The Monuments
of Human Rights

60 YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ANNIVERSARY BOOK

VOLUME I

The Monuments
of Human Rights

Adam Bosiacki, Hubert Wajs, Marek Wąsowicz, Rafał Witkowski, Małgorzata Znojek

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60 YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ANNIVERSARY BOOK
Collection Editor: ***Professor Marek Zubik***

Volume I
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Volume editor: ***Professor Marek Zubik***

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The sculpture of Moses designed for the tomb of Pope Julius II

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INTRODUCTION

Exegi monumentum aere perennius – those were the words of Horace about his poems, and they echo whenever monuments are mentioned. Can there be monuments established to commemorate ideas, particularly ideas of such great import as human rights? Any commemoration makes us think of death, but the idea of human rights remains alive and vibrant. But there is another kind of memory, based on the creative reception and assimilation of the heritage of the past, and on facing challenges of the future. And it is this kind of memory which has given rise to the idea of our three-volume edition in celebration of the 60th anniversary of the Universal Declaration of Human Rights.

A selection of most important human rights documents from antiquity to the present, to commemorate the thoughts of innumerable human generations who strove for a social order where every person's dignity and freedom would be respected, is a monument far more solid than one made of stone.

The first volume contains a selection of legal documents from the Edict of Caracalla in AD 212 to the UN Charter of the 20th century. The second volume illustrates the developments in human rights protection throughout the last century, beginning with the famous 1948 Declaration. The third volume comprises extracts from legal and philosophical works which were essential to shaping the idea of a human being and his rights.

There is a good reason for beginning our collection with legal texts, i.e. formal and institutional attempts to give the idea of human rights a normative form. The meaning of this process is probably best described by John Locke: "could they [the people] be happier without it, the law, as an useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom"[1]. Indeed there are no freedoms or rights without institutions and law to protect us from the uncertainty and arbitrariness of government. Ideas alone can do very little to guarantee freedom in our societies.

In this volume, which contains a survey of legal documents from almost twenty centuries, from Sweden and Italy, France, Poland, Lithuania, Russia and United States, the universal meets the local and the contingent.

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[1] J. Locke, *The Second Treatise of Civil Government*, sec. 57.

It should be obvious that a special place in this selection has been reserved for the Polish monuments of human rights. Therefore a set of documents, such as the charter for Jews of prince Boleslaw the Pious of 1264, the Constitution *nihil novi*, the Articles of King Henry of 1573 and the Constitution of 3 May 1791, had to be included. Poland's legal culture is deeply rooted in the democratic tradition of the Polish nobility and the broad civil rights and religious toleration which it entailed. It is the natural development of the social ideas and convictions shared by the elites, rather than the idea of a single ruler or philosopher.

Our selection also features the Constitution of the Kingdom of Sweden of 1809, with the regulations governing the office of Ombudsman, which *de facto* had existed since 1713. This institution became a model for all other Ombudsmen, including the Polish Commissioner for Civil Rights Protection, established in 1988.

One of the closing documents in the first volume is the Charter of the International Military Tribunal of Nuremberg.

Sometimes the revolutionary importance of certain legal acts reveals itself after many years and regardless of their actual presence within the legal order. The Polish or French constitutions of 1791 are examples. The Universal Declaration, being the cornerstone of the human rights edifice, is not even legally binding, being a resolution of the UN General Assembly. Nonetheless such acts are sometimes prophetic in their approach to the idea of law and can mark epochs in legal history.

I would like this three-volume collection to provoke discussion of the ideas and reflections of human experiences upon which the Western conception of human rights and civil society is founded.

By recalling the human rights tradition, we lay bare the legal and social foundations of our countries. A stable social development based on widely accepted values and culture would be impossible without an appeal to these sources.

This first volume, together with the two succeeding ones, is our contribution to the celebration of the 60th anniversary of the Universal Declaration of Human Rights. There is a paradox in such a celebration, as the idea of human rights requires not so much celebration, but rather constant effort to protect these rights in ever better ways. As an ombudsman I am well aware of what this entails.

Janusz Kochanowski
Commissioner for Civil Rights Protection
of the Republic of Poland

I
EDICT ISSUED BY EMPEROR CARACALLA IN 212

Caracalla

EDICT ISSUED BY EMPEROR CARACALLA IN 212

During the first two centuries of existence of the Roman Empire (I–II c AD), its borders were mostly quiet while its military and civilization advantage over the rivals was evident. The earliest signs of crisis became visible after 166, when an epidemic decimated the population of the Empire, which for some time lost control over its Danube provinces. The necessity to maintain a strong army at the time of decreasing revenues caused the crisis to continue under the Severan dynasty (193–235 AD). The already complicated situation was made worse by the conflict with the Senate, the decrease of the real value of money, and the growing threat of Persia ruled by the Sassanid dynasty.

Besides events of political and economic character, memorable ethnic and cultural changes were taking place at the time. The colonization of conquered provinces, initiated by Emperor Augusts, led to romanization of many among them. Settling war veterans on fertile lands outside Italy was to ease the problem of insufficient farmland on the Apennine Peninsula. Besides colonization, granting Roman citizenship to selected groups in provinces contributed greatly to their romanization.

Blurring differences between indigenous terrains of the Roman Empire (Italy) and the conquered provinces was evident mainly in the West (Gaul, Spain, Northern Africa), and to a lesser extent in the East.

Establishing of a new law is associated with Emperor Caracalla (188–217), known in Latin sources as *Marcus Aurelius Severus Antoninus*. He gained experience in ruling the country while helping his father *Septimius Severus*. After his death in 211, Caracalla for a short time governed the Empire together with his brother Geta. After Geta was murdered (212), Caracalla ruled on his own.

Ancient historiographers claim that Caracalla invoked the monarchical airs of Augustus and of Alexander of Macedon, whom he referred to as the "Augustus of the East". Caracalla propagated the idea of universal peace and fraternity among people living within the borders of the Empire. The idea, however, is not fully clear now due to the lack of adequate sources. The Edict of Caracalla, known as the *Constitutio Antoniniana*, seems to be one of the pillars of the Emperor's wider plan.

Only the citizens of Rome were entitled to Roman citizenship at first. Starting in 89 BC, however, it was granted to all free residents of Italy. In Roman legal tradition, the Roman citizen had the right to vote (*ius suffragii*), to serve in Roman legions (*ius militiae*), to be elected for a state post (*ius honorum*), to appeal to public opinion if a court verdict seemed to him unjust (*ius provocationis*), he had also the right to ownership (*ius census*), to conclude

marriage according to Roman law (*ius conubii*), to dispose of property, to exercise civil law (*ius commercii*), to make testament and to inherit property.

We know the *Constitutio Antoniniana* Edict, named so after the nickname of the Emperor (*Antonius*), from a damaged papyrus text (P.Giss. 40 I), discovered in 1902, and first published in 1907 by P. M. Meyer. 1/3 of each line of the text of *Constitutio Antoniniana* is missing, and thus more than one logical reconstructions are possible.

The text of Caracalla decree, granting Roman citizenship to all free residents of the Empire, was written on the papyrus in Greek, most likely translated from the Latin text of *Constitutio Antoniniana*. The date it was issued was disputed, as well as the motives of the Emperor and the exact legal implications of the Edict. Some historians claim that the idea to grant Roman citizenship to all free residents of the Roman Empire was born already during the rule of *Septimius Severus*.

The papyrus contains four legal acts: (1) decree granting Roman citizenship, (2) decree on amnesty, (3) and (4) fragments of an order on expelling Egyptian peasants from Alexandria. Dating of the second fragment suggests that Emperor Caracalla issued the decree in Rome on 11 July 212 (or soon after that date). It seems, however, that its contents was not generally known in Egypt before 213, when the papyrus was actually written down. Putting the decree into force must have also been spread over time, as it involved the need for the lawyers to design numerous detailed orders following the Emperor's decree.

Several aspects of the scope in which the Roman citizenship was granted are disputable. Full review of the text is hindered because there are gaps in the papyrus text. It seems, nevertheless, that it was Caracalla's intention to grant Roman citizenship to all inhabitants of the Empire (with the exception of slaves and barbarians), which is confirmed by other contemporary sources. At the beginning of 3rd century, many residents of the Empire did hold Roman citizenship, yet it was still quite attractive. Earlier, Roman citizenship had been granted as an award or as a motivation for military service in Roman army. Now, it was to be given to all the free residents throughout the Roman Empire, the fact which evidently caused discontent among local aristocracy and Roman administration. The meaning of the term "*deditícii*" gives rise to a number of doubts, as well as the situation of this group.

Issuing such an important legal document must have been a part of Emperor's wider political scheme. Any exact analogy to the provisions of Caracalla's Edict are difficult to find in the ancient world. The key to understanding the Emperor's decision might be Caracalla's big military expedition to the East, the war with the Parthians, and making Armenia

a Roman province. Caracalla wanted to be like Alexander of Macedonia, he wanted to conquer and include in his universal empire the territories once ruled by his idol. However, in 217 the Emperor was murdered and his political scheme was abandoned. The Edict, nevertheless, remained, having some long-lasting effects.

During the centuries to come, the division into those who held Roman citizenship and those who did not was being replaced gradually by another one, namely into people of noble origin (in Latin: *honestiores*), such as senators, aristocracy, local elites, and soldiers, and people of low classes (in Latin: *humiliores*), that is the Rest of the population.

Original text

Based on: S. Riccobono (ed.), *Fontes iuris Romani antejustiniani*, vol. 1, Florentiae 1941, no. 88, pp. 445-449.

The Latin text was reconstructed on the basis of the surviving Greek original, which was damaged itself. This results in numerous difficulties with the correct interpretation of the letter and spirit of the Emperor's edict. Therefore, the translation into English should be treated as an interpretation of the Latin original rather than as a literal translation.

Constitutio Antoniniana Anno 212

Imperator Caesar Marcus Aurelius Seuerus Antoninus Augustus dicit:

Nunc uero (...) potius oportet querellis et libellis sublatis quaerere quomodo diis immortalibus gratias agam, quod ista uictoria (...) me seruauerunt. Itaque existimo sic magnifi ce et religiose maiestati eorum satisfacere me posse, si peregrinos, quotiens cumque in meorum hominum numerum ingressi sint, in religiones (?)
deorum inducam. Do igitur omnibus peregrinis, qui in orbe terrarum sunt, ciuitatem Romanorum, manente omni genere ciuitatum, exceptis dediticiis. Oportet enim multitudinem non solum omnia (...) sed etiam uictoria circumcingi. Praeterea hoc edictum augebit (?) maiestatem populi Romanorum cum facta sit eadem aliorum (?) (peregrinorum ?) dignitas. (...)

English translation

Based on: A. C. Johnson, P. R. Coleman-Norton, F. C. Bourne and C. Pharr (ed.), *Ancient Roman statutes: A translation with Introduction, Commentary, Glossary, and Index,* Lawbook Exchange, N.J. 2003, pp. 225-226.

The English text clearly shows how difficult it was to translate the distorted Latin syntax into a grammatically correct English text. The three remaining parts of the edict are much more legible.

Edict Issued by Emperor Caracalla in 212

Emperor Caesar Marcus Aurelius Seuerus Antoninus Augustus proclaims: It is most fitting that, as I ascribe the causes and the reasons of events to divine origin, I should attempt to render thanks to the immortal gods for their preservation of me in so grant a danger. I believe, therefore, that most magnifi cently and reverently I can perform a service not unworthy of their majesty, if I make my offerings to the gods in company with the foreigners who at any time have entered the number of my subjects, as well as with my own people. I grant, therefore, to all foreigners throughout the Empire the Roman citizenship, though […] are preserved except the *dediticii*. For it is Proper that the populace not only should […] everything, but also should share in the victory. This edict will enhance [?] the majesty of the Roman people [?]

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II
EDICT OF MILAN OF 313

Constantine the Great
Hagia Sophia, Istambul, about 1000

EDICT OF MILAN OF 313

The issuance of the Edict on tolerance by Constantine the Great and Licinius in 313 was preceded by the period of persecutions under the rule of Diocletian (284–305). In 297 he published an edict against Manicheans. Soon, however, he turned against the Christians. Between February 303 and February 304, he published four edicts sanctioning persecutions. The first ordered the confiscation of objects of worship and demolition of churches. The subsequent one demanded that the "superiors of the Church", namely clergy, be arrested. The third edict permitted the release of those clergymen who renounced their faith and participated in making offerings to the gods. The last of the edicts ordered all the citizens of the Empire to make offerings to the gods, under the threat of severe torture, and most often of death. The intensity and timing of persecutions varied among individual provinces of the Empire. The provisions of the four edicts were maintained for the longest period of time in the East (up to 313). In 305, Dioclecian abdicated, but the persecutions were continued by his successors.

Many Christians gave their lives for the sake of their faith, thus adding to the number of martyrs. The persecutions significantly undermined the structures of the Church. Those events have a permanent place in history, especially in Orthodox Christian tradition. Severe, sometimes even sadistic persecutions forced many Christians to renounce their faith which created a new situation for the Church (how should such Christians be treated?).

The large Roman Empire, embracing all the Mediterranean countries, was ruled by the Emperor (later, Emperors), whose power was absolute. Diocletian, before his abdication, developed a precise succession system, which however was employed only once, namely in 305, and thus in the period between 306 and 312 there were many claimants to the throne. In 310, as many as seven Emperors ruled the Empire. The lack of stable central authority made it difficult to mitigate the tense relations between the Christianity and the *Imperium Romanum*.

The first significant step leading to changes was the edict of 30 April 311, issued by Emperor Galerius in Nicomedia soon before his death. In the edict, Galerius expressed his regret for the stubbornness of Christians refusing to go back to the old Roman faith. Finally, however, the Emperor declared tolerance for them. Maxentius, ruling over Italy and Africa, ordered that Christian temples are given back. Maximinus Daia did the same at first, but soon he resumed persecutions. Finally, however, he gave up and accepted the rule of new emperors, namely Constantine (later called the Great) and Licinius.

The reign of Constantine (306–338) brought about one of the major changes in the history of Christianity. The significance of the edict on tolerance, however, cannot be limited solely to Christianity or just to the issues of faith. Now it is hard to unambiguously determine when exactly did the Emperor convert to Christianity and whether it was a gradual (evolutionary) or a one-off decision. What we know for certain is that just before his death he accepted Christianity and was baptized (which was customary at the time).

Constantine, in his struggle to rule over the western provinces, on 12 October 312, defeated the army of Maxentius during the decisive battle of the Milvian Bridge, slightly to the west of Rome. The publishing of the edict on tolerance by Constantine ruling the West together with Licinius, controlling the eastern provinces is an indisputable fact. The decree, published on 15 June 313, on the day following the victory of the Constantine's army over that of Maximin Daia, had been prepared during a meeting between Constantine and Licinius, that had taken place in Milan at the beginning of 313, on the occasion of Licinius marrying Constantia, a stepsister of Constantine.

The original text of the Edict has not been preserved. Two editions (identical) of it are known, one by Lactantius (*Lucius Caelius Firmianus*, died 330 r.) in his work *De Mortibus Persecutorum* („On the Death of the Persecutors"), and the other one by Eusebius of Caesarea (died 338) in his book *Ekklesiastike historia* („Ecclesiastical History").

By the provisions of the Edict, the Christians were granted full and total freedom of worship. All their temples and property that had been confiscated was immediately returned. The Edict allowed Christians to start rebuilding the structures of the Church, destroyed in several Roman provinces due to persecussions.

Shortly, Constantine himself granted further rights to Christians living in African provinces of the Empire, allocating certain funds for the needs of clergy, exempting them at the same time from taxes.

With the Edict of Milan and the rule of Constantine a new era in the history of the Roman Empire began. After the fall of the Western Empire facing the irruption of barbarian hordes in the 5th century, many legal institutions as well as achievements of civilization and of culture were to survive in the coming centuries within the Church (later referred to as the Roman Church).

In 315, the first Christian symbols appeared on the coins minted by Constantine, while by 323 pagan symbols vanished. With support of Saint Helena, the mother of Constantine, Christian temples were erected, including the Basilica of St. John Lateran and the Church of the Holy Sepulchre in Jerusalem. Gradually, the Church came to enjoy a privileged legal position,

when the validity of judgments issued by Episcopal courts was stared to be recognized even in secular matters. In 323, a Christian became a Consul for the first time. The Emperor, however, began to interfere directly with the Church life, which became evident during the First Council of Nicaea in 325, which adopted the so called Nicene Creed. In 319, Constantine issued the first edict restricting private offerings to god, as well as magic and prophesy in private homes.

Easing restrictions imposed upon evangelising activity of the Church resulted in its rapid growth, revealing at the same time first heresies (the Arians). The short rule of Julian the Apostate (361–363), who wanted to restore pagan religious practices, did not slow down the process. Under the rule of Theodosius the Great (379–395) orthodox Christianity became the religion of the state, punishing heretics (381). It was Theodosius who finally ordered to close down pagan temples (391). This took place in less then 80 years after the edict on tolerance was issued.

Original text

Based on: Lactantius, *De Mortibus Persecutorum*, edited by O. F. Fritzsche, Leipzig 1844, (Opera, Bd. 2), pp. 288-289. (Bibl Patr. Ecc. Lat. XI).

Since the original document did not survive, it is quoted on the basis of a historiographic work from the period, written by an author who was eyewitness to the events (Lactantius died in 330).

Edictum Tolerantiae Mediolani Anno 313

Cum feliciter tam ego [quam] Constantinus Augustus quam etiam ego Licinius Augustus apud Mediolanum cinvenissemus atque universa quae ad commoda et securitatem publicam pertinerent, in tractatu haberemus, haec inter cetera quae videbamus pluribus hominibus profutura, vel in primis ordinanda esse credidimus, quibus divinitatis reverentia continebatur, ut daremus et Christianis et omnibus liberam potestatem sequendi religionem quam quisque voluisset, quod quicquid <est> divinitatis in sede caelesti. Nobis atque omnibus qui sub potestate nostra sunt constituti, placatum ac propitium possit existere. Itaque hoc consilium salubri ac reticissi ma ratione ineundum esse credidimus, ut nulli omnino facultatem abnegendam putaremus, qui vel observationi Christianorum vel ei religioni mentem suam dederet quam ipse sibi aptissimam esse sentiret, ut possit nobis summa divinitas, cuius religioni liberis mentibus obsequimur, in omnibus solitum favorem suum benivolentiamque praestare. Quare scire dicationem tuam convenit placuisse

nobis, ut amotis omnibus omnino condicionibus quae prius scriptis ad officium tuum datis super Christianorum nomine <continebantur, et quae prorsus sinistra et a nostra clementia aliena esse> videbantur, <ea removeantur. Et> nunc libere ac simpliciter unus quisque eorum, qui eandem observandae religionis Christianorum gerunt voluntatem. Citra ullam inquietudinem ac molestiam sui id ipsum observare contendant. Quae sollicitudini tuae plenissime signifi canda esse credidimus, quo scires nos liberam atque absolutam colendae religionis suae facultatem isdem Christianis dedisse. Quod cum isdem a nobis indultum esse pervideas, intellegit dicatio tua etiam aliis religionis suae vel observantiae potestatem similiter apertam et liberam ro quiete temporis nostri <esse> concessam, ut in colendo quod quisque delegerit, habeat liberam facultatem. <Quod a nobis factum est. Ut neque cuiquam> honori neque cuiquam religioni <detrac tum> aliquid a nobis <videatur>. Atque hoc insuper in persona Christianorum statuendum esse censuimus, quod, si eadem loca, ad quae antea convenire consuerant, de quibus etiam datis ad offi cium tuum litteris certa antehac forma fuerat comprehensa. Priore tempore aliqui vel a fi sco nostro vel ab alio quocumque videntur esse mercati, eadem Christianis sine pecunia et sine ulla pretii petitione, postposita omni frustratione atque ambiguitate restituant; qui etiam dono fuerunt consecuti, eadem similiter isdem Christianis quantocius reddant, etiam vel hi qui emerunt vel qui dono fuerunt consecuti, si petiverint de nostra benivolentia aliquid, vicarium postulent, quo et ipsis per nostram clementiam consulatur. Quae omnia corpori Christianorum protinus per intercessionem tuam ac sine mora tradi oportebit. Et quoniam idem Christiani non [in] ea loca tantum ad quae convenire consuerunt, sed alia etiam habuisse noscuntur ad ius corporis eorum id est ecclesiarum, non hominum singulorum, pertinentia, ea omnia lege quam superius comprehendimus, citra ullam prorsus ambiguitatem vel controversiam isdem Christianis id est corpori et conventiculis eorum reddi iubebis, supra dicta scilicet ratione servata, ut ii qui eadem sine pretio sicut diximus restituant, indemnitatem de nostra benivolentia sperent. In quibus omni bus supra dicto corpori Christianorum intercessionem tuam effi cacissimam exhibere debebis, ut praeceptum nostrum quantocius compleatur, quo etiam in hoc per clementiam nostram quieti publicae consulatur. Hactenus fiet, ut, sicut superius comprehensum est, divinus iuxta nos favor, quem in tantis sumus rebus experti, per omne tempus prospere successibus nostris cum beatitudine publica perseveret. Ut autem huius sanctionis <et> benivolentiae nostrae forma ad omnium possit pervenire notitiam, prolata programmate tuo haec scripta et ubique proponere et ad omnium scientiam te perferre conveniet, ut huius nostrae benivolentiae [nostrae] sanctio latere non possit.

English translation

Based on: *Translations and Reprints from the Original Sources of European History*, Philadelphia, University of Pennsylvania Press (1897?-1907?), vol. 4/1, pp. 28-30.

Edict of Milan of 313

When I, Constantine Augustus, as well as I, Licinius Augustus, fortunately met near Mediolanum [Milan], and were considering everything that pertained to the public welfare and security, we thought, among other things which we saw would be for the good of many, those regulations pertaining to the reverence of the Divinity ought certainly to be made first, so that we might grant to the Christians and others full authority to observe that religion which each preferred; whence any Divinity whatsoever in the seat of the heavens may be propitious and kindly disposed to us and all who are placed under our rule. And thus by this wholesome counsel and most upright provision we thought to arrange that no one whatsoever should be denied the opportunity to give his heart to the observance of the Christian religion, of that religion which he should think best for himself, so that the Supreme Deity, to whose worship we freely yield our hearts may show in all things His usual favor and benevolence. Therefore, your Worship should know that it has pleased us to remove all conditions whatsoever, which were in the rescripts formerly given to you officially, concerning the Christians and now any one of these who wishes to observe Christian religion may do so freely and openly, without molestation. We thought it fit to commend these things most fully to your care that you may know that we have given to those Christians free and unrestricted opportunity of religious worship. When you see that this has been granted to them by us, your Worship will know that we have also conceded to other religions the right of open and free observance of their worship for the sake of the peace of our times, that each one may have the free opportunity to worship as he pleases; this regulation is made we that we may not seem to detract from any dignity or any religion.

Moreover, in the case of the Christians especially we esteemed it best to order that if it happens anyone heretofore has bought from our treasury from anyone whatsoever, those places where they were previously accustomed to assemble, concerning which a certain decree had been made and a letter sent to you officially, the same shall be restored to the Christians without payment or any claim of recompense and without any kind of fraud or deception, those, moreover, who have obtained the same by gift, are

likewise to return them at once to the Christians. Besides, both those who have purchased and those who have secured them by gift, are to appeal to the vicar if they seek any recompense from our bounty, that they may be cared for through our clemency. All this property ought to be delivered at once to the community of the Christians through your intercession, and without delay. And since these Christians are known to have possessed not only those places in which they were accustomed to assemble, but also other property, namely the churches, belonging to them as a corporation and not as individuals, all these things which we have included under the above law, you will order to be restored, without any hesitation or controversy at all, to these Christians, that is to say to the corporations and their conventicles: providing, of course, that the above arrangements be followed so that those who return the same without payment, as we have said, may hope for an indemnity from our bounty. In all these circumstances you ought to tender your most efficacious intervention to the community of the Christians, that our command may be carried into effect as quickly as possible, whereby, moreover, through our clemency, public order may be secured. Let this be done so that, as we have said above, Divine favor towards us, which, under the most important circumstances we have already experienced, may, for all time, preserve and prosper our successes together with the good of the state. Moreover, in order that the statement of this decree of our good will may come to the notice of all, this rescript, published by your decree, shall be announced everywhere and brought to the knowledge of all, so that the decree of this, our benevolence, cannot be concealed.

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III
MAGNA CHARTA LIBERTATUM OF 1215

Magna Charta Libertatum of 1215
The National Archives, Records of the Duchy of Lancaster,
London DL 10/71

MAGNA CHARTA LIBERTATUM OF 1215

When in April 1199, during the siege of Châlus in Aquitaine, Richard the Lionhearted (or rather Richard Coeur de Lion, as French not English was the language of the court at the time) was killed, Arthur, Duke of Brittany, was to became the heir to Plantagenet Empire and the king of England (also the ruler of the following French provinces: Aquitaine, Anjou, Touraine, Maine, Brittany, and Normandy). Claims to the throne were also put forward by John Lackland (in French: Jean Sans Terre), Arthur's uncle and Richard's younger brother. John Lackland forced his nephew to pay him liege homage, but then the King of France, Philip II Augustus, demanded that John Lackland pays him liege homage for Normandy. After the lost war in Brittany, and the loss of the Plantagenet's territories, and especially after the victory of Philip II Augustus, the King of France, at Bouvines (1214), John of England was forced to return to England. There, he immediately got engaged in a dispute with the Church and the papacy concerning the election of the new Bishop of Canterbury. Pope Innocent III appointed Stephen Langton to this post, and John finally accepted him, threatened by a conflict with France. He surrendered England and Ireland to the pope and received it back as a vassal, rendering an annual tribute of 1 000 pounds. Later, John had to face the rebellious barons, more discontent because of the yet another tax imposed by the King. That winter and spring all sorts of arrangements, negations and mediations between the King and the barons were in progress, while both parties gathered their forces. Finally, on 15 June, the King surrendered, and the terms he accepted were specified in the so called "Capitula" (Articles of the Barons), a document prepared by the barons. Not until four days later was the "King's" version of the document prepared, the so called *Magna Carta Libertatum* – the Great Charter of Liberties. The Charter was guarded by the council of 24 barons and by Stephan Langton, the archbishop of Canterbury (clause 61). This document, purely feudal in nature, was perceived by its contemporaries as closing a certain stage of conflict between the sovereign and his vassals. Not for long, however, as was to become evident in a month, when the fight started anew. King John applied to the Pope, as the liege lord, to relieve him from his oath taken under duress. In August, Pope Innocent III proclaimed the Great Charter invalid. The situation changed after the death of King John (18 October 1216) and of the Pope. The new Pope, Honorius III (1216–1227), mediated the agreement with the barons, and the long period of regency (till 1227), when Wilhelm La Maréchal took care of Henry III, the son of John Lackland, made it possible for the barons to increase their achievements.

The juvenile king confirmed the Great Charter, which was shortened to 47 clauses, with no mention of the council of barons as described in clause 61 of the former version. With the passage of time, Magna Carta provided the grounds for the constitutional system in England, being the first document in which an important principle was defined, namely that the power of king should be restricted by his written commitment, which means that also the king became subjected to the law.

After *Magna Carta Libertatum* had been proclaimed, there were numerous copies of it made and sent to various authorities, both secular and church; thus 13 copies of the document still exist today (among others in the British Museum, the National Archives, and the archives of the Lincoln cathedral), but it is uncertain if any of them is the original.

Historians have varied in their opinions on the Great Charter. In the Victorian era, for example, the Charter was regarded as the first step towards the parliamentary system. Later, however, it was pointed out that many provisions of the Charter attempted to withdraw the law reforms introduced by king Henry II and meant to organize and unify the law. The Great Charter consisted of 63 clauses, two out of which, namely 39 and 40, were to protect the barons against abuse of power by the king. "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way (…) except by the lawful judgment of his equals or by the law of the land." Gradually, however, this right of the barons came to be interpreted as a guarantee for everybody, and for the members of Parliament. Clauses 13 and 14 also implied that the king could not impose taxes freely, in future constituting the grounds for claims that the monarch might impose taxes only upon consent of the Royal Council.

The very name "charter" in time became the property not only of England, but of all Europe and even of all the world (Charter of the United Nations – 1945), or the Czech Cahrter'77.

Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments. Clauses marked (*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.

Original text

Based on: Charles Bémont, *Chartes des libertés anglaises (1100-1305)*, Alphonse Picard, Paris 1892.

Magna Charta Libertatum Anno 1215

Johannes Dei gracia rex Anglie, Dominus Hibernie, dux Normannie, Aquitannie et comes Andegravie, (...)

+ 1. In primis concessisse Deo et hac presenti carta nostra confirmasse, pro nobis et heredibus nostris in perpetuum quod Anglicana ecclesia libera sit, et habeat jura sua integra, et libertates suas illesas; et ita volumus observari; quod apparet ex eo quod libertatem electionum, que maxima et magis necessaria reputatur Ecclesie Anglicane, mera et spontanea voluntate, ante discordiam inter nos et barones nostros motam, concessimus et carta nostra [illa carta data 21£ novembris anno Domini 1214; confirmatio papae Innocentii tertii 30£ martii anno Domini 1215] confirmavimus, et eam obtinuimus a domino papa Innocentio tercio confirmari; quam et nos observabimus et ab heredibus nostris in perpetuum bona fide volumus observari. Concessimus eciam omnibus liberis hominibus regni nostri, pro nobis et heredibus nostri in perpetuum, omnes libertates subscriptas, habendas et tenendas eis et heredibus suis, de nobis et heredibus nostris.

2. Si quis comitum vel baronum nostrorum, sive aliorum tenencium de nobis in capite per servicium militare, mortuus fuerit, et cum decesserit heres suus plene etatis fuerit et relevium debeat, habeat hereditatem suam per antiquum relevium; scilicet heres vel heredes comitis de baronia comitis integra per centum libras; heres vel heredes baronis de baronia per centum libras (sic); heres vel heredes militis de feodo militis integro per centum solidos ad plus; et qui minus debuerit minus det secundum antiquam consuetudinem feodorum.

3. Si autem heres alicujus talium fuerit infra etatem et fuerit in custodia, cum ad etatem pervenerit, habeat hereditatem suam sine relevio et sine fine.

4. Custos terre hujusmodi heredis qui infra etatem fuerit, non capiat de terra heredis nisi racionabiles exitus, et racionabiles consuetudines, et racionabilia servicia, et hoc sine destructione et vasto hominum vel rerum; et si nos commiserimus custodiam alicujus talis terre vicecomiti vel alicui alii qui de exitibus illius nobis respondere debeat, et ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, et terra committatur duobus legalibus et discretis hominibus de feodo illo, qui de exitibus respondeant nobis vel ei cui eos assignaverimus; et si dederimus vel vendiderimus alicui custodiam alicujus talis terre, et ille destructionem inde fecerit vel vastum, amittat ipsam custodiam, et tradatur duobus legalibus et discretis hominibus de feodo illo qui similiter nobis respondeant sicut predictum est.

5. Custos autem, quamdiu custodiam terre habuerit, sustentet domos, parcos, vivaria, stagna, molendina, et cetera ad terram illam pertinencia, de exitibus terre ejusdem; et reddat heredi, cum ad plenam etatem pervenerit, terram suam totam instauratam de carucis et waynagiis, secundum quod tempus waynagii exiget et exitus terre racionabiliter poterunt sustinere.

6. Heredes maritentur absque disparagacione, ita tamen quod, antequam contrahatur matrimonium, ostendatur propinquis de consanguinitate ipsius heredis.

7. Vidua post mortem mariti sui statim et sine difficultate habeat maritagium et hereditatem suam, nec aliquid det pro dote sua, vel pro maritagio suo, vel hereditate sua, quam hereditatem maritus suus et ipsa tenuerint dit obitus ipsius mariti, et maneat in domo mariti sui per quadraginta dies post mortem ipsius, infra quos assignetur ei dos sua.

8. Nulla vidua distringatur ad se maritandum, dum voluerit vivere sine marito, ita tamen quod securitatem faciat quod se non maritabit sine assensu nostro, si de nobis tenuerit, vel sine assensu domini sui de quo tenuerit, si de alio tenuerit.

9. Nec nos nec ballivi nostri seisiemus terram aliquam nec redditum pro debito aliquo, quamdiu catalla debitoris sufficiunt ad debitum reddendum; nec plegii ipsius debitoris distringantur quamdiu ipse capitalis debitor sufficit ad solucionem debiti; et si capitalis debitor defecerit in solucione debiti, non habens unde solvat, plegii respondeant de debito; et, si voluerint, habeant terras et redditus debitoris, donec sit eis satisfactum de debito quod ante pro eo solverint, nisi capitalis debitor monstraverit se esse quietum inde versus eosdem plegios.

*10. Si quis mutuo ceperit aliquid a Judeis, plus vel minus, et moriatur antequam debitum illud solvatur, debitum non usuret quamdiu heres fuerit infra etatem, de quocumque teneat; et si debitum illud inciderit in manus nostras, nos non capiemus nisi catallum contentum in carta.

*11. Et si quis moriatur, et debitum debeat Judeis, uxor ejus habeat dotem suam, et nichil reddat de debito illo; et si liberi ipsius defuncti qui fuerint infra etatem remanserint, provideantur eis necessaria secundum tenementum quod fuerit defuncti, et de residuo solvatur debitum, salvo servicio dominorum; simili modo fiat de debitis que debentur aliis quam Judeis.

*12. Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad hec non fiat nisi racionabile auxilium; simili modo fiat de auxiliis de civitate London.

+ 13. Et civitas London. habeat omnes antiquas libertates et liberas consuetudines suas, tam per terras, quam per aquas. Preterea volumus et concedimus quod omnes alie civitates, et burgi, et ville, et portus, habeant omnes libertates et liberas consuetudines suas.

*14. Et ad habendum commune consilium regni de auxilio assidendo aliter quam in tribus casibus predictis, vel de scutagio assidendo, summoneri faciemus

archiepiscopos, episcopos, abbates, comites, et majores barones sigillatim per litteras nostras; et preterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes illos qui de nobis tenent in capite ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum; et in omnibus litteris illius summonicionis causam summonicionis exprimemus; et sic facta summonicione negocium ad diem assignatum procedat secundum consilium illorum qui presentes fuerint, quamvis non omnes summoniti venerint.

*15. Nos non concedemus de cetero alicui quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, et ad faciendum primogenitum filium suum militem, et ad primogenitam filiam suam semel maritandam, et ad hec non fiat nisi racionabile auxilium.

16. Nullus distringatur ad faciendum majus servicium de feodo militis, nec de alio libero tenemento, quam inde debetur.

17. Communia placita non sequantur curiam nostram, set teneantur in aliquo loco certo.

18. Recogniciones de nova disseisina, de morte antecessoris, et de ultima presentacione, non capiantur nisi in suis comitatibus et hoc modo : nos, vel si extra regnum fuerimus, capitalis justiciarius noster, mittemus duos justiciarios per unum quemque comitatum per quatuor vices in anno, qui, cum quatuor militibus cujuslibet comitatus electis per comitatum, capiant in comitatu et in die et loco comitatus assisas predictas.

19. Et si in die comitatus assise predicte capi non possint, tot milites et libere tenentes remaneant de illis qui interfuerint comitatui die illo, per quos possint judicia sufficenter fieri, secundum quod negocium fuerit majus vel minus.

20. Liber homo non amercietur pro parvo delicto, nisi secundum modum delicti; et pro magno delicto amercietur secundum magnitudinem delicti, salvo contenemento suo; et mercator eodem modo, salva mercandisa sua; et villanus eodem modo amercietur salvo waynagio suo, si inciderint in misericordiam nostram; et nulla predictarum misericordiarum ponatur, nisi per sacramentum proborum hominum de visneto.

21. Comites et barones non amercientur nisi per pares suos, et non nisi secundum modum delicti.

22. Nullus clericus amercietur de laico tenemento suo, nisi secundum modum aliorum predictorum, et non secundum quantitatem beneficii sui ecclesiastici.

23. Nec villa nec homo distringatur facere pontes ad riparias, nisi qui ab antiquo et de jure facere debent.

24. Nullus vicecomes, constabularius, coronatores, vel alii ballivi nostri, teneant placita corone nostre.

* 25. Omnes comitatus, hundredi, wapentakii, et trethingi' sint ad antiquas firmas absque ullo incremento, exceptis dominicis maneriis nostris.

26. Si aliquis tenens de nobis laicum feodum moriatur, et vicecomes vel ballivus noster ostendat litteras nostras patentes de summonicione nostra de debito quod

defunctus nobis debuit, liceat vicecomiti vel ballivo nostro attachiare et imbreviare catalla defuncti inventa in laico feodo, ad valenciam illius debiti, per visum legalium hominum, ita tamen quod nichil inde amoveatur, donec persolvatur nobis debitum quod clarum fuerit, et residuum relinquatur executoribus ad faciendum testamentum defuncti; et, si nichil nobis debeatur ad ipso, omnia catalla cedant defuncto, salvis uxori ipsius et pueris racionabilibus partibus suis.

*27. Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum ecclesie distribuantur, salvis unicuique debitis que defunctus ei debebat.

28. Nullus constabularius, vel alius ballivus noster, capiat blada vel alia catalla alicujus, nisi statim inde reddat denarios, aut respectum inde habere possit de voluntate venditoris.

29. Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri, si facere voluerit custodiam illam in propria persona sua, vel per alium probum hominem, si ipse eam facere non possit propter racionabilem causam; et si nos duxerimus vel miserimus eum in exercitum, erit quietus de custodia, secundum quantitatem temporis quo per nos fuerit in exercitu.

30. Nullus vicecomes, vel ballivus noster, vel aliquis alius, capiat equos vel carettas alicujus liberi hominis pro cariagio faciendo, nisi de voluntate ipsius liberi hominis.

31. Nec nos nec ballivi nostri capiemus alienum boscum ad castra vel alia agenda nostra, nisi per voluntatem ipsius cujus boscus ille fuerit.

32. Nos non tenebimus terras illorum qui convicti fuerint de felonia, nisi per unum annum et unum diem, et tunc reddantur terre dominis feodorum.

