

III. PRZEKŁADY

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Parliamentary representatives in old Poland. Envoys, mandataries, and nation's representatives*

Dedicated to the memory of Adam Uruszczak¹

The modern understanding of parliamentary representation is based on the conviction that a parliamentary deputy who is selected to a legislative body is a representative of the whole nation. It means that there is no bond of a legal character between a deputy and their voters which would impede in any way the deputy's freedom to act. This way of understanding of parliamentary representation was born in the 18th century. It is based on the theory of parliamentary representation created by Emmanuel Joseph Sieyès, a French priest, who presented his ideas in his political pamphlet entitled *Qu'est-ce que le Tiers-État?* [What is the Third Estate?]. The pamphlet was published in 1789 and it considered the deputies of the Third Estate to be the representatives of the nation. Consequently, they could freely decide for the nation in matters pertaining to it and to pass new laws in particular². This character of the deputies' position was confirmed in

* Original version: W. Uruszczak, *Poselstwo sejmowe w dawnej Polsce: posłaniec, mandatariusz, poseł narodu*, „Czasopismo Prawno-Historyczne” 2009, Vol. LXI, issue 1.

¹ “*In Memoriam*”. Adam Uruszczak (3rd June 1978 – 16th October 2005) [in:] J. Halberda, M. Hosowicz, A. Karabowicz (eds.), *Prace poświęcone pamięci Adama Uruszczaka* [Works devoted to the memory of Adam Uruszczak], Cracow 2006, pp. 13–17. We would like to express our gratitude to Maciej Mikuła, M.A., for his help in editing the footnotes in the paper.

² S. Goyard-Fabre, *L'idée de représentation à l'époque de la Révolution*, “*Études françaises*” 1989, Vol. 25, No. 2/3, p. 80.

their work on the constitution. French constitutions from the French Revolution period stated that members of parliament were the representatives of the nation. The French Constitution of the 3rd of September 1791 passed by the National Assembly stated (Part III, article 7) that “Posłowie wybrani w departamentach nie są reprezentantami jednego określonego departamentu, lecz całego Narodu i nie będzie wolno udzielać im jakichkolwiek instrukcji” [The representatives elected in the departments are not the representatives of a single, particular department but of the entire Nation and issuing any instructions to them will not be allowed].³ On the other hand, the Montagnard Constitution of the 24th of June 1793 presented it in a shorter formula (article 29). “Každy poseł należy do całego narodu” [Each parliamentary representative belongs to the whole nation].⁴ This rule was expressed in the first constitution of the reborn Republic of Poland of the 17th of March 1921: “Posłowie są przedstawicielami całego narodu i nie są skrępowani żadnymi instrukcjami wyborców” [The parliamentary representatives are the representatives of the entire nation and they are not bound by any instructions from the voters].⁵ Also the current Constitution of Poland of 1997 states in article 104 that “Posłowie są przedstawicielami Narodu. Nie wiążą ich instrukcje wyborców” [The deputies are the representatives of the Nation. They are not bound by the instructions of the voters]. The deputies elected by the nation sit in the sejm (Translator’s note: the lower house of the Polish Parliament) or in other analogous parliamentary bodies which are authorised to enact acts which represent the will of the nation. So, in consequence, the will of the nation is identical with the will of the parliament as its collective representative.

The origin of the institution of parliamentary representation is connected with the creation of the legal institution of the power of attorney. The power of attorney is in its essence a type of substitution (representation) in order to enter into legal transactions and act on another person’s behalf. It consists in authorizing one to make a declaration of will on behalf of the represented person (substituted, known as the grantor) with legal effects pertaining directly to that person. The agent makes legal actions on behalf of their employer and at the employer’s expense.⁶ The power of attorney is based on a legal fiction which treats legal actions made by the agent as binding for the employer, who is directly one of the parties of the contract concluded by the agent. The agent’s latitude to make legal actions depends on the purview of the power of attorney, i.e., it depends on the mandate

³ B. Lesiński, J. Walachowicz, *Historia ustroju państwa w tekstach źródłowych* [The history of system of government in primary sources], Warsaw – Poznań, p. 127.

⁴ *Ibidem*, p. 132.

⁵ The Constitution of 1921, article 20.

⁶ Z. Radwański (ed.), *System prawa prywatnego. Prawo cywilne – część ogólna* [The system of private law. Civil law – the general section], vol. 2, Warsaw 2002, pp. 494–495.

given to them, the commission in other words. This mandate can be limited by the employer. The agent's latitude can be limited in any way the employer sees fit. On the other hand, the employer can issue *carte blanche* to the agent. Roman law did not know the institution of the power of attorney. However, it used legal constructions of a different kind, especially the so-called indirect representative. This representation consisted in taking legal actions by representatives in the following manner. The representative concluded an agreement on their own behalf but on someone else's expense. The last part meant that the represented person was not a party to the agreement.⁷ The person with the power to represent someone, authorized to make a declaration of will on behalf of their employer, is an agent. The agent should not be mistaken for the so-called envoy, who is a person transporting other people's declarations of will. The envoy is not enshrined to make legal actions on behalf of the person who sent them. The envoy's role is limited to conveying the will to a third party only.

The power of attorney was born in medieval canon law.⁸ The code of law of papal decretals, the so-called *Liber sextus* of 1298, stated among others the following legal rule: *Quod potest facere per ipsum, potest facere per alium* [what can be done by oneself, one can have done by someone else].⁹ The power of attorney in medieval Church was a profoundly important legal institution. It allowed the Church structures to function on a worldwide scale despite the difficulties connected with direct communication. The Pope's agents were usually legates, who were sent to local churches by the Holy See, in order to make important actions of legal significance. Trials were conducted on the Pope's behalf by proxies, who were delegated judges. The need for legal proxies was also created by the existence of collective entities within the Church such as church institutes and towns. Especially church chapters used enshrined representatives to settle various matters.

The power of attorney also became a trial institution and it was utilized in court cases. It was first employed in ecclesiastical courts.¹⁰ A court procedure used in ecclesiastical courts, called the Roman canon procedure, had a significant influence on the development of the institution of representation. The Roman canon

⁷ W Litewski, *Rzymskie prawo prywatne* [Private Roman law], Warsaw 2003, pp. 167–168.

⁸ P. Ourliac, J. De Malafosse, *Histoire du droit privé*, vol. 1: *Les obligations*, Paris 1969, p. 146.

⁹ Ae. Friedberg (ed.), *Corpus Iuris Canonici. Editio Lipsiensis*, vol. 2, Lipsiae 1874, coll. 1124.

