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5 Magna Carta and the Rise of Anglo-American Constitutionalism

5.1 The Great Charter

The history of institutions is inseparable from the history of ideas, but sometimes it is the institutions that inspire the development of political ideas. In case of Magna Carta that became part of the English constitution it certainly was the latter. A practical solution to political problems caused by the rebel barons gathered in London in 1215, Magna Carta established principles fundamental for the institution of the rule of law which later on British and American political thought has spread throughout the modern world (Madden, 2005, p.10). My main research question in this essay is to what extent an interesting parallel between Magna Carta and its legacy and later constitutional developments that took place in Europe and America can be determined. This parallel, or perhaps even inspiration, would indicate that there is a common heritage to the ideas of constitutionalism in Western political thought and legal culture. In order to do that I look at the ideas that shaped Magna Carta and their transmission into later periods and contexts. One of these contexts that is examined here is the rise of constitutionalism in the Polish Commonwealth in the early sixteenth century.

The English barons upon whose demand king John decided to grant the first charter of liberties that we know, the famous Magna Carta Libertatum, insisted simply that the king obeys his own rules. The dispute was to be set not by war, but trough a legal process. Sixty three clauses included in the document had local and universal meaning, it was a hotchpotch of various interests, but it also had appeal to justice. The most fundamental of these was the idea that the king must be bound by the law of his kingdom, that the law which comes from the ruler is observed by him so that he does not act in a tyrannical way. But it was not the king who willingly singed the Carta, it was the position of the barons who made him do so and thus brought to an end the state of civil war. There is a strong similarity between the English barons at Runnymede meadow demanding their liberties and the Polish noblemen in the fourteenth and fifteenth centuries declaring that they would not fight a war or agree to changes in dynastic succession if the king did not grant them certain rights (called privileges). The aim of this article is to bring to light this and other parallels in medieval and early-modern European history so that Magna Carta can be seen as one of the most important documents of early constitutionalism. Its significance lies in both legal and

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symbolic meaning, in the message that it conveyed upon others both in England and elsewhere as to what were the limits of monarchical power and who decided about these limits. Although the Great Charter 'did not save England from Tudor despotism', as one author observed, it "was despotism of fact rather than of law." As a charter of liberties Magna Carta did not mentioned any sanctions in case the king infringed upon the rights it mentioned, and that certainly was one of its weaknesses, but at the same time it was a clear assertion of fundamental rights of various groups within society, however differently they have been listed at different periods. It will be argued that Magna Carta is unique in comparison with other similar documents issued in medieval Europe because of the uniqueness of the English unwritten constitution as well as legal and political culture that it helped establish throughout the centuries. But those other instances of constitutional developments, including above all the Polish development help situate Magna Carta and political and legal ideas it instigated in a broader context of medieval Europe and early-modern republicanism.

Chapter 39 of Magna Carta states the credo of modern constitution in Europe and later on in America: "No free man shall be arrested or imprisoned, or disseised or outlawed or exiled or in any way victimized neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land" (Rothwell, 1975, p.312). In the fourteenth century the same right was granted to Polish nobility **(**the difference was that instead of a 'free man' the act referred to 'a noble man', the category somehow more limited although it was soon to include around ten percent of the Polish society). The Coronation Charter issued by Henry I on 5 August 1100 precedes Magna Carta as an example of a promises made by the new king to various sections of his feudal community including the church (Turner, 2003). This medieval custom of the new king biding for support and making a pledge with his people was to become common in Poland, especially with the rise of the Jagiellonian dynasty which itself was established as the result of an agreement between nobility and the king. It was precisely that first basic text of Henry I which the rebellion of 1215 demanded that it should be confirmed and reissued. And both documents start with the liberties of the church and then proceed to feudal incidents.

In his statute of 1225 reissuing Magna Carta, Henry III states again that the liberties in question were "to be held in our kingdom of England forever." It was a royal act of will: *spontanea et bona volunta nostra*. In a similar manner the liberties of Magna Carta as well as the Charter of the Forest were approved and renewed by Edward I in 1297. The concession of the king was a transaction made and remade for the benefit of all parties concerned, by men "used to receiving grants of liberties" (Holt, 1993, p.47). Granted *in perpetuum* the charters were unusual as they were going beyond the original concession and reflected the emergence of the *communitas regni*, a political phenomenon and a concept of men who were now in possession of liberties that could not be simply dismissed or invalidated. In this sense Magna Carta was a constitutional act, the origin of future legislation (e.g. the Provision of Merton of 1236) and thus the first statute. But it still remained a privilege. It was the same manner of

issuing at the same time a statute binding upon the kings in perpetuity and a privilege granted with a certain sections of the society in mind that prevailed in Poland from the fourteenth century onwards.