33. Omnis kidelli de cetero deponantur penitus de Tamisia, et de Medewaye, et per totam Angliam, nisi per costeram maris.

34. Breve quod vocatur „Precipe" de cetero non fiat alicui de aliquo tenemento unde liber homo amittere possit curiam suam.

35. Una mensura vini sit per totum regnum nostrum, et una mensura cervisie, et una mensura bladi, scilicet quarterium Londoniense, et una latitudo pannorum tinctorum et russetorum et halbergettorum, scilicet due ulne infra listas; de ponderibus autem sit ut de mensuris.

36. Nichil detur vel capiatur de cetero pro brevi inquisicionis de vita vel membris, set gratis concedatur et non negetur.

37. Si aliquis teneat de nobis per feodifirmam, vel per sokagium, vel per burgagium, et de alio terram teneat per servicium militare, nos non habebimus custodiam heredis nec terre sue que est de feodo alterius, occasione illius feodifirme, vel sokagii, vel burgagii; nec habebimus custodiam illius feodifirme, vel sokagii, vel burgagii, nisi ipsa feodifirma debeat servicium militare. Nos non habebimus custodiam heredis vel terre alicujus, quam tenet de alio per servicium militare, occasione alicujus parve serjanterie quam tenet de nobis per servicium reddendi nobis cultellos, vel sagittas, vel hujusmodi.

38. Nullus ballivus ponat decetero aliquem ad legem simplici loquela sua, sine testibus fidelibus ad hoc inductis.

+ 39. Nullus liber homo capiatur, vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terre.

+ 40. Nulli vendemus, nulli negabimus, aut differemus rectum aut justiciam.

41. Omnes mercatores habeant salvum et securum exire de Anglia, et venire in Angliam, et morari, et ire per Angliam, tam per terram quam per aquam, ad emendum et vendendum, sine omnibus malis toltis, per antiquas et rectas consuetudines, preterquam in tempore gwerre, et si sint de terra contra nos gwerrina; et si tales inveniantur in terra nostra in principio gwerre, attachientur sine dampno corporum et rerum, donec sciatur a nobis vel capitali justiciario nostro quomodo mercatores terre nostre tractentur, qui tunc invenientur in terra contra nos gwerrina; et si nostri salvi sint ibi, alii salvi sint in terra nostra.

*42. Liceat unicuique decetero exire de regno nostro, et redire, salvo et secure, per terram et per aquam, salva fide nostra, nisi tempore gwerre per aliquod breve tempus, propter communem utilitatem regni, exceptis imprisonatis et utlagatis secundum legem regni, et gente de terra contra nos gwerrina, et mercatoribus, de quibus fiat sicut predictum est.

43. Si quis tenuerit de aliqua eskaeta, sicut de honore Walligefordie, Notingeham, Bolonie, Lancastrie, vel de aliis eskaetis que sunt in manu nostra et sunt baronie, et obierit, heres ejus non det aliud relevium, nec faciat nobis aliud servicium quam faceret baroni si baronia illa esset in manu baronis; et nos eodem modo eam tenebimus quo baro eam tenuit.

44. Homines qui manent extra forestam non veniant decetero coram justiciariis nostris de foresta per communes summoniciones, nisi sint in placito, vel plegii alicujus vel aliquorum, qui attachiati sint pro foresta.

*45. Nos non faciemus justiciarios, constabularios, vicecomites, vel ballivos, nisi de talibus qui sciant legem regni et eam bene velint observare.

46. Omnes barones qui fundaverunt abbacias, unde habent cartas regum Anglie, vel antiquam tenuram, habeant earum custodiam cum vacaverint, sicut habere debent.

47. Omnes foreste que afforestate sunt tempore nostro, statim deafforestentur; et ita fiat de ripariis que per nos tempore nostro posite sunt in defenso.

*48. Omnes male consuetudines de forestis et warennis, et de forestariis et warennariis, vicecomitibus et eorum ministris, ripariis et earum custodibus, statim inquirantur in quolibet comitatu per duodecim milites juratos de eodem comitatu, qui debent eligi per probos homines ejusdem comitatus, et infra quadraginta dies post inquisicionem factam, penitus, ita quod numquam revocentur, deleantur per eosdem, ita quod nos hoc sciamus prius, vel justiciarius noster, si in Anglia non fuerimus.

*49. Omnes obsides et cartas statim reddemus que liberate fuerunt nobis ab Anglicis in securitatem pacis vel fidelis servicii.
(…)

* 52. Si quis fuerit disseisitus vel elongatus per nos sine legali judicio parium suorum, de terris, castellis, libertatibus, vel jure suo, statim ea ei restituemus; et si contencio super hoc orta fuerit, tunc inde fiat per judicium viginti quinque baronum, de quibus fit mencio inferius in securitate pacis. De omnibus autem illis de quibus aliquis disseisitus fuerit vel elongatus sine legali judicio parium suorum, per Henricum regem patrem nostrum vel per Ricardum regem fratrem nostrum, que in manu nostra habemus, vel que alii tenent, que nos oporteat warantizare, respectum habebimus usque ad communem terminum crucesignatorum; exceptis illis de quibus placitum motum fuit vel inquisicio facta per preceptum nostrum, ante suscepcionem crucis nostre: cum autem redierimus de peregrinacione nostra, vel si forte remanserimus a peregrinacione nostra, statim inde plenam justiciam exhibebimus.

* 53. Eundem autem respectum habebimus et eodem modo de justicia exhibenda, de forestis deafforestandis vel remanseris forestis quas Henricus pater noster vel Ricardus frater noster afforestaverunt, et de custodiis terrarum que sunt de alieno feodo, cujusmodi custodias hucusque habuimus occasione feodi quod aliquis de nobis tenuit per servicium militare, et de abbaciis que fundate fuerint in feodo alterius quam nostro, in quibus dominus feodi dixerit se jus habere; et cum redierimus, vel si remanserimus a peregrinatione nostra, super hiis conquerentibus plenam justiciam statim exhibebimus.

54. Nullus capiatur nec imprisonetur propter appellum femine de morte alterius quam viri sui.

* 55. Omnes fines qui injuste et contra legem terre facti sunt nobiscum, et omnia amerciamenta facta injuste et contra legem terre, omnino condonentur, vel fiat inde per judicium viginti quinque baronum de quibus fit mencio inferius in securitate pacis, vel per judicium majoris partis eorundem, una cum predicto Stephano Cantuarensi archiepiscopo, si interesse poterit, et aliis quos secum ad hoc vocare voluerit. Et si interesse non poterit, nichilominus procedat negocium sine eo, ita quod, si aliquis vel aliqui de predictis viginti quinque baronibus fuerint in simili querela, amoveantur quantum ad hoc judicium, et alii loco eorum per residuos de eisdem viginti quinque, tantum ad hoc faciendum electi et jurati substituantur.

56. Si nos disseisivimus vel elongavimus Walenses de terris vel libertatibus vel rebus aliis, sine legali judicio parium suorum, in Anglia vel in Wallia, eis statim reddantur; et si contencio super hoc orta fuerit, tunc inde fiat in Marchia per judicium parium suorum; de tenementis Anglie secundum legem Anglie; de tenementis Wallie secundum legem Wallie; de tenementis Marchie secundum legem Marchie. Idem facient Walenses nobis et nostris.

*57. De omnibus autem illis de quibus aliquis Walensium disseisitus fuerit vel elongatus, sine legali judicio parium suorum, per Henricum regem patrem nostrum

vel Ricardum regem fratrem nostrum, que nos in manu nostra habemus, vel que alii tenent que nos oporteat warantizare, respectum habebimus usque ad communem terminum crucesignatorum, illis exceptis de quibus placitum motum fuit vel inquisicio facta per preceptum nostrum ante suscepcionem crucis nostre; cum autem redierimus, vel si forte remanserimus a peregrinatione nostra, statim eis inde plenam justitiam exhibebimus, secundum leges Walensium et partes predictas.

(…)

English translation

Based on: E. Weber (ed.), *The Western Tradition, vol. I, From the Ancient World to Louis XIV*, Boston 1965, p. 218 and following.

Magna Charta Libertatum of 1215

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou,

(…)

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections – a right reckoned to be of the greatest necessity and importance to it – and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

2. If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight l00s.

at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'

3. But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

4. The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

5. For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

6. Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be' made known to the heir's next-of-kin.

7. At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

9. Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

*10. If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

*11. If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

*12. No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes ouly a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

+ 13. The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

*14. To obtain the general consent of the realm for the assessment of an 'aid' – except in the three cases specified above – or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

*15. In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

16. No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

17. Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

18. Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the

county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

19. If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

21. Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

22. A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

23. No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

24. No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

*25. Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

26. If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man's will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

*27. If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

28. No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

29. No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on

military service shall be excused from castle-guard for the period of this service.

30. No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

31. Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

32. We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

33. All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

34. The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

35. There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

36. In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

37. If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

38. In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

+ 39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

+ 40. To no one will we sell, to no one deny or delay right or justice.

41. All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property,

until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

*42. In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants – who shall be dealt with as stated above – are excepted from this provision.

43. If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

44. People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

*45. We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

46. All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

47. All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

*48. All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

*49. We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

(…)

*52. To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for

securing the peace (§ 61). In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

*53. We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first a-orested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

54. No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

*55. All fines that have been given to us unjustiy and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61) together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgement shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

56. If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

*57. In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgement of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from

the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

(...)

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IV
PRIVILEGE OF BOLESLAW THE PIOUS TO THE JEWS OF 1264

Picture of Privilege of Boleslaw the Pious to the Jews of 1264 made by Artur Szyk (1927)

PRIVILEGE OF BOLESLAW THE PIOUS TO THE JEWS OF 1264

Some traces of Jewish merchants on the territory of early Piast monarchy can be found in several written sources of the time, and Ibrahim ibn Yaqub, a Jewish traveller, described the Polish state ruled by Mieszko I. With the passage of time, more numerous groups of Jews started to pour into Polish territories, settling in the vicinity of larger towns. The oldest records of Jewish settlement in Cracow and in Gniezno date back to the end of 12th century, while in Wrocław and Płock – to the beginnings of 13th century. The Jewish commune in Kalisz was one of the oldest in Medieval Poland. In the second half of 12th century, Joseph son of Judah – one of the masters of the mint working for Polish prince Mieszko III the Old – lived in Kalisz for some time. As the settlement in Kalisz was transforming into a township, the Jewish commune was also growing.

Among the factors influencing the need to regulate the legal situation of Jews in Poland during the time of regional disintegration (after 1138) were: growing colonization, growing urbanization of medieval Poland, intensification of economic activity, as well as of trade and craftsmanship. All the above processes converged when the town privileges were introduced, and a new social class emerged, namely the burghers. The town charter, granted to a newly established town, regulated the rights and duties of burghers, defining also the town boundaries. Since Christian and Jewish population coexisted in the same neighborhood, it was necessary to regulate the legal situation of the Jews as subjects of the prince. At first, it seems, there were no special Jewish quarters in towns, but rather Jewish streets, where Jews lived next to Christians. Separate Jewish quarters (ghettoes) came to existence only during the late middle ages. The privilege of prince Boleslaw Pious to the Jews of Greater Poland was issued just a few years after the foundation of Poznań (1253). However, there existed differences between the legal situation of burghers and that of the Jews. The burghers were granted a separate privilege each time a new town was established, while the Jews were given the so called general privilege, and were regarded as an over regional social group. The customary law was replaced by norms defined in writing, specifying both duties and privileges.

A similar phenomenon was observed in the neighboring states, where the need to regulate, in the country as a whole, the legal relations between the Jews and, in particular, the burghers, led to the issuance of Jewish privileges by: Frederic II in 1238; privileges for the Jews by Frederic II Duke of Austria in 1244; privileges for Hungarian Jews by king Bela IV of Hungary in 1251,

and for Czech Jews by Ottokar II of Bohemia in 1254 and 1255. Those acts served as models for the General Charter of Jewish Liberties, known as the Statute of Kalisz.

The inspiration for the privilege may also be found in family connections of Boleslaw the Pious, married to Jolenta of Hungary, a daughter of Bela IV of the Arpad dynasty.

The privilege of Boleslaw the Pious was issued in Kalisz on 16 August 1264. It introduced some provisions directly relating to the functioning of Jewish commune in Kalisz (in 1257 Kalisz was granted the status of a town), as well as some provisions of more general character. Thus the term Statute of Kalisz should be understood as a document drawn up in Kalisz, and not for the Kalisz commune. The prince issued the statute and the privilege (*statuta et privilegia*), which applied to the Jews residing in the territory under his rule – namely the Greater Poland, since starting in 1257, when his brother Przemysł I of Greater Poland died, Boleslaw became the sole ruler of the whole region (*dux Polonie maioris*).

Almost half of statute's provisions deal with trade and financial matters (for example with usurious credits - Articles 1 – 7, 23, 25, 27 – 29, 32 – 33), constituting the basis for making a living by Jews, whose participation in other spheres of economic life was severely restricted or simply forbidden. It should be borne in mind, however, that such activity could end up in all kinds of fraud, as it usually consisted in oral agreements, and taking an oath (common in Polish customary law) was regarded as evidence in proceedings before the court. Jews were forbidden among other things, to deal in stolen goods (Articles 3 and 33) and to counterfeit money (Article 34). From the money they lent Jews collected interests and they took pledges to secure credits. Other articles referred to free trade throughout the kingdom (Article 12), even though the prince did not mention Jewish craftsmen. The provisions regulating the matters of religious belief included introduction of payments for the right to establish a cemetery for which Jews had to pay in kind (pepper and saffron). However, the prince allowed for Jewish jurisdiction in matters concerning the Jewish commune, reserving for himself the judgment, on the grounds of common law, in cases when a Jew injures another Jew (Article 11).

The fact that the economic relations between the Jews and the Christians were regulated in such great detail may be regarded as a proof that such relations were intense and that economy based on money and not on natural goods was growing fast.

The statute mentions the synagogue and a Jewish school in Kalisz, located at the Jewish Street of the time (leading from the market towards south-east). In the synagogue the judgments by the palatine or his delegate were

to be executed, there the Jews also made an oath on the staple, and in more serious matters an oath on the Torah (Article 19).

Jewish commune was also granted the right to free and safe use of the cemetery outside the town borders, on the hill between villages of Dobrzec and Rypinek. (The cemetery located between the current streets Zubrzyckiego, Skalmierzycka and Handlowa, was devastated during World War II.)

The Jews were recognized as subjects of *servi camerae*, under the care of the palatine representing the prince. The subjects of the prince were obliged to provide aid to a Jew crying out at night (Article 35), and if they ignored the obligation, they were compelled to pay a fine.

The privilege of Boleslaw the Pious was soon to be followed by similar acts issued by Silesian princes (Henry IV Probus in 1274–1290; Henry III, Duke of Silesia-Glogau – around 1274 and 1299; Henry of Legnica and Wrocław – in 1290–1295; and Bolko of Świdnica – in 1295.)

The first 29 articles of the Statute of Kalisz were repeated by Boleslaw the Pious almost literally after earlier privileges issued by other European rulers, articles 33 – 35, however, were added and punishments for anti-Jewish disturbances, administered in accordance to customary law, were made less harsh. The Statute of Kalisz, moreover, did not contain articles from similar Austrian, Hungarian and Czech privileges concerning the actual interest rates on loans. Besides, the king, prince or bailiff, as executors of legal deeds in foreign privileges, were replaced in the Statute by the prince and palatine representing the prince.

The privilege regulated the functioning of Jewish commune, using the Kalisz commune as an example, yet it may be regarded as a document directed towards all Jewish communes. The Statute made it possible for such communes to develop freely throughout Greater Poland. A fully organized Jewish commune having its elders did exist in Kalisz, as proved by yet another document of 1287.

With the privilege of Kalisz there began the process of formation of a separate social class in medieval monarchy, namely the Jews, who should also be regarded as the initiators of the privilege, as they certainly must have provided the prince with copies of Austrian, Hungarian and Czech privileges. It seems, however, that certain decisions of the prince in this regard, especially those concerning financial issues, were ahead of time and did not correspond to the existing situation.

In 1334, 1364 and 1367 King Casimir the Great confirmed the privilege of Kalisz, and extended it to cover all the Jews in the Polish Kingdom. In 1453, Casimir Jagiellon confirmed the privilege for the Jews, supposedly on the grounds of the privilege granted by Casimir the Great, but in fact the provisions allowing for taking over estate for debts were not a part of

the original privilege. One year later the privilege was revoked. Later it was again confirmed by the following kings: Alexander in 1505, Sigismund I in 1531, Sigismund II Augustus in 1584 and in 1559, Stephen Báthory in 1580, Sigismund III Vasa in 1592, Władysław IV Vasa – in 1633, Jaohn II Casimir in 1649, Michał Korybut Wiśniowiecki in 1669, John III Sobieski in 1678, Augustus II the Strong and Augustus III in 1735, and by Stanisław August Poniatowski – in 1633.

Original text

Based on: *Kodeks Dyplomatyczny Wielkopolski*, vol. 1, Poznań 1877, pp. 563-566, no. 605 (412a.) according to the transumpt affirmed by King Casimir the Great on 9th October 1334 in Cracow.

INSERT MANDAT PRIVILEGIUM IUDAEORUM CONCESSUM OLIM A BOLESLAO DUCE

In nomine Domini amen. Humani generis actiones, nisi vigeant voce testium aut testimonio literarum, celeriter transeunt et prorsus a memoria relabuntur. Igitur nos Boleslaus Dei gracia dux Maioris Polonie notum facimus tam presentibus quam futuris ad quorum notitiam devenerit presens scriptum, quod Iudeis nostris per totum districtum nostri dominii constitutis, eorum statuta et privilegia que a nobis obtinuerunt, de verbo ad verbum, prout in sequenti serie continentur, taliter duximus declaranda.

1. Primum quidem statuimus, ut pro pecunia aut pro quacunque re mobili vel immobili, aut in causa criminali que tangit personam aut res Iudei, nullus Christianus contra Iudeum, nisi cum Christiano et Iudeo, in testimonium admittatur.

2. Item, si Christianus Iudeum impedit, asserens quod ei pignora sua obligaverit, et Iudeus diffitetur, et Christianus Iudei simplicibus verbis fidem noluerit adhibere, Iudeus iurando super equivalente sibi oblato suam intentionem probabit et transeat absolutus.

3. Si Christianus obligaverit Iudeo pignus, asserens quod Iudeo pro minori pecunia obligaverit quam Iudeus contiteatur, iurabit Iudeus super pignore sibi obligato, et quod iuramento probaverit, Christianus ei solvere non recuset.

4. Item, si Iudeus Christiano testibus non assumptis dicat, se pignus mutuasse, et ille negaverit, super hoc Christianus solius sui iuramento se expurget.

5. Iudeus recipere poterit nomine pignorum omnia que sibi fuerint oblata, quocunque nomine vocentur, nulla de his inquisitione facta: exceptis vestibus sanguinolentis et madefactis, et sacris vestibus, quas Iudeus nullatenus acceptabit.

6. Item, si Christianus impediret Iudeum, quia pignus quod Iudeus habet, ei furtim vel per violenciam sit ablatum, Iudeus iuret super illo pignore, quod cum recepit, furtim ablatum vel raptim ignoraverit; hoc in suo iuramento implicito, quanto sit pignus huiusmodi obligatum probabit, et sic expurgacione facta, Christianus sortem et usuram ei persolvet que medio tempore accreverunt.

7. Si autem Iudeus per casum incendii, aut per furtum, aut per vim, res suas cum oblatis sibi pignoribus amiserit, et hoc constiterit, et Christianus qui hoc obligaverat nichilominus eum impetit, Iudeus iuramento se proprio absolvet.

8. Item, si Iudei inter se de facto discordiam moverint aut guerram, iudex civitatis nostre nullam iurisdicionem sibi vindicet in eosdem, sed nos tantummodo aut noster palatinus vel eius iudex iudicium exercebit. Si autem reatus vergit in personam, nobis tantummodo hic casus reservabitur iudicandus.

9. Item, si Christianus Iudeo vulnus qualitercunque inflixerit, reus nobis et nostro palatino penam solvat, secundum quod uostram graciam poterit invenire, nostre camere deferendam; et vulnerato satisfaciat pro curatione vulnerum et expensis, ut iura terre nostre requirunt et exigunt.

10. Item, si Christianus Iudeum occiderit, digno iudicio puniatur, et omnia rei mobilia et immobilia in nostram transeant potestatem.

11. Item, si Christianus Iudeum ceciderit, ita tamen ut sanguinem non effundat, pena per palatinum requiretur secundum terre nostre consuetudinem ab eodem; et percusso seu leso satisfaciat, quemadmodum in terra nostra est consuetum. Si vero pecuniam habere non poterit, idem pro commisso sicut iustum fuerit punietur.

12. Ubicumque Iudeus dominium nostrum transierit, nullus ei aliquod impedimentum prestabit nec molestiam inferat aut gravamen. Sed si aliquas merces aut aliquas res duxerit, muta debent ex eis provenire per omnia mutarum loca; et sic quoque ipse Iudeus nonnisi debitam solvat mutam, quam solveret unas civium civitatis illius, in qua Iudeus eo tempore commoratur.

13. Si Iudei iuxta suam consuetudinem aliquem ex mortuis suis aut de civitate in civitatem, aut de provincia in provinciam, aut de una terra in aliam deduxerint, nichil ab eis per mutarios nostros volumus extorqueri. Si autem mutarius aliquid extorserit, ut predo volumus puniatur.

14. Item, si Christianus cimeterium eorum quocunque modo dissipaverit aut invaserit, volumus ut secundum terre nostre consuetudinem et iura graviter puniatur, et omnia sua nostre camere proveniant, quocumque nomine nuncupentur.

15. Si aliquis temerarie iactaverit super scholas Iudeorum, nostro palatino duo talenta piperis volumus ut solvat.

16. Item, si Iudeus iudici suo in pena pecuniaria que vandil dicitur reus inventus fuerit, penam talenti piperis que ab antiquo est imposita solvat eidem.

17. Si Iudeus per edictum sui iudicis vocatur ad iudicium, et primo et secundo non venerit, pro utraque vice penam que consueta est ab antiquo persolvat. Si ad tercium edictum non venerit, penam que sequitur solvat iudici memorato.

18. Item, si Iudeus Iudeum vulneraverit, penam iudici suo secundum terre nostre consuetudinem solvere non recuset.

19. Statuimus, quod nullus Iudeus iuret super rodale ipsorum, nisi sit pro magnis causis, que se extendunt usque ad L. marcas argenti, vel sit ad nostram presenciam evocatus. Pro minoribus vero causis, iurare debet ante scholas, ante ostium dicte schole.

20. Si Iudeus clam fuerit interfectus, et per testimonium contestari non possit is qui eum interemit, si post inquisitionem factam aliquem suspectum habere ceperint Iudei, nos Iudeis contra suspectum Iudei occisorem patrocinium iusticie adhibebimus, iure mediante rei.

21. Item, si Christiani alicui Iudeo manum iniecerint violentam, secundum quod ius terre nostre exegerit punientur.

22. Item, iudex Iudeorum nullam causam ortam inter Iudeos in iudicium deducat, nisi fuerit per querimoniam invitatus. Item, Iudei circa scholas, vel ubi elegerint, debent iudicari.

23. Item, si a Iudeo Christianus pignus suum absolverit ita, quod usuras non persolverit, easdem si infra mensem non dederit, illis usuris accrescant usure.

24. Item, nullum volumus in domo Iudei hospitari.

25. Si Iudeus super possessiones aut literas bonorum immobilium pecuniam mutuaverit, id quoque ille cuius res est probaverit, nos Iudeo et pecunias et literarum pignus abiudicari statuimus.

26. Item, si aliquis vel aliqua puerum Iudeis abduxerit, volumus condemnetur ut fur.

27. Item, si Iudeus receperit a Christiano pignus et per spacium anni tenuerit, si pignoris valor mutuatam pecuniam non excesserit, Iudeus iudici suo pignus demonstrabit; si vero pignus bonum non faerit, palatino nostro vel suo iudici ostendet, vel postea vendendi habebit libertatem, si idem pignus, antequam annus transierit, suo iudici demonstrabit. Si quidem pignus apud Iudeum diem et annum remanserit, nulli super hoc postea respondebit.

28. Volumus, ut nullus Iudeum super solucione pignorum in suo feriato die audeat coarctare.

29. Item, quicunque Christianus per vim abstulerit pignus suum a Iudeo, aut violentiam in domo sua exercuerit, ut dissipator nostre camere graviter puniatur.

30. Item, contra Iudeum nonnisi in scholis, vel ubi iudicantur omnes Iudei, in iudicio procedatur; exceptis nobis et nostro palatino, qui eos possunt ad nostram presenciam evocare.

31. Iuxta constitutiones Pape in nomine nostri patris sancti districtius prohibemus, ne de cetero Iudei singuli in nostro dominio constituti debeant inculpari, quod humano utantur sanguine, cum iuxta preceptum Legis, ab omni prorsus sanguine se Iudei contineant universi. Sed si aliquis Iudeus de occisione alicuius pueri Christiani per Christianum fuerit inculpatus, tribus Christianis et totidem Iudeis convinci debet; et postquam convictus fuerit, tunc ipse Iudeus tantummodo pena que sequitur puniatur

crimine pro commisso. Si vero ipsum testes supradicti et sua innocencia expurgabit, penam Christianus, quam Iudeus pati debuerat, pro calumnia non immerito sustinebit.

32. Item statuimus, ut quitquid Iudeus mutuavit, sive aurum fuerit, denarii, sive argentum, idem sibi solvi vel reddi debet cum usura debita que accrevit.

33. Volumus, ut Iudei equos qualescunque, generaliter omnes, manifeste atque in luce diuturna pro pignore recipiant. Si autem aliquis equus apud Iudeum furatus, per Christianum aliquem inveniretur, Iudeus se iuramento proprio expurgabit dicens, quia eundem equum manifeste et in die pro tali quam dedit pecunia impignoratum habuit, et credebat non furatum.

34. Item inchibemus, ut monetarii in nostro dominio constituti, Iudeos cum falsis denariis vel rebus aliis, soli absque nostro nuncio vel nostri palatini seu absque civibus honestis, quoquo modo detinere vel capere non presumant.

35. Statuimus, quod si Iudeus aliquis compulsus nimia necessitate noctis tempore clamaverit, et si vicini Christiani prestare non curaverint auxilium opportunum, nec venerint ad clamorem, quilibet vicinus suus Christianus triginta solidos teneatur.

36. Statuimus eciam, ut Iudei vendant omnia libere et emant, panem tangant, similiter ut Christiani; prochibentes vero, penam nostro palatino pro eo solvere tenebuntur.

Et ut omnia que premissa sunt perpetue robur obtineant fi rmitatis, presens instrumentum cum testium annotatione ipsis pro cautela dedimus, cum sigilli nostri munimine roboratum.

English translation

Based on: Robert Chazan (ed.), *Church, State and Jew in the Middle Ages*, Behrman House, Inc., New York 1980, pp. 88-93.

Privilege of Boleslaw the Pious to the Jews of 1264

In the NAME OF THE LORD, amen. The actions of the human species quickly dissipate and disappear from memory, unless they are preserved by the voice of witnesses or by the testimony of documents. Therefore we Boleslav, by the grace of God duke of Greater Poland, inform those both present and future whose attention the present charter will reach, that we have caused to be prescribed for our Jews living throughout the area of our domain these statutes and privileges which they have obtained from us, word for word, as contained in the following series:

1. We decree, therefore, first, that in cases involving money, or movable property, or immovable property, or a criminal complaint touching the person or property of a Jew, no Christian shall be admitted as a witness against a Jew unless there is a Jewish witness together with the Christian.

2. Likewise, if a Christian should bring suit against a Jew, asserting that he had pawned his pledges with him and the Jew should deny this, and then if the Christian should not wish to accord any belief in the mere statement of the Jew, the Jew may prove his contention by taking an oath upon an object equivalent in value to that which was brought to him and shall then go forth free.

3. Likewise, if a Christian has deposited a pledge with a Jew, stating that he had left it with the Jew for a smaller sum than the Jew admits, the Jew shall then take an oath upon the pledge pawned with him, and the Christian must not refuse to pay the amount that the Jew has proved through his oath.

4. Likewise, if a Jew says that he returned the Christian's pledge as a loan to the Christian, without, however, the presence of witnesses, and if the Christian deny this, then the Christian is able to clear himself in this matter through his own oath.

5. Likewise, a Jew is allowed to receive as pledges all things which may be pawned with him – no matter what they are called – without making any investigation about them, except bloody and wet clothes and sacred vessels which he shall under no circumstances accept.

6. Likewise, if a Christian charges that the pledge which a Jew has was taken from him by theft or robbery, the Jew must swear on that pledge that when he received it he did not know that it had been removed by theft or robbery. In this oath the amount for which the pledge was pawned to him shall also be included. Then, inasmuch as the Jew has brought his proof, the Christian shall pay him the capital and the interest that has accrued in the meantime.

7. Likewise, if a Jew, through the accident of fire or through theft or violence, should lose his own goods, together with the pledges pawned with him, and this is established, yet the Christian who has pledged something with him nevertheless brings suit against him, the Jew may free himself merely by his own oath.

8. Likewise, if the Jews engage in quarreling or actually fight among themselves, the judge of our city shall claim no jurisdiction over them; only we alone or our palatine or his judge shall exercise jurisdiction. If, however, the accusation touches the person, this case shall be reserved for us alone for judgment.

9. Likewise, if a Christian should inflict any sort of a wound upon a Jew, the accused shall pay a fine to us and to our palatine, according to that which our grace decides, to be remitted to our treasury. He must also

pay the person who has been injured for the care of his wound and for expenses, as the laws of our land require and demand.

10. Likewise, if a Christian should kill a Jew, he shall be punished with the proper sentence and all his movable and immovable property shall pass into our power.

11. Likewise, if a Christian strikes a Jew, without, however, having spilled his blood, a fine will be required by the palatine according to the custom of our land. He shall also pay the man struck or injured in the manner which is customary in our land. If he has no money, he shall be punished for the crime committed as is just.

12. Likewise, wherever a Jew shall pass through our territory, no one shall offer any hindrance to him or molest or trouble him. If, however, he should be carrying any goods or other things for which he must pay duty at all customs offices, he shall pay only the prescribed duty which a citizen of that town, in which the Jew is then dwelling, pays.

13. Likewise, if the Jews, as is their custom, should transport any of their dead either from city to city, or from province to province, or from one land into another, we do not wish anything to be demanded of them by our customs officers. If, however, a customs officer should extort anything, then we wish him punished as a robber.

14. Likewise, if a Christian, moved by insolence, shall break into or devastate the cemetery of the Jews, we wish that he be gravely punished according to the custom and laws of our land and that all his property, whatever it may be, shall be forfeited to our treasury.

15. Likewise, if anyone wickedly throw something at the synagogues of the Jews, we order that he pay two talents of pepper to our palatine.

16. Likewise, if a Jew be condemned by his judge to a money penalty, which is called *wandel,* he shall pay him a fine of a talent of pepper, which has been imposed from antiquity.

17. Likewise, if a Jew is summoned to court by order of his judge, but does not come the first or second time, he must pay the judge for each time the fine which is customary from antiquity. If he does not come at the third summons, he shall pay to the judge mentioned the subsequent fine.

18. Likewise, if a Jew has wounded another Jew, he may not refuse to pay to his judge a fine according to the custom of our land.

19. Likewise, we decree that no Jew shall take an oath on the Torah unless it be for important cases which involve fifty silver marks or unless called to our presence. For minor cases, he should swear before the synagogue, before the entrance of the synagogue.

20. Likewise, if a Jew has secretly been murdered, and if through testimony it cannot be determined by his friends who murdered him, yet if after an investigation has been made the Jews begin to suspect someone,

we shall extend to the Jews the protection of justice against the suspected murderer of the Jew, by means of the law of such matters.

21 Likewise, if Christians raise their hand in violence against a Jew, they shall be punished according to that which the law of our land demands.

22. Likewise, the judge of the Jews shall bring no case that has arisen among the Jews before his court, unless he be invited due to a complaint. Also the Jews ought to be judged near the synagogues or where they take oaths.

23. Likewise, if a Christian has redeemed his pledge from a Jew but has not paid the interest, the interest due shall become compounded if it is not paid within a month.

24. Likewise, we do not wish anyone to seek quarters in a Jewish house.

25. Likewise, if a Jew has lent money on possessions or on a note for immovable goods, and he to whom the things belong shall offer proof, we order that the money and the pledge of the note be removed from the Jew.

26. Likewise, if any man or woman should kidnap a Jewish child, we wish that he be punished as a thief.

27. Likewise, if a Jew has held in his possession, for a year, a pledge received from a Christian, and if the value of the pledge does not exceed the money lent, the Jew may show the pledge to his judge. If the pledge is not good, he shall show it to our palatine or his judge. He shall then have the right to sell it. If he shows the pledge to his judge before a year passed, then he shall subsequently have the right to sell it. If any pledge shall remain for a year and a day with a Jew, he shall not have to account for it afterwards to anyone.

28. We wish that no one dare to force a Jew to payment of pledges on his holiday.

29. Likewise, whatever Christian shall take his pledge away from a Jew by force or shall exercise violence in the Jew's home shall be severely punished as a plunderer of our treasury.

30. Likewise, one shall in no place proceed in judgment against a Jew except in front of his synagogues or where all the Jews are judged, saving ourselves and our palatine who have the power to summon them to our presence.

31. According to the ordinances of the pope, in the name of our Holy Father, we firmly order that henceforth no Jews in our domain be accused of using human blood, since according to the precept of their law all Jews refrain from any blood. If any Jew be accused of killing any Christian child, he should be convicted by three Christian witnesses and as many Jewish witnesses. After he has been convicted, he should be punished by the proper penalty for the crime committed. If, however, the aforesaid witnesses and his

innocence exonerate him, then the Christian accuser should undergo the punishment which the Jew would have had to suffer, for slander.

32. Likewise, we order that whatever the Jew lends, whether it be gold or coins or silver, that the same thing should be repaid or returned to him along with required interest which has accrued.

33. We wish that the Jews accept horses as pledges openly and by daylight. If any stolen horse be found in a Jew's possession by any Christian, the Jew shall exonerate himself by his own oath, saying that he took that horse openly and by day as a pledge for a certain amount of money which he gave and that he believed that it was not stolen.

34. We order that the minters living in our domain dare not to detain or seize Jews with false coins or other things by themselves, without our representative or that of our palatine or without honest citizens.

35. We order that, if any Jew, compelled by dire necessity, cries out at night and if the neighboring Christians do not bother to provide the proper aid or heed the cry, every neighboring Christian shall be responsible to pay thirty shillings.

36. We also order that Jews may sell and buy all things freely; and may touch bread as do Christians. Anyone who impedes them shall be obliged to pay a fine to our palatine.

In order that all the foregoing attain the powers of perpetual validity, we have given them the present document with the addition of witnesses as I security, fortifi ed by the protection of our seal. The witnesses of this matter are ...

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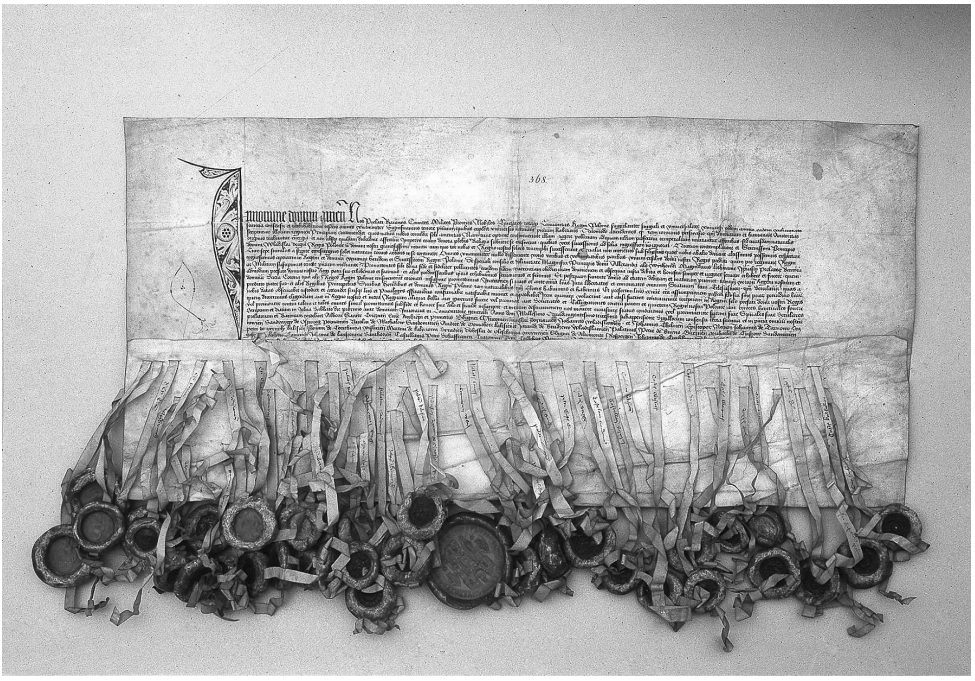
V
THE JEDLNA PRIVILEGE OF 1430



The Jedlna Privilege of 4 March 1430
Front page of *Statuta i przywileje Królestwa Polskiego* by Stanisław Sarnicki
The National Library

THE JEDLNA PRIVILEGE OF 1430

The legal rules of the union concluded by the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania kept changing together with the evolution of political situation and with internal changes taking place in both states. Signed on 14 August 1385, the Act of Kreva marked the beginning of a long co-existence of both states. After Queen Jadwiga's death on 17 July 1399, and following the Vilnius and Radom arrangements of 1401, the personal union took on a new shape. King Władysław Jagiełło, after his first male descendant was born in October 1424, began to make efforts to have the rights of his son to the Polish throne recognised, which encountered opposition on the part of some magnates (with Cardinal Zbigniew Oleśnicki heading the opposition). A series of events in foreign and internal policy led to the issuance of several royal privileges that on the one hand were supposed to remove frictions and tensions within the union and, on the other hand, to strengthen the position of King Władysław and his sons. During the assembly of gentry in Brześć Kujawski in 1425, an agreement was reached between the King and the gentry who agreed to recognise the rights of the royal son in exchange for the issuance of a privilege confirming all their immunities and freedoms, as well as containing some other provisions for their benefit. As a result of subsequent conflicts, the agreement never became effective.