¹⁰ The significance of trial representation in the development of the institution of parliamentary representation (mandate) was highlighted in Polish literature by K. Górski, *The Origins of the Polish Sejm* [in:] *Communitas, princeps, corona regni. Studia selecta*, Poznań 1976, pp. 57–71. See also: S. Gawlas, *Monarchien und Stände in den Ländern Ostmitteleuropas an der Wende vom Mittelalter zur Neuzeit* [in:] M. Dygo, S. Gawlas, H. Grala (eds.), *Ostmitteleuropas im 14–17. Jahrhundert – eine Region oder Region der Regionen*, Warsaw 2004, p. 35.

procedure developed detailed guidelines for the operations carried out by agents.¹¹ Papal delegated courts contributed greatly to the acceptance of the institution of parliamentary representation on Polish soil as well as to the dissemination of this court procedure. The courts first appeared in Poland already in the second half of the 12th century.¹² It was common practice in those courts for the sides to take advantage of the help provided by professional trial representatives endowed with the power of attorney. Papal delegated courts heard cases of the greatest national importance, especially ones such as the case of the Polish Crown versus the Teutonic Order in their dispute over the Pomeranian lands.¹³ The king of Poland was the plaintiff in those cases and representatives, called prosecutors, acted on his behalf. They possessed the power of attorney granted to them by the king which gave them full powers (*plena potestas*) to undertake all court proceedings as his proxies.¹⁴ The institution of the power of attorney was also used in secular cases both in the courts as well as in international relations. *Nuntius* is present in the Statutes of Casimir III the Great as the plaintiff's representative in a lawsuit.¹⁵

Researchers connect the beginnings of Polish parliamentarism with the interregnum period between 1382 and 1384 after the death of Louis I of Hungary.¹⁶ This was the time when the chivalry became politically active, which was exem-

¹¹ Compare with the definition of the agent which can be found in a popular course book (also in Poland) from the 13th century of ecclesiastical court cases, the so-called *Ordo iudiciarius magistri Tancredi*, § 1.2: “*Procurator est, qui aliena negotia, unum vel plura, mandato sibi a domino facto, gerenda gratuito suscipit*” [in:] F.Ch. Bergmann, *Pilii, Tancredi, Gratiae libri de iudiciorum ordine*, Gottingae 1842, p. 114.

¹² W. Uruszczak, *Udział Kościoła wrocławskiego w rozwoju prawa kanonicznego w średniowieczu* [The participation of the Wrocław Church in the development of medieval ecclesiastical law], “*Czasopismo Prawno-Historyczne*” [CPH, Journal of Legal and Historical Sciences], 2000, Vol. 52, issue 1–2, pp. 47–66.

¹³ Cf. H. Chłopocka, *Procesy Polski z Zakonem Krzyżackim w XIV wieku. Studium źródłoznawcze* [Court cases of Poland versus the Teutonic Order in the 14th century. A primary source study], Poznań 1967, *passim*.

¹⁴ Compare with the lawsuit power of attorney granted by king Władysław II in 1422 *Mandatum domini Regis* [in:] *Liter ac res gestae inter Polonos Ordinemque Cruciferorum*, vol. 2, Posnaniae 1855, p. 4.

¹⁵ Compare with article 27: “*actore per se vel suum nuntium comparente;*” article 137: “*actore presente vel eius nuntio;*” “*actor in primo termino nec per se ne per alium suum nuntium paruerit.*” *Polskie statuty ziemskie w redakcji najstarszych druków (Syntagmata)* [Polish land statutes in the editorial collection of the oldest prints (*Syntagmata*)], compiled by S. Roman, L. Łysiak, Wrocław – Cracow 1958, pp. 76, 113.

¹⁶ J. Bardach, *Początki Sejmu* [The beginnings of Sejm] [in:] J. Michalski (ed.), *Historia sejmu polskiego* [The history of the Polish sejm], vol. I: *Do schyłku szlacheckiej Rzeczypospolitej* [Until the twilight of the Nobles' Commonwealth], Warsaw 1984, pp. 13–14; cf. J. Gzella, *Małopolska elita władzy w okresie rządów Ludwika Węgierskiego w Polsce w latach 1370–1382* [The power elites in Lesser Poland during the reign of Louis I of Hungary in Poland between 1370 and 1382], Toruń 1994, p. 153.

plified by organized congresses (rallies). These served as a prototype of regional and provincial parliaments (Polish: *sejmiki ziemskie i prowincjonalne*) which appeared later. The first general sejms (*conventum generale, parlamentum generale*) appeared during the reign of Władysław Jagiełło. Among the participants in the sejms were the members of the royal council, land officers as well as nobles who were not officials. Moreover, representatives of towns and cathedral chapter delegates arrived to take part in them. These sejms were treated as a representation of the states of the Kingdom. The representative character of this body was emphasized by accentuating the presence of the majority of participants entitled to take part in its sessions. For instance, the general sejm convened in Nowy Korczyn in 1404 was supposed to have *universi prelati, barones et milites totius regni*¹⁷ present. Next, *conventio generalis omnium terrarum*¹⁸ took place in Sieradz in 1432. In January of 1435, a general sejm took place with the participation of "voivodes, castellans, landed nobles and all of populace of the Kingdom of Poland" (*domini palatini, castellani, nobiles terrigenae et tota communitas Regni Poloniae*).¹⁹ The majority of chivalry most definitely did not come to those sejms. However, by marking everyone's presence, they attempted to emphasize the representativeness of those gatherings. The character of that representation was fictional in its essence and, as such, it was imperfect. According to the words of the royal legate spoken to the Prussian estates in 1480, just a third or even one tenth of the entitled participants come to the crown general sejm, nevertheless its resolutions bind all of them.²⁰ In the oldest period of its existence, Polish parliamentarism basically did without the institutions of parliamentary representation and power of attorney.

The general sejms in the 15th century usually took place as a congress of high-level officials. Lower-level land officials and common nobles only came to some more important sejms. Sejm resolutions passed with the participation of high-level officials and land officials were in effect for everyone due to the rule

¹⁷ *Jana Długosza kanonika krakowskiego Dziejów polskich ksiąg dwanaście* [Twelve tomes of Polish history by Jan Długosz, a Cracow's canon], published and translated by A. Przeździecki, vol. 3, Cracow 1868, p. 558. F. Piekosiński, *Wiece, sejmiki, sejmy i przywileje ziemskie w Polsce wieków średnich* [Rallies, local parliaments, sejms and land privileges in Poland in the Middle Ages], vol. 14: 1900, p. 199.

¹⁸ *Jana Długosza kanonika krakowskiego Dziejów polskich...* [Twelve tomes of Polish history by Jan Długosz, a Cracow's canon], published and translated by A. Przeździecki, vol. 4, Cracow 1869, p. 471. F. Piekosiński, *Wiece...* [Rallies...], p. 214.

¹⁹ A. Pawiński, *Sejmiki ziemskie. Początek ich i rozwój aż do ustalenia się udziału posłów ziemskich w ustawodawstwie sejmu walnego 1374–1505* [Local parliaments. Their beginning and development until the determination of the participation of members of regional parliament in the legislation of the general sejm between 1374 and 1505], Warsaw 1905, *Dodatki* [Appendixes], p. XLVII. F. Piekosiński, *Wiece...* [Rallies...], p. 217.

²⁰ J. Bardach, *Początki Sejmu* [The beginnings of Sejm], p. 47.

of imperfect representation. At the same time, imperfect representation was not sufficient in case of issues of extraordinary importance. It was deemed necessary to gain the approval of nobles at the local parliaments. Such method of conducting proceedings was noted down by Długosz when he described the proceedings at the general sejm in Piotrków in 1456.²¹ A new tax was enacted then which was equal to the half of the rent acquired from all of the lands, moreover from roads as well as a head tax from peasants and nobles who did not have serfs.