Magna Carta became real and not only symbolic as a constant point of reference for those discontented subjects of their monarch, first in England and then in American colonies, who simply demanded the reconfirmation of the document as the starting point for political reform and guarantee of justice, or as a safeguard against tyrannical rule. Shortly after king Jonh's death in 1216 the Great Charter was quickly reissued in 1217 and its definitive version came in 1225. When thirty years later the barons of king Henry III demanded again that the king would keep and observe the charter of liberties of England, this validation of the charter was a significant act, an example of the personal oath of the king that he would abide by the terms agreed earlier by those present at Runnymede. Henry Bracton, the English jurist whose legal theory must have been influenced by the Great Charter, declared that 'The law makes the King', and not the other way round, adding that 'there is no king where will rules and not law' (White, 1908, p.268). The fundamental legal principle now was that the king must not take the definition of rights into his own hands, but must proceed against none by force for any alleged violation of them until a case has been made out against such a one by "due process of law" (McIlwain, 1975, p.78).

An important question that needs to be addressed is whether the king was legally bound to reissue Magna Carta or was it purely his will to do so? The king and the nobility with him took a solemn oath to observe *omnes libertates praescriptas*. In other words, it came as the result of their will and thus the king had only a moral obligation to stand by his oath. Henry III reissued Magna Carta simply by his own free will (*spontanea et bona voluntas nostra*) and not as a binding constitutional law by some other source (McIlwain, 1975, p.73). Such interpretation comes from Henry Bracton (Maitland, 1887) stating that prince's will is law in accordance with *lex regia* that stipulates what the law already is, promulgated by the king after a discussion with his magnates who demand observance of an ancient custom. A long tradition of treating the charter as valid was to make it a clear part of what was later called "the ancient constitution" of England. According to Bracton, binding law was the result of king's will being in conformity with *lex regia*, the laws the people have chosen. For American founders it came almost naturally to include Magna Carta in their own constitutional provisions as an ancient custom the subjects of the English king could call upon.

In England Magna Carta was seen as sacrosanct still in the fourteenth century and statutes that conflicted with it were ruled invalid, which as a norm was confirmed by a statute enacted by Edward III in 1369 who further developed what was to be called 'a due process of law' (Turner, 2003). However, by the mid fifteenth century Magna Carta was overshadowed by high politics and the strong reassertion of royal sovereignty by the Yorkist and Tudor monarchs. But even then Magna Carta remained the first of statutes of the English constitution, protector of landed property. Ignored by Henry VIII, in the seventeenth century Magna Carta and the doctrine of ancient

constitution that was emerging played the key role in the conflict between king and Parliament. The notion of 'the ancient constitution' was used by members of Parliament who searched for a body of laws and customs that imposed limits on the royal power over the subjects. But it was Sir Edward Coke who took the English constitution as "a chain of royal confirmations of English law, stretching back to the age of Edward the Confessor and and beyond" (Turner, 2003) and insisted that "the king by his proclamation or other ways cannot change any part of the common law, or statue law, or the customs of the realm" (Wilson, 1777, p.75).

5.2 Magna Carta as a Model in Medieval and Early-Modern Europe

In Central Europe a similar development took place in Hungary and later on in Poland. The Golden Bull of Hungary (Aranybulla) of 1222 issued by King Andrew II who, like King John I in England, was forced by his nobles to accept an act that placed constitutional limits on the power of the monarch. The edict established the basic rights and privileges of Hungarian nobility and clergymen. Caused by Andrew's excesses and extravagances, the act contains 31 articles reaffirming previously granted rights and bestowing new ones: "Since the liberties established by St. Stephan the king in favor of the nobles of our realm was well as of other persons have been diminished in many respects by the authority of certain kings. [...] We therefore desire to fulfill their requests in all respects as we are obliged to do [...] for the better preservation of the royal dignity which can be done better by no one other than by them. We grant both to them and to other men of our kingdom the liberty given by the holy king" (Bak, 1999, p.34). There is no textual link between the document and Magna Carta although we may speculate that their affinity is so striking that there must have been some inspiration coming from the English charter (Rady, 2014).