After the birth of the King's second son in 1426 (who died prematurely) and of his third son – Kazimierz, born on 29 November 1428, as well as when Grand Duke Vytautas started to make efforts to be crowned, the situation changed. During the assembly in Łuck in 1429, Vytautas reached an agreement with King Władysław Jagiełło and King of the Romans (Holy Roman Emperor as of 1433) Sigismund of Luxembourg, both accepting the proposal made by Vytautas. The latter promised that the right to inherit Lithuanian throne would rest with Władysław's sons. The intented coronation of Vytautas was received very badly by Polish magnates and by gentry, who did not want to consent to such termination of the union. In result of his unwise policy (initial agreement for the coronation and then its withdrawal), King Jagiełło had to accept the demands made by Polish gentry and magnates, which had been expressed during the assemblies in Brześć Kujawski and Łęczyca (1425–1426). As a result, on 4 March 1430, the monarch issued a privilege in Jedlna near Radom.

The Jedlna Privilege confirmed the entitlements and freedoms that gentry and clergy of the Crown had been granted by royal documents

issued in 1374, 1386 and 1388. It was based partially on the previous Czerwińsk Privilege of 23 July 1422, whereby the King undertook to ensure the inviolability of property if there was no decision issued by a court, and it repeated almost literally some earlier provisions of the Brześć Privilege of 25 April 1425, which however never became effective. The document of Jedlna was confirmed by yet another royal privilege, issued in Kraków on 9 January 1433. The above may be viewed as a certain kind of codification of gentry privileges.

The privileges introduced the principle of personal immunity of the gentry, as well as a prohibition to confiscate property without a court's decision. From then on, no member of gentry could be arrested or deprived of property, if he had not been convicted by a court.

The Privilege of Jedlna was confirmed by the King by way of issuing separate privileges for individual districts (for the land of Kujawy – on 14 April 1433, and the land of Dobrzyń – on 25 January 1434). The edict issued for the gentry of the Crown was extended in 1434 to include the lands of Halych Ruthenia, inhabited mainly by Orthodox Christian boyars. Władysław was aware that the rights of his sons to Polish throne were questioned by many. The above acts and the arrangements Jagiełło made with the magnates and gentry, helped him in securing the right of his juvenile sons to the Polish throne, which he did just a few months before his death. King Władysław Jagiełło died on the night of 31 May 1434 in Gródek Jagielloński during his journey to Halych Ruthenia. The first ruler of a new dynasty was buried in Kraków.

The above privileges made it possible to keep the Polish-Lithuanian Union and to introduce a system of electing rulers from among the Jagiellon dynasty. The eldest royal son Władysław, later called Władysław Warneńczyk, was only 10 when his father died. A month after King Jagiełło's funeral, a general assembly of gentry took place in Kraków. After a heated debate, the gentry agreed to offer the crown to Jagiełło's underage son who was crowned on 25 July. When he acceded to the throne, he pledged to preserve all the rights, statutes, freedoms and privileges that the Crown of the Polish Kingdom enjoyed.

Over three hundred years later, during the Great Sejm, the personal immunity privilege of the gentry was extended to include the bourgeoisie of the Polish-Lithuanian Commonwealth.

Original text

Based on: A. Lewicki (ed.), *Codex epistolaris saeculi decimi quinti*, vol. 2: 1382-1445, Cracow 1891 (Monumenta Medii Aevi Historia Res Gestas Poloniae Illustrantia, vol. 12), no. 177, pp. 228-234.

Neminem Captivabimus...

Wladislaus dei gracia rex Polonie necnon terrarum Cracovie, Sandomirie, Siradie, Lancicie, Cuyavie, Litthuanieque princeps suppremus, Pomeranie Russieque dominus et heres etc. Significamus tenore presencium quibus expedit universis: quomodo libramine vere racionis pensantes intemerate fidei et insuperabilis virtutis constanciam, quibus incole regni nostri Polonie in bellis et in certaminibus, que cum prosperis auspice domino nostrorum triumphorum successibus sepe sepius pro defensione nostra et regni eiusdem hostium sustinendo insultus suscepimus, placere nobis meruerunt et votis nostris obsecundacione fideli non absque varijs periculis corporum et extenuacione rerum devota subieccione ubique et semper paruerunt; horum intuitu et aliorum contemplacione meritorum, que excelsa dona nostre munificencie non indigne promerentur, volentes eciam, ut benivolencia eorum et fidei affectus, quos cum tanta sinceritate in filios nostros preclaros principes Wladislaum et Kazimirum direxerunt, quorum unum, quem apciorem ad regimen regni congnoverint [sic], quem nostris requisicionibus admoniti sibi expleta vite nostre periodo pro rege principe domino et herede regni huius Polonie et terrarum Littuanie et Russie, quas preclarus princeps dominus Allexander alias Witawdus magnus dux Littuanie frater noster carissimus, prout inpresenciarum possidet, debet ad tempora vite sue possidere, et post obitum eius ad nos et filios nostros predictos ac coronam vera et hereditaria successione devolvi, sicut patentibus litteris ad hoc confectis est firmatum, devote et humiliter susceperunt et corona regni sceptrisque regalibus cum sollempnitate cerimoniorum [sic] debita promiserunt tamquam verum et legittimum successorem, postquam etatem legittimam habuerit, insignire, dignis pro grata vicissitudine regie celsitudinis muneribus compensentur: omnia iura et ipsorum privilegia, que dudum circa coronacionem nostram et aliis postmodum momentis et temporibus ipsis concessimus vel que eis alii reges et principes veri heredes regni Polonie predecessores nostri ab antiquis temporibus concesserunt, patrocinio presentis nostri privilegii ratificamus approbamus, renovamus et confirmamus, sub infra scriptorum moderamine articulorum, quorum regulacione, si que obscura tenor predictorum privilegiorum comprehendit, sensum recipient clariorem et ambigua omni dubietate carebunt, per que intellectus confundi et nasci errores consueverunt.

§ 1. Primo quidem: quod universas edes sacras seu ecclesias in omnibus earum iuribus emunitatibus et libertatibus ac metis et distinccionibus antiquis, quibus

temporibus divorum predecessorum nostrorum Polonie regum et ducum fruebantur, volumus omnimode conservare.

§ 2. Dignitates autem ecclesiasticas et seculares regni Polonie equo modo circa iura et consuetudines ac libertates ipsorum [sic], que et quas temporibus serenissimorum principum dominorum Kazimiri Lodovici et aliorum regum et ducum heredum regni Polonie obtinebant, dimittimus persistere et permanere.

§ 3. Quas quidem dignitates, cum eas vaccare contigerit, nulli extraneo terrigene nisi nobili benemerito et in fama laudabiliter conservato illius terre, in qua dignitas huiusmodi vel honor vaccaverit, terre videlicet Cracoviensis terrigene Cracoviensi, Sandomiriensis terrigene Sandomiriensi et in Maiori Polonia terrigenis Polonie Maioris, et sic de singulis terris regni Polonie dabimus vel quomodolibet conferemus.

§ 4. Super quibus eciam dignitatibus ecclesiasticis et secularibus litteras expectativas nulli persone dabimus in futurum.

Et quod predictas dignitates, tam ecclesiasticas quam seculares, non debemus minuere nec eciam suffocare et possessiones census aut sollaria ad eas pertinenda absque iuris debito examine non auffene.

§ 5. Item, quia per tenutarios castrorum et fortaliciorum aliene gentis et extranee nacionis regnum in se et in suis partibus crebrius periclitari contingit: pro eo et ex eo nulli ducum et de ducali genere descendenti seu extraneo alienigene cuipiam aliquod castrum fortalicium aut civitatem ad regendum pro tempore vel in ewm dabimus, assignabimus aut quomodolibet conferemus, nec eciam aliquem talium in capitaneum aut tenutarium terre alicuius aut terrarum regni nostri predicti preficere volumus nec eciam surrogare.

§ 6. Item promittimus insuper et spondemus, quod dum ad requisidonem nostram nobiles nostri regni extra metas eiusdem regni ad repellendam hostium seviciam transferre contigerit, ipsis satisfaccionem condignam pro captivitate ceterisque dampnis notabilibus faciemus.

Metas vero seu granicies sepe dicti regni Polonie memorati nobiles ab insultu et incursu emulorum et hostium propriis dampnis et sumptibus tueri debent et omnimode teneantur.

In casu vero, quo aliquis emulus regni nostri quocumque modo regnum ipsum intraverit et cum eodem conflictum intra metas eiusdem regni terrigenas nostros facere contigerit: eisdem terrigenis pro captivitate dumtaxat; si vero extra metas id ipsum fieri contigerit, tunc et pro dampnis, si que quod absit incurrerint, et pro captivitate satisfaccionem condignam impendere [sic].

§ 7. Captivos autem quoslibet, quos extra metas et intra regni predicti per nostros terrigenas capi contigerit, pro depactacione per eosdem captivos nobis facienda retinere volumus penitus et habere.

§ 8. Item promittimus, quod si tempore se offerente et necessitate urgente in spem alicuius expedicionis future contra hostium et emulorum insultus et hostilitates terrigenis nostris pecunias, videlicet quinque marcas super hastam quamlibet, dare vel distribuere nos contingat; casu vero seu successu temporis offerente dum

infra spacium duorum annorum post distribucionem pecuniarum, sic ut premittitur factam, ad expedicionem non processerimus: extunc idem terrigene ab eisdem pecuniis et serviciis racione predictarum pecuniarum faciendis erunt soluti penitus et exempti.

Si autem infra decursum eorundem duorum annorum ad expedidonem cum eisdem terrigenis nostris transitum fecerimus et extra metas regni cum expedicione processerimus: extunc predicti terrigene ab eisdem pecuniis et serviciis pretextu earundem similiter sint soluti.

§ 9. Item promittimus pro inclitis filiis nostris predictis, quod postquam dante domino unus illorum in regem electus sceptra regni Polonie amplectetur, monetam ex quocumque genere metalli absque consensu et consilio speciali prelatorum et baronum in regno Polonie cudere non permittet, quemadmodum nos sine ipsorum consensu et consilio huiusmodi monetam cudere noluimus nec cussimus.

§ 10. Absolvimus insuper et perpetuo liberamus omnes et singulos omnium nostrorum terrigenarum kmethones ab omnibus solucionibus, contribucionibus et exaccionibus, vecturis, laboribus, equitaturis *podwodis* dictis, angariis, gravaminibus, frumentorum dacionibus dictis *sepp* wlgariter, preterquam duos grossos monete usualis Polonicalis et in regno Polonie communiter decurrentis.

Quos quidem duos grossos quilibet kmetho predictorum terrigenarum de quolibet laneo possesso, eciam si illum plures persone possideant – scoltetis eorum et servitoribus, quos ab huiusmodi solucione duorum grossorum esse volumus liberos et exemptos, necnon et molendinatoribus thabernatoribus et ortulanis, non habentibus nec colentibus agros, hoc est mansos seu laneos negros vel medios, dumtaxat exceptis atque demptis – singulis annis in futurum in festo sancti Michaelis archangeli usque ad diem sancti Nicolai solvere sit astrictus.

Si autem predictorum molendinatorum sive thabernatorum aut ortulanorum aliquis integrum laneum agrorum coluerit, tunc ad solucionem duorum grossorum, si vero medium laneum, ad solvendum unum grossum similiter monete predicte nobis sint astricti. Ad quos quidem duos grossos monete prescripte alias serenissimo principi domino Lodovico regi Hungarie et Polonie solvere libere se submiserunt.

§ 11. Quod si infra prefixum terminum nobis aliqua villa pecuniam huiusmodi solvere neglexerit: extunc exactor noster, quem pro tollenda eadem exaccione duxerimus deputandum, in eadem villa unum bovem racione non solucionis absque spe restitucionis habebit recipiendi omnimodam facultatem. Si vero infra quatuordecim dies post eiusdem bovis recepcionem eadem villa et quevis alia dictam pecuniam non solverit, extunc exactor noster duos boves consimili modo sine spe restitucionis redpiat atque tollat.

Memoratus eciam exactor pecuniarum predictarum pretextu note quod dicitur nichil exigat neque tollat et nichilominus litteris suis kmethones quittet de solutis.

§ 12. De civitatibus autem antiquis et nowis, tempore regiminis nostri lacatis, sic statuimus, quod ille civis seu opidanus, qui civitatem cum uxore filiis et familia inhabitat et agrum solus vel per suum ortulanum aut agricolam colit, non teneatur

ad predictam *poradlne* pensionem; sed si ante opidum vel civitatem resideret, solvat prefatam *poradlne* pensionem, ac si in villa resideret, non obstante, quod ad ius et iurisdiccionem eiusdem opidi seu civitatis pertinere vel cum eis onera sufferre perhibeatur.

§ 13. Item spondemus, quod in nulla terra totus regni nostri Polonie iustidarium constituere volumus vel quomodolibet surrogare.

§ 14. Preterea promittimus singulos articulos et clausulas in privilegiis, nullo vido falsitatis depravatis, serenissimorum principum dominorum Kazimiri et Lodovici ac omnium aliorum regum et ducum, ex vera successione heredum antiquorum regni Polonie, ecclesiis terrigenis et civitatibus concessis, nostrorum predecessorum, contentas, presertim comodum et profectum nostrum regnique Polonie sepefati et ipsius incolarum concernentes, firmiter et inviolabiliter perpetuis temporibus observare et tenere.

§ 15. Item pollicemur, quod nullas staciones seu procuradones vel descensus in civitatibus villis et hereditatibus curiis ac prediis ecclesiarum nobilium et terrigenarum nostrorum fademus.

Si vero casualiter, oportunitate et necessitate nos cogente, stacionem in bonis civitatibus castris aut curiis ecclesiarum vel nobilium nos facere contigerit: extunc nil vi vel potenda recipere faciemus vel quomodolibet facere recipi permittemus; ymmo queque necessaria nostris pecuniis propriis volumus comparare.

§ 16. Ceterum promittimus et spondemus, quod nullum terrigenam possessionatum pro aliquo excessu seu culpa capiemus seu capi mandabimus nec aliquam vindictam in ipso faciemus, nisi iudicio racionabiliter fuerit convictus et ad manus nostras vel nostrorum capitaneorum, per iudices eiusdem terre, in qua idem terrigena residet, presentatus. Illo tamen homine, qui in furto vel in publico maleficio, utpote: incendio, homicidio voluntario, raptu virginum et mulierum, villarum depopulacionibus et spoliis, deprehenderetur; similiter illis, qui de se nollent debitam facere caucionem vel dare iuxta quantitatem excessus vel delicti, dumptaxat exceptis.

Nulli autem bona seu possessiones recipiemus, nisi fuerit iudicialiter per iudices competentes vel barones nostros nobis condempnatus.

§ 17. Item promittimus, quod omnibus terrigenis cum bonis et hereditatibus nostris granicies postulantibus ac petentibus non denegabimus.

(§ 18 I) Item pollicemur, quod omnes terras nostras regni Polonie, eciam terram Russie includendo – salvis tamen contribucionibus avene, de quibus nobis ad tempora vite nostre sola Russia respondebit – ad unum ius et unam legem, comunem omnibus terris, reducemus reducimusque adunamus et unimus, tenore presencium mediante.

§ 18. II. Item pollicemur, quod omnes terras nostras regni Polonie, eciam terras Russye et Podolie includendo – salvis tamen avene contribucionibus, de quibus nobis ad tempora vite nostre ipsa Russya et Podolia respondebit – ad unum ius et unam legem, comunem omnibus terris, reducemus reducimusque adunamus et unimus, tenore presencium mediante.

§ 19. Item attendentes, quod dicti nostri regnicole et inhabitatores regni nostri in favorem nostre maiestatis privilegiis ipsis per nos et nostros predecessorcs concessis quandoque derogarunt: eadem ipsorum privilegia nostra et predecessorum nostrorum, regum et ducum et heredum legitimorum et verorum regni Polonie predicti, ad statum priorem reducimus reintegramus, restauramus ac presentis scripti patrocinio confirmamus, ratificamus et declaramus ipsas [sic] robur obtinere perpetue firmitatis.

§ 20. Item, si qui terrigene aut quivis alii incole regni Polonie predicti pendente lite in iudiciis pro quibuscumque causis concordare voluerint, a penis nostris ac iudicum et subiudicum, palatinorum et castellanorum, eosdem liberos facimus et solutos.

§ 21. Item promittimus, quod nulli penas super nobilibus, ad quas nobis iudicialiter fuerint condempnati, exigendas donabimus, sed eas per nos aut nostros capitaneos vel officiales exigemus et exactas iuxta beneplacitum nostrum convertemus.

§ 22. Item omnes incole terrarum Cuyaviensis et Dobrinensis de avena solita, quam nobis solvere consueverunt, ad decem annos dumptaxat nobis respondere sint astricti, quibus revolutis ab huiusmodi avena liberi sint et exempti.

§ 23. Item notarii tenestres ad officium notariatus promoti semper soli iudiciis et non per aliquos surrogandos vel subscribas resideant, ubi comode potuerint, alias liceret eis habere substitutos, quos baronibus iudicibus terrarum, in quibus officia huiusmodi possident, substituendos presentare teneantur; et quod tales sint bone fame et a dictis baronibus et iudicibus approbati. Alias nobis continuo hec ipsorum officia aliis habilioribus et magis assiduis conferenda sint affecta. Nulla autem levis causa nisi ardua absenciam notariorum poterit excusare.

Harum quibus sigillum nostre maiestatis appensum est testimonio litterarum. Actum in Jedlna sabbato ante dominicam Invocavit anno Domini millesimo quadringentesimo tricesimo. Presentibus reverendis in Christo patribus magnificis et nobilibus: Alberto sancte Gneznensis ecclesie archiepiscopo et primate; Sbigneo Cracoviensi, Johanne Wladislaviensi, Stanislao Poznaniensi, Johanne Chelmensi, episcopis; Johanne de Tarnow Cracoviensi, Sandivogio de Ostrorog Poznaniensi, Nicolao de Michalow Sandomiriensi et capitaneo Cracoviensi, Andrea de Domaborzs Calisiensi, Stiborio de Borzyslawicze Lanciciensi, Jarando de Brudzewo Wladislaviensi, palatinis; Petro de Bnyno Gneznensi, Michaele de Czysow Sandomiriensi, Petro de Zirniki Calisiensi, Floriano de Corithnicza Wisliciensi, Martino de Calinowa Siradiensi, Dobkone de Oleschnicza Woyniczensi, Sbigneo de Altomonte Rospergensi, Johanne de Cretkow Dobrinensi, Johanne de Lichin Sremensi, Dobrogostio de Colen Camenensi, Johanne de Laseynicze Santhoczensi, castellanis; Petro Schaffranecz Cracoviensi, Petro Cordbog Poznaniensi, Andrea Czolek Sandomiriensi, Dobrogostio de Schamotuli Calisiensi, Alberto Malsky Lanciciensi, Woyslao de Crostawo Brestensi, Andrea Donyn Wladislaviensi, Andrea de Lubin Dobrinensi, subcamerariis; Paulo de Bogumilovicze Cracoviensi, Johanne de Sprowa Sandomiriensi, Andrea de Ludbrancz Brestensi, Mathia de Suchodol Lublinensi, iudicibus; Martino de Rogy Cracoviensi, Nicolao de Pleschow Calisiensi, Jacobo de Strzigi Dobrinensi, wexiliferis; et aliis militibus nobilibus

in generali parlamento seu convencione constitutis. Datum per manus predicti reverendi patris domini Johannis episcopi Wladislaviensis, regni Polonie cancellarii, et venerabilis Wladislai de Opporow decretorum doctoris, prepositi Lanciciensis et sancti Floriani ante Cracoviam, eiusdem regni Vicecancellarii.

English translation

The Jedlna Privilege of 4 March 1430

Władysław, by the Grace of God, King of Wielkopolska and the lands of Kraków, Sandomierz, Sieradz, Łęczyca, also the Arch-Duke of Lithuania, Lord and Master of Pomorze and Ruś and so on and so forth. By this document, we make known to all to whom this information is of use that we have conscientiously considered the staidness of the impeccable fidelity and unvanquished valour, which are the qualities with which the inhabitants of our Polish kingdom have recommended themselves to us in times of the wars and battles which, under the eye of God, the guardian of our victories, we have often undertaken with successful outcome in our defence and that of our kingdom, withstanding the attacks of enemies and faithfully fulfilling our wishes, among other dangers risking the loss of their lives and damage to their property, being with filial submissiveness everywhere and always obedient. Mindful of this and bearing in mind the other virtues, the worthy and magnificent gifts of our benevolence, wishing also to show gratitude with worthy gifts of our royal munificence for their kindliness and feelings of fidelity, which with such great sincerity they have bestowed on our sons, the most pre-eminent princes, Władysław and Kazimierz, since at our summons the one of them who will be deemed by them to be the most apt to wield royal authority after the course of my life has been run, submissively and with humility they have agreed to accept as their king, lord and master of this Polish kingdom and the lands of Lithuania and Ruś, which the pre-eminent duke, Lord Aleksander, otherwise Witold, the Grand Duke of Lithuania, dearest our brother, currently possesses and should so possess until the end of his life and which, with his passing, will come to us and to my aforementioned sons and the Crown by way of the rightful and hereditary bequest – as is guaranteed by this open document to this end prepared – and when the appropriate time does come, they have promised to bestow on him the royal crown and sceptre as the rightful and real successor; all their rights and privileges, which earlier at our coronation and later in different circumstances and times were granted to them, or which were granted to them of old by other kings and dukes, our

predecessors and rightful heirs of the kingdom of Poland, by virtue of this privilege we confirm, acknowledge, renew and guarantee as appropriate in the articles below, thanks to which arrangement certain incomprehensible details included in the said privileges will acquire a clearer meaning and will be deprived of all uncertainty and ambiguity of expression, as a result of which there usually arises a false understanding of matters and mistakes ensue.

§ 1. Firstly, we want all the houses of God, namely churches, to retain completely all of their rights, immunities and freedoms, and also the boundaries and distinctions of which they took advantage in the times of my predecessors, the Polish kings and princes of blessed memory.

§ 2. Next, we allow the continued existence of church and lay offices on the strength of the same rights, customs and privileges which they possessed at the times of the most illustrious rulers, Kazimierz and Ludwik and other kings and princes, lords of the Polish kingdom.

§ 3. If it should occur that any of these offices should be free, we will not entrust it or in any other way offer it to any person from foreign lands but only to a deserving nobleman enjoying a good reputation in those lands in which such a high office or other office should be free, so in the lands of Kraków to a person born in Kraków lands, in the lands of Sandomierz to a person born in Sandomierz lands and in Wielkopolska to a person born in Wielkopolska and in like manner in other lands of the Polish kingdom.

§ 4. In the matter of these church and lay offices, we will not, even in the future, send letters to any person with a promise of the post. Also, we should not limit or oppress the aforementioned offices, either church or lay, or without the appropriate construction of a legal basis take away the properties, wealth or rents which belong to them.

§ 5. Further, since it quite often occurs that the leasing of castles and fortresses to people from foreign families from a foreign nation endangers the kingdom and its parts, we hereby determine that we will not give control of any castle, fortress or town into the hands of any prince or anyone from a princely family or any foreigner, whether for a certain period or forever, nor will we make it over or entrust it in any way; we will not appoint any of these people as the staroste or leaseholder of any such lands or regions of the aforementioned kingdom of ours or choose him to take the place of someone else.

§ 6. Furthermore, we pledge and guarantee that if, on our orders, the nobility of our kingdom have to go beyond the borders of our kingdom to repel the attacks of our enemies, we will give the appropriate remuneration for the vassalage and for other significant losses.

However, the nobility should, and are absolutely bound to, defend the borderlands and the borders of the often mentioned Polish kingdom from

the attacks and raids of our rivals and enemies even to the detriment of their own property and at their own cost.

If an enemy of our kingdom should in any way encroach on our kingdom and if it should fall on our knights to undertake a battle against them within the borders of our kingdom, then they will receive a reward only for the vassalage; but should they be obliged to do the same beyond our borders, then we promise to give the appropriate compensation for the losses, if such – God forbid – should occur and for the vassalage.

§ 7. All the prisoners captured by our knights within our borders or within the area of the aforementioned kingdom we will keep exclusively in our own hands so as to be able to estimate the value of such prisoners.

§ 8. We further pledge that should the appropriate situation arise and should there be an urgent need for the organisation of an attack in the future against the hostile raids of our enemies and rivals, it will be our duty to give or divide the money for our knights, namely five marks for each spear. If it should occur with the passage of time that in the course of two years from the time of making the aforementioned payment they do not move off on the expedition, then those knights will be completely freed from the obligation of repaying the money and from service on account of having received the aforementioned money.

If, however, within these two years we move off on the expedition and cross with this expedition the borders of our kingdom, then the aforementioned knights will similarly be freed from the obligation of repaying the money and from service on account of having received these sums.

§ 9. We further pledge in the name of the aforementioned famous sons of ours that, as one of them with God's mercy will be chosen as king and will take over the sceptre in the Polish kingdom, he will not mint money in the Polish kingdom from any precious metal whatsoever without the agreement and separate permission of the prelates and the barons, just as we did not wish to mint such coins without their agreement and permission, and we did not mint them.

§ 10. Apart from this, we release for ever all the peasants together and each separately on the properties of all of our landowners from all payments, rents and taxes, compulsory labour, the provision of horses for postal services, service, hard work, paying rent in grain, with the exception of two grosze of the ordinary Polish money being in common circulation in the Polish kingdom.

These two grosze each peasant of the aforementioned landowners will be obliged in the future to pay each year for each field possessed even if it is possessed by more persons and that from the feast of St. Michael until the feast of St Nicholas, with the exception of all village leaders and their assistants, whom we propose to free completely from this payment of two

grosze, also millers, innkeepers and gardeners, who do not have and do not cultivate fields, that is either an area of 30 morgens or whole fields of 48 morgens or half-fields.

If, however, any of the aforementioned millers or innkeepers or gardeners were to cultivate a whole field, then they would be similarly obliged to pay us two grosze, if it were a half-field, then they would pay one grosz of the aforementioned money. To pay this sum of two grosze, they had obliged themselves voluntarily at another time before the most distinguished ruler, Lord Ludwik, King of Hungary and Poland.

§ 11. If, however, some village were to neglect the payment of this sum in the designated time, then our collector, whom we will appoint to collect the due sum, will have complete authorisation to confiscate from this village one ox for failure to pay the sum and this with no hope of restitution. If, however, within fourteen days from the confiscation of this ox, this village or any other does not pay the said money, then our collector should in a similar way, without hope of restitution, confiscate and remove two oxen.

The aforementioned collector of the said money may not demand anything and may not take an official document but despite this should acknowledge in writing that the peasants have paid the due sum.

§ 12. As concerns the old towns and the new ones that have been founded during our reign, we issue the order that if any citizen or townsman lives in the town with his wife, children and servants and either himself or through his gardener or farmer cultivates fields, he shall not be obliged to pay the aforementioned sum or "hoeing tax" but if he should live outside the town or city, then he will pay the said "hoeing tax" as if he lived in the country, even though he states that he comes under the authority and jurisdiction of the town or city, or incurs with them costs.

§ 13. We further pledge that in no region of the whole of our Polish kingdom do we intend to establish royal judges or in any way whatsoever choose their deputies.

§ 14. Apart from this, we pledge that all the articles and clauses not tainted by the error of falsity and included in the privileges granted to churches, landowners and towns by our predecessors, the most distinguished rulers, Lords Kazimierz and Ludwik, and all other kings and princes, former rightful masters of the Polish kingdom, particularly those clauses which have regard for our benefit and profit and the often mentioned Polish kingdom and its inhabitants, will be permanently and inviolably upheld by us for all times and adhered to.

§ 15. We further pledge that, in the towns, villages and domains, manors and farmsteads of churches, the nobility and our landowners, we will not cause any discomfort as a result of our stopovers, raids or oblige anyone to make preparations.

If, however, by chance on account of benefit or necessity it falls on us to make a stopover in the estates, towns, castles or manors of the church or the nobility, then we will ensure that nothing is taken by force or by violence and we will not allow anything to be taken in any way other than by buying with our own money everything that we may need.

§ 16. Next we pledge and guarantee that we will not imprison for misdemeanours or faults any landowner possessing land property and we will not issue an arrest order against him and we will not punish him at all if the court in a judicious way does not prove his guilt and if the judges of the region in which the landowner lives do not deliver him into our hands or those of our starostes. An exception to this, however, will be a man who is caught stealing or committing any other public crime, such as for example arson, murder with malice aforethought, violation of maids and maidens, ravaging and looting villages and similarly those who do not want to pay the necessary bail as appropriate to the greatness of the misdemeanour or fault.

We will not confiscate the goods and possessions of anyone unless duly authorised judges present him to us as a man condemned by the court

§ 17. We further pledge that we will not neglect to offer compensation to any landowner seeking redress and asking for a separation of his and our goods and legacies.

§ 18. We also promise that all of our lands in the Polish kingdom including the lands of Ruś, with the exception of the oats duty, which to the end of our life will only be paid by Ruś, will be made equal under one law and codex common to all lands and with this document we make them all equal by joining and uniting them.

§ 19. Further bearing in mind that our aforementioned landowners and inhabitants of our kingdom out of their kind disposition towards our majesty often themselves limited the privileges granted to them by ourselves and by our predecessors, we hereby restore to those privileges received from us, our predecessors, kings and princes, the rightful and real masters of the aforementioned Polish kingdom, their original state and we renew, repair, guarantee and confirm them with the force of this document while declaring that they shall forever retain their permanence.

§ 20. Furthermore, should any landowners or other inhabitants of the aforementioned Polish kingdom during conflicts in court wish to reach agreement in any case, we will free them from any fines due to us or to judges and their deputies, voivodes and castellans.

§ 21. We further pledge that we will not allow anyone to collect fines from the nobility, which might have been imposed on them by a court, but we shall collect them personally or through our starostes or officials and the fines collected will be used in accordance with our wishes.

§ 22. Further, all the inhabitants of the lands of Kujawy and Dobrzyn who used to give us duties in oats will be obliged to pay them to us only for ten years, after the passing of which time they will be freed completely from these oats duties.

§ 23. Further, landed writers, appointed to the office of scribes, ought always to take their place in court in person and not make use of deputies or assistant scribes, wherever this is possible; otherwise they would be able to have deputies, who should, however, be presented as deputies to the barons and judges of those lands in which they hold office; they must also enjoy a good reputation and have the approval of the barons and judges. If this does not take place, we will have to entrust these duties to others, more suitable and diligent. Apart from important reasons, no trivial reason will be able to excuse the absence of these scribes.

This document is authorised by the attachment of the seal of our majesty. This was given in Jedlno on the Saturday before the Sunday known as "Invocabit" [namely 4 March] in the year of Our Lord 1430 in the presence of…

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VI
CONSTITUTION OF THE SEJM IN RADOM IN 1505

De litteris super bona regalia Ammissis innouandis.

q Ut lras ad bona regalia ammissas diceret, ac de ammissis infra annum, a perditione lrax cōputandum, eidēs ac legittimuz testimoniuz seu ptestationē nō fecerit, quā ptestationē cozā capitaneo. ⁊ palatino sue terre faciat. Ille anno post ammissas lras decurso, nō obtinebit renouationē. neqz pbationis viam habiturus erit perpetuo. Probationē vo ammissax lrax, faciet cozā regia maiestate.

ℭ Lrās sup bona regalia āmittātes corā palatino. Et capitaneo de amissis ptestabūt infra annū q decurso nisi ptestabitur carebit innouatione.

ℭ Finit statuta sua Alexander Rex. que Pijetrkouie anno ⁊ die supscriptis decreuerat. presentibus prelatis spiritualibus ⁊ secularibus in titulo eorundem statutoruz suprascriptis.

ℭ Continuat processum suum Alexander Rex in communi statutorū priuilegio Sic ergo inscribit hic sua: Radomieñ cōuentionis: decreta que sic incipiunt.

Radomiensem autez conuentionē

r Nos Alexander rex. Anno domini Millesimoquingentesimoquinto habuimus. ⁊ celebrauimus que coipso. Anno p dominica Conductus Pasce per nos indicta. ꝓpter consiliarios Lithuanie ac Prussie terrarum expectatos in testimonio pñtiuz scriptos Aliosqz magne importantie euentus. vsqz ad diez sabbati post octauas sacratissimi Corporis christi continuata fuit. In eaqz Reuerendissimis ⁊ reuerendis in christo patribus. ac Magnificis venerabilibus Generosis ⁊ Nobilibus prelatis ⁊ Baronibus consiliarijs nostris. ac terraruz nuncijs In fine priuilegij istius communis scriptis moderatib⁹ ⁊ ꝓsentientib⁹ nras scripsim⁹ ꝓstitutiões infrascriptas

1505

***Constitution of the Sejm in Radom in 1505* (*nihil novi*)**
Central Archives of Historical Records in Warsaw, Library SD III 50

CONSTITUTION OF THE SEJM IN RADOM IN 1505

The death of King Casimir IV the Jagiellonian in 1492 resulted in breaking up of the personal union between Poland and Lithuania, as the rule over the Crown was taken over by John I Olbracht while his brother, Alexander, became the Grand Duke of Lithuania. The state left by the deceased King Casimir covered vast areas, stretching from the coast of the Baltic Sea as far as Moldavia. Political tension inspired by the attempts of Ivan the Terrible to unite the land of Ruthenia, as well as by the unsuccessful Moldavian campaign (1497) led to the conclusion of the so-called Union of Vilnius in 1499, where the Crown and the Grand Duchy of Lithuania pledged to provide each other with military assistance and jointly elect their future ruler. In 1501, King John Olbracht died and his brother Alexander became the new ruler. On 25 October 1501, in consequence of internal tensions, the new king issued the Privilege of Mielnik, which shifted the main burden of power in the Polish and Lithuanian state to the Senate. Such decisions incited fierce opposition from the gentry, which led to the Sejm in Radom, convened in 1505. The state reforms proposed then were preceded by the so-called executionist movement of the gentry, demanding that law and order be maintained, all previously granted privileges confirmed, the principles of personal and property immunity observed, as well as the principles of parliamentarism and of elective throne.

At the beginning of 1505, the General Sejm was convened in Radom, preceded by provincial sejmiks (minor assemblies) at the beginning of February of that year, as well as by extending, on 25 February in Brześć Litewski, an invitation, drawn up by chancellor Jan Łaski, to the Lithuanians. The sejmiks granted unlimited powers (*plena et non limitata potestas*) to the deputies, which largely facilitated the proceedings. The Sejm was in session from 30 March to 31 May (or to the beginning of June) 1505. The centrally situated venue (Radom) was chosen to facilitate the arrival of deputies from the Crown and from Lithuania. The intention of the king and his supporters was that the Sejm, in the first place, would deal with the issues related to Polish-Lithuanian Union and its further functioning.

The key tenet of the privilege of Radom consisted in the statement that "from now on nothing new (*nihil novi*) may be decided by us and our successors without a common consensus of senators and land deputies, that would be detrimental or burdensome to the Commonwealth and harmful to anyone or that would alter the general law and public freedom". In practice,

it implied co-deciding on state affairs by the king, senators (the former King's Council) and the Chamber of Deputies (elected by the gentry). Moreover, the Sejm re-defined the nature of relationship between the Crown and Lithuania, stating that from then on these states "unite and combine into a single indivisible and uniform body to form one nation, one people, one fraternal relationship, and also joint councils".

The Privilege of Radom and the *Nihil Novi* Constitution can be regarded as the foundation for the political system of the Polish and Lithuanian state, continued during the Sejm of Lublin (1569) and following the adoption of the Warsaw Confederation and the Henrician Articles (1573).

One of the crucial decisions taken during that Sejm session was the consent given by King Alexander the Jagiellonian to publish that Sejm decisions in print, in order to advance knowledge of the law and of Sejm constitutions among Polish and Lithuanian gentry. That collection of laws, compiled by Chancellor Jan Łaski, was published as *Commune incliti Poloniae Regni privilegium*, better known as the so-called Łaski's Statute (published by Jan Haller's publishing house in Kraków in 1506). The Statute contained a collection of all legal acts passed since the times of King Casimir the Great, and largely contributed to spreading of knowledge of the law throughout the Commonwealth. The volume includes a drawing presenting the general Sejm with the coats of arms of the Crown, the Grand Duchy of Lithuania, Volhynia, Royal Prussia, the Grand Master of the Teutonic Knights, and the Duchy of Słupsk, placed above the king's throne.

In practice, the decisions taken by the Sejm of Radom and, in particular, the *nihil novi* principle led to strengthening of the position of bicameral parliament in the political system of the Polish and Lithuanian Commonwealth. From then on, the parliament and, in particular, its lower chamber (the Chamber of Deputies) obtained the right to co-decide and co-enact the law in the country. The Sejm (composed of the Senate and the Chamber of Deputies), constituted for the first time in 1493, thus became, next to the monarch, one of the pillars of state's political system. The gentry assumed an obligation to co-decide on state affairs, which led a sense of "gentry citizenship" being developed. The functioning of Sejm depended upon the efficient co-operation (*consensus*) of the King, the King's Council (Senate) and land-owning deputies (*nuntii terrarum*). Prior to the conclusion of the Union of Lublin in 1569, the Senate was composed of archbishops (2) and bishops (7) of the Catholic church, voivodes (17), major (17) and minor castellans (49), and ministers (5), whereas the Chamber of Deputies comprised approximately 90 elected representatives of the gentry.

The legal significance of that Constitution consisted in total rejection of the provisions of Mielnik of 1501, and in transformation of Polish and

Lithuanian Commonwealth from an oligarchic monarchy into a modern parliamentary monarchy. At the beginning of the 16th century, no tighter consolidation of Jagiellonian monarchy was possible, primarily due to the opposition on the part of Lithuanian and Ruthenian magnates. The sessions of Radom Sejm were attended only by those members of the Grand Duke's Council who supported the idea of establishing closer relationship between Poland and Lithuania. The parliamentary democracy system (no longer a personal union) began to serve as a pillar of Polish and Lithuanian Commonwealth, while the publication of the Statute by Chancellor Jan Łaski was intended to foster establishment of law, order and justice of the new Commonwealth.