Ta decyzja (tj. projekt uchwały podatkowej – W.U.) – pisał kronikarz – została przyjęta przez panów, szlachtę i całą społeczność Wielkopolski. Panowie zaś ziemi krakowskiej i Rusi, chociaż osobiście się zgadzali, to jednak żadną miarą nie mieli odwagi zobowiązać do tego społeczności, ponieważ rzecz była nowa i uciążliwa. Stąd postanowiono zwołać w dniu św. Jadwigi nowy zjazd w Nowym Mieście Korczynie, głównie ze względu na ziemie ruskie, z których gdyby wyraziły zgodę na tę decyzję, miało wpłynąć znaczne wsparcie” [This decision (i.e. the proposed tax bill – a note by the author) – wrote the chronicler – was accepted by the lords, the nobles and the entire community of Greater Poland. While the lords of Cracow lands and of Ruthenia, even though they personally agreed, did not have the courage to commit in any shape or form their community to this because the idea was new and burdensome. That is why it was decided to convene a new rally in Nowe Miasto Korczyn on the Saint Hedwig of Silesia day. The place was chosen mainly with the Ruthenia lands in mind as their approval of this decision would provide significant support].²²

As this message clearly attests, the tax resolution was passed for Greater Poland. The inhabitants of Lesser Poland represented only by Cracow and Ruthenia lords refused to agree due to the novelty and onerousness of this tax burden. They agreed to convene a regional parliament in Nowe Miasto Korczyn in order to acquire the consent from the nobles.

Parliamentary representation as a form of representation developed out of the need to acquire the consent of the nobles to introduce new taxes and to introduce other infringements of nobles' privileges. Imperfect representation was insufficient as it was based on the fictional representation of the whole assembly of the nobles' community by the lords and individual knights who came to a sejm. In such cases, acquiring real consent was a necessity. Parliamentary representation was also a method of communication among the nobles and of working out a common position. Such representation always consisted in being bound by the voter's will and so it was a preceptive or limitative mandate.

²¹ H. Samsonowicz, *Polska Jana Długosza* [Poland of Jan Długosz], Warsaw 1994, p. 342.

²² *Ibidem*, p. 342.

The oldest mention of parliamentary representatives at the sejm pertained to the coronation general sejm which took place in July of 1434 in Cracow. The following were present at that sejm: *prelati, principes, barones, dignitarii, milites, nobiles et cives* as well as “parliamentary representatives representing dependent territories of the Kingdom of Poland” (*vota nuntiorum, qui a singulis terriis, regno Poloniae subiectis advenerant*).²³ However, in this case, it most probably did not mean regional parliaments representatives but rather the parliamentary representatives of fiefdoms or of – as Franciszek Piekosiński surmised – “conquered lands” (*terrae subiecte*) among which he counted Ruthenia lands.²⁴ On the other hand, the document from the 14th of October 1435 mentions “members of regional parliaments” (*nuntii terrarum*) who were empowered to receive the reckoning of the managers of the mint in Cracow – Andrzej Łabędź from Goździkowo, Andrzej Wierzynek and the Treasurer Klaus Kieslink.²⁵ In this case, it pertained to the representatives of lands delegated on site from among the nobles present at the sejm. From this record, it is clear that they did not constitute a crowd at the sejm but they were grouped into lands which were represented at the sejm by the nobles who came.

The practice of sending parliamentary representatives elected at the regional parliaments (*nuntii terrestres*) to the general sejm was developed due to the growing importance of the regional parliaments during the reign of Casimir IV Jagiellon (1444–1492). The Statutes of Nieszawa, which the king issued, gave the regional parliaments the right to express consent for the introduction of new taxes and for mass mobilization to be summoned.²⁶ Thanks to its members, the regional parliaments could express their will towards the king and his council more effectively than it was possible for the knights’ community at the general sejms. The smaller group of authorized representatives of the regional parliaments could force the king and his council to agree to their demands and make concessions. It was possible thanks to agreeing on a common position by all the parliamentary representatives of the nobles who were present at the convened sejm.

During the general sejm in Piotrków in 1453, separate debates took place of “panów znaczniejszych” [the more significant lords] and between “szlachty ze średnimi panami” [the nobles and mid-level lords]. Each of those bodies “podjęło zgodne decyzje” [took congruent decisions].²⁷ This event constituted a beginning

²³ *Jana Długosza kanonika krakowskiego Dziejów polskich...* [Twelve tomes of Polish history by Jan Długosz, a Cracow’s canon], vol. IV, p. 543.

²⁴ F. Piekosiński, *Wiece...* [Rallies...], p. 216.

²⁵ S. Krzyżanowski (ed.), *Album Paleographicum*, Cracoviae 1935, no. 25, p. 52.

²⁶ J. Bardach, *Początki Sejmu* [The beginnings of Sejm], p. 37 et seq.

²⁷ H. Samsonowicz, *Polska Jana Długosza* [Poland of Jan Długosz], p. 402.

of the future division of the sejm into two separately deliberating chambers.²⁸ Besides that, as Jan Długosz informs us, King Casimir legitimized the rights in the presence of “znacześniejszych panów i 12 z ogółu zgromadzonych” [more significant lords and 12 from all of the convened] at the sejm. One can guess that the mentioned 12 were the representatives of the Kingdom’s lands chosen on site.

The oldest example of the presence of representatives of regional parliaments at the general sejm, who were envoys of the nobles from each land, dates back to 1459.²⁹ For the general sejm in Piotrków came – according to the words of Jan Długosz – “posłowie ziem krakowskich, których głównymi przywódcami byli starosta sandomierski Jan Rytwiański, Jan Jan Tarnowski i Jan Melsztyński” [envoys of regional parliaments from Cracow lands who were mainly led by the starost of Sandomierz Jan Rytwiański, Jan Tarnowski and Jan Melsztyński].³⁰ Jan Rytwiański spoke at this sejm “nie tylko w imieniu ziem krakowskich, ale całego Królestwa” [not only on behalf of the Cracow lands but on behalf of the whole Kingdom].³¹ “Posłowie rycerzy i miast pruskich” [Representatives of the knights and Prussian towns]³² were also present in Piotrków. During this sejm, a decision was made that the tax bill which stipulated 6 groschen from each field (Polish: łan; Translator’s note: a łan denotes an area equal to roughly 16.5 hectares) was not accepted by “panów krakowskich i szlachtę” [Cracow lords and nobles].³³ It most probably pertained to the representatives from Cracow mentioned above. It was decided that this matter was to be sent back to the regional parliament in Nowe Miasto Korczyn which was called for the Saint Matthew day. The fact that this matter was sent back to the regional parliament leads one to believe that the representatives from Cracow who were present at the general sejm refused to express their consent for the introduction of the tax due to the lack of power of attorney. So they did not appear at the sejm as mandataries but rather as envoys which means

²⁸ W. Knoppek, *Zmiany w układzie sił politycznych w Polsce w drugiej połowie XV w. i ich związek z genezą dwuizbowego sejmu* [Changes in the balance of political power in Poland in the second half of the 15th century and their connection with the origins of the bicameral sejm], CPH 1955, Vol. VII, issue 2, pp. 77–79.

