this is not the appropriate place to present the process, I shall merely indicate the points which I consider most important. These were:

- disallowing formal restitution of the national political front and ruthless extermination of the majority of its leaders,
- marginalizing the SP by eliminating its authentic, Christian-socialist leadership,
- finally, achieved in the longer run, eradicating PSL’s independence, mainly by arresting its leaders or forcing them to flee the country.

Upon the completion of the liquidation phase, the integration phase began in which the PPS was put under pressure to unite with the PPR. The PPS, even though it was not authorized to use the achievements of the real PPS banned by the communists, posed a real problem for the PPR. It was much more “sympathetic” for the public than the PPR, it had more members, and operated in the same part of the political scene. Moreover, the PPS was even trying to create its own “relations” in Moscow without the PPR’s mediation. Since the PPS was an ally in “the fight with the rebellious reaction movements,” it was impossible to use the liquidation option here. That is why the unity option prevailed that made it possible to recognize by the end of 1948 without any doubt that the new PZPR could realize the principle of “the leading role of the communist party in building socialism.”

Contrary to those two principles made effective outside of the legal system, the introduction of the two remaining ones called for legal instruments.

First, the basic issues regarding the new economic system were resolved.<sup>19</sup> The regulations concerning agricultural reform of 1944<sup>20</sup> and

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<sup>19</sup> After some years the goal of the changes was no longer kept hidden: *Therefore the task was to undertake such changes in social structures that, while satisfying the needs of the workers and peasants, would at the same time weaken and*

nationalization of practically all sections of industry in 1946<sup>21</sup> comprised the foundations of the new economy. At the same time they were heavily repressive, hitting tens of thousands of the most economically active individuals independent from the authorities. On top of these regulations came the “trade battle”,<sup>22</sup> cleaning the economy of virtually all private property (except in farming),<sup>23</sup> naturally won by the authorities, and the Soviet-style reform of the banking system in the Fall of 1948.<sup>24</sup> It is worth pointing out that the key role in reforming economy was played by the so-called three-year reconstruction plan. According to the First PPR Congress in 1945,

*eliminating great capitalists and landowners as well as regaining the Western land opens the possibility for quick and successful economic development, overcoming poverty and reaching prosperity in Poland. The First Congress believes the efforts to achieve this*

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*restrict the positions of owning classes, especially by extinguishing the class of landowners and great industrial and trade bourgeoisie.* See: N. Kołomejczyk, M. Malinowski, op. cit., p. 339

<sup>20</sup> The PKWN decree concerning agricultural reform of September 6, 1944 (Dz. U. No. 4, pos. 17). Here is how Marxist historians perceived political and social effects of the agricultural reform: *The agricultural reform changed the agricultural structure and social relations in the countryside. The most backward phenomenon in the history of the nation, extensive landowning, disappeared from the countryside and the entire political life* – N. Kołomejczyk, M. Malinowski, op. cit., p. 351

<sup>21</sup> The bill concerning nationalizing the main branches of national economy, of January 3, 1946 (Dz. U. No. 3, pos. 17)

<sup>22</sup> The following bills constituted the most important legal regulations in the matter: of fighting overpricing and excessive profits in trade, of June 2, 1947 (Dz. U. No. 43, pos. 218) and of permission to run a trade company and conduct trade professionally, of June 2, 1947 (Dz. U. No. 43, pos. 220)

<sup>23</sup> *The result of the trade battle was in fact another important step – after the agricultural reform and the nationalization – on the way to structural reform. It restricted the private sector significantly and strengthened public economy, its crucial positions. Businessmen in small and medium companies, scared off by administrative and economic restrictions, were closing their works and shops* – N. Kołomejczyk, M. Malinowski, op. cit., p. 388

<sup>24</sup> The most important regulations in the matter were three decrees approved on October 25, 1948: of the rules and the mode of liquidation of some banking institutions (Dz. U. No. 52, pos. 410); of the rules and the mode of liquidation of some institutions of long-term loan (Dz. U. No. 52, pos. 411); of banking reform (Dz. U. No. 52, pos. 412)

*should be put in the form of a three-year state plan for reconstruction and rebuilding of Poland.*<sup>25</sup>

Finally, the principle of “the representative form of government of the working people” was expressed in two bills – those of 1944 and 1950.<sup>26</sup> It is characteristic of the first bill that a particular mode of forming the councils at all levels was adopted. In fact, they consisted almost exclusively of persons appointed by a specific circle of entities (mainly the so-called “democratic” parties and social organizations), accepted by the “leading force”, i.e. the PPR. Councils so constructed (among them those of the highest level, the KRM, and after the falsified elections the Constituent Sejm too) became “the representative organs of government” decisions of which “should be treated by the citizens and other public organs as the decisions of the people”! One must admit that with this construction the new authorities reached the heights of constitutional acrobatics.

After 1950 these principles did not change significantly. An election mechanism was introduced, but the system of voting and constructing the election lists by the so-called national front (being consequences of the leading role of the party) made the elections purely fictitious, even if a large percentage of voters were making them legitimate.

It is easy to notice that all the important facts and regulations concerning the practical introduction of the most crucial constitutional norms in the Soviet style in Poland took place before 1950, and in their core before 1948. Adopting Constitution Minor was not any significant breakthrough. The process had had its dynamics and logic since 1944. That is why Constitution Minor was supposed to be and indeed was just an episode in the process of constructing a new order. I believe it was not even the most significant one. From this point of view there is no doubt that the constitution adopted in 1952 merely restated and formalized the principles of the new system that had been introduced earlier.

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<sup>25</sup> PPR. Resolutions, proclamations, instructions and letters of the Central Committee, August 1944 – December 1945, Warsaw 1959, p. 213

<sup>26</sup> The decree concerning the organization and the range of activities of national councils, of September 11, 1944 (Dz. U. No. 5, pos. 22), and the bill of local organs of uniform governmental authority, of March 20, 1950 (Dz. U. No. 14, pos. 130). In the work by K. Działocha and J. Trzciński, op. cit., p. 36, we find the following summary of the change made in 1950: *Eventually the idea of councils as uniform local organs of authority was formulated at the 4<sup>th</sup> Plenum of PZPR's Central Committee in 1950. It meant victory of the idea of a socialist state based on councils. It was expressed in, among others, the bill adopted in March 1950...*