Original text

Based on: S. Grodziski, I. Dwornicka, W. Uruszczak (eds.), *Volumina Constitutionum*, vol. 1: 1493-1526, Warsaw 1996, p. 138.

Alexandri Regis Decreta in Cimitiis Radomiensibus Anno 1505

Radomiensem autem conventionem, Nos Alexander Rex, anno 1505 habuimus et celebravimus quae eo ipso anno pro Dominica Conductus Paschae [30 III] per nos indicta, propter consiliarios Lithvaniae ac Prussiae terrarum expectatos in testimonio praesentium scriptos, aliosque magnae importantiae eventus, usque ad diem sabbathi post Octavam Sacratissimi Corporis Christi [31 V] continuata fuit, in eaque reverendissimis et reverendis in Christo patnbus ac magnifi cis, venerabilibus, generosis et nobilibus, praelatis et baronibus consiliariis nostris ac terrarum nuntiis in fine privilegii istius communis scriptis moderantibus et consentientibus, nostras scripsimus constitutiones infra scriptas.

[1]. De non faciendis constitutionibus sine consensu consiliariorum et nuntiorum terrestrium.

Quoniam iura communia et constitutiones publicae non unum, sed communem populum afficiunt, itaque in hac Radomiensi conventione cum universis Regni nostri praelatis, consiliariis, baronibus et nuntiis terrarum, aequum et rationabile censuimus ac etiam statuimus, ut deinceps futuris temporibus perpetuis, nihil novi constitui debeat per nos et successores nostros sine communi consiliariorum et nuntiorum terrestrium consensu, quod fieret in praeiudicium gravamenque Reipublicae, et damnum atque incommodum cuiuslibet privatum, ad innovationemque iuris communis et publicae libertatis.

[2] De constitutionibus novis per proclamationes publicandis

Ne per ignoratam constitutionem novam, quispiam colludi videatur, dum quispiam fieret contra constitutionem, quae ad cognitionem non esset deducta communem, idcirco in constitutionibus nostris plane procedere cupientes decernimus, quod nullus obligatus erit ad novam constitutionem servandam, nisi ipsa primum per proclamationem in Regno publicetur.

English translation

Text based on a brochure published by the Constitutional Tribunal of the Republic of Poland. "500 lat tradycji Państwa Prawa w Rzeczypospolitej".

Constitution of the Sejm in Radom in 1505

[1] On not passing laws without the consensus of senators and land deputies

Since general laws and public acts apply not to a single person but to the whole nation, therefore at this general Sejm in Radom, together with all prelates, councils and land deputies of our Kingdom, we have found it right and justifi ed, as well as decided that from now on nothing new *(nihil novi)* may be decided by us and our successors, without a common consensus of senators and land deputies, that would be detrimental or burdensome to the Commonwealth and harmful to anyone or that would alter the general law and public freedom.

[2] On new laws introduced upon offi cial proclamation *(per proclamationem)*

So as upon the ignorance of the new law no persons considered themselves deceived, should there appear any action against the new law prior to proclaiming it to the general public, we decided, wishing all our decisions be passed in an unquestionable manner, for no person to be obliged to observe the new law before it is officially proclaimed.

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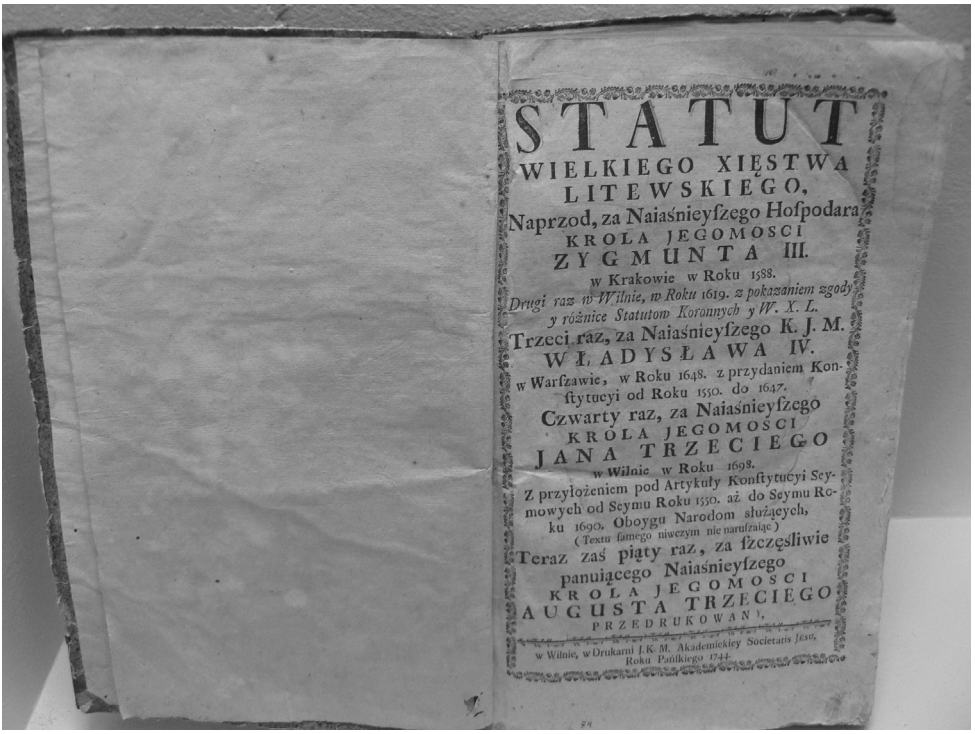
VII
STATUTES OF LITHUANIA OF 1529, 1566 AND 1588



STATUT
WIELKIEGO XIĘSTWA
LITEWSKIEGO,
Naprzod, za Naiaśnieyszego Hofpodara
KROLA JEGOMOSCI
ZYGMUNTA III.
w Krakowie w Roku 1588.
Drugi raz w Wilnie, w Roku 1619. z pokazaniem zgody
y różnice Statutow Koronnych y W. X. L.
Trzeci raz, za Naiaśnieyszego K. J. M.
WŁADYSŁAWA IV.
w Warszawie, w Roku 1648. z przydaniem Kon-
ftytucyi od Roku 1550. do 1647.
Czwarty raz, za Naiaśnieyszego
KROLA JEGOMOSCI
JANA TRZECIEGO
w Wilnie w Roku 1698.
Z przyłożeniem pod Artykuły Konftytucyi Sey-
mowych od Seymu Roku 1550. aż do Seymu Ro-
ku 1690. Oboygu Narodom służących,
(Textu samego niczym nie naruszając)
Teraz zaś piąty raz, za szczęśliwie
panuiącego Naiaśnieyszego
KROLA JEGOMOSCI
AUGUSTA TRZECIEGO
PRZEDRUKOWANY.
w Wilnie, w Drukarni J. K. M. Akademickiey Societatis Jesu,
Roku Pańskiego 1744.

Statutes of Lithuania of 1529, 1566 and 1588
Front Page of the 1744 Edition

STATUTES OF LITHUANIA OF 1529, 1566 AND 1588

After a union with Poland was formed (1385–1386), the Grand Duchy of Lithuania became a country composed of two cultural, religious, and linguistic spheres. The influence of the Catholic Church and Latin culture blended with the influence of the Orthodox Church and Russian culture. The gradual integration of the two countries which formed the Polish-Lithuanian Union, and the diversity of traditions and legal practices made it necessary to codify laws. For a number of reasons, the actions initiated with the so-called Łaski's Statute were successfully continued in the Grand Duchy of Lithuania in the 16th century. As a result, three statutes were prepared within half a century, which significantly preceded the accomplishments of lawmakers in the Crown. According to some historians, these were rather three versions of one statute. However, the thesis that they were three separate attempts to codify the law of the Grand Duchy of Lithuania and reflected the intensive and extensive changes in the country in the Renaissance seems more correct. In the period between the adoption of the First and the Third Statute (1529-1588), the Grand Duchy of Lithuania assimilated many achievements of Western civilization, which was accompanied by a simultaneous emancipation of Lithuanian and Ruthenian nobility from under the influence of princes, and by a deep change in the legal bases of the Polish-Lithuanian Union.

The first signs of the attempts to codify the law of the Grand Duchy of Lithuania date back to 1501, when Grand Duke Alexander issued a charter for the Volhynia region. He stated in it that it should remain in force until a new statute for the Duchy is prepared. After many attempts, the new statute was presented to the Sejm in 1522; after numerous amendments and supplements were introduced, it was adopted by the Vilnius Sejm and entered into force in 1529. The text of the Statute (referred to as the First Statute of Lithuania) was divided into 13 chapters, which covered 244 articles on public, private, penal, and procedural law. It was devised and adopted on the basis of common law and numerous charters granted to the nobility and boyars. The Statute was drafted by Olbrycht Gasztołd, Voivode of Vilnius and Chancellor, although the majority of work was performed by two Vilnius canons: Jerzy Taliat(owicz) from Eišiškės and Wacław Czyrka. The First Statute of Lithuania was not only a codification of Lithuanian common law, it was also based on the provisions of the *Ruskaya Pravda* and other codes (e.g. the Saxon and Magdeburg Law). It introduced, among others, the capital punishment for raping a woman, which was a reference to Western European legal tradition.

The need to supplement and improve the First Statute emerged already when it entered into force. Despite its partial improvement (in 1538), work continued on its new edition, which showed that the elites of the Grand Duchy of Lithuania were open to the ideas of the Renaissance. During the Vilnius Sejm in 1551, King Sigismund Augustus appointed a special commission, which comprised "five members of the Roman Catholic Church and another five of the Greek Orthodox Church." The most significant role in preparing the second Statute was played by two lawyers: Augustinus Rotundus and Petrus Roysius (Pedro Ruiz de Moroz). The latter arrived in Vilnius in 1551. He worked in the Court of the Grand Duke and reformed the church school in St. John's parish. It seems that Roysius, who also acted as advisor to Samogitian bishop Jan Domanowski (who died in 1563), exerted the greatest influence on the final wording of the text. Adopted in 1566, the Second Statute of Lithuania is composed of 14 chapters and covers 368 articles. It was prepared in Ruthenian and Latin. Compared to the First Statute, the Second Statute of Lithuania introduced a greater systematisation of the legal matter, which the previous version lacked. The first three chapters concerned the system of the Grand Duchy of Lithuania, Chapter IV – judicial matters, Chapters V-X – private law, and Chapters XI-XIV – penal law and proceedings. One of the most important reforms brought about by the Second Statute of Lithuania was the introduction of poviat sejmiks into the system of the Grand Duchy of Lithuania (the same took place in the Crown a year earlier) and a similar organisation of nobility judicature. The Statute was to prepare the society of the Grand Duchy for the new union which had been discussed for years, and was successful in doing so.

The Third Statute of Lithuania is directly related to the visible tendencies to retain the political subjectivity of the Grand Duchy of Lithuania after the Union of Lublin was concluded in 1569. The task of preparing the amended version of the previous Statute was entrusted to a special commission, composed of nine representatives of the nobility (one from each voivodeship), two Senators and a secretary (Augustinus Rotundus). The draft Statute was presented and discussed during sejmiks and general conventions (Vilnius convocations) in 1582, 1584, and 1587. The final shape of the Statute was influenced by Mikołaj Jurewicz Radziwiłł, Eustachy Wołłowicz, Krzysztof Radziwiłł, and Lew Sapieha (all of them were of different faiths; during the work on the Third Statute they held the offices of the Chancellor and Deputy Chancellor). The latter was the author of a dedication for King Sigismund III Vasa, printed in the edition of the Third Statute published by the Mamonicz printing house in Vilnius in 1588. The text of the Statute was presented during the election sejm held in 1587, and approved during the coronation sejm (28 January 1588); it entered into force on 6 January 1589. The original act was written in Ruthenian (Western Russian). The Statute was approved

by King Sigismund III Vasa in the charter issued on 28 January 1588, which explicitly stated that the act might not be contrary to the legal basis of the Union. The adoption of the Third Statute may also be linked to the political situation in Poland after the election of King Sigismund III Vasa and the war for the throne with his rival.

The provisions of the First and Second Statute were developed or supplemented by the Third Statute. Similar to the Second Statute, individual chapters were devoted to the following matters: Chapter I: On the person of His Royal Highness; Chapter II: On land defence; Chapter III: On freedoms of the nobility and on extending the Grand Duchy of Lithuania; Chapter IV: On judges and courts; Chapter V: On gratuity and dowry; Chapter VI: On care; Chapter VII: On bequests and sales; Chapter VIII: On last wills; Chapter IX: On chamberlains in poviats and on land laws, and on borders and hedges; Chapter X: On forest, hunting, wild beehive trees, lakes and hay meadows; Chapter XI: On violence and battles, and on punishment for murder of nobles; Chapter XII: On punishment for murder and on duties of simple people; Chapter XIII: On plunder and compensations; and Chapter XIV: On thieves of all estates.

The main objective of preparing and implementing the Third Statute was the idea of the rule of law and, above all, the defence of freedom and the rights of citizens. The Third Statute of Lithuania underscored the independence of the Grand Duchy of Lithuania; there is no single reference to the existing union with the Crown. Contrary to the provisions of the Union of Lublin, which allowed those born in the Crown to purchase land in Lithuania (and *vice versa*), the Statute upheld the ban in this respect, which had existed prior to 1569. It also obliged the King to grant offices in the Grand Duchy of Lithuania only to those born there.

As a guarantee for the system of democracy of the nobility, the Third Statute confirmed all of the provisions of the Warsaw Confederation of 1573, which sanctioned religious tolerance (*pax inter dissidentes in religione*). It must be borne in mind that a majority of then-Lithuanian Senators were Protestant, mainly Calvinist (16 out of the total of 22). The Third Statute, *inter alia*, limited the notion of enslavement to being captured at war, but it did not pertain to children born and living in Lithuanian and Ruthenian land (Chapter XII, Article 21).

The provisions of the Third Statute concerning the law of the Grand Duchy of Lithuania were an expression of its romanisation and its moving closer to European law. It established the organisation of central and local authorities, the army and the judiciary in the Duchy. Penal provisions retained estate differentiation of the perpetrator and the victim, but certain explicit changes were already visible. It introduced (with certain exceptions) the capital punishment for deliberate murder regardless of the estate of the

murderer and the victim; one of the articles was entitled *On thieves of all estates*. Lower social strata were included in the sphere covered by written law. One of the articles stipulated explicitly that "every putni boyar and townsman of an unprivileged town as well as a simple man... is to compose his last will." Also the principle saying that "judgment in dubious cases is to tend for release rather than punishment" was emphasised (Chapter XIII, Article 14). Also in the case of fines imposed on the poor and orphans, it was postulated that they be lifted rather than executed strictly. The Second Statute obliged the Grand Duke to try his subjects regardless of their estate but according to the law. The Third Statute extended the principle also to foreigners, thus stressing the principle of submission to law by all those staying within the country.

The First and the Second Statute of Lithuania served to retain political cohesion and unity of the legal system of Lithuanian and Ruthenian (Belarusian and Ukrainian) land. After the Union of Lublin was concluded in 1569, the Second Statute remained in force in voivodeships incorporated into the Crown, i.e. in the Volhynian, Kiev, and Bracław Voivodeships. After the Third Statute was implemented, the Second Statute was called the Volhynian Statue in the reduced Grand Duchy of Lithuania to differentiate it from the previous one. In the 17th century, it was replaced by the Third Statute after the latter was published in Polish, and after the incorporation of left-bank Ukraine to Russia in the 18th century it was used to codify law in the area.

The Third Statute of Lithuania was translated into Polish at the beginning of the 17th century and issued in print in 1614 (other editions: 1619, 1648, 1693, and 1786). In the second half of the 17th century and in the 18th century, thanks to the popularisation of the Statute in the Crown, it became an applied law, even despite the earlier accusations raised against the Third Statute by the nobility during sejms and sejmiks. Chancellor Andrzej Zamoyski made use of that fact and prepared a project of law codification ("Collection of Laws") in 1780, yet it was rejected by the Sejm. In the territories of the former Grand Duchy of Lithuania and Ukraine, the Third Statute remained in force until 25 June 1840, when for political reasons it was replaced by Russian law by the decision of Emperor Nicholas I. Many articles of the Third Statute, introduced in 1588, were ahead of the legal solutions adopted in many countries. The fact that it remained in force for almost 300 years was mainly due to its originality, precision and progressiveness as compared to many similar codifications in neighbouring countries (e.g. compared with the Russian Sudebnik or Western European codes). For many, the Third Statute of Lithuania remains a symbol of the enlightened historic achievements of the intellectual elite of the Grand Duchy of Lithuania.

Original text

Based on: Karl van Loewe (edition and translation into English), *The Statute of Lithuania. Lietuvos statutas. Statuta Lituaniae 1529*, Vilnius 2002, pp. 205-211.

Nos, Sigismundus, Dei gracia rex Polonie, magnus dux Lithuanie, Russie, Prussie, Samagithie Mazbuieque etc. dominus et heres, diutina et studiosa soliciti cura de saluberiori in dies statu Magniducatus nostri Lithuanie et vt eo conciniori iusticie resultet celebritate, quo euidenciore iurium fulciatur idemptitate, statuta seu iura scripta Magnoducatui ei nostro, videlicet prelatis, baronibus, militibus, nobilibus et toti communitati, terrarum ipsius Magniducatus Lithuanie incolis cuiuscunque status et condicionis ac eorum subditis, dandum et concedendum duximus dedimusque et concessimus, que in hunc sequuntur modum.

1. Princeps sub iuramento suo promittit iura omnia Magniducatus inuiolabiliter obseruare et confirmat eadem

In primis omnia eorum iura, priuilegia, tam ecclesiastica, ritus latini et greci, quam eciam secularia, a felicis olim recordacionis regibus et magnis ducibus Kazimiro et Alexandro, parente ac fratre predecessoribusque nostris carissimis, super quecunque bona aut libertates, sub quibuscunque literarum, latinarum vel ruthenarum tenoribus concessa emanataque iuste et legitime, perinde ac si omnia de verbo ad verbum hic inserta essent, firmiter tenere et obseruare volumus et verbo nostro regio, sub nostro corporali iuramento ad sancta dei ewangelia prestito, promisimus et promittimus, eaque in omnibus eorum conditionibus et articulis de gracia et liberalitate nostra ratificandum et confirmandum duximus, prout ratificamus et confirmamus, decernentes ea obtinere robur temporibus perpetuis.

2. Nemo ex simplici delacione puniendus, nisi iuridice conuictus. Et insimulator in probacione deficiens pene talionis subiacet

Concedimus ipsis prelatis, ducibus, baronibus, nobilibus et ciuitatibus terrarum Magni ducatus Lithuanie, Russie, Samagithie etc, quod ad nullius hominis delacionem vel accusacionem, publicam aut occultam, seu suspicionem sinistram ipsos duces, barones, nobiles et ciues punire volumus, nec mulctare pena aliqua pecuniaria, sanguinaria, carceraria aut bonorum alienatoria, nisi qui prius in iudicio publico more iuris catholicili, actore et reo personaliter comparentibus, legitime fuerint conuicti, qui post iudicium et condemnacionem secundum consuetudinem iurium catholicorum puniri debent et sentenciari iuxta grauitatem aut leuitatem excessuum suorum. Item dum quis obloquendo quempiam culpauerit ad ignominiam vel ad perdicionem

capitis et ageretur de collo aut de bonis vel de quacunque pena, tunc ille, qui alterum inculpauerit et id non probauerit, ea pena ipse solus puniri debet.

3. Profugientes ad terram hostilem efficiuntur infames et bona eorum confiscantur

Quicunque subditorum nostrorum profugierit de dominio nostro ad terram hostium nostrorum, talis vnusquisque honorem suum ammittit et bona eius paterna et seruicio aut emptione acquisita non pueris eius nec propinquis devoluuntur, sed nobis, principi.

4. De bonis profugi venditis aut obligatis alicui ante comissum crimen

Si profugus, antequam commisisset crimen huiusmodi, existens adhuc in dominio nostro, vendiderit aut obligauerit aliqua bona sua alicui et si is consilium eius nesciuit et super eo iurauerit, tunc bona illa empta aut obligata sibi retinebit pacifice. Si vero noluerit iurare, tunc et sua propria bona simulque et ea, que a profuga emerit aut impignorata habuerit, ammittit.

5. Quid cum filis et quid cum bonis profugi, qui se ad terram hostilem contulerit

Constituimus:si quis profugierit ad terram hostilem relictis pueris indiuisis, tunc bona huiusmodi cedunt pro nobis, nam tunc per excessum patris fily remouentur a bonis. Eciam si annos perfecte etatis non habuerint, eodem modo. Si aliquis cognatus — frater aut patruus — vel quicunque ex stirpe alicuius profugierit ad terram hostilem, sors eius cedit pro nobis et propinquus nullus ad eam habebit interesse. Et si eciam filius, existens diuisus a patre, profugierit ad terram hostilem, tunc sors eius non cedit patri eius nec fratribus, sed nobis. Si vero fili alicuius profugi fuerint sequestrati seu diuisi ab eo et non fuerint consci voluntatis paterne, et expurgauerint se de hoc iuramentis suis corporalibus, tunc ipsi sortem suam non ammittunt, sed tantum sors patris eorum profugi cedit nobis. Similiter et fratres, si divisi fuerint, non ammittunt sortes suas propter profugum fratrem, dummodo tamen se iuramentis corporalibus expurgauerint non fuisse se conscios et non prestitisse expedicionem fratri profugo; sors vero profugi cedit pro nobis.

6. Quid cum falsificatore literarum aut sigilli principis.

Is, qui literas aut sigilla nostra ausus fuerit falsificare vel talibus scienter vti, igne puniatur.

7. Quid cum eo, qui officialem vel nuncium principis violauerit

Si quis subditorum nostrorum officialem nostrum terrestrem aut nuncium in negocio nostro terrestri violauerit, wlnerauerit aut verberauerit, talis debet puniri collo, perinde ac si maiestatem leserit nostram.

8. Pro delicto alieno puniendus nemo

Item pro alterius facto non debet puniri, nisi ille, qui deliquit, semper tamen ordine iuris catholici obseruato. Et non conuictus iure ne puniatur, et nec vxor pro delicto mariti sui, nec pater pro delicto fily, nec filius pro patre, nec eciam alius cognatus et nec seruus pro domino.

9. Quid ei, qui non nichil bonorum ducalium suis adiunxisse vel sub nomine pauci multa impetrasse fuerit deprehensus

Si quis multum sub pauci nomine impetrauerit et hoc probatum fuerit contra eum iuridic, et deprehensum fuerit vltra quam quod impetrauit, talis huiusmodi donatum et emeritum ammittit. Et si eciam iuste impetrauerit, sed aliquid sine concessione occupauerit et suis adiunxerit, tunc eciam et suum emeritum vna cum illo occupato ammittit nobis. Et si quis ad paterna bona sua homines nostros ducales vel terras, siluas venaciones aut lacus sine donacione occupauerit et bona eius, ad que huiusmodi occupata adiunxerit, valerent tantum, quantum nostra occupata, tunc ea bona sua vnacum occupato ammittit ad mensam nostram. Et si quis occupauerit hominem vel duos, vel decem aut quotcunque, cum terris aut terras desolatas, tunc tenetur homines, quotquot occupauerit, singulos suis compensare hominibus et terris; et terras desolatas terris suis.

10. Incole Magniducatus eque omnes eodem iure iudicandi

Uolumus eciam et constituimus perpetuis temporibus obseruandum, quod omnes subditi nostri, tam pauperes, quam diuites, cuiuscunque ordinis aut status fuerint, equaliter et vnanimiter eodem iure scripto iudicari debent.

11. Litere ex cancellaria principis in dilacionem iudici nemini concedende, et litere aperte reddende porrectori

Promittimus, quod literas nostras inhibitorias, iusticiam hominum quomodocunque retardantes, exnunc in antea ad iudicia non concedemus, nec successores nostri concedent, exceptis casibus tribus: primo dum quis pro re publica apud hostes nostros fuerit in captiuitate; secundo dum quis fuerit in seruicio reipublice; tercio dum quis vere infirmus fuerit; et tunc ille, qui non paruerit, debet in sequenti termino iurare, quod vere infirmus fuit. In alys vero casibus, preter tres supra expressos, officiales nostri terrestres et vices gerentes huius modi literis in hibitorys, in preiudicium vnius partis obtentis, obedire seu suscipere eas minime tenebuntur. Et si quis dux, baro, tenutarius aut nobilis literas nostras apertas, per aliquem in negocio eius obtentas et sibi exhibitas, lectas eidem restituere recusauerit et retinuerit penes se, talis incidit penam duodecim siclorum grossorum, fisco nostro applicandorum, et totidem illi, ex parte cuius litere huius modi exhibite fuerint. Et propterea litere huiusmodi aperte debent exiberi ordinate, videlicet aut per aulicum nostrum, aut in districtu coram visore districtuario, aut coram hominibus adhibitis, aut alis fide dignis. Et nichilominus, visor habeat secum adhibitos.

12. Quid contemptori vadiorum principis

Item constituimus, quod dum causa inter aliquos, occasione fundorum, venacionum pratorumve aut mellificiorum exorta, fuerit iudicialiter determinata et ille, qui in huiusmodi causa succubuit, rem iudicatam et literas iudiciarias non curans, illum victorem in huiusmodi bonis, iure ei adiudicatis, in ea se se ingerendo, molestauerit et victor contra eum obtinuerit a nobis literas, quibus inhibeatur illi sub vadio vt desistat a resistendo rei iudicate, ille tamen et vadium nostrum contempnens in bona illa, a se abiudicata, pertinaciter se ingesserit, tunc a tali debet irremissibiliter vadium pro nobis exigi et victori illi dampnum ab eo reformari et in bona adiudicata intromissio efficax concedi. In nostra vero a Magnoducatu absencia consiliari nostri eandem vadiorum interponendorum et exequi faciendorum habebunt facultatem.

13. Dimittens de carcere debitorem alterius, aut eum reum tenetur sistere, aut satisfacere

Si quis debitorem alterius, in aliqua summa condempnatum vel alia occasione inculpatum, carceri nostro aut alteri cuiquam deputatum et sue cure traditum, improuidencia sua dimiserit, is solus huiusmodi summam seu dampnum, propter quod fuit carceri ille deputatus, actori iuxta probacionem eius debet soluere aut reum sistere. Et terminus ad sistendum: si in Magnoducatu reus fuerit, duodecim ebdomadarum, si vero extra Magnumducatum reus esse dicetur, tunc dandus est terminus ad sistendum eum trinarum duodecim ebdomadarum.

14. Prescriptio eis, qui tempore diuorum Kazimiri et Alexandri non tacuerunt, non obest. Et ab administranda iusticia nichil accipiendum

Quicunque tempore felicis recordacionis genitoris nostri super iuribus suis requisiuerunt iusticiam et tempore fratris nostri, pie recordacionis regis Alexandri memorati sunt, et literas ipsorum genitorum et fratris nostri de interrupta prescriptione ostenderint, eis tenebimur cum consilio consiliariorum nostrorum iusticiam administrare sine dilacione. Et a iure nichil percipere debemus, ita eciam et consiliari nostri. Et non debemus assistere fauore vni parcium, sed eque omnibus reddere et facere iusticiam.

15. De prescripcione et vendicione, et emptione bonorum

Item constituimus ducibus, baronibus et nobilibus, quod quicunque tenuit bona, homines et terras tempore regis Kazimiri pacifice et tempore regis Alexandri nulla ei desuper illata fuerit contradictio, talis possesor, si eciam nulla munimenta literalia huiusmodi super bona habuerit, tamen debet iam ea tenere pacifice et liberum est ei bonorum suorum terciam partem alienare, donare, vendere et ad vsus beneplacitos conuertere. Et nichilominus alienaturus quis bona sua ita ea debet vendere, commutare aut donare et inscribere ea: veniens ad presenciam maiestatis nostre et in absencia nostra ad presenciam palatinorum aut marsalcorum nostrorum, terrestris vel curialis, aut capitaneorum nostrorum, in quo districtu qui eorum fuerit, et debet ab eis accipere

consensum. Palatini vero, marsalci et capitanei nostri, vnusquisque in suo districtu, debet consentire ad emptionem et literas suas consensuarias desuper concedere, a quibus quidem literis eorum consensuarys notari eorum non debent exigere plusquam ab vnoquoque homine vendito per duos grossos, a terra, in qua seminantur decem tunne, per grossum, a prato decem curruum feni per grossum. Quarum quidem literarum consensuariarum palatinorum, marsalcorum et capitaneorum nostrorum pretextu et vigore bona ipsa empta possidebuntur perinde atque si noster consensus literalis accederet. Bona vero a nobis concessa coram palatinis, marsalcis et capitaneis nostris alienare non licet, nisi coram maiestate nostra de speciali consensu nostro. Et si quis plusquam terciam partem bonorum suorum dona verit aut vendiderit alicui in perpetuum, talis alienacio non valet, nam donatarius aut emptor tenetur cedere de bonis huiusmodi accepta pecunia sua, quam dederit. Et si datum fuerit pecunie plusquam tercia pars valeat, tunc emptor debet esse contentus valore tercie partis, residuum vero pecunie sue ammittit.

16. Bonorum tercia parte alienata imperpetuum due relique impignorari possunt

Consensimus vnicuique terciam partem bonorum suorum alienare in perpetuum. Attamen exigente necessitate ad seruicium nostrum terrestre ad suum quis comodum potest et reliquas partes duas impignorare in tanta summa, quantam partes ipse valeant, et non in maiori, nam propinqui eius redimendo non tenebuntur soluere plus, nisi quantum valeant. Ille vero, qui super bona aliena dederit plusquam valeant, id, quod valorem verum excedet, ammittit.

17. Quod legatur testamento in presencia et cum consensu principis aut officialis, obtinetur

Constituimus eciam et permittimus cum consilio consiliariorum nostrorum, quod dum quis existens in bona valitudine coram maiestate nostra aut officiali districtus illius, in quo residet, personaliter comparens iegauerit alteri cuipiam testamento vel inscripcione terciam partem bonorum suorum paternorum aut maternorum et legatarius ille seu donatarius habuerit desuper literas nostras aut officialis nostri districtualis consensum, tunc huiusmodi testamentum seu inscriptio debet firmiter teneri. Et si quis inscripserit sine consensu nostro aut officialis nostri districtualis terciam partem bonorum suorum, existens in infirmitate et testes desuper fuerint idonei, talis inscriptio debet teneri. Et nichilominus post mortem eius huiusmodi litere indigebunt confirmacione a nobis vel officialibus nostris propter propinquos legatoris.

18. Inscripcio bonorum, si infra decennium non fulcitur possessione, extinguitur; et prescriptio pupillis non obest. Et qui sunt anni perfecte etatis

Constituimus eciam, quod si quis habens inscriptionem bonorum aliquorum, legitime sibi coram fidedigno testimonio aut coram officiali factam, per decem annos

non fuerit vsus ea et tacuerit, huiusmodi inscripcio post decursum decenni non valet. Non obest autem prescripcio ea, si vocacione in ius, vel alias commemoracione legitima, fuerit interrupta. Et si is, cui inscripcio bonorum facta est, fuerit pupillus, tunc ei in etate pupillari prescriptio non nocet vsque ab annis perfecte etatis. Sunt autem anni perfecte etatis: masculo decemocto et femine quindecim. Illi, qui eciam in externa regione fuerit, prescriptio non nocet, donec a tempore, quo redierit.

19. Bona, que quis tempore diuorum principum Kazimiri et Alexandri pacifice possedit, perpetuo obtinebit

Qui bona aliqua vel patrimonium tempore diui Kazimiri in pace possedit et tempore diui Alexandri regis a nemine de eis fuerit commemoratum, iam tunc in pace ea debet possidere. Et si quis contenderit pro terra, a principe concessa, non debet querere plus nisi tantum, quantum ei fuerit datum et prout pro mensa principis tentum; et quod quis abstulerit post concessionem principis, hoc debet requiri. Et si quis terram ablatam tenuerit tempore Withowdi, Sigismundi et Kazimiri, et nunc possideat hoc.

20. Quomodo expurgatur, cui contra honorem obiectum fuerit

Si quis contra honorem vel bonam famam alterius obiecerit et hoc ad nostram serenitatem deuolutum fuerit, debemus iusticiam in hoc administrare vnicuique. Et si eo tempore contigerit nos arduis aliquibus occupari negocis, tunc huius modi casibus quatuor terminos in anno instituimus; et si in tribus terminis huiusmodi, casibus finis non imponetur, ex tunc in quarto et vltimo termino omnimodam iusticiam cum consiliaris nostris faciemus. Iterim vero ad quartum terminum honori eius, qui se expurgat, non nocet. Et si moreretur ante quartum terminum, honori tamen eius et successorum eius obesse hoc non debet. Non debet eciam infamatus excusare se a seruicio nostro. Et si quis infamatus fuerit in prelio, quamuis non sit expurgatus, non obest nichilominus ei et successoribus eius.

21. Theloneum authoritate propria instituens ammittit bona illa

Inhibemus, ut nullus hominum in Magnoducatu nostro Lithuanie thelonea noua excogitare aut instituere audeat in vis, ciuitatibus, pontibus, acgeribus, aquis, nec in foris, in bonis suis, preter ea, que ex antiquo fuerint instituta et communita literis predecessorum nostrorum, magnorum ducum, vel nostris. Et si quis ausus fuerit nouum theloneum in bonis suis constituere, tunc huius modi bona amittit mense nostre.

22. Kmethones nobilitatis absoluuntur a redditibus et laboribus principi impendendis

Volumus, ut omnes generaliter *kmethones* et quiuis homines subditi ducum, baronum, nobilium et ciuium predictarum terrarum Magniducatus Lithuanie ab vnius cuiusque tributi solucione et redditu contribucionis, dicte serebsczyzna, et *dzijakla*, et ab omnibus oneribus vecture, dictis podwody, a vectione lapidum et lignorum ad exustionem laterum et cementi pro castris nostris, a fenifalcacione et

ab alys iniustis laboribus exempti sint et omnino libertati. Volumus tamen reseruare integre consuetudines vetustas prestandorum victualium in stacionibus ex antiquo solitis, poncium antiquorum reformaciones, nouorum in locis vetustis edificaciones, castrorum antiquorum reformaciones et ibidem in locis vetustis parcium suarum denuo edificaciones, viarum antiquarum reformaciones, nec non onera dandarum podwodarum sub cursores nostros ibi, vbi ex antiquo solite sunt dari.

23. Sentencie principis recalcitrans penam carcerum et mulctam duodecim siclorum incidit

Si quis sentencie, quam princeps cum consiliarys comperierit et promulgauerit, resistere voluerit, tunc talis, cuiuscunque — tam superioris, quam inferioris — status fuerit, debet sedere in carceribus sex ebdomadas et vltra hoc debet solueuere ad thesaurum nostrum siclos duodecim.

24. Impetracio prima preualet; et re integra decennio extinguitur

Si quis aliquid sub altero impetrauerit et priuilegium desuper obtinuerit, et ille, sub quo impetratum fuerit, habeat desuper priora iura, priuilegium et confirmacionem et fuerit in vsu ac possessione aliquot annis, tunc ipsum priuilegium prius seu litere in robore debent conseruari, et is, qui prioritate literarum fulcitur, debet tenere et vti iuxta priorem concessionem et confirmacionem privilegi sui; posteriores vero litere vel priuilegium in nichilum rediguntur. Si eciam quis aliquam rem sibi impetrauerit et in literis hoc sibi expresserit vel confirmauerit, et in possessione eius non fuerit ad decennium, talis postea iam ad id peruenire nequit et litere eius in nichilum rediguntur.

25. Concessio bonorum ducalium extra Magnumducatum non valet, similiter nec confirmacio cessionis veteris

Item constituimus, quod ex nunc nos et successores nostri, existentes in regno Polonie, non debemus aliquid bonorum ducalium, kmethonum aut terrarum alicui concedere, nec priores concessiones confirmare. Sed in Magnoducatu Lithuanie existentes, nos et successores nostri subditos suos iuxta merita eorum donis liberalitatis nostre prouidebimus. Nec super quauis re perpetua licebit nobis priuilegia alicui concedere alibi, preterquam in conuencione generali dum erimus simul cum consiliaris nostris. Si itaque aliquis post hanc constitucionem nostram quomodocunque a nobis, existentibus in regno Polonie, kmethones aut terras sibi concedi vel prius concessa per priuilegium nostrum confirmari impetrauerit, huiusmodi literas et privilegia nos in nichilum redigimus et non debemus tenere ea nos et successores nostri. Super emptis vero boi literas empticias vbique locorum, eciam in regno Polonie existentes, confirmare debemus.

26. Itineranti ad curiam principis diuersandi gracia declinare licet nemini

Prohibemus ne quis subditorum nostrorum in Magnoducatu nostro Lithuanie itinerans ad curias nostras audeat diuertere, nec victualia aliqua sibi vel equis pabula illinc accipere, nec in piscinis nostris piscari. Que vero curie nostre sunt in desertis, in illis liceat diuersari, ita tamen, quod nullum ibi damnum presertim igne inferatur ab eis. Si quis autem, prohibicioni huic nostre contra veniens, aliquid premissorum commiserit, talis tenebitur nobis duodecim siclos grossorum luere et dampnum reformare totum.

English translation

Based on: Karl van Loewe (edition and translation into English), *The Statute of Lithuania. Lietuvos statutas. Statuta Lituaniae 1529*, Vilnius 2002, pp. 69-74.

Statute of Lithuania of 1529

Written Laws Given to the State, the Grand Principality of Lithuania, Rus, Samogitia and Other [Lands] by Enlightened Lord Sigismund, by the Grace of God King of Poland, Grand Prince of Lithuania, Rus, Prussia, Samogitia, Masovia and Other [Lands].