²⁹ It was convened on the day of Saint Giles (the 1st of September). H. Samsonowicz, *Polska Jana Długosza* [Poland of Jan Długosz], p. 403. F. Piekosiński mistakenly terms this sejm “wiec senatorski” [a senators’ rally]. F. Piekosiński, *Wiece...* [Rallies...], issue 121, p. 234. To read about this sejm see W. Fałkowski, *Rok trzech sejmów* [The year of three sejms] in: A. Bartoszewicz et al. (eds.), *Aetas media, aetas moderna. Studia ofiarowane prof. Henrykowi Samsonowiczowi w 70. rocznicę urodzin* [Aetas media, aetas moderna. Studies offered to Professor Henryk Samsonowicz on the 70th anniversary of his birthday], Warsaw 2000, p. 433.

³⁰ H. Samsonowicz, *Polska Jana Długosza* [Poland of Jan Długosz], p. 403.

³¹ *Ibidem*, p. 404.

³² *Ibidem*, p. 405.

³³ *Ibidem*, p. 406.

people who are chosen by others who are absent and they present their position (will) in legal negotiations.³⁴

King Casimir IV Jagiellon summoned “zjazd walny koronny” [a royal general assembly] to gather on the 6th December of 1461 to which “zwoławszy wszystkie województwa” [every province was summoned] and “wszystkie ziemie i miasta pruskie” [all the Prussian lands and towns] were also ordered to participate.³⁵ As Caspar Schütz informed in his “Kronika Pruska” [The Prussian Chronicle], *ordines Regni et Prussiae* were present at this sejm.³⁶

The next piece of information pertaining to the presence of the representatives of regional parliaments at the sejms comes from 1468. At the end of June (the 25th of June), a regional parliament took place in Wiślica in Lesser Poland with the participation of King Casimir. The enactment of the tax which the king demanded was postponed until the general sejm in Piotrków in order to communicate with the people from Greater Poland. For the sejm in Piotrków – as Jan Długosz wrote – “from all the districts two representatives each were chosen who were given the power of attorney in order to authorize an appropriate but moderate tax” (*ex omnibus deinde districtibus duos legunt nuntios, potestatem ad consentiendum in modestum subsidium habituros*).³⁷ On the basis of this piece of information, authors who wrote in the 16th century, such as Marcin Kromer³⁸ and Marcin Bielski, assumed the previously mentioned year of 1468 as the date which marked the beginning of the chamber of deputies at the general sejm.³⁹

³⁴ Z. Radwański (ed.), *System prawa prywatnego...* [Private law system...], p. 400.

³⁵ B. Wapowski, *Dzieje Korony Polskiej i Wielkiego Księstwa Litewskiego od roku 1380 do 1535* [The history of the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania from 1380 until 1535], vol. 3, Vilnius 1848, pp. 421–498.

³⁶ *Caspari Schützii Rerum Prussicarum historia ex codice manu auctoris scripto edita*, Gedani 1769, l. 7, p. 468.

³⁷ *Joanni Dlugossi Annales seu Cronicae incliti Regni Poloniae*, liber duodecimus 1462–1480, Cracoviae 2005, p. 219; *Jana Długosza kanonika krakowskiego Dziejów polskich...* [Twelve tomes of Polish history by Jan Długosz, a Cracow’s canon], vol. 5, Cracow 1870, p. 480. Compare with the translation *Jana Długosza Roczniki czyli Kroniki sławnego Królestwa Polskiego* [Yearbooks or the Chronicles of the famous Kingdom of Poland by Jan Długosz], Book 12: *1462–1480*, Warsaw 2006, p. 230: “Następnie ze wszystkich powiatów wybierają po dwóch posłów, którzy będą mieli prawo do wyrażenia zgody na skromną pomoc” [Subsequently two representatives are chosen from all the districts who will have the right to express consent for granting modest help].

³⁸ M. Cromerus, *De origine et rebus gestis Polonorum libri XXX*, Cologne 1589, l. XXVII, p. 399 et seq.

³⁹ One can read the following in *Kronika* [The Chronicle] by Marcin Bielski: “Potem król jechał do Wiślice na sejm, gdzie prosił szlachty Małej Polski o pobór na zapłatę żołnierzom w Prusiech, ale musie Wielką Polską wymawiali. Przetóż król jechał do Koła, gdzie także Wielcy Polacy wymówili mu się Małymi Polakami. A tak król położył sejm walny w Piotrkowie, na który chciał, aby tak z Małej jako Wielkiej Polski ze wszystkich województw przyjechali posłowie, którzyby mieli moc od drugiej braciej zezwolić na pobór, aby mu się potem jeden drugim nie wymawiał. Także to przyszło

This view was also accepted by Polish historians, such as Władysław Łebiński⁴⁰ and Michał Bobrzyński,⁴¹ in the 19th century. This opinion was criticized by Adolf Pawiński.⁴² It was his opinion that the previously mentioned text by Długosz should not be understood as a choice “po 2 posłów ze wszystkich powiatów” [of 2 representatives from all the districts] but rather as a choice of 2 representatives from the Cracow lands who were subsequently sent to Piotrków in order to debate together with representatives from Greater Poland. It would mean that Lesser Poland lands were represented by only 2 members in Piotrków. Moreover, they were given instructions which limited their power to represent (*potestas ad consentiendum in modestum subsidium*). Pawiński’s position is not convincing. As Długosz wrote, the choice of representatives was done *ex omnibus districtibus deinde*, which points to a connection of the number of the 2 representatives with each respective district.

More detailed information pertaining to the Piotrków congress can be found in *Roczniki* [Yearbooks] by Długosz. As one can gather from his description, it took place on the 9th of October 1468 in Piotrków. The event dealt, among other issues, with the matter of the levy to pay the back pay to the mercenaries:

Zajęli się potem król i panowie rada obmyśleniem środków do uiszczenia rycerstwu zaległego żołdu albowiem sejm w tym celu był zwołany. Ale gdy posłowie rycerstwa i szlachty oświadczyli, że od ziem swoich nie byli wcale upoważnieni do zezwolenia na jakikolwiek podatek, przez co popsuły się wszystkie szyki i zamiary, nic bowiem na obecnym sejmie uchwalonym być nie mogło; przeto posta-

od tego czasu w obyczaj, iż żaden sejm walny nie może być bez posłów, ani prawa żadne bez nich kowane; zaczęł się im dalej tem więcej władza ich zamogła tak, iż już senat ze wszystkiej władzy wyzuli” [Then the king went to Wiślicea to the sejm where he asked the nobles from Lesser Poland for a levy to pay the soldiers in Prussia but they declined and used Greater Poland as an excuse. Wherefore the king went to Koło where the people of Greater Poland also refused him and used the people from Lesser Poland as an excuse. And so the king called the general sejm in Piotrków where he wanted the representatives from Lesser as well as from Greater Poland and other provinces to come who would be authorized to consent to the levy and to stop them from using one another as an excuse. And so at that time began the custom that no general sejm could take place without the deputies and no new laws could be created without them; consequently, their power continued to grow so that the senate was deprived of all the power]. *Kronika Marcina Bielskiego* [A chronicle by Marcin Bielski], vol. 2 (Book 4, 5), Kazimierz Józef Turowski edition, edited and printed by Karol Pollak, Sanok 1856, pp. 824–825.

⁴⁰ W. Łebiński, *De nuntiorum terrestrium in Polonorum Republicae origine, conditione, rebus gestis. Pars prior (1468–1668)*, Vratislaviae 1863, pp. 11–12.