In 1241 Danish king Valdemar the Victorius issued the Jutland Code which established the concept of the legal order as a contract between ruler and people. It was strengthened by the charter of 1282 signed upon the demand of nobility by king Erik V. Both documents are regarded as forerunners of the subsequent Danish constitutional law. The Jutland Code, the oldest civil code in Denmark, was first drafted by a royal committee and passed by the Lndsthing at Viborg before being finally issued by the king. In 1326 it was ratified as official law and made applicable to all parts of Denmark (Orfield, 1954). According to the Code, legislation was to be based on universal justice to be legitimate. In other words, the source of law was to be found in natural law and not in the will of the ruler. In stating that 'No man may meddle with the law, and the king may not set it aside without the will of the land', it followed Magna Carta as a single document valid in the entire kingdom that aimed at making the law a binding power upon the ruler and the ruled. Like Magna Carta, the Code provided a regular and fixed form to the ancient customary law without constituting anything unknown before. The result of struggle between the king and nobility, the

Charter of 1282 secured a number of rights to nobility including the king's promise not to convict anyone without legal basis and not to rule in an arbitrary manner. The Code and the Charter were adopted by assemblies comprised of king, bishops and the nobility constituting together a representative body whose union was needed to make the new law valid. The Preamble of the Jutland Code stated that "A land must be built on law [...]" which must be "honest and just, reasonable and according to the ways of the people. It must meet their needs and speak plainly so that all men may know and understand what the law is. The law is not to be made in any man's favour, but for the needs of all who live in the land" (The Jutland Code 2008, p.21).

The Privileges of the Union of Aragon granted by the king in 1287 is another instance of a statute for which the Magna Carta could serve as a model. "The King vows and binds himself, his heirs and successors and any person acting on his or their part not to arrest, detain, expropriate or hold the property of any of the nobility or others of the Kingdoms of the Crown of Aragon." Consequently, the idea behind the Privileges was that of the sovereignty of law, of making resistance to the crown legal though extraordinary (Madden, 2005, p.167). From the earliest times in Spanish political thought justice was not only the end of human society, the norm regulating political community and the only justification of the state or rather the political rule was its duty to secure justice (Madden, 2005, p.14). The document was unique in the Middle Ages as it contained a clause allowing that the reigning king may be abandoned and another elected if he contravenes the articles of the Privileges (Gissey, 1968, p.88).

In the 1355 Treaty of Buda and the Košice privilege of 1374, Louis of Anjou, king of Poland and Hungary promised certain analogous rights to Polish nobility to ensure Angevin dynastic claim, the unprecedented succession of a female to the Polish throne. The charter of 1374 exempted the nobility from any payment of taxes to the crown, except a minor duty on their lands, without their explicit approval. It also assured the nobility that the most important royal appointments would go only to Poles and that offices in regional administration in each province would go to candidates nominated by the local nobility. The charter also stated that the nobility would be required by law to fight without pay within the borders of the kingdom, but any military service outside its borders was to be remunerated at a specific rate (Fedorowicz, 1982). At Košice Louis I also renewed a pledge made during his coronation to maintain the Polish kingdom's territorial integrity.

Similarly, the privileges issued at Jedlnia (1430) and Krakow (1433) by King Władysław Jagiełło in order to secure the succession of his progeny to the Polish throne, granted to the whole nobility one of the most important civil liberties: *Neminem capivabiums nisi iure victum* ('We shall not imprison anybody unless they have been convicted by law'), as the first words of the document stated. Although it is underestimated and forgotten in the history of European legal culture, the *Neminem Captivabimus* granted the rights that were comparable to those granted not only by Magna Charta but also by the later Habeas Corpus Act of 1679. In 1454 the nobility were granted the right to participate in the legislative process by which new law

proposed by the king could not be valid without the approval of the convention of the gentry called the landed diets. Finally, the constitution called Nihil Novi issued in 1505 demanded that the king had no right to legislate without the consent of both chambers of Polish parliament, the Senate and the Chamber of Deputies (Izba Poselska). From then on, it was impossible to introduce new laws or make changes related to the political system without consent of the nobility. The constitution, which was fundamental to the consolidation of nobility's political role, its representation as well as the mixed political system, proclaimed that:

> 'General laws and public acts do not apply to individuals but to the whole nation, thus, on this general Sejm in Radom, we, with all of the Kingdom's prelates, councils and representatives of sejmiks (local assemblies of nobles) deemed as fair and just that from now on nothing new (*nihil novi*) can be decided by us and our successors without the approval of senators and representatives of sejmiks. No ordinance that would bring dishonour on the Commonwealth, harm anyone or aim to change the common law and public freedom can be enacted' (Szymanek, 2005, p.123).