[SECTION ONE]

We, Sigismund, by the grace of God King of Poland and Grand Prince of Lithuania, Rus, Prussia, Samogitia, Masovia and other [lands], having ourselves sufficiently examined with good intent and desiring in accordance with our sovereign grace to grant Christian laws to all prelates, princes, banner lords, magnates, holy knights, nobility and the entire state and their subjects, the native inhabitants of the lands of our Grand Principality of Lithuania, regardless of their class or origin, all their rights and church privileges, both [for persons] of the Latin faith as well as Greek, as well as secular [privileges] which were received from the memory of the kings and grand princes, our father Casimir and our brother Alexander, our ancestors, during their lifetime, wish to consider [these privileges] binding for whatever possessions and rights [these subjects] may have regardless of

on what date, Latin or Russian, these freedoms were given. And [we also wish to consider binding] granted privileges consisting of just decisions as though [these privileges were] our documents inscribed word by word on our records. We by our sovereign word and by our personal oath on the Holy Gospel pledge to observe and preserve, as we pledge and promise to confirm and secure [these privileges,] with all their regulations, customs and articles by our grace, nobility and generosity. We have resolved to confirm them and establish as we confirm and secure, commanding that they be valid for all time.

1. The Sovereign Pledges Not to Punish Anyone as a Result of Slander even if the Matter Concerns Insults to the Dignity of His Highness. And if Someone Without Grounds Accuses Another, then He Must Suffer that Same [Punishment].

First of all, to the above-named prelates, princes, banner lords, nobles and cities of the noted lands of the Grand Principality of Lithuania, Rus, Samogitia and other [lands], we grant that for no one's slander, overt or covert, [nor for] unjust suspicions of those princes and banner lords, [hereditary] nobles and burghers, do we want to punish or threaten [anyone] with any kind of money fine, death penalty, or imprisonment, or confiscation of property, but only after plaintiff and defendant personally appear before a court am by means of a public trial [in accordance with the custom] of Christian law once and for all their guilt is determined; only then, after the trial and such an establishment of guilt in agreement with the custom of Christian laws may sentences and punishment be [meted out] according to the gravity of their crimes.

Also, whoever [by] slandering subjects another to disgrace or execution, or death or [the confiscation of an] estate or some other punishment, but does not present evidence, must suffer that same punishment.

2. Concerning the Abuse of the Dignity of the Sovereign Expressed in the Case of Someone Who Has Fled to a Hostile Land.

If someone of our subjects flees from our state to a land of our enemies, then he forfeits his honor and his estate, patrimonial, earned and purchased neither to [his] children nor to relatives, [but] only to the sovereign.

3. If Someone Buys or Takes in Security the Estate of Someone Who Later Flees to a Hostile Land.

If that person prior to the fulfillment of this evil act [while] still in our state sells or turns over as security to someone any sort of estate, and the purchaser is not aware of his intentions and swears to that effect, then he

may quietly possess the goods bought or taken in security. But if he does not want to swear an oath, then he loses his own estate as well as that which he bought [or took] from [the other as] security.

4. If a Father [Abandoning] His Children, or One of Their Relatives Flees to a Hostile Land.

Also we decree: if a father flees to a hostile land and leaves his children behind and there was no apportionment, then such an estate transfers to us, the sovereign, because for the crime of their own father they are separated from the estate. And even if they are not adults, [they are treated] in the same way.

Also, if someone's step-brother or uncle, or someone of the family flees to a hostile land, then his share [of the estate] transfers to us, the sovereign, and no relative has a right to it.

And if a son is independent of his father and flees to a hostile land, then his share goes neither to the father nor to a brother, but only to us, the sovereign.

But if the sons are independent of their father, and the father flees and they are unaware of their father's intentions and can justify themselves with their own personal oaths, they do not forfeit their property, and only the father's share goes to us, the sovereign.

In the same way, even brothers, if they are independent and a brother flees, and they are unaware of this and do not assist him, and can justify themselves with their own personal oaths to that [effect], then they do not forfeit their shares, but only the share of that brother who fled transfers to us, the sovereign.

5. In What [Manner One] Must Be Punished Who Forges Royal Orders or Seals.

If anyone forges our orders or seals or deliberately uses forgeries, every such forger must be punished by fire.

6. In What [Manner One] Must Be Punished Who Does Not Respect a Crown Official or Envoy.

If any of our subjects attacks our land officials or envoys on our land mission, injures or beats them, that one must be sentenced to death just as though he had insulted our sovereign highness.

7. No One May Suffer for [the Crime of) Another, but Everyone for His Own.

Also, no one may be punished or tried for someone else's crime, [but] only that one who is guilty. Thus, in accordance with Christian laws, one

[whose guilt] has not been established by a court may not be punished, i.e., a wife not for the crime of her husband, nor a father for the crime of his son, nor a son for [the crime of his] father, nor anyone [for the crime of his] relatives, nor a servitor for [the crime of] his lord.

8. If Someone Obtains Much under the Pretense of Little or Takes [Something] Without a Grant.

If anyone obtains much for little and this is proven against him in the proper manner by a trial, and it is established that he took more than was asked, such a person forfeits that service estate *(vysluga)*, and that granted *(danina)*. And if he asks in the proper manner, but takes [something] willfully and joins it to that [received], then he forfeits to the sovereign that service estate and that which he took.

And whoever joins to his patrimonial estate without a grant *(bez daniny)* people or lands, virgin forests *(pushchi),* hunting forests [or] lakes, whatever the value of the estate which he joined to his own he must forfeit to the sovereign [the corresponding value of his own] estate together with that which he took. And if he took one or two individuals, or ten, or however many there were with the lands, or [even if they were] uninhabited *(pustye)* lands, he must pay a fine [for] every person, as many as he took with his own inherited [persons], and for every land with his own land.

9. Everyone in the Grand Principality of Lithuania Must Be Tried by One Law.

We desire and establish to be preserved for all time that all our subjects, poor and rich alike, whatever their condition or position, be tried equally and identically by these written laws.

10. To No One May Papers Be Issued by the Chancery for the Suspension of Legal Procedure, Except for Valid Reasons.

We also promise that henceforth neither we nor our descendents will issue for presentation to any courts our postponement papers *(listy zapovednye)* which in any way could delay court examination, with the exception of only three cases: first, should someone on government business be found detained by our enemies; second, should someone be in government service in our states; and third, should someone actually be ill, then that one who does not appear must on the second date [for trial] swear that he was actually ill. But in any circumstances other than these cases, our land and local officials must not be influenced by such papers received in prejudice to the other side, nor accept them.

11. Safe-Conduct Papers Must Be Returned to Everyone.

If someone delivers to someone our safe-conduct papers, [issued] at his request, be this to prince or lord, or to noble, or *zemianin* to *zemianin,* whoever of these, having read the papers retains them and does not wish to return them, must pay his gracious king a fine of twelve rubles of grosh, and to the one who delivered to him the papers [which] he kept, a second twelve rubles of grosh. And the safe-conduct papers must be handed over in the proper manner: either through a crown *dvorianin,* or in the county, before a county *vizh,* or before outside people, noble or others worthy of confidence; and the *vizh* besides this must have witnesses *(storona).*

12. Concerning Royal Postponement Papers – If Someone Disregards Them.

We also establish: if someone be tried with anyone else over a land or hunting lands, or a Meadow, or a bee-tree, and if that one who loses the matter, not heeding the legal papers causes damage to his neighbor in spite of the judgement, taking possession of the afore-mentioned property, and [the latter] turns to us, the sovereign, and takes a paper with our royal injunction *(zaklad)* that the peacebreaker take this no more, in defiance of the legal decision, and he in spite of our sovereign injunction and that legal decision seizes that, then [he] must [pay for breaking] that injunction and compensate for the damage, and the victim in conformity with the decision of the first trial takes complete possession. And in our absence our noble councils must issue injunctions in the same manner and act likewise.

13. If Anyone Frees from Prison a Convicted Criminal or Evil-Doer.

If someone by the decision of a court is put into our royal [prison] or some other prison for non-payment of some sum or for some other charge, and by the carelessness of that one into whose hands this guilty one was given [the criminal] escapes from jail, that one must himself pay the sum or compensate the damage for which the guilty one was imprisoned, and as was confirmed by the proper evidence of the plaintiff, or must bring anew the escapee into court within a time established by the court: if in our royal land, then [within] twelve weeks, and if in a foreign land, then three times twelve weeks.

14. [To] Those Who under Kings Casimir and Alexander Solicited Something, the Sovereign Promises to Administer Justice.

Also, if someone during the life of our father demanded justice, [asserting] his rights, and under King Alexander solicited [the same], and produces papers soliciting our father and brother, we want and pledge together with our council to administer all justice without delay. We may take nothing

from [that one's] rights nor may our council [do so without examination of the matter]. Neither may we show preference to one side, but [we] shall be obliged to render and administer justice to everyone.

15. No One May Claim that Which Someone Else Had in Possession under Casimir and Alexander.

We also grant to princes, lords, banner lords and nobles, that if someone under King Casimir freely held estates, persons and land, and under King Alexander no one laid claim to this property *(dobra),* and even if he had no papers to it, then he may freely hold this and has the full right to dispose of, sell or give as a gift one-third of his estate, and make free use [of it]. However, he must sell, exchange, dispose of and register them thusly: personally appearing before us, the sovereign, and in our absence [before] our lord governors and marshals, land and court, and our elders *(starosty)* in whatever county *(povet)* this is, he must accept our settlement. But the lord governors *(voevody)* and marshals, and our elders, each in his own county, must permit the purchase and give to him their own legal papers, and may not order their clerks by the legal papers to take more [than] only two grosh per person, one grosh per ten *bochki* of land, [and] one grosh per ten *vozy* of meadow.

According to the legal papers of the lord governors and marshals, and our elders, everyone of them may keep his own purchase just as according to our legal papers.

Whatever concerns our royal charter, that may not be sold nor relinquished before lord governors, nor marshals, but [only] before us, the sovereign, with our royal consent.

And if someone gives another or sells for perpetuity more than one-third [of his estate], then that one to whom it was given or relinquished or given as a gift, may not receive it, and the money which was given for it must be returned. And if money was given in excess [of what] one- third costs, then [the buyer] may take [back] only that money which one-third costs, and forfeits the remainder of the money.

16. Two Portions of an Estate [May Be] Given Freely in Security for Money, but [May] Not Be Sold in Perpetuity.

Also, we authorize the permanent sale of [only] one-third of an estate. However, should money be necessary for [the performance of) our land service or even if someone [must] obtain money for his own need, then he may mortgage even those two parts, but only for that sum for which the two parts would sell. But no more than that may [anyone] accept, nor permanently deprive relatives of.

And if [someone] wants to mortgage even those two parts, then [he] may not take more than what these two parts cost. And what is given in excess of

this sum, [the person who gives it] must forfeit that money erroneously given in excess.

17. If Someone Wills Something to Someone in a Testament or Paper and Declares [This] Before the Sovereign and Lords of the Council, That [Property] May Be Held in Perpetuity.

We also establish and permit with the advice of our councils that if someone, being in good health, before our majesty or before any of our officials *(vradniki)* of that county in which he lives, personally affirming this, wills to someone else by testament or by record one-third of his patrimonial or matrimonial estate, [and] that one to whom it is assigned has our papers to it, or the papers of our county official, then that testament or document must be considered valid. And if someone wills without our authorization or [without the authorization] of our county official one-third of his estate, being ill, but having adequate witnesses, such a document must be considered [valid]. However, after the death [of the testator] that document must be confirmed by us, the sovereign, or by the lords of the council for the relatives.

18. If Something Is Given to Someone by Document and He Does Not Make Use of This Document and Remains Silent Ten Years.

We also establish that anyone who gives a document to someone for something or makes a record before a proper witness or before an official for something, but that one to whom it is assigned remains silent for ten years, for such a person who under land prescription *(davnos't zemskaia)* is in possession or in usufruct, those assignments after the expiration of a ten-year period may not be valid. However, if someone in the course of the period of land prescription asserts a claim and does not lose his things by silence, then he does not forfeit [them] by prescription. If [the property] was assigned to one who had not come of age, then the prescription does not apply to such a person in his minority, but only from his majority. Majority for young men comes at eighteen years of age, for girls at fifteen.

And if someone is on foreign soil, then the prescription does not apply to him, but from that time when he returns from the foreign land to his own he must not miss the period of land prescription.

19. If Someone Who under King Casimir Possessed Freely Some Sort of Estate, and under Alexander No One Claimed It.

Also, if someone possessed freely an estate or patrimony under King Casimir, and under Alexander no one claimed it, then [he] may hold it freely. And who solicits lands and the king gives [them] to him, may [hold] nothing [more than] that which was given to him as held by the king. And if someone takes away that given by the sovereign, [the grantee] may seek

that. And if someone took that land and held it under Vitovt, Sigismund and Casimir, that one even now may hold that.

20. If Someone Defames the Honor of Another, Justice Must Be Administered on the Fourth Date.

Also, if someone defames the honor of another, or his good name, and that [matter] comes to our attention, we are obligated to administer justice to all. And if at that time it happens that on account of great difficulties there is no time [to examine] such matters, then in the course of a year we shall establish four dates, and if no clearly definitive decision is reached on these matters on the first, second, or third dates, then we shall reach a definitive decision without delay with our council members with the coming of the last date; and up to this fourth date the honor of that one judged must suffer no damage. And if he dies, not having reached the fourth date [set for the examination of] this matter, then neither his honor nor the honor of his descendents must suffer any damage. And the one insulted may not refuse [to perform] our service. And if he is murdered, and that matter is not settled [prior to his death], it must not damage his [honor] nor [that of] his descendents.

21. If Someone Establishes New Duties.

We also direct that no individual in our state, the Grand Principality of Lithuania, may invent nor introduce new duties on any roads, in any cities, on any bridges, nor on weirs, waters, nor in markets on his own estates besides those which were established long ago, and for which there are documents of our forefathers, grand princes, or ours. And whoever dares to establish new duties, forfeits that estate in which he established [them], and [the estate] transfers to us, the sovereign.

22. Concerning the Liberation of Persons from New Payments and from Podvod and from Labor Other Than [That Prescribed by] Old Established Customs.

We desire that all people of the commonwealth, subjects of the princes and banner lords, nobles, boyars and burghers of these lands of the Grand Principality of Lithuania, be withdrawn from and forever liberated from the payment of any tribute or assessment of the so-called silver tax *(serebshchizna),* and also from the kind payment *(diaklo)* and from all obligations for transport, called *podvod,* from the carting of stone, wood, or firewood for the kilning of bricks and lime to our cities, from the mowing of hay and from other unspecified labor. But we wish to preserve as inviolable the long-established customs of the assignment of lodging *(statsiia)* in camps, long since established, the repair of old bridges and the building of new in old

towns, the repair of old castles and the erection of new portions in very old towns, the building of new bridges and the repair of old roads and the feeding of our messengers where it has long been done.

23. If Someone Contests a Royal Verdict.

If the sovereign with the Council of Lords considers something and makes his royal decision and someone wants to contest the sovereign's decision, then such a person, of whatever class, the upper or lower, must serve a term of imprisonment of six weeks and, besides that, must pay to the royal treasury twelve rubles of grosh.

24. If Someone Solicits Something for Himself, but Before Him [It] Was Given [to Another), and Before Was Assigned in a Royal Privilege, Such a Person Must Recognize the First Privilege.

Also, if someone solicits for himself something and in a privilege that which he requested was assigned [to another] and written out earlier in a privilege and confirmed, and [the other person] in the course of several years makes use of it and holds it in his possession, such an earlier privilege or document is valid, and [the one who received it] may hold it and make use of it by virtue of the earlier date and the confirmation of that privilege. And the later document or privilege may not be valid.

Also, if someone solicits something for himself and in the document he describes or accepts [it], but was not in possession of it for ten years, then such a person after [ten years] can make no claim to it, and his document may not be valid.

25. While in the Kingdom of Poland the Sovereign May Grant Nothing to Anyone Nor Confirm Privileges.

We also decree that from this time neither we ourselves nor our descendents while in our state, the Kingdom of Poland, may grant to anyone in our state, the Grand Principality of Lithuania, estates, people, nor lands, nor confirm earlier grants [for those] to whom [such things] were given. But we ourselves and our descendents, while in the Grand Principality, may give our subjects [such grants] and reward them in accordance with their service. And we may not grant privileges in perpetuity to anyone, anywhere but in conference with our lords of the council at the general diet. And so, if after this our decree, when we are in Poland, [someone] in some way solicits from us people and lands, or the confirmation of an earlier grant by means of our privilege, [we] then shall not defend such our documents and privileges, and neither we ourselves nor our descendents may recognize them.

If something concerns the purchase [of something], we may confirm [that] for anyone, anywhere, even while in our state, the Kingdom of Poland.

26. No One Traveling by Road May Billet on a Crown Manor.

We also decree that no one of our subjects, traveling by road through our manors in our state, the Grand Principality of Lithuania, may billet [on] nor take any provisions *(statsiia)* from our crown manors for himself and his horse, nor fish in our fishponds. But they may stop on those manors located in virgin forests; however, they must not cause any damage or fire in those our manors.

And if someone acts contrary to this our decree and billets on our manors, takes provisions for himself and his horse, fishes in our fishponds, or [on the occasion of] billeting in dense forests, causes any damage to our manor, such a person must pay us twelve rubles of grosh and compensate us for all damage.

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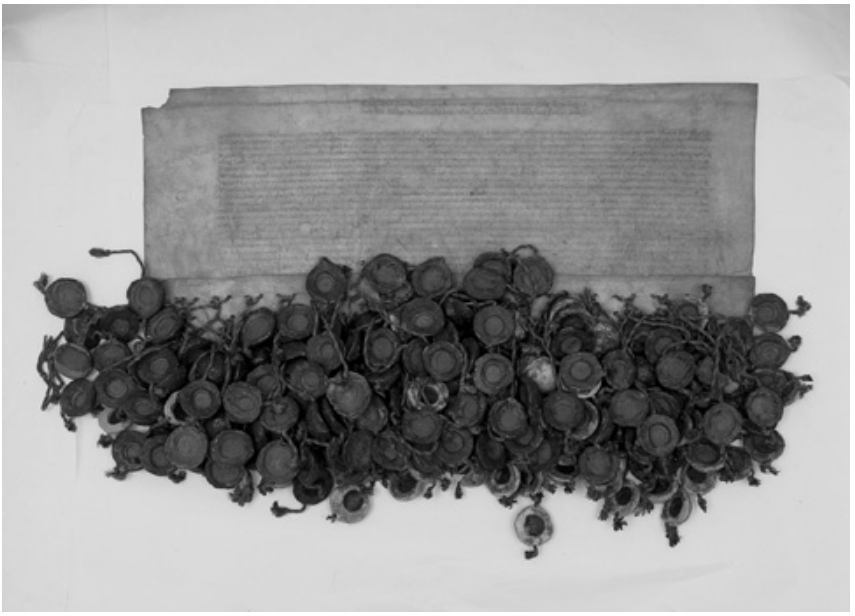
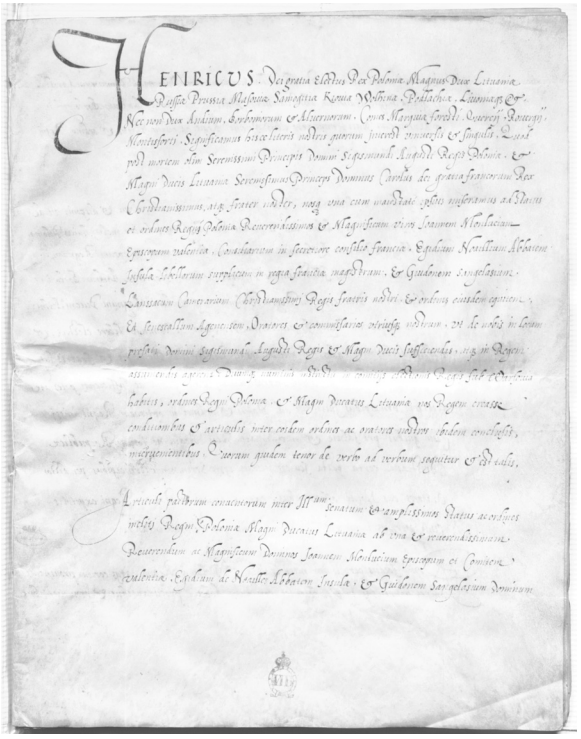
VIII
ACT OF THE WARSAW CONFEDERATION AND THE HENRICIAN ARTICLES OF 1573



Act of the Warsaw Confederation of 1573
Central Archives of Historical Records in Warsaw, Collection of parchment documents, catalogue number 4467.



The Henrician Articles of 1573
Central Archives of Historical Records in Warsaw, Collection of parchment documents, atalogue number 4468.

ACT OF THE WARSAW CONFEDERATION AND THE HENRICIAN ARTICLES OF 1573

In result of the Union of Lublin, concluded on 1 July 1569, the Polish and Lithuanian state, joined by the personal union of the Jagiellons, became the Polish-Lithuanian Commonwealth. Under the rule of King Sigismund Augustus, it comprised the territory of approx. 800,000 square meters, and was composed of two different, yet having equal rights, elements: the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania. Incorporation of Ukraine to the Crown significantly reduced the territory of the Grand Duchy, but led to inclusion of Ukraine, directly, in the policy meant for the area along the Eastern border. The new monarch was to be elected by "both nations", represented by the joint Sejm. The Sejm was composed of 113 senators from the Crown and 27 Lithuanian senators, as well as 114 Crown deputies and 48 Lithuanian deputies.

The new political system of the state, established after the death of the last king of Jagiellonian dynasty, was based on the body of laws developed by the past generations, yet it had to meet the new challenges. From the very beginnings of Polish and Lithuanian union, the state was multi-ethnic and multi-religion, with a dominant political role played by the gentry, gaining numerous privileges irrespective of their religious denomination. The division between the sphere of Catholic and Orthodox influence widened in the second quarter of 16th century in result of expansion of Protestant denominations. The Commonwealth was home for many at the time.

Following the death of King Sigismund Augustus on 7 July 1572, the primate issued a proclamation whereby he announced the news. The gentry, assembled on sejmiks, formed confederations in voivodeships to ensure law, order and public safety. The so-called *interregnum* courts (municipal adjudicating panels enlarged to include gentry's deputies) were also established at the time. A dispute over competencies between Jan Firlej, the Grand Marshall of the Crown, and Jakub Uchański, the Primate and Archbishop of Gniezno, was won by the latter, as he had the right to set the dates of sessions of the convocation sejm, the election sejm and the crown sejm, and he became the *Interrex*. A convocation sejm (general assembly), which could be attended in fact by each member of the gentry, was convened for 6-29 January 1573 in Warsaw, at the Royal Castle. Its task was to specify the time and venue for the election of the new ruler. On the initiative of deputies from the Wielkopolska region, in particular Jan Firlej – the Grand Marshall of the Crown, and the magnates of the Zborowski family (mainly Piotr Zborowski, the Voivode of Sandomierz), work was commenced to draw

up the text of the act of confederation. The sejm committee was headed by Stanisław Karnkowski, the then bishop of the Kujawy region, although the text of the declaration was prepared mainly by Protestants. Despite the objection from the papal nuncio, Francesco Commendone, the Sejm passed the Act of Confederation by a majority of votes. Following its adoption, Primate Jakub Uchański wanted to submit a written objection to the municipal office in Warsaw, but it was not accepted. Then, he went to Sochaczew and on 3 February 1573 submitted his protest there.

Another legal deed, the so-called Henrician Articles, was drawn up in 1573, during the election Sejm in Kamień near Warsaw. French deputies signed the Articles on 12 May 1573. The text was then approved by the King of France Charles IX, and by his brother, Henry de Valois, on 10 September 1573 during the ceremony in the Notre Dame cathedral in Paris. Henry de Valois, however, when he arrived in the Commonwealth, did not adopt the Articles during the coronation Sejm of 1574.

The Act of Warsaw Confederation confirmed the privileges gentry enjoyed in the Commonwealth, and it contained a provision to the effect that nobody should impose any religion upon anyone by force and, should the governing power try to do the same while initiating any religious persecution, then all signatories to the Confederation were obliged to jointly oppose it. The Act of Confederation did not specify which religious denomination the gentry could follow. The so-called Sandomierz Agreement, concluded in 1570, covered the three largest reformed denominations in the Commonwealth (Lutherans, Calvinists and the Czech Brethren). Certainly, the Warsaw Confederation pertained to all Christian denominations while roughly one-half of its signatories were Catholic. The Act of Confederation guaranteed representatives of various denominations equal access to offices, official titles and awards, and forbade the monarch to interfere with the issue of faith and conscience of the gentry.

The Henrician Articles, labelled as such after the name of the first elective king Henry de Valois (1573–1574), were drafted during the first interregnum, and stemmed from development of the law, and from former legislative practice in the Polish and Lithuanian state, when the new monarch was elected from among the Jagiellonian dynasty. The Act safeguarded the fundamental rights of the Commonwealth, including: (1) inviolability of the principle that the king was to be chosen by election by all gentry (*viritim*), (2) principles of religious peace, developed in the Act of the Warsaw Confederation, (3) co-deciding on state affairs by the king, the senate and the sejm, (4) legislative competencies vested in the sejm, (5) the right to disobey the king by the gentry should the former breach the law, and (6) appointment of senators-residents to serve as the king's advisors.

Adoption of the Henrician Articles was an expression of a belief that during the king's absence the full legislative power was taken over by deputies and senators.

In many Western Europe countries various edicts on tolerance were passed, usually to end the wars that were going on; the provisions of such edicts were based on the concept whereby the sovereign allowed certain religious denominations larger or lesser freedom to practice religious rites. The Warsaw Confederation differed greatly from such legal acts in that it was not a document that ended some religious war in the Commonwealth (where, in fact, no such war ever took place). Moreover, it was the gentry themselves who, by way of a compromise, granted certain rights and privileges among themselves.

In February and March 1573 the text of the Act of Confederation was discussed at the post-convocation sejmiks which, generally, adopted it with no reservations (except for the sejmik of the Mazowieckie voivodeship). The final text of the Act of Confederation was decided upon during the election sejm which was in session from 3 April to 15 May in a village of Kamień (Kamionek) near Warsaw (presently, a part of Warsaw-Praga). The gentry adopted the text of the Act of Confederation, and more than 200 pendant seals were attached to the parchment document (currently stored in the Central Archives of Historical Records in Warsaw, Collection of Parchment Documents, file no. 4467).

On 21 February 1574, Henry de Valois ratified the Warsaw Confederation and the so-called Henrician Articles in Kraków, yet refused to confirm the same following his coronation. The meaning of that document was far different from the intention of those who organised the St. Bartholomew's Day Massacre in Paris (on the night of 23-24 August 1572), and Henry de Valois was among them. After the king fled from Kraków in June 1574, the gentry of the Commonwealth elected Stefan Batory the king, who solemnly approved both these documents. In 1576, they were adopted as sejm constitutions, re-approved by King Stefan Batory. They were published in print in 1579, in a collection of sejm constitutions. The subsequent elective kings, starting with Sigismund III Vasa, approved the Henrician Articles in the form of a general confirmation of the rights. Starting with the reign of King Ladislaus IV Vasa, the Henrician Articles had been included in the *pacta conventa*.

Each elective monarch of the Commonwealth had to approve the Act of Confederation incorporated into the Henrician Articles which were a certain proto-constitution of the Commonwealth. The freedom to practice religious rites, guaranteed in the Act, influenced also other areas of public life, mainly culture, later on referred to as Sarmatian culture.

The Act of Confederation, shortly after being adopted, was translated into French for the king-elect. Its translation into Ruthenian was included

in the III Statute of the Grand Duchy of Lithuania, issued in Vilnius in 1588 (k. 73-74v), and at the beginning of 17th century the German translation was published.

On 16 October 2003, the Act of Warsaw Confederation was entered into list of Registered Heritage under UNESCO Memory of the World Programme.

The provisions of the Henrician Articles reflected the parliamentary practice prevailing in the Commonwealth in the second half of 16th century, when the sejm was almost permanently in session, and the activists of the executionist movement influenced the enacted law. The sejm was convened each year and not infrequently was in session for several months. The Henrician Articles introduced limits upon the right to convene the ordinary sejm. It could be convened biannually for six weeks, and this, to a large extent, restricted in practice the possible influence of gentry on the course of state affairs. These limitations contributed to a deterioration of the position of the sejm and its efficiency. Lack of consent (*liberum veto*) to extending of sejm debate led to its breaking up in 1652.

Both these legal acts incited heated discussion since the moment they were passed - also long after among historians - but they are undoubtedly a memorable proof that the Polish-Lithuanian Commonwealth chose a political and cultural development path different than that of other European countries.

ACT OF THE WARSAW CONFEDERATION OF 1573

Original text

Based on: M. Korolko, J. Tazbir (eds.), *Konfederacja warszawska 1573 roku wielka karta polskiej tolerancji*, Warsaw 1980;

Confoederatio Generalis Varsoviensis

My Rady Koronne, duchowne i świeckie, i rycerstwo wszystko, i stany insze jednej a nierozdzielnej Rzeczypospolitej z Wielkiej i z Małej Polski, Wielkiego Księstwa Litewskiego, Kijowa, Wołynia, Podlasza, z Ziemie Ruskiej, Pruskiej, Pomorskiej, Źmudzkiej, Inflanckiej i mia sta koronne.

Oznajmujemy wszytkim wobec komu należy, ad perpetuam rei memoriam, iż pod tym niebezpiecz nym czasem, bez króla pana zwierzchniego mieszkając, staraliśmy się o to wszyscy pilnie na zjeździe warszawskim, jako byśmy przykładem przodków

swych sami miedzy sobą pokój, sprawiedliwość, porządek i obronę Rzeczypospolitej zatrzymać i zachować mogli. Przetoż statecznym, jednostajnym zezwoleniem i świętym przyrzeczenim so bie to wszyscy spoinie, imienim wszystkiej Rzeczypospolitej, obiecujemy i obowiezujemy się pod wiara, poczciwością i sumnienim na szym.

Naprzód żadnego rozerwania między sobą nie czynić, ani dismembracyi żadnej dopuścić, jako w jednej, nierozdziel nej Rzeczypospolitej, ani jedna część bez drugiej pana sobie obierać, ani *factione privata* z inszym narabiać. Ale podług miejsca i czasu tu naznaczonego zjechać się do gromady koronnej i spoinie a spokojnie ten akt electionis podług wolej Bożej do skutku słusznego przywieść. A inaczej na żadnej pana nie pozwalać, jedno z takowa pewna a mianowitą umowa: iż nam pierwej prawa wszystkie, przywileje i wolności nasze, które są i które mu podamy post electionem, poprzysiąc ma.

A mianowicie to poprzysiąc: pokój pospolity miedzy rozerwa nymi i różnymi ludźmi w wierze i w nabożeństwie zachowywać i nas za granicę koronna nigdy nie ciągnąć żadnym obyczajem ani prośbą królewską swą, ani *solutione quinque marcarum super hastam*, ani ruszenia pospolitego bez uchwały sejmowej czynić.

Przetoż powstać przeciwko każdemu takiemu obiecujemy, ktoby albo miejsca i czasy inne do elekcyi sobie obierał i składał, albo tumultować na elekcyi chciał, abo lud służebny *privatim* przyjmował, albo elekcyi onej zgodnie od wszytkich *conclusae* sprzeciwiać się śmiał.

A iż w Rzeczypospolitej naszej jest *dissidium* niemałe in *causa religionis christianae*, zabiegając temu, aby się z tej przyczyny miedzy ludźmi sedycyja jaka szkodliwa nie wszczęła, którą po inszych królestwach jaśnie widziemy, obiecujemy to sobie spólnie, *pro nobis et successoribus nostris in perpetuum, sub vinculo iuramenti, fide, honore et conscientiis nostris*, iż którzy jesteśmy *dissidentes de religione*, pokój miedzy sobą zachować, a dla różnej wiary i odmiany w Kościelech krwie nie przelewać, ani się penować c*onfiscatione bonorum*, poczciwością, *carceribus et exilio*, i zwierzchności żadnej ani urzędowi do tako wego progressu żadnym sposobem nie po magać. I owszem, gdzie by ja kto przelewać chciał, *ex ista causa* zastawiać się o to wszyscy będziem powinni, choćby też za pretekstem dekretu albo za postępkiem jakim sadowym kto to czynić chciał.

Wszakże przez tę konfederacyją naszę zwierzchności żadnej nad poddanymi ich, tak panów duchownych, jako i świeckich, nie derogujemy i posłuszeństwa żadnego poddanych przeciwko panom ich nie psujemy. I owszem, jeśliby takowa licencyja, gdzie była *sub praetextu religionis*, tedy jako zawsze było, będzie wolno i teraz każdemu panu poddanego swego nieposłusznego tam *in spiritualibus, quam in saecularibus* podług rozumienia swego skarać.

Aby wszystka *beneficia iuris patronatus Regii praelaturarum, ecclesiasticarum*, jako arcybiskupstw, biskupstw i inszych wszelakich beneficyi były dawane nie inszym, jedno Rzymskiego Kościoła klerykom, *indigenis Polonis iuxta statutum*; a beneficyja kościołów greckich ludziom tejże greckiej wiary dawane być mają.

A iż to do pokojów wiele należy, aby dyferencyje *inter status* hamowane były, a miedzy stanem duchownym i świeckim jest niemała *differentia de rebus politicis temporalibus*, obiecujemy wszystkie te miedzy sobą *componere* na blisko przyszłym sejmie *electionis*.

Sprawiedliwości porządek taki w mocy zachowujemy, jaki so bie które województwo doma spólnie postanowiło, albo jeszcze po stanowi zgodnie, także i około obrony potrzebnej zaników pogra nicznych.

Któżkolwiek się komu o pewny dług zapisał i do grodu *firma inscriptione* odpowiadać się poddał dobrowolnie, bądź przed śmiercią, albo już i po śmierci królewskiej, takowy każdy po dług zapisu swego niechaj *progressum iuris usitatum* cierpi. A panowie starostowie będą powinni *vigore huius generalis confederationis, sine omni dilatione iuxta usitatam formam* sądzić, odprawować i egzekwować takowe kauzy, oprócz tych województw, które sobie formam sprawiedliwości i egzekucyi specialem postanowili sub interregno abo jeszcze postanowić mają.

Inscriptiones wszelakie *et resignationes bonorum perpetuas coram authenticis actis factas et fiendas sub interregno*, spornym tej konfederacyi zezwoleniem umacniamy, aby *sub interregno*, począwszy od dnia śmierci królewskiej, nikomu in *progressibus iuris fatalia* albo *praescriptio* nie szkodziła na potem do sprawiedliwości jego.

Także którzy mieli terminum brania pieniędzy na przeszłe Gody abo na Nowe Lato, abo na jaki czas już przeszły, ci wszyscy aby byli powinni brać swe pieniądze na pierwsze sady, dali Pan Bóg po obraniu nowego króla, albo na pierwsze leżenie ksiąg.

Obiecujemy też to sobie, że na elekcyją naznaczoną jadąc, i na miejscu będący, i do domu się rozjeżdżając, gwałtu żadnego ludziom sami miedzy sobą czynić nie będziemy.

Te wszystkie rzeczy obiecujem sobie i na potomki swe chować statecznie i trzymać *sub fide, honore et conscientiis nostris*. A kto by się temu sprzeciwiać chciał i pokój a porządek pospolity psować, *contra talem omnes consurgemus in eius destructionem*.

A dla lepszej pewności tych wszystkich opisanych rzeczy przy łożyliśmy pieczęci swe do tego i rękoma własnymi podpisali.

Actum Varschoviae in Conventione Regni Generali, vigesima octava Mensis Ianuarii, Anno Domini Millesimo Quingentesimo Septuagesimo Tertio.

English translation

The General Confederation of Warsaw, 28 January 1573

We, the Crown Councils, spiritual and temporal, and all the knights and the other states of the one and indivisible Commonwealth from Wielkopolska and Małopolska, the Grand Duchy of Lithuania, Kiev, Wołyń, Podlasie, the lands of Ruś, Prusy, Pomorze, Żmudź, Infl anty and the crown towns.

We hereby declare to all whom this concerns, *ad perpetuam rei memoriam*, that in this dangerous time, without a king and sovereign lord in residence, we have tried to assemble everybody urgently at this convention in Warsaw, following the examples of our predecessors, to guarantee among us that the peace, justice, order and the defence of the Commonwealth be maintained and upheld. With this stately and uniform permission, all together and cohesively, in the name of the whole Commonwealth, we do so promise and pledge on our faith, good nature and conscience.

Firstly, we will not cause any breaches among ourselves or allow for any dismemberment as in the one and indivisible Commonwealth, neither will one part choose without the other nor make *factione privata* with any other. But in this appointed place and time we will gather in a crown assembly and cohesively and calmly effect the act of election in accordance with God's will until we reach a satisfactory conclusion.

Also, we will not allow any lord to make a certain agreement of appointment until the fi rst rights, privileges and freedoms of ours, which we have and which we will present *post electionem*, be sworn to.

And it is to this that he must swear: common peace between divided and diverse people in faith and in religious rites must be maintained and we must never be drawn outside crown boundaries by any custom or royal request and he must never summon a levee en masse or *solutione quinque marcarum super hastam* without a resolution of the seym.

Further, we promise to rise against every one who chooses and appoints for himself a different time and place for the election or who wants to raise a tumult at the election or accept his subjects *privatim* or who dares to stand against all the rightful *conclusae* of this election.

And since in the Commonwealth there is considerable *dissidium in causa religionis christianae*, we will prevent this so that for this reason no harmful sedition between people should arise, which we can see in other kingdoms, and we promise this together, *pro nobis et successoribus nostris in perpetuum, sub vinculo iuramenti, fide, honore et conscientiis nostris*; although some of us are *dissidentes de religione*, peace between us will be maintained and for various faiths and differences in the Churches no blood shall be spilt and we will not punish *confi scatione bonorum*, with kind heart, *carceribus et exilio*, and we will not help any sovereignty or office to undertake such a process. And also, should anyone wish to shed blood somewhere, *ex ista causa*, all of us should stand against it, even if on the pretext of a decree or through some legal ploy, as anyone wishes.

After all, through this our confederation, we are not derogating any sovereignty over the subjects of these lords, whether spiritual or temporal, and we are not hindering the obedience of these subjects to their lords. And furthermore in the case of such licence, where it is *sub praetextu religionis*,

every lord, just as always was the case, will still be free to punish his disobedient subject *tam in spiritualibus, quam in saecularibus* according to his own judgement.