⁴¹ M. Bobrzyński, *Dzieje Polski w zarysie* [An outline of Polish history], Warsaw 1974, p. 250. This opinion was referred to by W. Knoppek in the 20th century, *Zmiany w układzie sił politycznych w Polsce...* [Changes in the balance of political power in Poland...], the text was previously cited in footnote no. 28, pp. 77–90.

⁴² A. Pawiński, *Sejmiki ziemskie* [Local parliaments], p. 113.

nowiono złożyć tym celem sejmiki, jeden dla Wielkopolan w dzień św. Mikołaja w Kole; drugi w uroczystość Poczęcia Najświętszej Marii Panny w Nowym Mieście Korczynie, aby na nich od szlachty uzyskać zezwolenie na pieniężny zasiłek [Then the king and the council lords began to contrive how to get funds to pay the back pay to the knights and for this reason the sejm was convened. But when the representatives of the knights and nobles stated that they were not authorized to allow an introduction of a new tax on their lands, which foiled all the plans and intentions, then nothing could have been enacted at the sejm; consequently, it was decided that regional parliaments were to be called, one for people of Greater Poland on the day of Saint Nicholas in Koło; and the second one on the celebration of the Immaculate Conception of Virgin Mary in Nowe Miasto Korczyn, in order to acquire consent there for the financial support].⁴³

According to the text above, beside the king and the council lords, regional parliament representatives also took part in the general sejm in October of 1468.⁴⁴ They refused to give their consent during the debate on the levy by pointing out that they did not have proper authorization. For this reason, the sejm did not pass the tax act. The issue was only sent back postsejm to the provincial parliaments and the date they were to be convened on was scheduled as well. The representatives of the nobles who were present at the sejm acted as mandataries of the regional parliaments and they acted on the instructions they had been issued. The mandate they possessed was a writ mandate in character. The aforementioned provincial parliaments took place on the scheduled dates. Representatives from

⁴³ *Jana Długosza kanonika krakowskiego Dziejów polskich...* [Twelve tomes of Polish history by Jan Długosz, a Cracow's canon], vol. V, p. 485. Cf. *Jana Długosza Roczniki...* [Yearbooks by Jan Długosz...], Book 12, p. 236: "Następnie tak król, jak i członkowie rady, zwrócili się ku szukaniu sposobu, w jaki by można wypłacić żołd żołnierzom; dla tej jednej sprawy został wyznaczony wspomniany zjazd, ale ponieważ posłowie wysłani ze strony rycerzy i szlachty wyjaśniali że nie otrzymali mandatu na wyrażenie zgody na jakieś wsparcie, wyjaśnienie to poruszyło wszystkich; ponieważ obecni tam ludzie nie mogli wydać żadnego orzeczenia, wyznaczono dwa zjazdy: jeden w Kole dla ziem Wielkopolski, na dzień świętego Mikołaja [6 XII], i drugi na dzień Poczęcia Świętej Marii Panny w Nowym Mieście Korczynie [8 XII], żeby na nich można było uzyskać zgodę rycerzy na udzielenie finansowej pomocy" [Subsequently, the king as well as his council members turned to looking for a way how to pay out the pay to the soldiers; the aforementioned congress was scheduled for this one matter, however, because the representatives who had been sent by the knights and the nobles explained that they had not been granted a mandate to express consent for any kind of support, this explanation caused a commotion among everyone; because the people present there could not pass any ruling, two congresses were scheduled: one in Koło for Greater Poland, on the day of Saint Nicholas (the 6th of December), and the second on the day of the Immaculate Conception of Virgin Mary in Nowe Miasto Korczyn (the 8th of December), in order to acquire the consent of the knights for the financial aid to be granted].

⁴⁴ F. Piekosiński mistakenly described this sejm as "wiec senatorski powszechny" [a general rally for senators]. See F. Piekosiński, *Wiece...* [Rallies...], no. 152, p. 238.

Greater Poland came to the parliament in Nowe Miasto Korczyn.⁴⁵ The sense of community and solidarity demanded from the crown nobles to communicate with each other. As one can expect, those representatives were in effect only envoys whose task was to convey information about the acts passed in Koło.

The general sejm which took place on the 12th of January 1478 in Piotrków had an analogous turn of events to the sejm which had taken place 10 years earlier in 1468. As one can read in *Roczniki* [Yearbooks] by Długosz:

[...] radzili niektórzy, aby w tak wielkim niedostatku uchwalić pobór wiardunkowy od kmieci. Czemu, gdy się jednak wielu szlachty sprzeciwiło, nie przyszło do żadnej stosownej uchwały i rzecz całą odesłano do sejmików, na których lubo wszystkie ziemie głosowały za ustanowieniem poboru [some advised to enact a wiardunek (Translator's note: an old-Polish unit of measure) collection among peasants due to this tremendous shortage. However, when many of the nobles objected to this, no appropriate act was passed and the whole matter was sent back to the local parliaments where all the lands voted for the enactment of the collection with relish].⁴⁶

Even though Długosz talks about the objection from the nobles' side at the sejm, and not the representatives, in this case, it seems extremely probable that the aforementioned nobles were in reality representatives of the regional parliament who had been issued instructions which prohibited them from expressing consent to the introduction of the new tax.

This assumption is confirmed in the legation of King Casimir IV Jagiellon which summoned the Prussian Sejm in Elbląg in 1488. It contained a notice instructing the local parliaments to choose representatives with full power of rule-making and that they were to arrive to the sejm (*nuntiosque cum plena potestate ad conventionem [...] expedirent*).⁴⁷ As Juliusz Bardach correctly surmises, this legation was edited according to a form which was in force in Poland. According to the author, it points to the fact "że idea reprezentacji w tym czasie rysowała się coraz wyraźniej" [that the idea of representation at that time was becoming more

⁴⁵ *Jana Długosza kanonika krakowskiego Dziejów polskich...* [Twelve tomes of Polish history by Jan Długosz, a Cracow's canon], vol. V, p. 486.

⁴⁶ *Ibidem*, pp. 630, 667; F. Piekosiński, *Wiece...* [Rallies...], no. 180, p. 242.

⁴⁷ See the letter from Mikołaj Kościelecki, the king's secretary, to Mikołaj Tungen, the bishop of Warmia, from the 13th of December 1488: "aby coetus consiliariorum possint effectualiter, respondere ad legacionum regie mtatis, nonnui dominos palatinos, castellanos et capitanoes scriptis, ut in suis districtibus conventiones particulares celebrarent et civitates, quod se alias cum opidis simul intelligenrent, nunciosque cum plena potestate ad conventionem Elbinensem pro dominica Reminiscere translatam [15 March 1489] et nomine regie mtatis per me institutam et divulgatam expedirent." *Akta Stanów Prus Królewskich* [The acts of Royal Prussia states], vol. 1: (1479–1488), published by K. Górski, M. Biskup, Toruń 1955, Fontes 41, p. 544, no. 283, p. 545, no. 284.

and more crystallized].⁴⁸ The subsequent mentions in sources pertaining to the activity of local parliament representatives date back to 1489 and 1493. 14 local parliament representatives, who received an allowance, came to the Greater Poland sejm in Koło in 1489. It was, as one can conjecture, a provincial parliament which took place prior to the general sejm.⁴⁹

A sejm in Piotrków took place between the 28th of January and the 3rd of March 1493.⁵⁰ It was preceded by presejm regional parliaments in the respective lands of Lesser Poland and Greater Poland.⁵¹ From the formula included in the constitution of this sejm, *de unanimitate procerum et comitatuum regni nostri in praesenti conventionione congregatorum*, historians draw the same conclusion, namely the presence of regional parliaments' representatives at the sejm. According to Juliusz Bardach, "pod obecnymi na sejmie walnym 1493 r. *comitates* należy rozumieć posłów szlacheckich" [as *comitates* present at the general sejm in 1493, one should understand representatives of the nobility].⁵² According to the prevalent opinion among historians, the 1493 sejm is considered to be the first bicameral sejm. The incorrectness of this opinion is, in the author's opinion, blatantly obvious. As the author of the present paper has attempted to show, regional parliament representatives took part in the sejms regularly since 1468.