At the sejm in Radom, king Alexander Jagiellon promised also, at the representatives' request, to observe the laws (*confirmatio iurium*) (*Volumina Constitutionum*, 1996, pp.172-173). In practice, it meant accepting the superiority of law in the state and acknowledging it as a source of all authority. The Commonwealth's law was to originate from a widespread consensus and was to be directed at the common good, since it concerned *res populi* – the community and its well-being.

Like the Great Charter, the privileges limited royal power, and at the same time they transformed the relationship between the ruler and the nobles into a contractual relationship. Although formally the act of a monarch, in fact they made up a kind of social contract and contained the obligations of binding character supported with the clause on the possibility of renouncing the allegiance to the ruler (the right of resistance). This constitutional development contributed to the victory of the republican principles in Poland, which was best illustrated by the replacement of the term "Regnum", which so far was used to describe the Polish Kingdom, with "Respublica" (*Rzeczpospolita*), which highlighted the equality of its members/citizens. The goal of the nobility and republican political system, under the leadership of the king and parliament was to protect and maintain freedom from domination and self-government, which in practice frequently led to a conflict between freedom and the authority.

During that period a number of small charters of liberties (often called privileges as they were usually granted only to the nobility) and statutes shaped a constitution of a limited mixed government, the *monarchia mixta* of the Polish and later on Polish-Lithuanian Commonwealth. Similarly to England and Venice, Poland was called *rzeczpospolita – res publica* or commonwealth for its supreme norm was the welfare of the political community, *bouns communi*, and liberty of its citizens. The various acts of Polish monarchs granting rights and liberties to the citizens of Rzeczpospolita became a cornerstone of the doctrine of liberty cherished by republican writers and the whole class of noblemen. Subsequent concessions of the monarchs who often

simply due to historical circumstances (e.g. external threat) were willing to limit royal prerogatives gave rise to a speedy development of a representative parliamentary system concentrated in the lower chamber of the Sejm and traditional land diets (*sejmiki*). This was further strengthened with the right of nobility (as a social class independently of the material status of each citizen) to elect the king.

The formula of the Charter of Liberties of 1215: "We have also granted to all the free men of our realm for ourselves and our heirs for ever, all the liberties written below" (Rothewell, 1975), which also applied to the Charter of the Forest, was not present in the Polish charters, but it was taken for granted that each subsequent monarch was obliged to keep all liberties intact. This was became a formal requirement imposed on elected monarchs in form of *Articuli Henriciani* first issued in 1572 which by and large were a written seal to all existing constitutional rules and liberties and of the kingdom and thus could be treated as the first constitution of the Kingdom (Lewandowska-Malec, 2009, pp.21-22). Additionally, all elected kings were supposed to enter a specific contract with the representatives of Rzeczpospolita called *Pacta convent*, a document that comprised of various obligations, promises and plans for reforms. Like Edward III in 1225, the Polish kings of the Jagiellonian dynasty, which itself was established as a contract between the king and nobility, and subsequent elected monarchs had to promise that nothing would be sought that would weaken or infringe the liberties. The transaction was to be constantly reinforced to ensure its permanence and certainty. And the very election of a king by consent of the subjects was seen as a sufficient guarantee of law and order of the commonwealth. Stanislaw Orzechowski, one of the most prominent republican authors in the sixteenth century stressed that a king is nothing more than the 'mouth of the kingdom' obliged by the free and lawful election to acting only in accordance with the will of his subjects and the law (Orzechowski, 1972, p.104).