In order for all *beneficia iuris patronatus Regii praelaturarum, ecclesiasticarum*, as archbishoprics, bishoprics and all other benefi ts were not given to others except to the clerics of the Roman Catholic Church, *indigenis Polonis iuxta statutum*; so benefits to the churches of Greek people of their Greek faith are to be given.

As peace depends on so many things and because the differences *inter status* must be limited and because between the spiritual and temporal states there is a considerable *differentia de rebus politicis temporalibus*, we promise to *componere* all of these among ourselves at the next seym after the elections.

We will maintain in force such an order of justice as each voivodeship jointly established or will jointly establish, also in the matter of the necessary defence of the losses in the borderlands.

Whoever incurred a certain debt to someone and who voluntarily submitted himself to the town *firma inscriptione*, whether before the death or even just after the death of the king, let each one suffer in accordance with his registration *progressum iuris usitatum*. And the lord starostes should judge *vigore huius generalis confederationis, sine omni dilatione iuxta usitatam formam* and dismiss and execute such causes, apart from those voivodeships which in the form of justice and special execution decided or will decide *sub interregno*.

All contested *Inscriptiones et resignationes bonorum perpetuas coram authenticis actis factas et fi endas sub interregno* by the permission of this confederation we do strengthen, so that *sub interregno*, beginning on the day of the death of the king, no one *in progressibus iuris fatalia sed praescriptio* will suffer in terms of justice thereafter.

Also, those who had a time set for taking money for a past Wedding or for the New Summer or for some time already past, all of these should take their money for the first judgement after the election of the new king, God willing, or for the first opening of the accounts.

We also promise ourselves that in going to the appointed election and being at the place and then departing for home we will not do any violence to any people among ourselves.

All of these things we promise each other and swear on the lives of our descendants to uphold and maintain *sub fide, honore et conscientiis nostris*. And anyone who wishes to oppose this and harm the common law and order *contra talem omnes consurgemus in eius destructionem*.

And for the greater certainty of all the things written here, we have placed our seals on it and signed it with our own hands.

Actum Varschoviae in Conventione Regni Generali, vigesima octava Mensis Ianuarii, Anno Domini Millesimo Quingentesimo Septuagesimo Tertio.

THE HENRICIAN ARTICLES OF 1573

Original text

Based on: Zdzisław Kaczmarczyk, *Artykuły Henrykowskie*, Poznań 1946, pp. 3-18 (Biblioteka Źródeł Historycznych 1).

Articuli Henriciani Anno 1573

Henricus, dei gratia electus rex Poloniiae, Magnus dux Lithuaniae, Russiae, Prussiae, Mazoviae, Samogitiae, Kioviae, Voliniae, Podlachiae, Livoniaeque nec non dux Andium, Borboniorum et Alvernorum, etc., signifi camus tenore presentium, quorum interest, universis et singulis; quoniam consiliam ac senatores, omnesque nobiles et Status regni Poloniae atque Magni ducatus Littnianiae, (Russiae, Prussiae,

Masoviae, Samogitiae, Woliniae, Podlachiae et aliorum dominiorum), atque aliorum dominiorum ad regnum pertinentium id sibi praecipue apud Nos comtum esse voluerunt, quod etiam Nos sancimus atque pro lege et jure publico habere velumus;

(1) Quod tempore vitae nostrae Nos et successores nostri reges Poloniae, iidemque Magni duces Lithuaniae, Russiae, Prussiae, Masoviae, Samogitiae, Livoniae, Voliniae, Podlachiae, et aliorum dominiorum, (quia) non debemus nominare, eligere aut electionem indidere, vel quemcumque alium modum tentare instituendi et designandi Domini sive regis successoris nostri, idque ob eam causam ut post decessum nostrum et successorum nostrorum libera et illaesa electio regis statibus et ordinibus regni maneat; quam ob rem neque titulo haeredis, regibus Poloniae antehac solito, Nos aut successores nostri posthac utemur.

(2) Quoniam vero inter amplissimi regni Poloniae atque Magni ducatus Lithuaniae, aliorumque dominiorum ad regnum pertinentium, incolas in religionis negotio est quoddam dissidium, ne ex hac occasione aliquando, (quod absit), seditio vel tumultus aliqualis oriatur, caverunt sibi nonnulli incolae ejusdem regni, confoederatione singulari inter se facta, ut hoc nomine dissidii, scilicet religionis, pax illis servetur, quod etiam Nos illis spondemus, atque confoederationem ipsam juxta ejus contenta perpetuis temporibus Nos servaturos promittamus.

(3) In negotiis vero Reipublicae, personam atque dignitatem nostram attinentibus, utpote in expediendis ad externos principes legationibus ac ipsis vicissim ab eisdem audiendis, in conscribendis item adversus aliquem regni hostem militibus, nihil Nos unquam, neque Serenissimos successores nostros absque consilio et consensu dominorum utriusque gentis consiliariorum, attenturos utique res et negotia comitiis regni publicis attinentia, propterea nihil perturbantes, utique eas legationes, quae non multum ad Rempublicam spectarent, ac pro ratione temporum et necessitate rerum

expediri poscentur, tales omnes (semper) Nobis expedire licebit, cum consiliariis nostris, qui tum praesentes Nobis adfuerint.

(4) De bello seu expeditione illius publica seu generali, nihil Nos authoritate propria absque consensu omnium regni Ordinum statuere posse, neque in ipsa expeditione exercitum extra fi nes regni, sive petitione nostra regia, sive solutione quinque marcarum super hastam, sive etiam quavis alia ratione educere dcbere, pro

Nobis et Serenissimis successoribus nostris verbo nostro regio promittimus. Quando vero ex decreto comitiorum publico expeditionem bellicam generalem fecerimus, utique non diutius quam duobus septimanis in loco tali expeditioni atque illius congregationi ultimis restium literis per nos assignato, subditos nostros detinebimus. Quod si autem, consentientibus omnibus Ordinibus, extra fi nes regni subditos nostros educere vellemus, atque illi ipsi ad id libere consentirent, tum unicuique illorum, nemine excepto, tam equiti quam pediti, ad expeditionem generalem bellicam de iure communi obligato, debebimus numerare quinque marcas pecuniae, antequam fines regni exiverint. Et hoc tali stipendio non diutius eos in militia detinebimus, tantum in unum quartale anni. Exercitum autem hunc non dividemus in partes tam magnas quam parvas. Quod si autem intra duarum septimanarum spatium ultra fines regni non fuerint a Nobis ducti, utique diutius per Nos detineri non poterunt, sed licebit illis ad sua libere reverti. Tempore autem bellicae expeditionis generalis omnes sumptus ad rem bellicam necessarios, puta tormenta bellica, pulverem tonnentarium, jaculatores, custodes, speculatores, pedites, et alia id genus, quae usus belli poscet, nostris pecuniis, providere debebimus.

(…)

(6) Saepenumero etiam evenire solet, ut in tanta multitudine senatorum, qualem regnum istud habet, sententias in publicis deliberationibus variari discordesque fieri contingat; Nos itaque pro Nobis atque Serenissimis successoribus nostris verbo regio pollicemur, nihil Nos unquam privato consilio et authoritate nostra in tam variantibus consiliis conclusuros, sed in modis omnibus curaturos, omnium rationes diligenti judicio perpendendo, ut ad unam reduci possint sententiam; quod si fieri nequiverit, quod legibus, libertatibus, ac commodo denique Reipublicae magis consentaneum videbitur, in id Nos voto et sententia nostra esse assensuros, comitialibus negotiis in hac parte nihil detrahando, quae more solito ex omnium Ordinum consensu expedienda erunt.

(7) Quoniam facile non est pro regni hujus amplitudine, unum omnibus negotiis suffi cere posse, providentes id, ne Respublica gravibus implicetur difficultatibus, perpetuo servandum statuimus, ut in quibuslibet comitiis regni generalibus sexdecim personae ex Ordine senatorio tam regni Poloniae, quam Magni ducatus Lithuaniae, aliorumque dominiorum ad regnum pertinentium, ex communi omnium Ordinum consensu eligantur, et aliis officialibus regni polonicis et lithuanicis adjugantur, dignitatem Majestatis nostrae atque communem libertatem procuraturi, absque quorum scitu et consilio nihil Nos et Serenissitni successores nostri in communibus

Reipublicae negotiis comitiali generali conventui reservandis statuemus. Qui quidem senatores omnia decenter, decore et cum dignitate Majestatis nostrae fieri curabunt, in futuris comitiis ex omnibus actis suis et nostris Reipublicae rationem daturi. Nihilominus tamen caeteris quoque senatoribus semper erit liberum et venire ad nostram curiam et quoad placuerit, manere, quinimo omnium consiliorum participes esse debebunt nec quiquam praerogativae deputati illi supra hos habebunt, nisi quod praefi xum sibi ad regiam nostram manendi tempus continuare tenebuntur, Non praetermittemus tamen propter id morem illum antiquitus observatum, ut, si quod hujusmodi acciderit, quod caeteros quoque absentes consiliarios scire interesset, ad eos per literas nostras Nos deferemus.

(8) Deputari autem illi sexdecim consiliarii debent in comitiis regni generalibus pro quolibet anni dimidio personae quatuor; ex episcopis unus, ex palatinis unus, ex castellanis vero duo; quae quidem deputatio secundum eum ordinem, qui in dicendis votis observatur, procedere debet. Si vero aliquis, quem ordo attigerit, deputari noluerit, vel per legale aliquod impedimentum non potuerit, ibidem in comitiis sortioni suae renuntiare debet, ut in ejus locum alius ex ordine. necessario sufficiatur. Provisio autem his consiliariis deputatis ex fisco nostro atque Serenissimorum successorum nostrorum talis esse debet; episcopis terrarum Russiae singulis quingenti floreni ad dimidiam anni partem, secularibus itidem, Episcopi vero in regno episcopatus suos habentes, minime hac provisione indigere videntur, cum satis amplis facultatibus atque reditibus sint dotati.

(9) Comitia regni generalia biennio ad summum semper Nobis erunt indicenda; exigente tamen Reipublicae necesitate et consensu dominorum consiliariorum accedente, secundum Reipublicae rationes, et saepius indici ac celebrari poterunt. Non diutius tamen conventum generalem tenebimus, nisi per sex septimanarum spatium. Ante comitia vero in regno secundum morem antiquitus receptum, in Magno autem ducatu Lithuaniae (in Wolkowiska) secundum ejus statuta, conventiones sive comitia particularia celebrari debent, sicut in regno Poloniae in Kolo et in Korczyn, sic etiam in Lithuania in Wolkowyska, ad quae quidem comitia particularia sive conventiones ea omnia, quae necessaria erunt, signifi cabimus.

(…)

(11) Officia vero regni publica utriusque gentis integre in sua authoritate retinebimus, similiter et offi cia curiae non supprimemus neque suffocabimus, sed ea ipsa officia, cum vacaverint, hominibus utriusque gentis idoneis, de Republica bene meritis et non extraneis, distribuemus.

(12) Volentes etiam tollere omnem ambiguitatem de fundis privatorum, maxime nobilium atque ecclesiasticorum hominum, eos omnes una cum ipsis fructibus, sive etiam metallis et fodinis quibusvis quarumvis minerarum, etiam salis, in eis repertarum, dominis ac possessoribus suis liberos relinquimus, absque omni nostro et omnium successorum nostrorum prohibitione et impedimento.

(13) Simul promittimus nullas interpretationes aut deductiones ex jure externo Nos esse admissuros de bonis haereditario jnre quibuslibet personis per antecessores nostros donatis, ut minime pro feudalibus nostris regiis bonis censeri debeant, praeterquam ea, quae disertis verbis in eorum privilegiis esse feudalia, perscriberentur.

(14) Capitanei, sive praefecti, tam fi nitimi, quam intra regnum in principalioribus castris existentes, similiter etiam civitatum principalium praefecti, sacramentali juramento regi atque regno obligari debent, nulli se tempore interregni concredita sibi loca tradituros, nisi cui ab omnibus regni (Poloniae) incolis secundum jura liberae electionis in regem electus fuerit et coronatus, sub amissione bonorum, honorum, et vitae.

(…)

(16) Formam publicorum judiciorum quaedam provinciae unanimiter sibi constituerunt, regiam nostram personam ex ea liberantes; quod quidem Nos illis concedimus cum hac cautione, ut caeteris quoque provinciis (id) libernm atque integrum semper sit similem quoque, si velint judiciorum formam sibi constituere; correctio autem horum iudiciorum (cuidam provinciae) communi ominum consensu accedente, libera semper esse debet. Quod si visum eis iuerit, haec eadem judicia in personam nostram rursus imponere, suscipere ea tenebimur Nos et Serenissimi successores nostri. Similiter etiam consiliarii caeterique etiam omnes ducatus Lithuaniae atque terrarum Voliniae, Kijoviae, Braclaviae Ordines, qui legibus ac juribus Magni ducatus Lithuaniae utuntur, ante futura coronationis nostrae comitia, formam atque modum judiciorum invenire, et correcturam quandam legum suarum facere constituerunt. Quaecumque itaque unanimiter inter se constituerint, ea omnia Nos illis in futuris nostrae coronationis comitiis sacramento juramenti confi rmare tenebimur. Et posthac semper licebit eis eandem judiciorum formam caeterosque jurium defectus corrigere.

(17) Maxime vero id cautum esse volumus, nullas Nos contributiones in bonis nostris regalibus, spiritualium senatorum, novorum vectigalium in civitatibus nostris, tam in regno quam etiam aliis dominiis ad regnum pertinentibus, absque omnium ordinum consensu laudaturos et instituturos; neque etiam monopolia ulla rerum earum, quae sive ex regni Poloniae sive Magno ducatu Lithuaniae extra dominia regini evehunturi instituturos aut institui permissuros.

(18) (Et) Quoniam matrimonium nostrum ad rem quoque publicam magna ex parte pertinere videtur, promittimus verbo nostro regio pro Nobis et Serenissimis successoribus nostris, nihil Nos unquam, in hioc negotio absque consilio totius senatus tractaturos, nec alias ullas causas praeter has, quae verbo Dei expressae sunt, ad dissolvendum matrimonii sacramentum quaesituros.

(…)

(21) Quod si vero, (quod absit), contra leges, libertates, articulos aut conditiones, a Nobis commissum et non impletum quid fuerit, omnes regni incolas utriusque gentis a debita Nobis obedientia et fi de liberos pronunciamus.

Haec omnia, constituta sunt per senatores et universos regni Poloniae atque Magni ducatus Lithuaniae aliorumque dominiorum ad regnum pertinentium, Ordines atque Status, in comitiis generalibus electionis sub Varsavia ad villam Kamien, die 12 maii, anno 1573.

English translation

Based on: Zdzisław Kaczmarczyk, *Artykuły Henrykowskie* Poznań 1946, pp. 3-17 (Library of Historical Sources 1).

The Henrician Articles of 1573

(…)

Henryk, by the Grace of God King of Poland, Grand-Duke of Lithuania, Ruś, Prusy, Mazowsze, Żmudź and Duke of Anjou, Bourbon and Auvergne etc. We bring this document to the attention of all those who should be cognisant of it, all together and each separately, the council, the senators, the nobility and the State of the Kingdom of Poland and the Grand Duchy of Lithuania, Ruś, Prusy, Mazowsze, Żmudź, Wołyń, Podlasie and other possessions.

(1) Until the end of our life, we and our descendants, Polish kings and grand-dukes of Lithuania, Ruś, Mazowsze, Żmudź, Kiev, Wołyń, Inflanty and other states will not nominate or in other way choose in any shape or form that may come to mind a king to be imposed as a successor on the state, so that for all time after our death and the deaths of our descendants a free choice be left to all the states of Poland and neither we nor our descendants will use the title of heir to the kings of Poland.

(2) Since, in this worthy commonwealth of the nations of Poland, Lithuania, Ruś, Inflanty and others, there is no shortage of people of other faiths, which might in time lead to the sedition of the populace caused by a schism or disagreement in religious matters, which has been guarded against by certain citizens of the commonwealth of the confederation, in this measure in the matter of religion, peace must be maintained, which we intend to keep to the end of our time.

(3) In the case of matters of the crown, which might concern our person and our eminence, the sending of envoys to other countries or the hearing or dismissal of envoys from other countries, the summoning or receiving of armies or of soldiers, we and our descendants will not initiate or do anything without the advice of the crown councils of both nations and we will not interfere in matters belonging to the seym; but those envoys which do not concern the Commonwealth and which can be dismissed according to the time and the need we will and always will dismiss with the acquiescence of the lords of the crown councils of both nations who will be residing near us at that time.

(4) In the case of war or a levee en masse, we will not initiate anything without the permission of the seyms of all states, or send to war beyond the borders of the commonwealth of both nations knights of the royal army either by custom or by royal request, or pay fi ve marks per spear; this we and our descendants, Polish kings, will not do and we so pledge with our royal word. If, however, we were, on the basis of a resolution by the seym, to raise a levee en masse, we will not keep our subjects in the place where they have been called to arms, that is the time and place appointed by letters of war, for longer than two Sundays. If we were, with the permission of all states, to send our subjects beyond our borders and they agreed voluntarily then for each and every mounted knight, without exception, and also each nobleman on foot who should serve the war, we should pay them the marks before we cross the border. And we will not keep them on the army pay of five marks more than one quarter of the year and no division of the army shall be made into smaller or larger parts between them. If we were not to cross the border before the passing of two Sundays, then they will not be kept by us for longer. For the duration of the war, we will cover all the costs of the war by ourselves, including cannons, gunpowder, gunners, infantrymen and all the guards.

(…)

(6) What may also occur is that, among so many senators, opinions, thoughts and understanding may differ and not always be in agreement in all matters, so we and our descendants will not conclude any matter with our might but will make diligent efforts to make sure we all come to the same conclusion, after considering all speeches, and ensure that these conclusions do not do detriment to the rights and freedoms of the people and that they are of benefi t to the Commonwealth and that they are not contrary to the rights and freedoms and liberties of all the states. If we cannot come to one agreed opinion, then our conclusion will be the one that is closest to the freedoms, rights and customs in accordance with the laws of each land and the good of the Commonwealth, apart from seym matters, which should be discharged in accordance with common custom and the cognisance and permission of all states.

(7) Since it is a certain and suffi cient matter that the person of the king of such great states of the kingdom cannot deal alone with all these matters, which could lead the Crown into disorder or danger;

We hereby establish and wish to have as a permanent right that from each general seym there should be nominated and appointed from the crown councils 16 persons from each of Poland, Lithuania and the other states belonging to the Commonwealth, with the cognisance of all states and other Polish and Lithuanian crown officials, who are constantly with us guarding the person of our majesty and common freedom, without whose advice and knowledge neither we nor our descendants cannot and will not be able to do anything in common matters (not affecting seym matters); and these lords will guarantee that in all matters nothing will be done against our gravity and against common law, about which they should later report at a general seym to those who attend; should any of the lords of the councils, senators, come to us any number of times, they shall be able to reside here for this matter and for any other which comes before the council and they shall offer advice and should know; also the deputies shall have nothing more before any of them apart from the fact that they will reside near us until their time, retaining nothing of the old custom of writing our letters to the absent councils, whenever such an event should take place.

(8) The appointment of these senators at the seym shall affect 16 persons, for each half-year, four: one from the bishops, a second from the voivodes and two from the castellans, in the order in which they sit in the council. If someone did not want to take his turn or if there was some legal impediment preventing him from so doing, he should state so at the sitting of the seym so that someone else from the order should be appointed in his place. And they shall receive remuneration from the treasury belonging to us and to our descendants: other bishops from the lands of Ruś and senators of a lay state for their half-year should receive five hundred złotys, while the spiritual lords of Polish lands do not need this as they are well supplied.

(9) The general seym of the crown should be summoned not less than in two years and where there exists an urgent and sudden need of the Commonwealth, then on the advice of the lords of the council of both states we shall convene it as the time and the needs of the Commonwealth dictate but we will not extend the sitting beyond six Sundays. Before such seyms in Poland, in accordance with custom, and in Lithuania, in accordance with the statute of the Grand-Duke of Lithuania, there should be summoned poviat seyms, as happens in the famous seyms of Koło and Korczyń, and also in Lithuania and in Wołkowysk there shall be a main seym; at these seyms through the deputies, in accordance with custom, there shall be a presentation of their needs.

(…)

(11) The crown offices of both nations are to be preserved in their entirety and we will not interfere in or suppress court offices; but they shall be given to stately persons, worthy and deserving from both nations and not to foreigners, when these offices fall vacant.

(12) So that there will be no doubts whatsoever about the lands of the nobility, which have always been free with all the resources therein, which may ever be found in them, including all precious metals and salt windows, we and our descendants give them to the nobility for free usage for time eternal.

(13) We also promise that we will not conduct any lectures or draw arguments from foreign laws so that the legacies of our ancestors by virtue of our inheritance law be understood as given in fief, but shall make it clear that they have been given in accordance with feudal law.

(14) The starostes of border and court castles and main towns, and those main towns that do not have starostes, shall pledge to the king and the kingdom that at a time of interregnum they shall not bequeath the castles and the towns to the detriment of the Commonwealth and to no one else but to the king duly appointed and crowned by the will of all, on pain of loss of life, friendship and fortune.

(…)

(16) Some countries of the Polish Crown took the justice of the common courts from our royal person, which we allow them to do and we do not intend to hinder this with the proviso that others who wish to establish the same for themselves will always be free to do so and that this improvement will freely be done with their mutual consent. If they should manage to do this with our royal person then we and our descendants do freely consent. So should the lord councillors, all the states of the Grand Duchy of Lithuania and of the lands of Kiev, Podole, Wołyń, Jarosław, Bracław, which are subject to Lithuanian law, in this way establish their matters at the next seym gathered for our coronation and establish the custom of justice among themselves; and whatever they decide among themselves and what the majority of those subject to Lithuanian law agree to, to this we will pledge our support at our coronation and they will then be able to take these matters and these courts freely into their own hands forever.

(17) We personally guarantee that we will not introduce or raise any taxes and levies on behalf of our royal and spiritual councils, or tolls on our new towns in Poland and the Grand Duchy of Lithuania and in all our lands belonging to our crown without the permission of all the states in the general seym, or establish or allow for any monopolies on goods which originate from our crown lands, such as Poland or Lithuania.

(18) Since on our marriage much depends in the Commonwealth, we here promise and pledge in our own name and in that of our descendants, kings of Poland, never to establish or undertake any actions concerning our marriage apart from with the cognisance and permission of the crown councils of both nations. Apart from such causes as are permitted by and expressed in the Holy Bible and the Word of God, we will not seek opportunity for ourselves not to live in the state of marriage or to divorce.

(…)

(21) And if we should (God forbid) transgress against all the laws, freedoms, articles and conditions or not fulfil them, then we will make the crown citizens of both nations free of their subservience and the faith that they owe us and we will free them from our rule.

This all, constituted and written by the Crown Councils of both nations, the knights and the states of all the nations belonging to the Crown, at the common election seym near Warsaw, in the village of Kamień, on the twelfth day of the month of May in the year of Our Lord 1573.

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IX
PEACE OF WESTPHALIA OF 1648

Peace of Westphalia of 1648
Reverse side of a medal of the mint-master of Münster Engelbert Ketteler dating from 1648
(picture and description taken from: Der *Westfälische* Frieden, 149)

PEACE OF WESTPHALIA OF 1648

The Thirty Years' War, although often considered religious, as it originated in Bohemia as a result of the Austrian counter-reformation, soon transformed into an international political conflict. The Habsburgs reigning the Holy Roman Empire, namely Ferdinand II (1619–1637), and subsequently his son Ferdinand III (1637-1657), strove to strengthen the emperor's power and tighten the links between the politics of the Empire and the interests of the Austrian and Spanish monarchy. France under the rule of King Louis XIII (1610–1643) opposed any attempts to unite the Habsburg powers, whereas Sweden decided to counteract in a military way any plans to reinforce their power over the Baltic Sea. After many years of a destructive conflict, the parties considered it necessary to undertake peace negotiations. This decision was affected by the death of two chief commanders of the armies taking part in the war, namely the King of Sweden Gustavus Adolphus in 1632, and Albrecht von Wallenstein in 1634, as well as by depletion of material and human resources, and by internal unrest both in the Holy Roman Empire and in France (and also in England which was not involved in the conflict). It is estimated that on the area covered by the war the population declined by as much as two-thirds, whereas the population of the Holy Roman Empire decreased from 20 million at the beginning of the war to 12 million in the middle of 17th century. Although as early as in 1641, the Empire began informal talks with the French and the Swedish in Hamburg, the death of Cardinal Richelieu in 1642, and the death of King Louis XIII in the following year, delayed commencement of negotiations. The parties' plenipotentiaries had negotiated since the end of 1644. The talks were held by two separate groups, meeting in two Westphalian towns: in Osnabrück talks with Sweden were held, i.e. with the Lutheran countries, and in Münster – with France, namely with the Catholics. It was the first international congress, and it was attended by 148 delegates (111 delegates from the German states and 37 from other states).

The treaty was composed of three main parts. The first two comprised separate treaties between the Emperor and France, Sweden, and their allies. The third part regulated some religion-related issues, the relationship between the German states and the Emperor, and the foreign policy of the Emperor and Holy Roman Empire.

On 26 November, the Treaty was condemned by Pope Innocent X (1644–1655) with the papal bull *Zelo Dominus Dei* and deemed null and void. This, however, did not prevent the papal nuncio, Fabio Chigi, an active

participant of the congress in Münster, from becoming the Pope's successor as Alexander VII (1655-1667).

The peace treaty signed in Münster and Osnabrück laid foundations for the future distribution of political powers in the Holy Roman Empire while, at the same time, reinforcing its continuing disintegration. All the territories of the Holy Roman Empire were vested with full power (sovereignty) and the right to enter into alliances with other states (with a reservation that such alliance might not be against the Emperor). Furthermore, the individual states were recognised as states of various religions, and in the future Reichstag of the Holy Roman Empire separate Evangelical and Catholic bodies (*Corpus Evangelicorum* and *Corpus Catholicorum*) were to be established, which deprived the Emperor of a decisive voice in issues related to religion. Among the German states, the one that gained most was Brandenburg (part of Western Pomerania, some land in Rhineland, as well as Magdeburg and Halberstadt). France obtained access to the right bank of Rhine in upper and lower Alsace, as well as the Bishoprics of Metz, Toul and Verdun; whereas Sweden acquired control of Vornpommern – west of the lower course of the Oder River with Szczecin and Wismar, as well as secularised territories of the Bishoprics of Bremen and Verden. Sweden controlled the mouths of the Oder, Elbe and Weser rivers. Both France and Sweden became the guarantors of peace and of German freedoms. Also the Netherlands (the Republic of United Provinces along with its domains in East and West India) and Switzerland were recognised as independent states. The Treaty, however, did not settle a number of serious problems and failed to prevent further conflicts (e.g. between France and Spain, ended as late as in 1659 with the Treaty of the Pyrenees; struggle for *dominium maris Baltici* – peace in Oliwa of 1660, the guarantor of which was the king of France; and here again the state that gained most was Brandenburg: thanks to a ratification of the Treaties of Wehlau and Bromberg, the elector obtained full sovereign powers in Duchy of Prussia).

In the body of international law, that collection of bilateral agreements confirmed by the rulers formed the so called *constitutio Westphalica*, a set of regulations specifying who was a sovereign ruler in Europe, and what prerogatives where granted to him. Such sovereignty vested in the electors destroyed the then-existing unity of the Empire as well as its hegemony, both church and political one. Thanks to the destruction of universal unity of the Empire and of the Papacy, each ruler could protect his own interests and follow *raison d'État*. On the whole, it also provided some sort of a guarantee of religious freedom and was the first step towards protection of fundamental rights.

The Treaty reintroduced the terms of the Peace of Augsburg (1555), yet it covered, in addition to the Catholic and Protestant (Lutheran)

religion, also the third Evangelical Reformed denomination, namely the Calvinist denomination. This meant that followers of these three Christian denominations had identical rights; none of the denominations was privileged. The principle of *cuius regio eius religio* remained in effect, but with some restrictions and taking into account the state of affairs as of 1624, as well as with some exceptions (right to practice religion by minorities, change of religion by the subject entitled him to emigrate without confiscation of his property, and change of religion by the ruler did not force the subjects to follow his new religion). Although intolerance remained the rule underlying the reigns of the Habsburgs in their hereditary states, the Treaty granted Sweden and the Protestant states of the Holy Roman Empire the right to care for Protestants, not only for the gentry, but also for their subjects in Lower Austria and Silesia. The visible signs of this approach are the "churches of peace" (*die Friedenskirche*) erected in the 1660s outside the city walls with the use of perishable materials, such as wood, clay and straw in Świdnica, Jawor and Głogów (that one has not survived).

The Treaty is made up of two key documents:

- *Instrumentum Pacis Osnabrugensis (IPO)* – a treaty concluded between the Empire and Sweden (Lutherans), comprised of 17 articles (numbered with Roman numerals), of which Articles V and VII pertain to religious rights; and
- *Instrumentum Pacis Monasteriensis (IPM)* – a treaty concluded between the Empire and France (Catholics), comprised of 120 sections containing repetition of IPO provisions, and (Sections 69-91) providing for detailed issues, such as the giving up of Alsace and Sundgau to the benefit of France.

The numbering after: *Die Westfälischen Friedenverträga vom 24 October 1648. Text und Übersetzungen (Acta Pacis Westphalicae. Supplementa electronica,* 1), 2004. The Treaty with comments can be found at the following address: http://www.pax-westphalica.de/ipmipo/indexen.html

Original text

Based on: *Die Westfälischen Friedenverträga vom 24. October 1648. Text und Übersetzungen (Acta Pacis Westphalicae. Supplementa electronica*, 1) The critical edition of the treatise available on: http://www.pax-westphalica.de/ipmipo/indexen.html

[numbering of the articles was done by IPO symbols – taken from the Latin text *Instrumentum Pacis Osnabrugensis*, their counterparts in IPM – *Instrumentum Pacis Monasteriensis* – are presented in paretheses]

Pax Westphalica Anno 1648

Art. V

28. [Art. V,28 IPO ← § 47 IPM] Libera et immediata Imperii nobilitas omniaque et singula eius membra una cum subditis et bonis suis feudalibus et allodialibus, nisi forte in quibusdam locis ratione bonorum et respectu territorii vel domicilii aliis statibus reperiantur subiecti, vigore pacis religiosae et praesentis conventionis in iuribus religionem concernentibus et beneficiis inde promanantibus idem ius habeant, quod supradictis electoribus, principibus et statibus competit, nec in iis sub quocunque praetextu impediantur aut turbentur, turbati vero omnes omnino in integrum restituantur.

30. [Art. V,30 IPO ← § 47 IPM] Quantum deinde ad comites, barones, nobiles, vasallos, civitates, fundationes, monasteria, commendas, communitates et subditos statibus Imperii immediatis sive ecclesiasticis sive secularibus subiectos pertinet, cum eiusmodi statibus immediatis cum iure territorii et superioritatis ex communi per totum Imperium hactenus usitata praxi etiam ius reformandi exercitium religionis competat ac dudum in pace religionis talium statuum subditis, si a religione domini territorii dissentiant, beneficium emigrandi concessum, insuper maioris concordiae inter status conservandae causa cautum fuerit, quod nemo alienos subditos ad suam religionem pertrahere eave causa in defensionem aut protectionem suscipere illisve ulla ratione patrocinari debeat, conventum est hoc idem porro quoque ab utriusque religionis statibus observari nullique statui immediato ius, quod ipsi ratione territorii et superioritatis in negotio religionis competit, impediri oportere.

Art. VIII

1. [Art. VIII,1 IPO = § 62 IPM] Ut autem provisum sit, ne posthac in statu politico controversiae suboriantur, omnes et singuli electores, principes et status Imperii Romani in antiquis suis iuribus, praerogativis, libertate, privilegiis, libero iuris territorialis tam in ecclesiasticis quam politicis exercitio, ditionibus, regalibus horumque omnium possessione vigore huius transactionis ita stabiliti firmatique sunto, ut a nullo unquam sub quocunque praetextu de facto turbari possint vel debeant.

2. [Art. VIII,2 IPO = § 63 IPM] Gaudeant sine contradictione iure suffragii in omnibus deliberationibus super negotiis Imperii, praesertim ubi leges ferendae vel interpretandae, bellum decernendum, tributa indicenda, delectus aut hospitationes militum instituendae, nova munimenta intra statuum ditiones extruenda nomine publico veterave firmanda praesidiis nec non ubi pax aut foedera facienda aliave eiusmodi

negotia peragenda fuerint. Nihil horum aut quicquam simile posthac unquam fiat vel admittatur nisi de comitiali liberoque omnium Imperii statuum suffragio et consensu. Cumprimis vero ius faciendi inter se et cum exteris foedera pro sua cuiusque conservatione ac securitate singulis statibus perpetuo liberum esto, ita tamen, ne eiusmodi foedera sint contra Imperatorem et Imperium pacemque eius publicam vel hanc inprimis transactionem fiantque salvo per omnia iuramento, quo quisque Imperatori et Imperio obstrictus est.

3. [Art. VIII,3 IPO = § 64 IPM] Habeantur autem comitia Imperii intra sex menses a dato ratificatae pacis, postea vero, quoties id publica utilitas aut necessitas postulaverit. In proximis vero comitiis emendentur inprimis anteriorum conventuum defectus, ac tum quoque de electione Romanorum regum, certa constantique Caesarea capitulatione concipienda, de modo et ordine in declarando uno vel altero statu in bannum Imperii praeter eum, qui alias in constitutionibus Imperii descriptus est, tenendo, redintegrandis circulis, renovanda matricula, reducendis statibus exemptis, moderatione et remissione Imperii collectarum, reformatione politiae et iustitiae, taxae sportularum in iudicio camerali, ordinariis deputatis ad modum et utilitatem reipublicae rite formandis, legitimo munere directorum in Imperii collegiis et similibus negotiis, quae hic expediri nequiverant, ex communi statuum consensu agatur et statuatur.

4. [Art. VIII,4 IPO = § 65 IPM] Tam in universalibus vero quam particularibus diaetis liberis Imperii civitatibus non minus quam caeteris statibus Imperii competat votum decisivum, iisque rata et intacta maneant regalia, vectigalia, reditus annui, libertates, privilegia confiscandi, collectandi et inde dependentia aliaque iura ab Imperatore et Imperio legitime impetrata vel longo usu ante hos motus obtenta, possessa et exercita cum omnimoda iurisdictione intra muros et in territorio, cassatis, annullatis et in futurum prohibitis iis, quae per repressalias, arresta, viarum occlusiones et alios actus praeiudiciales sive durante bello quocunque praetextu in contrarium facta et propria autoritate hucusque attentata sunt sive dehinc nullo praecedente legitimo iuris et executionis ordine fieri attentarive poterunt. De caetero omnes laudabiles consuetudines et Sacri Romani Imperii constitutiones et leges fundamentales inposterum religiose serventur sublatis omnibus, quae bellicorum temporum iniuria irrepserant, confusionibus.

Art. X

1. [Art. X,1 IPO # IPM] Porro quoniam serenissima regina Sueciae postulaverat, ut sibi pro locorum hoc bello occupatorum restitutione satisfieret pacique publicae in Imperio restaurandae condigne prospiceretur, ideo Caesarea maiestas de consensu electorum, principum et statuum Imperii, cumprimis interessatorum, vigoreque praesentis transactionis concedit eidem serenissimae reginae et futuris eius haeredibus ac successoribus regibus regnoque Sueciae sequentes ditiones pleno iure in perpetuum et immediatum Imperii feudum:

2. [Art. X,2 IPO # IPM] Primo: Totam Pomeraniam Citeriorem vulgo *Vorpommern* dictam una cum insula Rugia iis finibus contentas, quibus sub ultimis Pomeraniae ducibus descriptae fuerant; ad haec e Pomerania Ulteriori Stetinum, Gartz, Dam, Golnau et insulam Wollin una cum interlabente Odera et mari vulgo *das frische Haff* vocato suisque tribus ostiis Peine, Swine et Diwenow atque adiacente utrinque terra ab initio territorii regii usque in mare Balthicum ea latitudine littoris orientalis, de qua inter regios et electorales commissarios circa exactiorem limitum et caeterorum minutiorum definitionem amicabiliter convenietur.

3. [Art. X,3 IPO # IPM] Hunc ducatum Pomeraniae Rugiaeque principatum una cum ditionibus locisque annexis omnibusque et singulis ad ea pertinentibus territoriis, praefecturis, urbibus, castellis, oppidis, vicis, pagis, hominibus, feudis, fluminibus, insulis, lacubus, littoribus, portubus, stationibus, antiquis vectigalibus et reditibus et quibuscunque aliis ecclesiasticis ac secularibus bonis nec non titulis, dignitatibus, praeeminentiis, immunitatibus et praerogativis caeterisque omnibus ac singulis ecclesiasticis et secularibus iuribus ac privilegiis, quibus antecessores Pomeraniae duces ea habuerant, incoluerant et rexerant, regia maiestas regnumque Sueciae ab hoc die in perpetuum pro haereditario feudo habeat, possideat iisque libere utatur et inviolabiliter fruatur.

4. [Art. X,4 IPO # IPM] Quicquid etiam iuris in collatione praelaturarum et praebendarum capituli Camminensis antehac habuerant duces Pomeraniae Citerioris, habeat imposterum regia maiestas regnumque Sueciae perpetuo cum potestate eas extinguendi reditusque mensae ducali post modernorum canonicorum et capitularium decessum applicandi. Quicquid autem Ulterioris Pomeraniae ducibus competierat, competat domino electori Brandenburgico una cum integro episcopatu Camminensi eiusque territoriis, iuribus et dignitatibus, prout infra pluribus explicatur [cf. Art. XI,5 IPO].