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The representatives sent by regional parliaments to the general sejms in contemporary Poland acted as proxies which meant they were mandataries of the community of nobles of a particular province or land. The scope of authorization they were granted depended on the mandate they were granted, which means their commission to act, and in essence their authorization to act during a sejm, especially to make statements on behalf of the nobles of a particular province or land. The mandate, which they acquired from their voters, was the so-called imperative mandate, or preceptive, which constituted an older version of the parliamentary mandate in the history of European parliamentarism.⁵³ It relied on binding the representatives to the will of the voters. Representatives could make declarations

⁴⁸ J. Bardach, *Początki Sejmu* [The beginnings of Sejm], p. 48.

⁴⁹ *Ibidem*.

⁵⁰ W. Uruszczak, *Datacja obrad sejmu walnego koronnego w 1493 r.* [The chronological dating of the general sejm sessions in 1493], "Przegląd Sejmowy" [Parliamentary Digest], 1993, no. 1, pp. 80–81.

⁵¹ The list of regional parliaments is provided by A. Pawiński, *Sejmiki ziemskie* [Local parliaments], p. 171.

⁵² J. Bardach, *Początki Sejmu* [The beginnings of Sejm], p. 48.

⁵³ A valuable study of the parliamentary mandate in Poland in the 16th century in the European context was delivered by A. Sucheni-Grabowska. See: *Rola mandatu poselskiego w dawnej Polsce na tle porównawczym* [The role of parliamentary mandate in Poland of old against a comparative

of will only in the scope of authorization which was granted to them. Consent expressed by the representatives was tantamount to the consent of the voters themselves precisely thanks to the exact binding of the scope of authorization the representatives were granted, which was the mandate. This method of proceeding was the best reflection of the idea expressed by the Roman maxim *Quod omnes tangit, ab omnibus approbari debet* [What touches all should be approved by all]. The opposite of the preceptive mandate (imperative) is the representative mandate, also called free, which means complete freedom of a representative to make declarations of will. This type of mandate is characterized by the modern institution of representation in the parliament and, as such, also in the sejm. It is expressed by article 104 of the Constitution of Poland according to which a sejm deputy is not bound by any instructions of their voters. Moreover, from this article also arises the prohibition to use the third type of parliamentary mandate as well, which is the so-called limitative mandate, or restricted. It consists in restricting the scope of matters a deputy could make a decision on behalf of those they represented. However, they were given freedom in the manner in which they could deal with a matter.⁵⁴

The parliamentary mandate in Poland of old at the crown sejm, even though it was imperative in its nature, was diversified in terms of its contents depending on the scope of a particular authorization. It was decided by instructions which were given to representatives. It was a collection of pointers (commands) pertaining to the actions which was given to representatives. The instruction was an inherent part of the imperative mandate. It could have consisted in granting them full power (*plena potestas*) or limiting the scope of their power (*limitata potestas*). Royal legations, which were sent to local parliaments prior to each and every sejm, appealed for full power of lawmaking (*plena potestas*) to be granted to the representatives. Granting them full power, which was in essence unlimited power of attorney, created the hope that sejm sessions would have a positive conclusion and that the representatives would grant their consent to legislation proposed by the king and the senate. Limited power (*limitata potestas*) consisted in a complete rejection of the king's proposals (a negative instruction) or the consent was dependent on fulfilling certain predetermined conditions, which usually meant the acceptance of the nobles' demands by the monarch (a conditional instruction), or the consent was granted only to some postulates of the king (a partially positive instruction). The arrival of the representatives to the sejm *cum limitata potestate*

backdrop] [in:] C. Kukło (ed.), *Między polityką a kulturą* [Between politics and culture], Warsaw 1999, pp. 119–137.

⁵⁴ C. Mueller, *Das imperative und freie Mandat*, Leiden 1966. Cf. K. Grzybowski, *Teoria reprezentacji w Polsce epoki Odrodzenia* [The theory of representation in Poland during the Renaissance period], Warsaw 1959, p. 71.

meant in practice the necessity to conduct lengthy debates in order to work out a compromise which would stand a chance of being generally accepted at the sejm or outside the sejm at the postsejm local parliaments.

The instruction, which was given to the representatives by the local parliaments, was, as a rule, a collection of pointers with various contents which contained numerous references relating to the proposals of the crown. The instruction especially pertained to the proposals which concerned taxation issues as well as other issues connected with the defence of the country. Moreover, it included various postulates, opinions, complaints, and other statements which were important for the nobles. All of the above were to be presented to the king, the senate, and everyone else who participated in the sejm. Granting full or limited power in issues pertaining to the crown's propositions was only one of the elements of the instruction. The instruction itself was frequently necessary for the success of the sejm sessions. It explains the regular appeals from the king to the nobles to send representatives *cum sufficienti instructione*.

It is certain that granting the representatives with full power of lawmaking brought the parliamentary mandate in old Poland closer to a representative mandate present in modern parliaments. In practice, these cases were relatively rare. During the rule of Sigismund I, only 4 sejms took place where the representatives came with *cum plena potestate*.⁵⁵ As a rule, representatives were granted limited power and the most common form of it was the conditional instruction version. The consent of the representatives to new taxes was dependent on the acceptance of the representatives' articles which were submitted to the king and the senate. According to the words of Konstancy Grzybowski, this type of instructions were a tool used by the nobility in their fight against the policy of the king and of the senate, a defence of the middle-class nobility against the pressure from the magnates as well as a tool of extorting consent for an execution programme of the rights.⁵⁶

The introduction of the parliamentary representation system as a basis for enacting laws was conducive to state centralization because local parliaments could not give authority to their representatives and they did not take into account the position of other nobles from other provinces. The legal requirement for the king to acquire the consent of the nobles to enact tax laws created new possibilities to acquire it more easily by influencing the representatives themselves instead of seeking the local parliaments' consent. Consequently, the activity of a parliamentary representative who was a mandatary was dependent on

⁵⁵ W. Uruszczak, *Sejm walny koronny w latach 1506–1540* [The crown general sejm between 1506 and 1540], Warsaw 1980, p. 48.