The insistence of being granted *in perpetuum* in the case of both English Charters was unusual (2008, p.48). Another feature that both the Magna Cart and the Polish statutes and privileges shared was the fact that they were official documents with more and more detailed provisions. And as the final version of Magna Carta was to be used as vehicle for legislation, 'a source of law as well as a conveyance of liberties' (Holt, 2008, p.50), the same could be said of the statutes the Polish nobility so cherished. Similarly, these documents shared the unique feature of being both statute and privilege at the same time. Citizens could appeal to them against acts of government and the courts treated them as law that they would follow (Holt, 2008, p.51). The difference between these acts was quite striking. While Magna Carta was by 1422 confirmed in over fifty councils of parliaments, and had more general application as it referred to the category of "freemen", the privileges of Polish nobility were treated as the best weapon of free citizens against *absolutum dominium* and were limited to that were social class. And while Magna Carta was to be reinterpreted and adjusted to circumstances (as the very term 'freemen' was changing), the liberties of nobility were treated as fixed and unchangeable; they could only be extended. In the fifteenth

and sixteenth centuries neither Polish nor English authors argued against monarchy. They were in favour of a mixed polity, *monarchia mixta*, or, to use the term which gained currency in today's scholarship, 'a monarchical republic' (Collinson, 1987). It was taken for granted in both Poland and England that only the ancient model of a mixed constitution could guarantee that the rule of law and liberty were preserved.

Charters of liberties and privileges contributed to the development of a mixed constitutional system of government in Poland that was first founded upon such concepts as *corpus regni* and in the sixteenth century replaced by new terms such as *corpus reipublicae* and *respublica*. New representative system now comprised of the king, treated not as a sovereign, but as an administrator of the kingdom (Zaborowski, 1507), and two chambers of parliament. Stanislaw Zaborowski stressed at the beginning of the sixteenth century that *communitas regni* was higher than the monarch advocating sovereignty of the people and arguing that the king was not the owner, but only an administrator of the kingdom. The 1505 Constitution Nihil Novi stated that nothing new could be decided without consent of nobility expressed by Izba Poselska – the lower chamber of parliament. It strengthened political liberties of citizens and successfully limited any attempts of the king to strive towards absolutism. The right to participate in state decision-making granted to all citizens became a crucial element of republican liberty and was additionally secured by civil liberties including religious freedom and freedom of speech. Although the concept of an 'ancient constitution' was not used in Poland, the statutes that guaranteed liberties also guaranteed the rule of law and limited government and were the main claim of the movement for the 'execution of the law' in mid-sixteenth century to limit various practices (e.g. granting royal estates to senators for loyalty and support) that infringed upon old customs and laws. The struggle of nobility against *absolutum dominium* on the one hand and the dominant position of aristocracy in government on the other hand not only gave the noblemen prominent position in political community for three centuries, but vastly influenced political consciousness supported by the republican theory that flourished in the sixteenth and the seventeenth centuries (Pietrzyk-Reeves, 2012). Additionally, the Act of Warsaw Confederation of 1573 guaranteed freedom of conscience and religious toleration to all estates of the Polish-Lithuanian Commonwealth.

The term 'golden liberty' which comprised of all the rights, liberties and privileges that the nobility could enjoy had a different practical meaning from the term 'ancient constitution', but its symbolic connotation was similar. It referred to fundamental norms of the commonwealth whose sacred statutes could only be preserved as long as its practical validity was intact. At the same time the development of nobility's privileges and consequently the growth of rights of the nobles had an enormous impact on the constitutional system of the Polish Commonwealth since it generated the mechanisms and legal guaranties of the nobility's privileged position in the representative system of mixed government (Uruszczak, 2008). The concept of cardinal or fundamental laws understood as the laws of superior and invariable character was fully established in the seventeenth century. These laws could be supplemented by

new provisions but they were not subjected to review. They included *Articuli Henriciani*, *pacta conventa*, principles of free election of the monarch and all the privilegies, including particularly those that guaranteed the nobles individual liberties, as we would call them today, including protection of private property, freedom of conscience and religious freedom as we, as well as equal political rights.

Different historical circumstances led to different constitutional developments in Poland and England. The May Constitution of 1791, the second written constitution after the American constitution, was an attempt to establish a better institutional structure and to secure the rights of all three estates of the Commonwealth. In England some of the most important provisions of Magna Carta including habeas corpus were strengthened with numerous other acts including the Bill of Rights of 1689 and its lasting significance as both a symbol and fundamental law was reinforced so that its most fundamental provisions never lost its validity.