Titulis et insigniis Pomeraniae tam regia domus quam Brandenburgica promiscue utantur more inter priores Pomeraniae duces usitato, regia quidem perpetuo, Brandenburgica vero, quamdiu ullus e linea masculina superfuerit, absque tamen Rugiae principatu omnique alia praetensione ullius iuris in loca regno Sueciae cessa. Deficiente vero linea masculina domus Brandenburgicae omnes praeter Sueciam alii titulis et insigniis Pomeranicis abstinebunt, atque tunc quoque Ulterior Pomerania tota cum Citeriori Pomerania totoque episcopatu et integro capitulo Camminensi adeoque omnibus antecessorum iuribus et expectantiis consolidata ad solos reges regnumque Sueciae perpetuo pertinebunt spe interim successionis et investitura simultanea gavisuros, ita ut etiam ordinibus subditisque dictorum locorum pro homagii praestatione solito more caveant.

5. [Art. X,5 IPO # IPM] Dominus elector Brandenburgicus caeterique omnes interessati exsolvunt ordines, officiales et subditos singulorum supradictorum locorum vinculis et sacramentis, quibus hucusque sibi suisque domibus obstricti fuerant, eosque ad homagium et obsequia regiae maiestati regnoque Sueciae more solito praestandum remittunt atque ita Sueciam in plena iustaque eorum possessione

constituunt renunciantes omnibus in ea praetensionibus ex nunc in perpetuum, idque pro se suisque posteris peculiari diplomate hic confirmabunt.

9. [Art. X,9 IPO # IPM] […]: Ratione supradictarum omnium ditionum feudorumque Imperator cum Imperio cooptat serenissimam reginam regnique Sueciae successores in immediatum Imperii statum, ita ut ad Imperii comitia inter alios Imperii status regina quoque regesque Sueciae sub titulo ducis Bremensis, Verdensis et Pomeraniae ut et Rugiae principis dominique Wismariae citari debeant, assignata eis sessione in conventibus Imperialibus in collegio principum scamno seculari loco quinto, voto quidem Bremensi hoc ipso loco et ordine, Verdensi vero et Pomerano ordine antiquitus prioribus possessoribus competenti explicando.

Art. XI

5. [Art. XI,5 IPO # IPM] Dicto domino electori et successoribus suis episcopatus quoque Camminensis in feudum perpetuum ab Imperatore et Imperio concedatur eodem plane iure et modo ut supra de episcopatu Halberstadiensi et Mindano dispositum est, sed cum hoc tamen discrimine, ut in episcopatu Camminensi integrum sit domino electori canonicatus post decessum praesentium canonicorum extinguere atque sic successu temporis totum episcopatum Ulteriori Pomeraniae adiungere seu incorporare.

12. [Art. XI,12 IPO # IPM] Regia quoque maiestas Sueciae restituat domino electori pro se et successoribus suis, haeredibus atque agnatis masculis primo reliquam Pomeraniam Ulteriorem cum omnibus appertinentiis, bonis et iuribus secularibus et ecclesiasticis pleno iure tam quoad dominium utile quam directum; deinde Colbergam cum toto episcopatu Camminensi omnique iure, quod Ulterioris Pomeraniae duces hucusque habuerunt in collatione praelaturarum et praebendarum capituli Camminensis, ita tamen, ut salva maneant iura regiae maiestati Sueciae supra concessa atque ordinibus et subditis in restitutis partibus Ulterioris Pomeraniae episcopatuque Camminensi competentem eorum libertatem, bona, iura et privilegia secundum tenorem literarum reversalium (quibus etiam ordines et subditi dicti episcopatus gaudere debent, ac si iis directe datae essent) cum libero Augustanae confessionis exercitio iuxta invariatam Augustanam confessionem absque ulla perturbatione perpetim fruendo circa homagii renovationem et praestationem omni meliori modo confirmet et conservet.

English translation

Peace of Westphalia of 1648

Art. V

[Art. V,28 IPO ← § 47 IPM] With regard to the free Nobility, who hold immediately of the Empire, and all and singular their Members, with their Subjects, and feudal and allodial Goods and possessions (if it be not found that they are subject in some Places to other States upon the account of certain Goods, and for a Territory or Dwelling-Place) they shall by virtue of the Peace of Religion, and of the present Convention, have the same Right in matters of Religion, and in the Advantages arising form thence, with the Electors, Princes and States of the Empire; nor shall they be hinder'd or troubled therein more than they, upon any pretence whatsoever, and all such who have been molested, shall be entirely restor'd.

[Art. V,30 IPO ← § 47 IPM] As to what concerns the Counts, Barons, Nobles, Vassals, Towns, Foundations, Monasteries, Commendams, Communities and Subjects, holding of the States depending immediately upon the Empire, Ecclesiastical or Secular (as it belongs to those States holding immediately of the Empire to have the Right of reforming Religion, together with the Right of the Territory and Superiority, according to the common Practice hitherto in use thro the whole Empire; and it having been formerly agreed in the Peace of Religion, that the Subjects of such States, as were not of the Religion of the Lord of the Territory, might have leave to change their Habitation) it was moreover ordain'd, in order to preserve a more perfect Concord among the States, That no Person should entice to his Religion the Subjects of others, nor receive them into Safeguard and Protection on that account, or support them in any manner whatsoever. It is also agreed, that the same thing shall be observ'd by the States of the one and the other Religion, and that no immediate State shall be troubled in the right which belongs to it, by reason of any Superiority it may have in matters of Religion;

Art. VIII

[Art. VIII,1 IPO = § 62 IPM] And in order to prevent for the future all Differences in the Political State, all and every the Electors, Princes, and States of the Roman Empire shall be so establish'd and confirm'd in their antient Rights, Prerogatives, Liberties, Privileges, free Exercise of their Territorial Right, as well in Spirituals and Temporals, Seigneuries, Regalian Rights, and in the possession of all these things, by virtue of the present

Transaction, that they may not be molested at any time in any manner, under any pretext whatsoever.

[Art. VIII,2 IPO = § 63 IPM] That they enjoy without contradiction the Right of Suffrage in all Deliberations touching the Affairs of the Empire, especially in the matter of interpreting Laws, resolving upon a War, imposing Taxes, ordering Levies and quartering of Soldiers, building for the publick Use new Fortresses in the Lands of the States, and reinforcing old Garisons, making of Peace and Alliances, and treating of other suchlike Affairs; so that none of those or the like things shall be done or receiv'd afterwards, without the Advice and Consent of a free Assembly of all the States of the Empire: That, above all, each of the Estates of the Empire shall freely and for ever enjoy the Right of making Alliances among themselves, or with Foreigners, for the Preservation and Security of every one of them: provided nevertheless that these Alliances be neither against the Emperor nor the Empire, nor the publick Peace, nor against this Transaction especially; and that they be made without prejudice in every respect to the Oath whereby every one of them is bound to the Emperor and the Empire.

[Art. VIII,3 IPO = § 64 IPM] That the States of the Empire assemble within the space of six Months, counting from the Date of the Ratifi cation of the Peace, and after that as often as the publick Interest and Necessity shall require; That in the first Dyet they correct especially the Faults of preceding Assemblies; and moreover, that they treat and regulate the Election of King of the Romans, the Imperial Capitulation, which ought to be reduc'd to Terms that cannot be chang'd, the Manner and Order that ought to be observ'd in putting one or more of the States under the Bann of the Empire, besides what has been formerly declar'd in the Imperial Constitutions; That they treat there also of the Re-establishment of the Circles, of the Renewal of the Matricula, of the means of inserting in it the Names of such as have been taken out, of moderating and lowering the Taxes of the Empire, of the Reformation of the Policy, and Law of the Fees that are paid to the Imperial Chamber, of the best manner of forming and instructing the ordinary Deputies according to the Necessity and Advantage of the Commonwealth, of the true Business and Duty of the Directors of the Colleges of the Empire, and of other such-like Affairs which cannot be specify'd here.

[Art. VIII,4 IPO = § 65 IPM] That the free Towns of the Empire have a decisive Voice in the general and particular Dyets, as well as the other States of the Empire; and that their Regalian Rights, annual Revenues, the Liberties and Privileges of Confi scation, and imposing of Duties, may not be touch'd or meddled with, nor any thing that depends thereupon, nor any other Rights which they have legally obtain'd of the Emperor and the Empire, or which they have possess'd and exercis'd by a long Usage before these Troubles, with an entire Jurisdiction within the Inclosure of their Walls and

Territories; whatsoever has been hitherto done or attempted to the contrary by Reprisals, Arrests, stopping up of Passages, and other prejudicial Acts, by private Authority during the War, upon any pretext whatsoever, or which may afterwards be done or executed without any pretended Formality of Law, remaining for that effect void and null, and forbidden for the future. For the rest, all the laudable Customs, Constitutions, and fundamental Laws of the Empire, shall for the future be strictly kept and observ'd, and all the Confusions and Disorders that have crept in during the War, shall be remov'd.

Art. X

[Art. X,1 IPO # IPM] Next, the most Serene Queen of Sweden having demanded Satisfaction to be made her for the Restitution which she is oblig'd to make of the Places by her occupy'd during this War, and that lawful means might be provided for re-establishing publick Peace in the Empire; his Imperial Majesty for that effect, with the Consent of the Electors, Princes, and States of the Empire, and particularly of those concern'd, yields to the said most Serene Queen, her Heirs and Successors, by virtue of the present Transaction, the following Provinces, in full Right and perpetual and immediate Fief of the Empire.

[Art. X,2 IPO # IPM] All the hither Pomerania, commonly call'd Vor-Pommeren, together with the Isle of Rugen, included in the Limits wherein they were bounded under the last Dukes of Pomerania. Besides, in further Pomerania, the Towns of Stetin, Garts, Dam, Golnau, and the Isle of Wolin, with the River Oder, and the Arm of the Sea commonly call'd the das frishehaff. Likewise the three Mouths of Peine, Swine, and Divenow, and the adjacent Land on both sides, beginning at the Royal Territory, and reaching to the Baltick Sea, in such an Extent on the Eastern Bank, as shall be amicably agreed betwixt the Royal and Electoral Commissioners, who shall be nam'd for the more exact Regulation of the Limits and the other Particulars.

[Art. X,3 IPO # IPM] Her Majesty and the Kingdom of Sweden shall hold and possess from henceforth and for ever, in hereditary Fief, the said Dutchy of Pomerania, and the Principality of Rugen, and shall enjoy and make use of them freely and inviolably, together with the Domains and Places annex'd, and all the Territories, Bailliages, Towns, Castles, Burghs, Villages, Hamlets, Fiefs, Rivers, Isles, Lakes, Banks, Ports, Roads, antient Tolls and Revenues, and all other Goods whatsoever Ecclesiastical and Secular; as also the Titles, Dignities, Immunities, Preeminencies and Prerogatives, and all the other Rights and Privileges, Ecclesiastical and Secular, in the same manner that the former Dukes of Pomerania had, possess'd, and govern'd them.

[Art. X,4 IPO # IPM] Her Royal Majesty and the Kingdom of Sweden shall also have for the future for ever all the Right which the Dukes of hither

Pomerania had in the Collation of the Dignities and Prebendaries of the Chapter of Camin, with power to extinguish them, and incorporate them into the Ducal Domain after the Death of the present Prebends: but as to what of these belong'd to the Dukes of further Pomerania, that shall remain to the Elector of Brandenburg, with the entire Bishoprick of Camin, its Lands, Duties and Dignities, as shall be more amply explain'd afterwards.

The Royal Family of Sweden, and the Electoral Family of Brandenburg, shall use the Titles, Dignities and Arms of Pomerania, without any distinction, as the former Dukes of Pomerania us'd them; the Royal Family for ever, and that of Brandenburg so long as there shall remain any Descendants of the Male Line: but yet the Family of Brandenburg must not lay any claim to the Principality of Rugen, nor to any other Right upon the Places yielded to the Crown of Sweden. But the Male Line of the Family of Brandenburg coming to fail, all others except Sweden shall abstain from taking the Titles and Arms of Pomerania; and then also the whole further Pomerania, together with the hither Pomerania, and the whole Bishoprick, and entire Chapter of Camin, together with all the Rights and Dependencies of the former Possessors that shall be united thereto, shall for ever belong to the Kings and Crown of Sweden only, who in the mean time shall enjoy the Benefits of an apparent Succession and simultaneous Investiture, so that they shall be oblig'd to give the accustom'd Assurance to the States and Subjects of the said Places for the Performance of Homage.

[Art. X,5 IPO # IPM] The Elector of Brandenburg, and all others concern'd, discharge the States, Officers and Subjects of all the said Places of the Tyes and Oaths by which they have hitherto been engag'd to him and those of his Family, and remit them for the future to pay their Homage and Services in the accustom'd manner to her Majesty and the Crown of Sweden. And thus they constitute, for that effect, the Crown of Sweden in full Power and Possession of the things abovesaid, renouncing from henceforth and for ever all the Pretensions which they had thereto; which they will here confirm for them and their Descendants by a particular Act.

[Art. X,9 IPO # IPM] The Emperor and the Empire do receive, upon the account of all the foresaid Provinces and Fiefs, for an immediate State of the Empire, the most Serene Queen and her Successors to the Crown of Sweden, so that the foresaid Queen and the said Kings shall from henceforth be call'd to the Imperial Dyets with the other States of the Empire, under the Title of Dukes of Bremen, Werden, and Pomerania, as well as under that of Princes of Rugen, and Lords of Wismar; and there shall be assign'd them a Seat in the Imperial Assemblies in the College of Princes upon the Bench of the Seculars in the fi fth place, viz. for Bremen, in that same place and Order; but for that of Werden and Pomerania, the Places shall be regulated according to the antient Order of the former Predecessors.

Art. XI

[Art. XI,5 IPO # IPM] In like manner the Bishoprick of Camin shall be yielded and given over by the Emperor and the Empire to the foresaid Elector and his Succcessors, with the same Rights and in the same manner as the Bishopricks of Halberstadt and Minden have been dispos'd of above; with this difference only, That in the Bishoprick of Camin the foresaid Elector shall be at liberty to extinguish all the Canonicates, after the death of the present Canons, and thus to add and incorporate in the time the whole Bishoprick with further Pomerania.

[Art. XI,12 IPO # IPM] Her Majesty of Sweden shall also restore to the foresaid Elector, for him, his Successors, Heirs and Relations Male by the Father's side; in the fi rst place the rest of the further Pomerania, with all its Appurtenances, Goods, Ecclesiastical and Secular Rights in full Property, as well for the Dominium utile, as for the Dominium directum. In the second place, the City of Colberg, with the whole Bishoprick of Camin, and the whole Right which the Dukes of the further Pomerania formerly had in the Collation of Dignities and Prebendships of the Chapter of Camin; but so that the said Rights granted above to her Majesty of Sweden, shall entirely remain to her, and that the said Elector shall confirm and preserve, in the best manner possible, to the States and Subjects in the restor'd part of the further Pomerania, and in the Bishoprick of Camin, at the renewing and paying of Homage, their competent Liberty, and their Goods, Rights and Privileges, to enjoy them perpetually without any Trouble, according to the Tenor of the Reversal Letters (which the States and Subjects of the said Bishoprick are likewise to enjoy, as if they had been directly granted to them) with the free Exercise of the Confession of Augsburg, in so far as it has not been chang'd.

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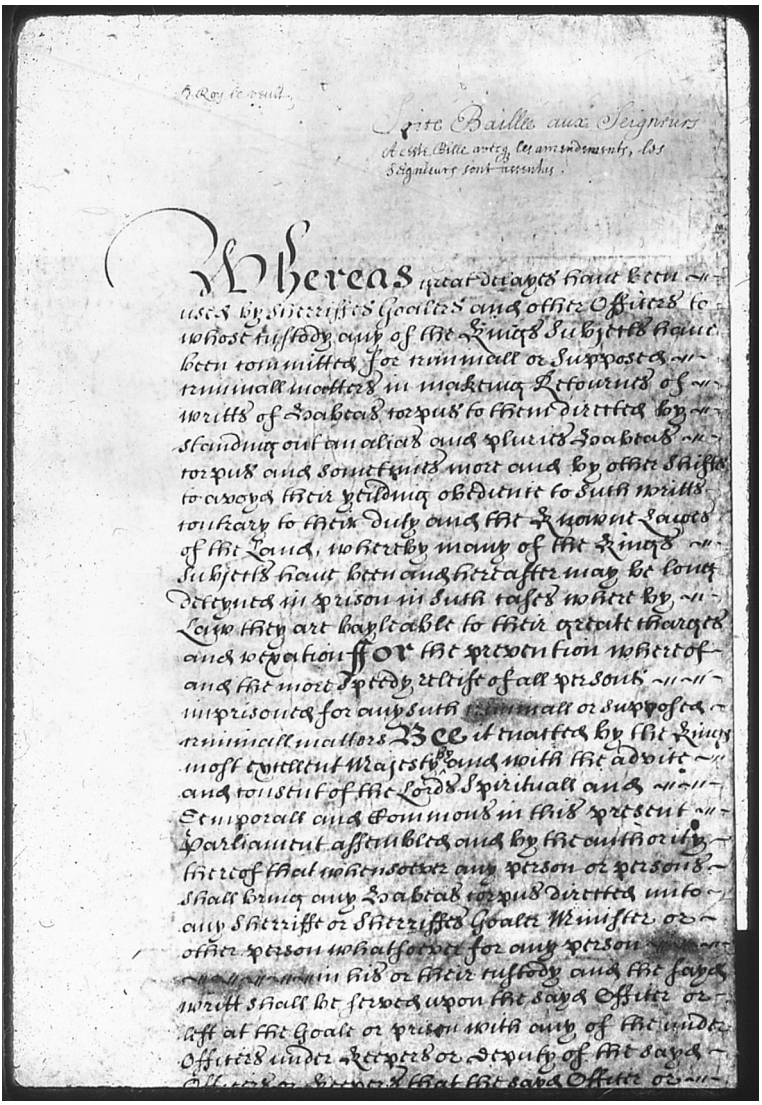
X
HABEAS CORPUS ACT OF 1679



Le Roy le veult.

Fait Baillé aux Seigneurs
A cette Bille avecq les amendements, les
Seigneurs sont assentus.

Whereas great delayes have been
vsed by Sheriffes Gaolers and other Officers to
whose custody any of the Kings Subjects have
been committed for criminall or Suppos'd
criminall matters in makeing Returnes of
writts of Habeas corpus to them directed by
Standing out an Alias and Pluries Habeas
corpus and sometimes more and by other shifts
to avoyd their yeilding obedience to such writts
contrary to their duty and the known Lawes
of the Land, whereby many of the Kings
Subjects have been and hereafter may be long
detayned in prison in such cases whereby
Law they are bayleable to their great charges
and vexation For the prevention whereof
and the more speedy relief of all persons
imprisoned for any such criminall or suppos'd
criminall matters Bee it enacted by the Kings
most Excellent Majesty and with the advice
and consent of the Lords Spirituall and
Temporall and Commons in this present
Parliament assembled and by the authority
of the same that whensoever any person or persons
shall bring any Habeas corpus directed unto
any Sheriffe or Sheriffes Gaoler Minister or
other person whatsoever for any person
in his or their custody and the said
writt shall be served upon the said Officer or
att the Gaole or prison with any of the under
Officers under keepers or deputy of the said
Officer or

HABEAS CORPUS ACT OF 1679

In May 1660, King Charles II (1660-1685) arrived in Dover. Earlier, the Parliament had recognized him as the King of England as of January 1649 when his father, Charles I (1625–1649), had been executed. It seemed that thanks to the bloodless Restoration of Stuart dynasty, peace would return at last to the kingdom after the chaos of the past years of Civil War and the rule of Lord Protector Oliver Cromwell (+1658). Although at first nothing indicated the forthcoming events, the struggle between the Crown and the Parliament finally ended up in the glorious revolution and victory of the Parliament, when the son and successor of Charles II, James II, fled the country in 1688. The first Parliament under the reign of Charles II was in session for 18 years (until February 1679) to be dissolved by the King. In May 1679, a new Parliament, in the course of struggle with the King, passed *Habeat corpus capti in prisona* (drafted already by the previous Parliament), a prohibition to restrict in any way the writs of *habeas corpus* (*Habeas Corpus Act).* At first, the King adjourned the Parliament's session, to finally dissolve it in July. As has already been mentioned, the origins of the *habeas corpus* concept go back much further than to that 18th century act, namely to the Middle Ages or even to the Anglo-Saxon period. The first instance of its application was recorded in 1305, yet there had also been references to its use prior to the issuance of *Magna Carta* in 1215. Originally, such writs were issued in order to bring a witness before the court, so that the court procedure would not be suspended, in particular in cases relating to debts. Later on, writs began to serve as a means of protection of individuals against arbitrary imprisonment by the state. Although this was provided for by Article 39 of *Magna Carta* and was a part of English common law, the kings often made various exceptions to it and suspended the application of *Habeas corpus.*

Habeas corpus are the first words of a mediaeval written court order, addressed to the authority that arrested a given person, urging it to bring the person to trial so that the court could decide whether the imprisonment was legitimate. The court's decision pertained only to the legitimacy of the imprisonment itself, and not to existence or absence of guilt. If the court decided that the imprisonment in question was illegitimate, the arrested person had to be freed.

The essence of that right comes down to safeguarding the fundamental principle that any illegitimate detention may be appealed against, directly to the court (a judge). That principle applied to all arrested people, regardless of their social status. The detainee had 24 hours to get acquainted with the charges against him and could not be detained in jail prior to court hearing

for more than 3 to 20 days, depending on the distance between the jail and the venue of the court. The right was of particular importance, considering that court proceedings at the time differed significantly from those of today – an oath, religious in character, rather than a critical analysis of charges and of testimony, constituted its basis. Suspending the *Habeas corpus,* quite frequent later on, resulted in arbitrary arrests and imprisonments. The Act was suspended in 1695, during the plots by supporters of expelled King James II, then again in 1723, in 1794 (for 8 years, due to French revolution), and in 1817.

The principle is also known in other Anglo-Saxon countries, where at times it has also been "suspended", e.g. by President Abraham Lincoln during the Civil War.

Original text

Based on: *The Founders' Constitution*, Volume 3, Article 1, Section 9, Clause 2, document 2 http://press-pubs.uchicago.edu/founders/documents/a1_9_2s2.html

The University of Chicago Press

Habeas Corpus Act of 1679

31 Car. 2, c. 2 , 27 May 1679

Whereas *great delays have been used by sheriffs, gaolers and other officers, to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of* habeas corpus *to them directed, by standing out an* alias *and* pluries habeas corpus, *and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their* duty and the known laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation:

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; (2) be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority thereof, That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or her custody, and the said writ shall be served

upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, underkeepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring or cause to be brought the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of *England* for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment,unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of any such writ; (2) be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli secundi Regis,* and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court where of he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be,

returnable *immediate* before the said lord chancellor or lord keeper, or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts; 6) and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detainer; (7) and thereupon within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the court of King's bench the term following, or at the next assizes, sessions or general gaol-delivery of and for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said court where such appearance is to be made; (8) unless it shall appear unto the said lord chancellor or lord keeper, or justice or justices,or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

IV. Provided always, and be it enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation-time, in pursuance of this act.

V. And be it further enacted by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds; (2) and for the second offence the sum of two hundred pounds, and shall

and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the King's courts at *Westminster,* wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by *Non vult ulterius prosequi,* or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the offi cers or person within the said penalty for the second offence.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence; (2) be it enacted by the authority aforesaid, That no person or persons which shall be delivered or set at large upon any *habeas corpus,* shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; (3) and if any other person or persons shall knowingly contrary to this act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

VII. Provided always, and be it further enacted, That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of *oyer* and *terminer* or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of *oyer* and *terminer* or general gaol-delivery, after such commitment; it shall and may be lawful to and for the judges of the court of King's bench and justices of *oyer* and *terminer* or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol-delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the King could not be produced the same term, sessions or general gaol-delivery; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or first day of the sessions of *oyer* and *terminer* and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of *oyer* and *terminer* or general gaol-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

VIII. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

IX. Provided always, and be it enacted by the authority aforesaid, That if any person or persons, subjects of this realm, shall be committed to any prison or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers; (2) unless it be by *habeas corpus* or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol; (3) or where any person is sent by order of any judge or assize or justice of the peace, to any common workhouse or house of correction; (4) or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6) and if any person or persons shall after such commitment aforesaid make out and sign, or countersign any warrant or warrants for such removal aforesaid, contrary to this act; as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their *habeas corpus* as well out of the high court of chancery or court of exchequer, as out of the courts of King's bench or common pleas, or either of them; (2) and if the said lord chancellor or lord keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of *habeas corpus* by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of fi ve hundred pounds, to be recovered in manner aforesaid.

XI. And be it declared and enacted by the authority aforesaid, That an *habeas corpus* according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque-ports, or other privileged places within the kingdom of *England,* dominion of *Wales,* or town of *Berwick* upon *Tweed,* and the islands of *Jersey* or *Guernsey;* any law or usage to the contrary notwithstanding.

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XI
VIRGINIA BILL OF RIGHTS OF 1776

Virginia State Motto

VIRGINIA BILL OF RIGHTS OF 1776

Along with Massachusetts, Virginia was among the leaders of American independence movement. After Governor Lord Dunmore, representing the Royal Government, had been forced to withdraw from the colonies, in autumn 1775, the patriots organized a convention – on 6 May in Williamsburg. And it is the convention, that provided an impulse to thirteen colonies to ultimately declare their independence. The only issue discussed during the convention was the way in which the independence was to be proclaimed – should the convention do it first, or should it wait for the Congress to proclaim it. Finally, on 15 May the first option prevailed, supported by a lawyer Edmund Pendleton. The resolution was sent to Philadelphia where it was received on 27 May and discussion on the draft was held on 7 June. Meanwhile, in Williamsburg a commission was appointed to draw up a bill of rights and a constitution of the newly-established republic. The first draft bill was prepared in mid-May, while at the end of that month the draft drawn up by the commission was ready. Among the members of commission was James Madison, who emphasised the need to guarantee freedom of religion (section 16).. The final version of the bill was ready in June. The author of the drafts and of the final wording of the Bill and of the Constitution, drawn up in 6 weeks, was Colonel George Mason. 15 years later, some of his expressions were directly incorporated into the *US Bill of Rights* (amendments to the Constitution). Following heated discussions and numerous amendments, the Bill was unanimously adopted on 11 June 1776, three weeks prior to the announcement of the Declaration of Independence. The Constitution of the State of Virginia was adopted on 28 June 1776.

The idea to adopt bills of rights became appealing and by the end of 1776 five other states proclaimed similar declarations. Yet, it was Mason who was the author of the first American act limiting the powers of the government and strengthening the rights of individual.

Original text

Based on: H.C. Syrett (ed.), *American Historical Documents*, New York 1967, pp. 78-81.

Virginia Bill of Rights of 1776

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representives so elected, nor bound by any law to which they have not, in like manner, assembled, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments infl icted.

10. That general warrants, whereby an offi cer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

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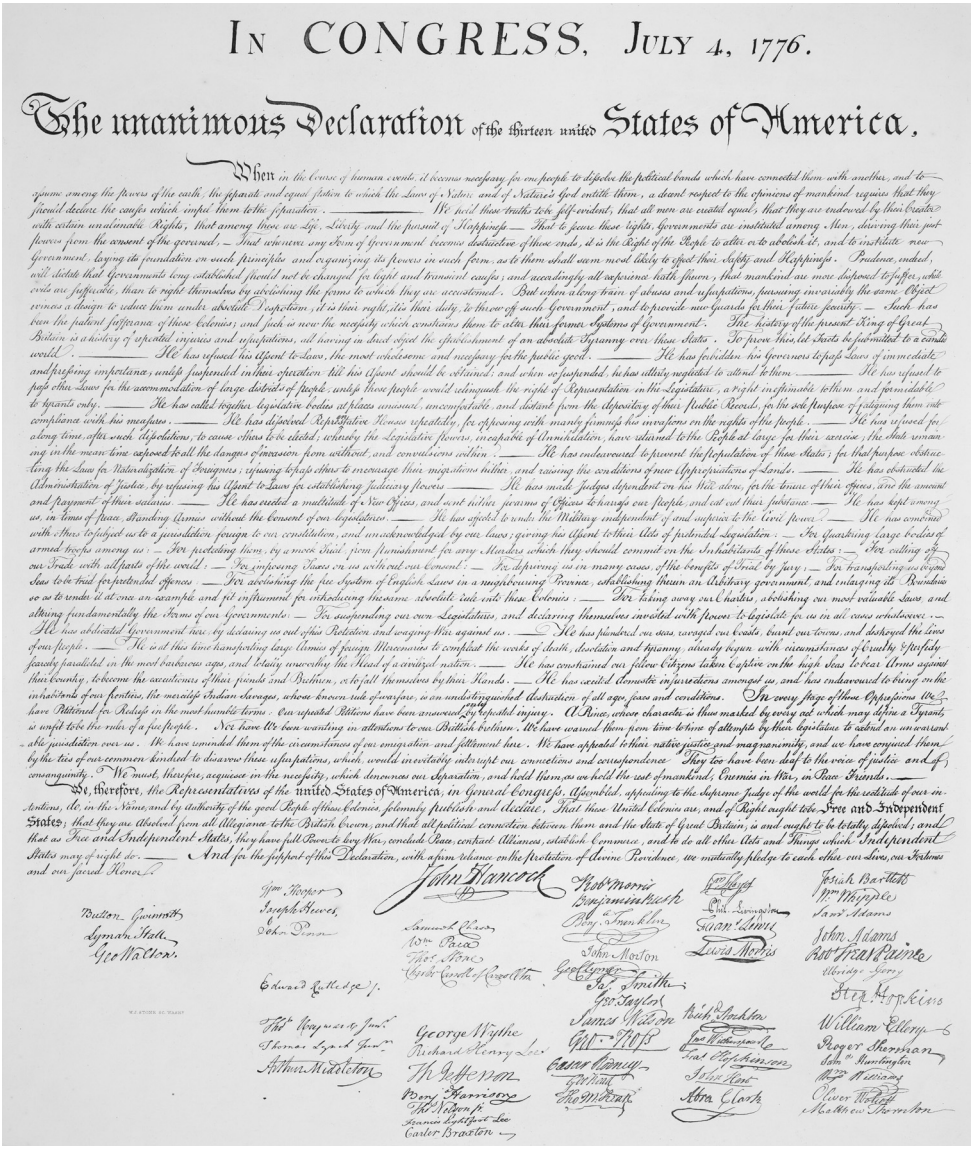
XII
THE UNITED STATES DECLARATION OF INDEPENDENCE OF 1776



IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. — We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. —

He has refused his Assent to Laws, the most wholesome and necessary for the public good. —

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them. —

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. —

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. —

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. —

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. —

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. —

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers. —

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. —

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance. —

He has kept among us, in times of peace, standing Armies without the Consent of our Legislatures. —

He has affected to render the Military independent of and superior to the Civil power. —

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: —

For Quartering large bodies of armed troops among us: —

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States: —

For cutting off our Trade with all parts of the world: —

For imposing Taxes on us without our Consent: —

For depriving us in many cases, of the benefits of Trial by Jury: —

For transporting us beyond Seas to be tried for pretended offences —

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies: —

For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms of our Governments: —

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. —

He has abdicated Government here, by declaring us out of his Protection and waging War against us. —

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people. —

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. —

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. —

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. —

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends. —

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. — And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

The United States Declaration of Independence of 1776
The U.S. National Archives and Records adminidtration, Washington

THE UNITED STATES DECLARATION OF INDEPENDENCE OF 1776

The Second Continental Congress, commenced on 10 May 1775 in Philadelphia (the First Congress debated there from September to October 1774), and composed of representatives of thirteen colonies, was treated by Great Britain as an usurpatory body. No explicit independence idea was voiced among several dozen representatives present; some of them were indeed separatists but advocates of moderately radical steps also made up a fairly large group. However, the rejection by King George III (1760–1820) and the British government of the *Olive Branch Petition,* drawn up during the First Congress by an advocate of conciliation, John Dickinson – a lawyer from Philadelphia; the developments on the war front, and declaration of martial law; and, first of all, the publication of then anonymous pamphlet of Thomas Paine *Common Sense* – all of them encouraged opinions in favour of independence. In his pamphlet, Thomas Paine urged the nation to overthrow the despotic monarch, break off the bonds with the mother country, and establish a republic, since only the republican system could ensure social justice and further development in the future. In spring 1776, resolutions were pouring in to the Congress in Philadelphia from different parts of the country, demanding that independence be proclaimed. In April, first authorisation to declare independence was granted to the delegate of North Carolina. At the end of May, a resolution requiring immediate proclamation of independence was sent to the Congress by the Convention of the State of Virginia. Then the Congress appointed a commission composed of: John Adams (of Massachusetts), Benjamin Franklin (of Pennsylvania), Thomas Jefferson (of Virginia), Robert Livingston (of New York), and Roger Sherman (of Connecticut). In the context of exchanging declarations, appeals, pamphlets and of polemics, continuing since the First Congress, drafting of yet another text did not seem important. On 11 June, it was decided to entrust the task of producing the final text to Thomas Jefferson, a representative of the State of Virginia, less engaged in the activities of the Congress, yet with literary skills. The text of the *Declaration* was drafted by him in the second and the third decade of June 1776, and after 28 June the other members introduced only minor amendments to his text. Starting on 1 July, the document was discussed in the Congress. On 2 July, the Congress concluded that "these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain is and ought to be totally dissolved". Such a wording was

incorporated by the Congressmen to the last paragraph of Jefferson's text. In the course of the debate on the text some deletions were however made; upon request made by the delegates from the South, a fragment related to slavery was removed. Two days later, on 4 July, the final draft document was adopted: 12 delegates voted in favour and one delegate from New York abstained from voting. The document was proclaimed on 8 July. The *Declaration*, rewritten on parchment paper, was signed (signing lasted until 2 August) by all members of the Congress (56 signatures).

The *Declaration* was assumed to serve as a manifesto justifying independence to the world's opinion and to own society, rather than actually proclaiming it. As later on Jefferson put it: "it was intended to be an expression of the American mind". The text of the *Declaration* consists of three parts. The first one presents the moral grounds for the decisions made and contains some self-evident truths repeated after the *Second Treatise on Government* by an English philosopher John Locke: All men are created equal; they are endowed with certain unalienable rights, among these are life, liberty and the pursuit of happiness. The purpose of the government is to secure these unalienable rights. The government derives its powers from the consent of the governed. If, however, the government fails to follow these rules and pursue these goals, it is the right of the people to alter the form of government into one that shall secure their happiness and safety. In the second part, the colonists listed the injuries suffered from the English King George III, while in the third part it was concluded that these injuries, as well as a breach of the terms of the agreement between the government and the governed forced the colonists to declare independence, this being also corroborated by the very title of the document, referring to the united states.

The *Declaration* is one of the most revered national symbols of liberty. The principles contained in it, based on the theory of the Law of Nature and the natural human right, were not intended to merely detach from Great Britain the thirteen colonies on the other side of Atlantic, situated between the ocean shore and the Appalachian Mountains. Those principles provided American society with guidelines as to the future and shape of its state, they reinforced its unity while, at the same time, paving the way for the future (to come in 11 years) constitutional solutions. They also exerted some impact on the Old Continent - similar ideas of liberty and equality were shared by the authors of the Declaration of the Rights of Men and Citizens; although they limited the Jeffersonian pursuit of happiness and the right to strive for personal success to the right of ownership. These ideas of the Founding Fathers were also incorporated into the United Nations Universal Declaration of Human Rights.

Original text

Based on: Harold C. Syrett (ed.), *American Historical Documents*, New York 1967, pp. 81-85.