⁵⁶ K. Grzybowski, *Teoria reprezentacji* [The theory of representation], pp. 84, 87.

the will of the represented people. As a matter of fact, opinions appeared in the 16th century which stated that parliamentary representatives were representatives of the whole *communitas nobilium*, which is equal to the entire community of nobles. Chancellor of Poland Jan Ocieski stated in 1551 that deputies do not represent provinces but the whole country. It is the author's opinion – contrary to Konstanty Grzybowski's viewpoint who put too much stock in that quotation – that it was more of a wish or a display of the awareness of the power elites. The reality was different. Further development only strengthened the process of more closely bonding the representative by the represented, which was expressed by refraining from granting *plena potestas* even though there were exceptions to this.⁵⁷

The representative mandate, in effect, meant freedom to act for the sejm deputies. It can lead to the creation of an oligarchic rule if members disregard the will of the voters. Democracy based on the existence of parliamentary institutions with the participation of parliamentary representatives who are permanently connected with the voters thanks to the mechanism of the imperative mandate is more congruent with the idea of democracy. The mechanism of the imperative mandate accepted in Poland of old corresponded with ideal nobles' democracy and guaranteed its functioning. It was by no means impeded by instructions given to representatives because their real political significance was decided by the actual contents of the instructions and the political aims connected with them as well as the moral level of the political elites.⁵⁸ Scientists researching the life of the parliament in Poland in the past draw attention to the differences between local parliament instructions from the 16th century and their counterparts from the following centuries. The instructions in the 16th century were, to a significant extent, a legislative programme which was proposed by the execution of rights movement of middle-level nobility. And so legislative and executive postulates in the fields of foreign policy, judiciary, and administration appeared frequently in the instructions.⁵⁹ The contents of local parliament instructions from the 17th century was best explained by Stanisław Płaza:

⁵⁷ According to J. Choińska-Mika, the Mazovian parliaments, during the reign of the House of Vasa, "wiele razy wychodziły naprzeciw postulatowi króla, udzielając swoim posłom *absolutam facultatem*" [frequently met the expectations of the king's postulates by granting *absolutam facultatem* to their representatives]. J. Choińska-Mika, *Sejmiki mazowieckie w dobie Wazów* [The Mazovian parliaments in the House of Vasa period], Warsaw 1998, p. 43.

⁵⁸ An analogous evaluation of the imperative mandate is given by A. Sucheni-Grabowska, *Rola mandatu...* [The role of the mandate...], pp. 136–137.

⁵⁹ *Wybór tekstów źródłowych z historii państwa i prawa polskiego* [A selection of primary sources from the history of Polish state and law], compiled by J. Sawicki, vol. 2, Warsaw 1953, p. 76.

W sumie instrukcja stanowi zbiór zazwyczaj nieuporządkowanych ani formalnie, ani merytorycznie postulatów i dyrektyw dla posłów, powstałych najczęściej żywiołowo, bez jakiejś myśli porządkującej, ujętych zazwyczaj w formie krótkich zdań, a więc bez zbędnego gadulstwa, które cechuje bardzo często legacje [...], ale bez bliższego uzasadnienia [Overall, instructions constitute a collection of frequently unstructured, both formally and substantively, postulates and directives for the representatives, which were usually made spontaneously, without any ordered thoughts, and frequently expressed in short sentences, and so it was devoid of superfluous garrulousness which very often was a mark of legations [...] but without detailed substantiation].⁶⁰

Since the second half of the 17th century, instructions were dominated by issues which were individual or private in character, which not infrequently overshadowed the common good.⁶¹ In the 18th century, during the Saxon period, instructions were only an instrument of decomposition of parliamentary life in Poland and a significant cause of parliament's incapacity and inefficiency.

The practice of functioning of the imperative mandate of parliamentary representatives was frequently far removed from its model. The representatives did by no means feel completely bound by their instructions. Deviations from the instructions were far from being an uncommon practice. Moreover, there was no mechanism of responsibility in place to ensure adherence to the instructions. Violations of the instructions or of the common law was (at most) grounds for protestations as it was described in the instruction issued by the local parliament in Proszowice in 1606.⁶² The practice of deviation from instructions was most probably frequent because swearing an oath to abide by the instruction was introduced. Taking such an oath, besides being an obligation of a moral character, was also sanctioned by law. Failure to fulfil the oath could have been treated as the crime of perjury. Numerous postulates placed in instructions were repeated over the years. As a consequence, local parliament nobles did not treat fulfilling those postulates as an obligation to achieve a result but only to undertake diligent and careful action.

The king demanded full rulemaking powers from the local parliaments. In practice, the scope of the power of attorney was delineated in relation to specific issues. As a rule, limited power of attorney was granted in case of taxation issues. Latitude was granted in other cases but with the proviso of certain limitations, for

⁶⁰ S. Płaza, *Sejmiki i zjazdy szlacheckie województwa sieradzkiego. Ustrój i funkcjonowanie (1572–1632)* [Local parliaments and nobles' rallies in the Sieradz province. System of government and functioning (1572–1632)], part 1, Warsaw – Cracow 1987, p. 93.

⁶¹ W. Kriegseisen, *Sejmiki Rzeczypospolitej szlacheckiej w XVII i XVIII wieku* [Local parliaments in the Nobles' Commonwealth in the 17th and 18th century], Warsaw 1991, p. 84.

⁶² *Wybór tekstów...* [A selection of texts...], vol. 2, p. 179.

instance: stipulating accordance with the law and with the nobles' freedoms, the wellbeing of the Commonwealth, relocating a bill from the sejm to the postsejm local parliaments. Complete power of attorney – according to S. Płaza – pertained to numerous issues of fundamental importance to the state. In each case, the rule was to follow the instruction. It was the opinion of that famous expert on local parliament life that the representatives during the reign of Sigismund III had quite large latitude to act. The representatives' authorization was not treated with too much rigor.⁶³ However, instructions were gradually treated as completely binding. Taking an oath was demanded. Formulas were introduced into the text so representatives would be obliged to abide by them: *obligujemy fide, honore et conscientis eorum*. An anonymous author wrote the following words in the 18th century:

Posel jest tylko współ województwa swego ustami, ich wolą rządzić się powinien i co mu w instrukcji podadzą na sejmie popierać [A deputy is only a mouthpiece of their province, they should be ruled by the will of the represented and support everything stipulated in the instruction].⁶⁴

It was tantamount to an attempt to bring representatives back to the role of envoys. It was different in reality. Paradoxically, the main legal reason behind the weakness of the sejm, namely the *liberum veto* right, was considered to be a guarantee of a sejm deputy full freedom in relation to their activity at the sejm. According to Stanisław Konarski:

[...] wszystkie sejmy i województwa są tego zdania, że poseł za swoją wolę i racją, za swój wolny głos, za swe zdanie, sprawować się i odpowiadać nie powinien nikomu. Tysiącami razy to w izbie słyszemy; inaczej nie byłby według powszechnej opinii wolny głos, gdyby poseł do sprawowania się komu z zrozumienia swego i ze zdania swego, obowiązany był. Na tym dziś rzetelnie zawisło liberum veto: tak mi się zdaje, nie powinienem dawać nikomu z głosu mego rachunku [every sejm and all provinces share the opinion that a deputy should not be held accountable to anyone in relation to their will and reason, their free vote, their opinion, and how they discharge their duties. We have heard it a thousand times in the house; it would not be a free voice otherwise if, according to popular opinion, a deputy was obliged to explain their behaviour and opinion. Liberum veto depends on it nowadays: it is my opinion that one should not have to explain how they vote]⁶⁵.

⁶³ S. Płaza, *Sejmiki* [Local parliaments], p. 134.