5.3 Magna Carta in America

Magna Carta is unique in comparison with other similar documents issued in medieval Europe because of the uniqueness of the English unwritten constitution as well as the legal and political culture that it helped establish throughout the centuries. But it was especially in America that Magna Carta became a symbol of a limited government in legal and political thought. It influenced American constitution even more greatly than European constitutionalism for it was taken by English colonists as the most cherished part of the legal tradition of their homeland that they still (until 1776) belonged to. The Massachusetts Body of Liberties of 1641 included a different list of liberties and provisions, being issued in different times and different circumstances, but the idea behind it seems to be similar to that of the Great Charter; to secure as many liberties to the colonists of Massachusetts as necessary at the time for the stability of churches and the commonwealth. Soon before the outbreak of the American Revolution in 1775, colonial lawyers and pamphleteers turned to Magna Carta for support against the British king. In October 1774 the first Continental Congress adopted a resolution which claimed that the colonists were doing 'as Englishmen their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties' (Declaration 1774).

Later on it was the conviction of the Founding Fathers that England was founded on ancient constitution and that it was a government of law not of man. This idea of establishing the new fundamental law – a constitution for the colonies which were now an independent political community came from the long tradition of the common law and legal and political culture. John Adams insisted that "Where the public interest governs it is a government of laws, and not of men [...] If, in England, there has ever been any such thing as a government of laws, was it not *magna charta*?" (Adams, 1787, p.126). American colonists' attitude to politics and government, as Bailyn observed,

"was fundamentally shaped by the root assumption that they, as Britishers, shared in a unique inheritance of liberty" (Bailyn, 1967, p.67). Among the first amendments to the new constitution ratified in 1791 to compose a Bill of Rights, number five most closely resembles 39th chapter of Magna Carta promising that no person shall be "deprived of life, liberty, or property without due process of law". The phrase "due process of law" would prove to be remarkably elastic in expanding the rights of American citizens. And amendment 6 follows provisions of chapter 39 promising accused persons the right to a "speedy and public trial, by an impartial jury," and the right "to be informed of the nature and cause of the accusation," the right "to be confronted with the witnesses against him", to call "witnesses in his favor," and to have "counsel for his defense." The colonists and the Founders of the American Republic treated Magna Carta as fundamental law, standing above both king and Parliament and unalterable by statute. Their commitment to such higher law strengthened their ambition for written constitution and the final federal constitution of 1787. And today the Great Charter has even higher symbolic meaning in the USA than in Britain supporting the concept of limited government in American legal and political thought. As Hazeltine in somewhat exaggerated words put it:

> The history of the Charter's influence upon American constitutional development [...] should be illuminating alike to subjects of the Crown and citizens of the Republic. Above all it teaches them that English political and legal ideals lie at the basis of much that is best in American institutions. Those ideals, jealously preserved and guarded by Americans throughout their whole history, still form the vital force in political thought and activity within the Union (Hazeltine, 2012, pp.225-6).

Magna Carta was a symbol of liberty in early America and it remained so today. It is liberty understood as the absence of arbitrary power that could undermine the basic rights such as *habeas corpus* or free speech. The colonists' fundamental claim to ancient rights was the best weapon to protect themselves from the British rule when injustice occurred. Magna Carta thus provided both a symbol and a tool to strengthen the claims of the people in their relationship with political authority, to make this relationship more contractual and consequently to establish constitutional norms as fundamental, sacred and demanding respect of all.

5.4 Conclusion

Symbolic as it might be, Magna Carta, and especially its chapter 39, proved a lasting source of the doctrines which it launched on the mainstream of political thought and jurisprudence in Europe and America. By the seventeenth century such key concepts as trial by jury, the rule of law, limited monarchy, habeas corpus and Parliament's right to control taxation were traced back to the English charter. Parallel statutes or charters issued in other parts of medieval Europe never gained such prominence, but

they also played a very significant role in shaping the doctrine and institution of constitutionalism that is of fundamental law of a political community. It was especially so in Poland where the roots of constitutionalism were indeed to be found in various charters of rights and privileges granted to the *regnum* and more precisely to its citizens who not only secured legal protection against absolutism (*absolute dominium* as they called it at the beginning of the sixteenth century) in the form of the rule of law and sovereignty of law, but above all established the foundations of a free political community – a monarchical republic whose citizens could enjoy liberty greater than that of most European societies at the time. During the period of A deep crisis of Rzeczpospolita in the eighteenth century it led to yet another development: the first written constitution later called the Constitution of 3 May adopted in 1791 which in different historical circumstance would perhaps have led to a similar stable constitutional order as that of the United States of America. The second and third partitions of Poland stopped that development. The story of Magna Carta is different for unlike other similar documents of medieval or early modern Europe it never fully lost its validity and binding force, it was never abandoned or outlawed in its entirety by some other act or event.

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