⁶⁴ H. Olszewski, *Sejm Rzeczypospolitej epoki oligarchii 1652–1763* [The sejm in the oligarchy period of the Commonwealth between 1652 and 1763], Warsaw 1966, p. 112.

⁶⁵ S. Konarski, *O skutecznym rad sposobie* [On the means of effective counsels], vol. 1, Warsaw 1923, p. 73.

Did that mean a clean break from the imperative mandate? Certainly not. The argumentation justifying unlimited freedom of a representative to vote had the character of propaganda and it served as the rationale behind maintaining *liberum veto* in force even though it was more and more damaging.

Parliament's incapacity and inefficiency, which infected the Commonwealth in 1652, and its strongest collapse took place during the reign of the Saxons, particularly while Augustus III was the king, forced with time the necessity to introduce reforms into the sejm sessions and how they were carried out. Public discourse was held by enlightened authors and it concentrated around the procedure of passing resolutions (unanimity or majority). Generally, the issue of the mandate itself was not dealt with. An anonymous author of *Głos wolny wolność ubezpieczający* [A free voice ensuring freedom], which may have been written by Stanisław Leszczyński, constantly considered representatives to be mandataries of a local parliament and an instruction was viewed as an act of exceptional importance, which delineated the scope of authorization granted to the representatives. It was suggested that an instruction should only contain issues which were universally agreed on; while controversial issues ought to have been included in a separate memorandum. He wrote that at a sejm "Posłowie zaś byliby obligowani z dystynkcją *urgere* instrukcją, aby *desideria* zgodne województwa odebrały swój skutek, memoriału zaś materie, a które nie była powszechna zgoda, *simpliciter deferre*" [representatives would be obliged to an instruction of an *urgere* distinction so that *desideria* had their effect on concordant provinces, while the matters contained within the memorandum for which there was no universal approval should be *simpliciter deferre*].⁶⁶

The preceptive mandate as well as binding representatives with instructions in Poland was positively evaluated by Jean Jacques Rousseau in his treaty entitled *Considerations sur le gouvernement de la Pologne*, which was commissioned by Michał Wielhorski, the ambassador of the Bar Confederation. According to the Swiss thinker, this type of mandate and the instructions allowed the people to maintain the position of the sovereign, which was not guaranteed under any circumstances by the representative mandate. The same point of view was taken by Hugo Kołłątaj, who was one of the most preeminent representatives of the Age of Enlightenment in Poland. He wrote the following words in his *Listy Anonima* [Letters by an Anonym]:

Naród nasz chce być rządzoną, a zatem opieka najwyższego rządu powinna być w rękę reprezentantów od województw wysłanych, których moc ograniczona jest wolą obywatelów, jako mających prawo wysyłać ich od siebie, wola zaś ta najlepiej da się widzieć w instrukcji każdego województwa... Zbiór zatem

⁶⁶ S. Leszczyński, *Głos wolny wolność ubezpieczający* [A free voice ensuring freedom], published in 1790, p. 69.

posłów na sejm zgromadzonych nie jest to zbiór absolutnych despotów. Wola każdego województwa, udzielona posłowi, kładzie granice jego powadze, a cokolwiek chciał sobie nad instrukcją pozwolić, byłoby zawsze nieprawe względem województwa [Our nation wants to be a commonwealth and so the care of the highest government should rest in the hands of the representatives of the provinces, whose power is limited by the will of the citizens who have the right to send them out and this will can be best seen in the instructions issued by each province... Consequently, an assembly of the representatives congregated at the sejm is not a congress of absolute despots. The will of each province, passed on to the representative, delineates his power, and whatever one may want to do to circumvent the instruction, it would always be unlawful in relation to the province].⁶⁷

Kołątaj in another one of his works, *Prawa polityczne Narodu Polskiego* [Political rights of the Polish nation], made a differentiation between the preceptive mandate in the scope of rulemaking as well as in passing new perpetual taxes and the freedom in the scope of execution of laws.⁶⁸ One can state with certainty that this celebrated representative of the reform camp was not a supporter of the free mandate for sejm representatives and of their undefined status as the nation's representatives. Finally, however, pragmatism also won in Poland. The creators of the Constitution of 3 May decided to walk away from the imperative mandate towards the free mandate. They must have had bad experiences in their memory from the past Saxon period when local parliament instructions had been used as a pretext to end sejm sessions by means of *liberum veto*. By reforming the sejm, article 6 of the Constitution of 3 May acknowledged representatives chosen at local parliaments as the representatives of the nation.⁶⁹ It is telling that the Governance Act

⁶⁷ H. Kołątaj, *Listy Anonima* [Letters by an Anonym], part 3, the 9th letter from the 28th of November 1788, p. 44.

⁶⁸ Cf. H. Kołątaj, *Prawo polityczne Narodu Polskiego* [Political law of the Polish nation], chapter 2 § 7: "Zwołanie stanów, nazywać się będzie sejmem, na który wszystkie stany swych posłów wysyłać powinny z każdego województwa. Posłowie od stanów wybrani nie będą mieli nigdy jedy-nowładnej mocy, ale tylko władza ich określoną zostanie, użyczona każdemu w szczególności instrukcją czyli plenipotecją od tej części obywatelów, od których byliby wysłanemi, co ma się rozumieć względem stanowienia nowych lub uchylenia starych praw, niemniej względem wieczystych podatków. Względem zaś wejrzenia w wykonaniu praw, posłowie władzę najwyższej opieki mieć będą w obszerności, jakie im prawa ustanowione dozwolą i przepiszą" [Convening of the classes shall be called the sejm to which all the classes ought to send their representatives from each province. The chosen representatives will never have unlimited power but it will be delineated, granted to them with an instruction, that is granting them plenipotentiary powers, from that part of the citizens who they would be sent by, which would pertain to enacting new or repealing old laws, however, not in relation to perpetual taxes. Furthermore, parliamentary representatives shall possess supreme legislative power in accordance with the scope delineated by the Constitution]. *Wybór tekstów...* [A selection of primary sources...], compiled by J. Sawicki, vol. 1, part 2, Warsaw 1951, p. 76.

⁶⁹ "Posłowie na sejmikach obrani, w prawodawstwie i ogólnych narodu potrzebach, podług niniejszej konstytucji, uważani być mają jako reprezentanci całego narodu, będąc składem ufnos-

did take a stance on the issue of instructions. However, the law “o sejmikach” [on local parliaments] which was enacted at the Great Sejm preserved instructions only as a collection of voters’ opinions which were not binding in legal terms.⁷⁰

Abandoning the imperative mandate and enacting the free mandate for the deputies was a return of sorts to the institution of imperfect representation. In this case, a deputy’s mandate was based only on the act of choice and the trust which was placed in a deputy by the voters. The extremely short period of time when the Constitution of 3 May was in effect does not allow one to draw any conclusions in relation to the effectiveness of this new model of parliamentary representation in practice.

ci powszechnej” [The representatives chosen at the local parliaments, according to the present constitution, are to be treated as the representatives of the whole nation in relation to legislation and the general needs of the nation as they are a repository of common confidence]. B. Lesiński, J. Walachowicz, *Historia ustroju...* [The history of system of government...], p. 86.

⁷⁰ *Volumina Legum*, vol. 9, Cracow 1889, p. 237.