The United States Declaration of Independence of 1776

In Congress, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

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We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

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For Quartering large bodies of armed troops among us;

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States;

For cutting off our Trade with all parts of the world;

For imposing Taxes on us without our Consent;

For depriving us in many cases, of the benefi ts of Trial by Jury;

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For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fi t instrument for introducing the same absolute rule into these Colonies:

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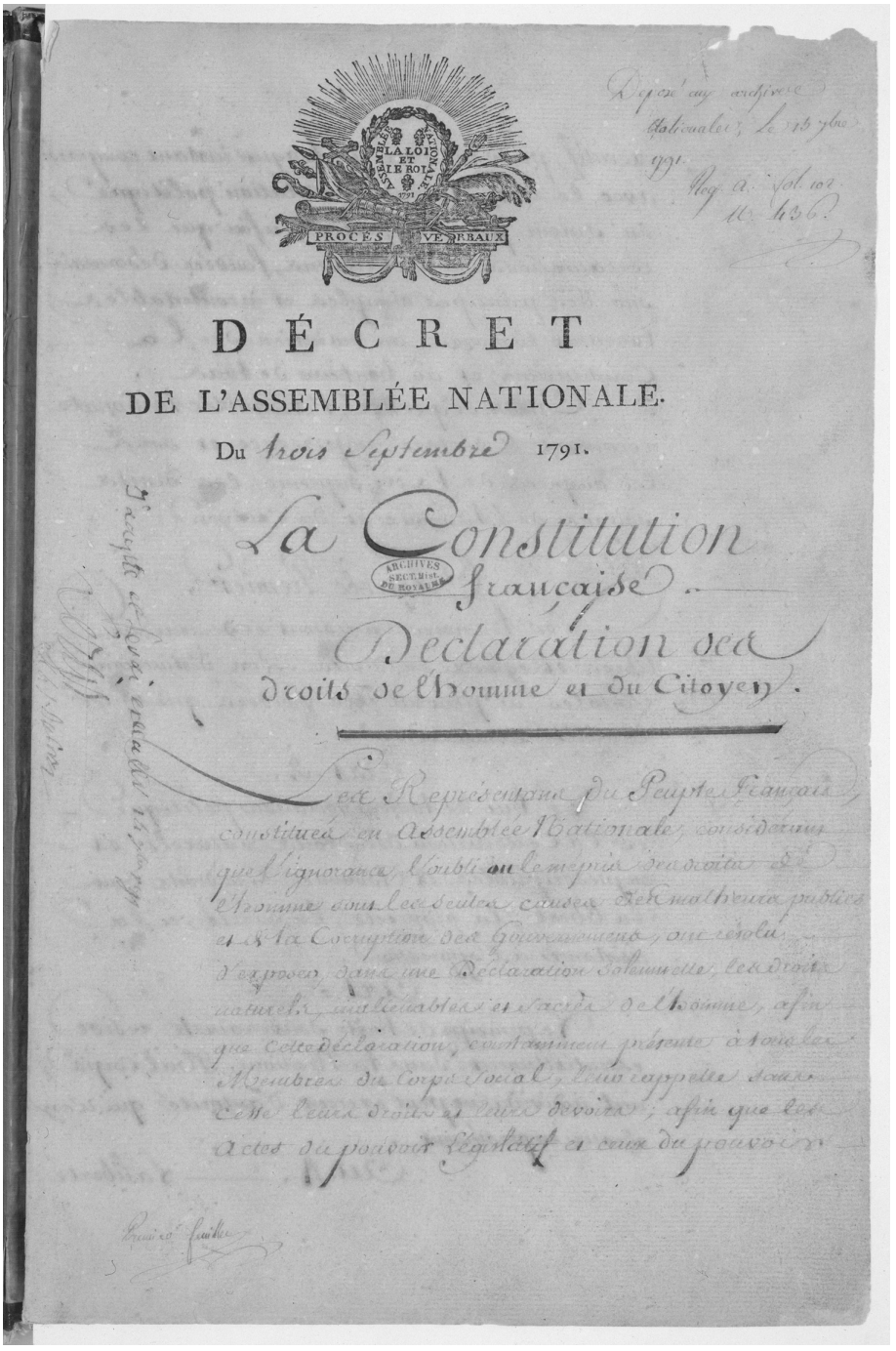
XIII
THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN OF 1789



The Declaration of the Rights of Man and of the Citizen of 1789
Centre Historique des Archives Nationales AE/I/10/nl

THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN OF 1789

When on 5 May 1789, three days after being presented to Louis XVI (1774–1792), by the Grace of God, King of France, 1,165 Deputies of Estates General gathered in Versailles, it seemed that their task would be limited to regulating taxe issues (to remedy the State budget deficit and to moderate taxes). All French citizens aged over 25 had a right to elections deputies. About 300 Deputies were chosen from among the clergy, about 300 from the gentry, and about 600 from among the Third Estate – its members were principally neither craftsmen nor labourers or peasants, but constituted a group of well-educated bourgeoisie, mainly lawyers (hence a frequently evoked notion of a "revolution of lawyers"). Only after one month (on 17 June), the Third Estate achieved its first victory by transforming the Estates General into the National Assembly – upon the motion of Father J. Sieyès, the author of the famous pamphlet *What is the Third Estate? (Qu'est-ce que la Tiers État?)*. Three days later, 600 Deputies gathered in an indoor tennis court took an oath that they would not separate until the constitution of the kingdom is established. Upon the King's consent, representatives of the remaining two estates joined the National Assembly, which on 9 July 1789 was transformed into the National Constituent Assembly. The storming of the Bastille (on 14 July), and a wave of peasant revolts, which alarmed the Assembly, forced it to take further reformation steps, and on 4 August the Assembly announced the abolition of feudal rights. Liquidation of the *ancien régime* resulted in a void, and the new situation demanded that a constitution be adopted – giving the society and the government a new form. The time has come to translate all the victories into legal regulations, and thus work began on the Declaration of the Rights of Man and of the Citizen. The whole National Assembly was involved and the work began in July, taking as its basis a draft prepared by one of Assembly commissions (offices). The *Declaration* was an expression of certain ideas, while actual transformations were to be sanctioned by the constitution being prepared simultaneously. The most heated debates concerned the constitution, and especially the place and role of the King in the country. King Louis XVI approved the *Declaration* on 5 October when the crowd forced him to flee Versailles and travel to Paris (Tuileries). The National Constituent Assembly followed the King. The Constitution establishing constitutional monarchy was adopted only on 3 September 1791. The King agreed to approve the Constitution in full (he had no right to amend it), although many advised him against doing so. A British conservative E. Burke, the author of *Reflections on the French*

Revolution (1790), opted for rejecting the Constitution. Louis XVI took an oath on the Constitution (on 13 September) thus avoiding dethronement. On 30 September, the National Constituent Assembly concluded its tasks, yet before it was dissolved, a resolution was adopted that its members may not be re-elected. In line with M. Robespierre's predictions, the 1791 Constitution did not last a year. It was abolished on 10 August 1792 by a popular insurrection of the people of Paris. The King was imprisoned and decapitated (21 January 1793). Also the subsequent constitution (of 24 June 1793), the so-called Constitution of the Year I, never entered into force. During the French Revolution, two more versions of the *Declaration* were adopted – in 1793 and 1795, yet the first one of 1789 is considered as the basic one. The text of the *Declaration* of 1789 became the preamble to the Constitution of the Republic, of 3 September 1791, and to subsequent Constitutions of 1852, 1946, as well as to the present Constitution of the Fifth Republic of 1958.

The text of the *Declaration* consists of a preamble and 17 articles stipulating that all men are born and remain free and equal in rights; social distinctions may be founded only upon the general good. It comprises all the fundamental rights the nation was deprived of by the *ancien régime*: the right to freedom, including fiscal freedom, to freedom of speech and press, to equality, and to ownership. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression. The principle of all sovereignty resides essentially in the nation. Liberty consists in the freedom to do everything which injures no one else. Nothing may be prevented which is not forbidden by law. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished.

The Constitution of 1791 sanctioned many earlier reforms of the National Constituent Assembly. Although it was another attempt to bring the ideas of the Enlightenment into effect, it was fully compliant neither with the principles propagated by its representatives nor with the preceding *Declaration*. The Constitution established a constitutional monarchy, not a democratic republic. In line with the principle of Father E. J. Sieyès who claimed that citizens are only those who pay taxes, the universal right to vote was granted to 'active citizens' whose tax amounted to at least three days' pay. Contrary to one of the basic ideas of the French Revolution – *Egalité* – voting rights were only granted to 20% of residents of France. Similar to the *United States Declaration of Independence*, but contrary to the said principle, the problem of slavery was disregarded. The legislative power was entrusted with the Legislative Assembly consisting of 754 Deputies. Furnished with the

right to a suspensive veto, the King was a part of the executive power which he exercised through six ministers accountable to the Legislative Assembly.

The *Declaration* of 1789 (together with Decrees of 4 and 11 August abolishing the feudal system) marked the end of the *ancien régime* and the beginning of the new era when "men are born and remain free and equal in rights." The *Declaration* was entered into the UNESCO Memory of the World Register.

The 1791 Constitution was the first European constitution which abolished the division of society into estates; yet introducing the property qualification into electoral law undermined its democratic nature, explicitly underscored by the *Declaration*.

Original text

Based on: E. Blum, *La Declaration des droits de l'homme et du citoyen, text with commentary*, Paris 1902.

Declaration des Droits de l'homme et du citoyen du 26 août 1789

Les Représentants du Peuple Français, constitués en Assemblée Nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'Homme sont les seules causes des malheurs publics et de la corruption des Gouvernements, ont résolu d'exposer, dans une Déclaration solennelle, les droits naturels, inaliénables et sacrés de l'Homme, afin que cette Déclaration, constamment présente à tous les Membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que leurs actes du pouvoir législatif, et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'Assemblée Nationale reconnaît et déclare, en présence et sous les auspices de l'Etre suprême, les droits suivants de l'Homme et du Citoyen.

Art. 1.

Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

Art. 2.

Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'Homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

Art. 3.

Le principe de toute Souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

Art. 4.

La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres Membres de la Société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la Loi.

Art. 5.

La Loi n'a le droit de défendre que les actions nuisibles à la Société. Tout ce qui n'est pas défendu par la Loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

Art. 6.

La Loi est l'expression de la volonté générale. Tous les Citoyens ont droit de concourir personnellement, ou par leurs Représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les Citoyens étant égaux à ses yeux sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité, et sans autre distinction que celle de leurs vertus et de leurs talents.

Art. 7.

Nul homme ne peut être accusé, arrêté ni détenu que dans les cas déterminés par la Loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis; mais tout citoyen appelé ou saisi en vertu de la Loi doit obéir à l'instant: il se rend coupable par la résistance.

Art. 8.

La Loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une Loi établie et promulguée antérieurement au délit, et légalement appliquée.

Art. 9.

Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

Art. 10.

Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la Loi.

Art. 11.

La libre communication des pensées et des opinions est un des droits les plus précieux de l'Homme : tout Citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la Loi.

Art. 12.

La garantie des droits de l'Homme et du Citoyen nécessite une force publique: cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux auxquels elle est confiée.

Art. 13.

Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable : elle doit être également répartie entre tous les citoyens, en raison de leurs facultés.

Art. 14.

Tous les Citoyens ont le droit de constater, par eux-mêmes ou par leurs représentants, la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

Art. 15.

La Société a le droit de demander compte à tout Agent public de son administration.

Art. 16.

Toute Société dans laquelle la garantie des Droits n'est pas assurée, ni la séparation des Pouvoirs déterminée, n'a point de Constitution.

Art. 17.

La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

English translation

Declaration of the Rights of Man and of the Citizen of 1789

Preamble

The representatives of the French people, formed into a National Assembly, considering ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and uncontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.

In consequence whereof, the National Assembly recognizes and declares, in the presence and under the auspices of the Supreme Being, the following Rights of Man and of the Citizen.

Art. 1.

Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.

Art. 2.

The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression.

Art. 3.

The source of all sovereignty lies essentially in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.

Art. 4.

Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other

than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.

Art. 5.

The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.

Art. 6.

The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents.

Art. 7.

No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty.

Art. 8.

The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied.

Art. 9.

As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.

Art. 10.

No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.

Art. 11.

The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish

freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.

Art. 12.

To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.

Art. 13.

For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.

Art. 14.

All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration.

Art. 15.

Society has the right to ask a public official for an accounting of his administration.

Art. 16.

Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.

Art. 17.

Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.

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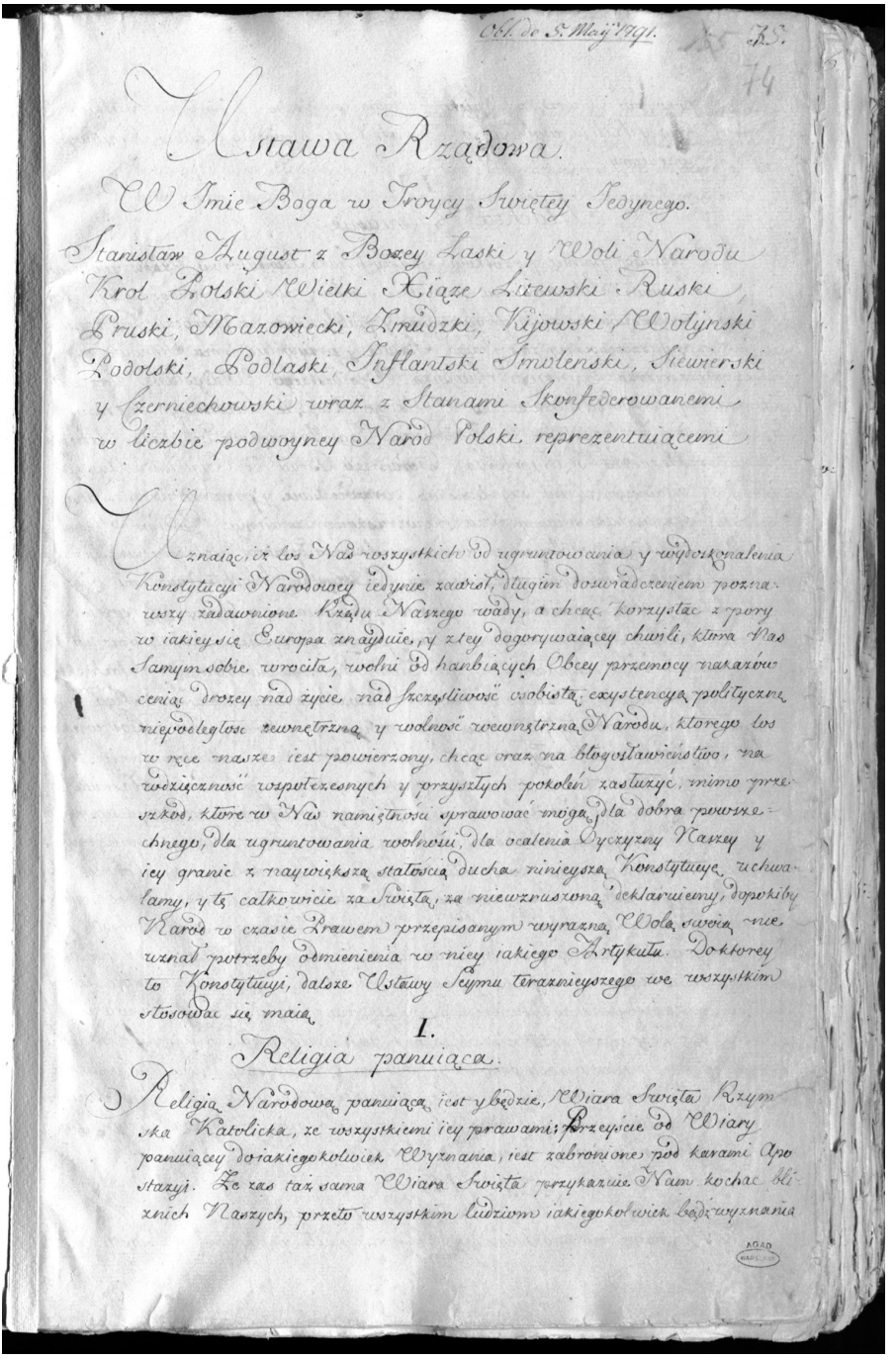
XIV
GOVERNMENT ACT OF 3 MAY 1791



Ust. do 3. Maj 1791.

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Ustawa Rządowa.

W Imie Boga w Troycy Swiętey Jedynego.

Stanisław August z Bożey Łaski y Woli Narodu Krol Polski Wielki Xiąże Litewski Ruski, Pruski, Mazowiecki, Żmudzki, Kijowski Wołyński Podolski, Podlaski Inflantski Smoleński, Siewierski y Czerniechowski wraz z Stanami Skonfederowanemi w liczbie podwoyney Naród Polski reprezentuiącemi

Uznaiąc, iż los Nad wszystkich od ugruntowania y wydoskonalenia Konstytucyi Narodowey iedynie zawisł, długim doświadczeniem poznawszy zadawnione Kraiu Naszego wady, a chcąc korzystać z spory w iakiey się Europa znayduie, czy z tey dogorywaiącey chwili, która Nas samym sobie wrociła, wolni od hańbiących Obcey przemocy nałożeń, cenią drożey nad życie, nad szczęśliwość osobistą exystencyą polityczną, niepodległość zewnętrzną y wolność wewnętrzną Narodu, którego los w ręce nasze iest powierzony, chcąc oraz na błogosławieństwo, na wdzięczność wszystkich teraźniejszych y przyszłych pokoleń zasłużyć, mimo przeszkod, które w Nas namiętności sprawować mogą, dla dobra powszechnego, dla ugruntowania wolności, dla ocalenia Oyczyzny Naszey y iey granic z naywiększą statecznością ducha niniejszą Konstytucyę uchwalamy, y tę całkowicie za Swiętą, za niewzruszoną deklarujemy, dopokąd Naród w czasie Prawem przepisanym wyraźną Wolą swoią nie uznał potrzeby odmienienia w niey iakiego Artykułu. Doktorey to Konstytucyi, dalsze Ustawy Seymu teraźnieyszego we wszystkim stosować się maią.

I.

Religia panuiąca.

Religia Narodowa panuiąca iest y będzie, Wiara Swięta Rzymska Katolicka, ze wszystkiemi iey prawami; Przeyście od Wiary panuiącey do iakiegokolwiek Wyznania, iest zabronione pod karami Apostazyi. Że zaś ta sama Wiara Swięta przykazuie Nam kochać bliźnich Naszych, przeto wszystkim ludziom iakiegokolwiek będź wyznania

Government Act of 3 May 1791

Central Archives of Historical Records in Warsaw, Public Archives of Potoccy, catalogue number 100, vol. 2, pp.74-84

GOVERNMENT ACT OF 3 MAY 1791

For decades, the reign of King Stanisław August Poniatowski (1764–1795) has provoked heated debates among historians as to its assessment. It was undoubtedly a time of brave projects of internal reforms, which constituted a form of renaissance during the decline of the state. The transformations in the field of culture and education which had begun already under the Saxon reign paved the way for future multilateral reforms and fast socioeconomic development. For instance, the population of Warsaw increased from 20,000 to over 100,000 in that period.

The first political changes were introduced already during the elections of the new King in 1764 (the Treasury Commission and the Military Commission of the Crown and Lithuania). In order to hinder changes, which were favourable to the state, the three neighbouring powers carried out the First Partition of Poland (1772), after suppressing the Bar Confederation (1768–1772). The Diet which ratified the 1st Partition also established the Commission of National Education and the Permanent Council (*Consilium Permanens*), which acted as the government. Although it was meant as a tool to put pressure on the King, it reached agreement with the monarch and sometimes they cooperated successfully. Members of the Permanent Council were elected in a secret ballot during the joint sitting of both Diet chambers (18 from the Diet and 18 from the Senate); they worked within five departments: Foreign Interests, Order (Police), Army, Justice, and Treasury. Over a dozen years of functioning of the Permanent Council brought about many positive changes in the economic life of Poland, but the unfavourable attitude of the Diet hindered further reforms. In 1780, the Diet rejected the project of law codification prepared by Andrzej Zamoyski.

After the outbreak of the Russian-Turkish war in 1787, Empress Catherine II was forced to withdraw the Russian army from Poland; she consented to holding a parliament session, thus seeking an ally. The Diet – later on called the Great Diet – convened in Warsaw on 6 October 1788. Political disturbances allowed for introducing a few reforms, including an increase in the number of soldiers to 100,000 (to only 60,000 in reality) and new tax collection principles. The Permanent Council, a symbol of Russian influence, was dissolved in January 1789. In November 1789, Jan Dekert, the mayor of Warsaw, organised the so-called black march, during which almost 300 delegates from 141 royal towns demanded an improvement in the situation of townsmen in Poland. A "Deputation to our Royal Towns" was appointed at that time; it was to prepare drafts of new legal solutions. The Diet was permanently a scene of the clashing influences of the hetman

(pro-Russian) party, the court (royal) party, and the patriotic party, which hindered the adoption of new resolutions.

After the elections for Deputies, held in November 1790, a decision was made to co-opt them onto the former Parliament. The extended Diet, composed of 354 Deputies and 155 Senators, convened for the first time on 16 December 1790. Its first important resolution was the "Law concerning the Dietines" adopted on 24 March 1791, which stipulated that the "naked nobility" (without property) were deprived of the possibility to participate in sessions of dietines. The "Act on Towns", adopted on 17 April 1791, granted civil rights equal to those of the nobility (personal inviolability and inviolability of possessions, the right to own land and to hold offices) to townsmen from royal towns.

Yet the most important achievement of the Great Diet was the "Law on Government", better known as the Constitution of 3 May. Hugo Kołłątaj, Stanisław Małachowski, Ignacy Potocki, and Scipione Piattoli (the royal secretary) participated in the work on its text. It was adopted after a heated debate with the application of a simplified procedure (after the first reading) with only 182 Diet Deputies and Senators present.

In 1791, the "Law on Government" was published at least 13 times, and was soon translated into German, French, English and Italian.

The text of the Constitution of 3 May (*the Law on Government*) did not encompass legal relations between the Crown and the Grand Duchy of Lithuania. It seems that Poland retained its federal nature despite the strongly centralised state administration. The Reciprocal Warranty of Two Nations, issued on 20 October 1791, may be treated as an addendum to the Constitution of 3 May. The act comprises a preamble and five sections. After invoking the union between the Crown and the Grand Duchy of Lithuania and the Constitution of 3 May, subsequent sections present the principles of appointing ministerial clerks and the powers of individual offices. Lithuania and the Crown were to hold an equal number of representatives in the Treasury Commission and the Military Commission, and in the Police Commission two-thirds of commissioners were to come from the Crown and one-third from Lithuania. Other provisions concerned the scope of competence of courts and of the Treasury Commission in the Grand Duchy of Lithuania. All warranties inscribed in the Reciprocal Warranty were to become "articles of the act of union" of the Two Nations.

The "Law on Government" comprises a preamble and 11 chapters; it is thus the most concise of such acts in the history of Polish constitutionalism.

The Constitution of 3 May introduced the separation of powers in Poland, seeking its sources in the "civil society" and the "will of the people." It abolished the Permanent Council and replaced it with the "Council of Guardians" as the executive body (with a similar structure). It was composed

of five Ministers, the primate (who chaired the Commission of National Education) and the Marshal of the Diet. The King was under the obligation to obtain a countersignature of the appropriate Minister for ordinances. Instead of a free royal election, the Constitution introduced succession to the throne, which was offered to the Saxon House of Wettin. It recognised the Roman Catholic Church as the dominant religion. The nobility were ensured "preeminence both in public and in private life," townsmen were guaranteed rights they had been granted earlier by the Act on Towns; peasants were taken "under the protection of national law and government." The Diet was to be elected for a two-year term. It was composed of the House of Deputies (204 Deputies of the nobility, not limited by instructions of the dietines) and 24 plenipotentiaries of towns. The Senate was composed of 102 voivodes and castellans, 30 bishops and government ministers. Resolutions were passed by a majority of votes in an open voting or by a secret ballot.

The Constitution of 3 May 1791 was undoubtedly the most important achievement of the Great Diet – the longest and the most numerous assembly of Diet Deputies and Senators in the history of Poland. The second fundamental statute in the world (after the American Constitution of 1787) and the first one in Europe (preceding the French Constitution of September 1791), it was an expression of the political and civil awareness of the country's elites at the time of a deep crisis.

The opposition of a group of Diet Deputies against the new law and a determined attitude of the partitioners made it impossible to implement all of its provisions. After the Confederation of Targowica was organised (on 14 May 1792), a 100,000 corps of the Russian army entered the territory of Poland (on 18 May). On 29 May 1792, the Great Diet suspended its session and a war started to defend the independence of the country.

The last Diet of the First Republic was called to Grodno in June 1793. It accepted the conditions of the Second Partition, formally suspended the "Law on Government" and reinstituted the so-called cardinal laws and the Permanent Council. The 1794 insurrection led by Tadeusz Kościuszko was the final attempt to save the practically non-existent country. In 1795, Russia, Prussia, and Austria carried out the Third Partition of Poland. The fate of the inhabitants of the former Crown and the Grand Duchy of Lithuania in the 19th century developed quite differently, yet today the achievements of the Great Diet together with the "Law on Government" of 3 May 1791 are considered a notable heritage of the past not only by Poles but also by other modern states which rose from the ruins of the former Poland.

Original text

Based on: J. Bardach (introduction), *Konstytucja 3 maja 1791. 1791 Gegužės 3-osios Konstitucija. The Constitution of May 3, 1791*, Warsaw 2001, pp. 55-72.

Konstytucja 3 maja 1791

Preambuła

W imię Boga w Trójcy Świętej jedynego. Stanisław August z Bożej łaski i woli narodu król Polski, wielki książę litewski, ruski, pruski, mazowiecki, żmudzki, kijowski, wołyński, podolski, podlaski, inflancki, smoleński, siewierski i czernichowski, wraz z stanami skonfederowanymi w liczbie podwójnej naród polski reprezentującymi.

Uznając, iż los nas wszystkich od ugruntowania i wydoskonalenia konstytucji narodowej jedynie zawisł, długim doświadczeniem poznawszy zadawnione rządu naszego wady, a chcąc korzystać z pory, w jakiej się Europa znajduje i z tej dogorywającej chwili, która nas samym sobie wróciła, wolni od hańbiących obcej przemocy nakazów, ceniąc drożej nad życie, nad szczęśliwość osobistą egzystencję polityczną, niepodległość zewnętrzną i wolność wewnętrzną narodu, którego los w nasze ręce jest powierzony, chcąc oraz na błogosławieństwo, na wdzięczność współczesnych i przyszłych pokoleń zasłużyć, mimo przeszkód, które w nas namiętności sprawować mogą, dla dobra powszechnego, dla ugruntowania wolności, dla ocalenia Ojczyzny naszej i jej granic, z największą stałością ducha niniejszą konstytucję uchwalamy i tę całkowicie za świętą, za niewzruszoną deklarujemy, dopóki by naród w czasie prawem przewidzianym wyraźną wolą nie uznał potrzeby odmienienia w niej jakiego artykułu. Do której to konstytucji dalsze ustawy sejmu teraźniejszego we wszystkim stosować się mają.

I. Religia panująca

Religią narodową panującą jest i będzie wiara święta rzymska katolicka ze wszystkimi jej prawami; przejście od wiary panującej jakiegokolwiek wyznania jest zabronione pod karami apostazji. Że zaś taż sama wiara święta przykazuje nam kochać bliźnich naszych, przeto wszystkim ludziom jakiegokolwiek bądź wyznania pokój w wierze i opiekę rządową winniśmy. I dlatego wszelkich obrządków i religii wolność w krajach polskich podług ustaw krajowych gwarantujemy.

II. Szlachta ziemianie

Szanując pamięć przodków naszych jako fundatorów rządu wolnego, stanowi szlacheckiemu wszelkie swobody, wolności, prerogatywy pierwszeństwa w życiu

prywatnym i publicznym najuroczyściej zapewniamy, szczególniej zaś prawa, statuta i przywileje temu stanowi od Kazimierza Wielkiego, Ludwika Węgierskiego, Władysława Jagiełły i Witolda brata jego, wielkiego księcia litewskiego, nie mniej od Władysława i Kazimierza Jagiellończyków, od Jana Alberta, Aleksandra i Zygmunta Pierwszego braci, od Zygmunta Augusta, ostatniego z linii jagiellońskiej, sprawiedliwie i prawnie nadane, utwierdzamy i za niewzruszone uznajemy. Godność stanu szlacheckiego w Polszcze za równą wszelkim stopniom szlachectwa, gdziekolwiek używanym, przyznajemy. Wszelką szlachtę równymi być między sobą uznajemy, nie tylko co do starania się o urzędy i o sprawowanie posług Ojczyźnie, honor, sławę, pożytek przynoszących, ale oraz co do równości używania przywilejów i prerogatyw stanowi szlacheckiemu służących. Nade wszystko zaś prawa bezpieczeństwa osobistego, wolności osobistej i własności gruntowej i ruchomej, tak jak od wieków każdemu służyły, świętobliwe nienaruszenie zachowanie mieć chcemy i zachowujemy; zaręczając najuroczyściej, iż przeciwko własności czyjejkolwiek żadnej odmiany lub ekscepcji w prawie nie dopuścimy; owszem, najwyższa władza krajowa i rząd przez nią ustanowiony żadnych pretensji pod pretekstem *iurium regalium* i jakimkolwiek innym pozorem do własności obywatelskich bądź w części, bądź w całości rościć sobie nie będzie. Dla czego bezpieczeństwo osobiste i wszelką własność komukolwiek z prawa przynależną jako prawdziwy społeczności węzeł, jako źrenicę wolności obywatelskiej szanujemy, zabezpieczamy, utwierdzamy i aby na potomne czasy szanowane, ubezpieczone i nienaruszone zostawały, mieć chcemy.

Szlachtę za najpierwszych obrońców wolności i niniejszej konstytucji uznajemy. Każdego szlachcica cnocie, obywatelstwu i honorowi jej świętości do szanowania, jej trwałości do strzeżenia poruczamy jako jedyną twierdzę Ojczyzny i swobód naszych.

III. Miasta mieszczanie

Prawo na teraźniejszym sejmie zapadłe pod tytułem Miasta nasze królewskie wolne w państwach Rzeczypospolitej w zupełności utrzymane mieć chcemy i za część niniejszej konstytucji deklarujemy, jako prawo wolnej szlachcie polskiej dla bezpieczeństwa ich swobód i całości wspólnej Ojczyzny nową, prawdziwą i skuteczną dające siłę.

IV. Chłopi włościanie

Lud rolniczy, spod którego ręki płynie najobfitsze bogactw krajowych źródło, który najliczniejszą w narodzie stanowi ludność, a zatem najdzielniejszą kraju siłę, tak przez sprawiedliwość, ludzkość i obowiązki chrześcijańskie, jako i przez własny nasz interes dobrze rozumiany, pod opiekę prawa i rządu krajowego przyjmujemy, stanowiąc: iż odtąd jakiebykolwiek swobody, nadania lub umowy dziedzice z włościanami dóbr swoich autentycznie ułożyli, czyli by te swobody, nadania i umowy były z gromadami, czyli też z każdym osobno wsi mieszkańcem zrobione, będą stanowić wspólny

i wzajemny obowiązek podług rzetelnego znaczenia, warunków i opisu zawartego w takowych nadaniach i umowach pod opiekę rządu krajowego podający układy takowe i wynikające z nich obowiązki przez jednego właściciela gruntu dobrowolnie przyjęte, nie tylko jego samego, ale i następców jego lub prawa nabywców tak wiązać będą, że ich nigdy samowolnie odmieniać nie będą mocni. Nawzajem włościanie jakiejkolwiek bądź majętności od dobrowolnych umów, przyjętych nadań i z nimi złączonych powinności usuwać się inaczej nie będą mogli, tylko w takim sposobie i z takimi warunkami, jak w opisach tychże umów postanowione mieli, które czy na wieczność, czyli do czasu przyjęte, ściśle ich obowiązywać będą. Zawarowawszy tym sposobem dziedziców przy wszelkich pożytkach od włościan im należących, a chcąc jak najskuteczniej zachęcić pomnożenie ludności krajowej, ogłaszamy wolność zupełną dla wszystkich ludzi tak nowo przybywających, jak i tych którzy by pierwej z kraju oddaliwszy się, teraz do Ojczyzny powrócić chcieli, tak dalece, iż każdy człowiek do państw Rzeczypospolitej nowo z którejkolwiek strony przybyły lub powracający, jak tylko stanie nogą na ziemi polskiej, wolnym jest zupełnie użyć przemysłu swego jak i gdzie chce, wolny jest czynić umowy na osiadłość, robociznę lub czynsze, jak i dopóki się umówi, wolny jest osiadać w mieście lub na wsiach, wolny jest mieszkać w Polszcze lub do kraju, do którego zechce, powrócić, uczyniwszy zadosyć obowiązkom, które dobrowolnie na siebie przyjął.

V. Rząd, czyli oznaczenie władz publicznych

Wszelka władza społeczności ludzkiej początek swój bierze z woli narodu. Aby więc całość państw, wolność obywatelska i porządek społeczności w równej wadze na zawsze zostawały, trzy władze rząd narodu polskiego składać powinny i z woli prawa niniejszego na zawsze składać będą, to jest: władza prawodawcza w Stanach zgromadzonych, władza najwyższa wykonawcza w królu i Straży i władza sądownicza w jurysdykcjach na ten koniec ustanowionych lub ustanowić się mających.

VI. Sejm, czyli władza prawodawcza

Sejm czyli Stany zgromadzone na dwie izby dzielić się będą: na izbę poselską i na izbę senatorską pod prezydencją króla.
Izba poselska jako wyobrażenie i skład wszechwładztwa narodowego będzie świątynią prawodawstwa. Przeto w izbie poselskiej najpierw decydowane będą wszystkie projekta.

1-mo co do praw ogólnych, to jest konstytucyjnych, cywilnych, kryminalnych i do ustanowienia wieczystych podatków, w których to materiach propozycje do tronu województwom, ziemiom i powiatom do roztrząśnienienia podane, a przez instrukcje do izby przychodzące, najpierw do decyzji wzięte być mają.

2-do co do uchwał sejmowych, to jest poborów doczesnych, stopnia monety, zaciągania długu publicznego, nobilitacji i innych nagród przypadkowych, rozkładu wydatków publicznych ordynaryjnych i ekstraordynaryjnych, wojny, pokoju, ostatecznej ratyfikacji traktatów związkowych i handlowych, wszelkich dyplomatycznych aktów i umów do prawa narodów ściągających się, kwitowanie magistratur wykonawczych i tym podobnych zdarzeń, głównym narodowym potrzebom odpowiadających, w których to materiach propozycje od tronu prosto do izby poselskiej przychodzić mające, pierwszeństwo w prowadzeniu mieć będą.

Izby senatorskiej, złożonej z biskupów, wojewodów, kasztelanów i ministrów pod prezydencją króla, mającego prawo raz dać votum swoje, drugi raz paritatem rozwiązywać osobiście lub nadesłaniem zdania swojego do tejże izby, obowiązkiem jest: *1-mo* Każde prawo, które po przejściu formalnym w izbie poselskiej do senatu natychmiast przesłane być powinno, przyjąć lub wstrzymać do dalszej narodu deliberacji opisaną w prawie większością głosów; przyjęcie moc i świętość prawa nadawać będzie; wstrzymanie zaś zawiesi tylko prawo do przyszłego ordynaryjnego sejmu, na którym gdy powtórna nastąpi zgoda, prawo zawieszone od senatu przyjętym być musi. *2-do* Każdą uchwałę sejmową w materiach wyżej wyliczonych, którą izba poselska senatowi przesłać natychmiast powinna, wraz z tąż izbą poselską większością głosów decydować, a złączona izb obydwóch większość według prawa opisana będzie wyrokiem i wolą Stanów.

Warujemy, iż senatorowie i ministrowie w obiektach sprawowania się z urzędowania swego bądź w Straży, bądź w komisji, *votum decisivum* w sejmie nie będą mieli i tylko zasiadać wtenczas w senacie mają dla dania eksplikacji na żądanie sejmu.

Sejm zawsze gotowym będzie. Prawodawczy i ordynaryjny rozpoczynać się ma co dwa lata, trwać zaś będzie podług opisu prawa o sejmach. Gotowy, w potrzebach nagłych zwołany, stanowić ma o tej tylko materii, do której zwołanym będzie lub o potrzebie po czasie zwołania przypadłej. Prawo żadne na tym ordynaryjnym sejmie, na którym ustanowione było, znoszonym być nie może. Komplet sejmu składać się będzie z liczb osób niższym prawem opisanej, tak w izbie poselskiej, jako i w izbie senatorskiej.

Prawo o sejmikach, na teraźniejszym sejmie ustanowione, jako najistotniejszą zasadę wolności obywatelskiej uroczyście zabezpieczamy. Jak zaś prawodawstwo sprawowane być może przez wszystkich i naród wyręcza się w tej mierze przez reprezentantów, czyli posłów swoich dobrowolnie wybranych, przeto stanowimy, iż posłowie na sejmikach obrani w prawodawstwie i ogólnych narodu potrzebach podług niniejszej konstytucji uważani być mają jako reprezentanci całego narodu, będąc składem ufności powszechnej.

Wszystko i wszędzie większością głosów udecydowane być powinno. Przeto *liberum veto*, konfederacje wszelkiego gatunku i sejmy konfederackie jako duchowi niniejszej konstytucji przeciwne, rząd obalające, społeczność niszczące, na zawsze znosimy.

Zapobiegając z jednej strony gwałtownym i częstym odmianom konstytucji narodowej, z drugiej uznając potrzebę wydoskonalenia onej po doświadczeniu jej skutków co do pomyślności publicznej, porę i czas rewizji i poprawy konstytucji co lat dwadzieścia pięć naznaczamy, chcąc mieć takowy sejm konstytucyjny ekstraordynaryjnym podług osobnego o nim prawa opisu.

VII. Król, władza wykonawcza

Żaden rząd najdoskonalszy bez dzielnej władzy wykonawczej stać nie może. Szczęśliwość narodów od praw sprawiedliwych, praw skutek od ich wykonania zależy. Doświadczenie nauczyło, że zaniedbanie tej części rządu nieszczęściami napełniło Polskę. Zawarowawszy przeto wolnemu narodowi polskiemu władzę praw sobie stanowienia i moc baczności nad wszelką wykonawczą władzą oraz wybierania urzędników do magistratur, władzę najwyższego wykonywania praw królowi i radzie jego oddajemy, która to rada Strażą Praw zwać się będzie.

Władza wykonawcza do pilnowania praw i onych pełnienia ściśle jest obowiązana. Tam czynna z siebie będzie, gdzie prawa dozwalają, gdzie prawa potrzebują dozoru egzekucji, a nawet silnej pomocy. Posłuszeństwo należy się jej zawsze od wszystkich magistratur, moc przynaglenia nieposłuszne i zaniedbujące swe obowiązki magistratury w jej ręku zostawiamy.

Władza wykonawcza nie będzie mogła praw stanowić ani tłumaczyć, podatków i poborów pod jakimkolwiek imieniem nakładać, długów publicznych zaciągać, rozkładu dochodów skarbowych przez sejm zrobionego odmieniać, wojny wydawać, pokoju ani traktatu i żadnego aktu dyplomatycznego *definitive* zawierać. Wolno jej tylko będzie tymczasowe z zagranicznymi prowadzić negocjacje oraz tymczasowe i potoczne dla bezpieczeństwa i spokojności kraju wynikające potrzeby załatwiać, o których najbliższemu zgromadzeniu sejmowemu donieść winna.

Tron polski elekcyjnym przez familie mieć na zawsze chcemy i stanowimy. Doznane klęski bezkrólewiów, periodycznie rząd wywracających, powinność ubezpieczenia losu każdego mieszkańca ziemi polskiej i zamknięcia na zawsze drogi wpływom mocarstw zagranicznych, pamięć świetności i szczęścia Ojczyzny naszej za czasów familii ciągle panujących, potrzeba odwrócenia od ambicji tronu i możnych Polaków, zwrócenia do jednomyślnego wolności narodowej pielęgnowania wskazały roztropności naszej oddanie tronu polskiego prawem następstwa. Stanowimy przeto, iż po życiu, jakiego nam dobroć boska pozwoli, elektor dzisiejszy saski w Polszcze królować

będzie. Dynastia przyszłych królów polskich zacznie się na osobie Fryderyka Augusta, dzisiejszego elektora saskiego, którego sukcesorom *de lumbis* z płci męskiej tron polski przeznaczamy. Najstarszy syn króla panującego po ojcu na tron następować ma. Gdyby zaś dzisiejszy elektor saski nie miał potomstwa płci męskiej, tedy mąż przez elektora za zgodą Stanów zgromadzonych córce jego obrany zaczynać ma linie następstwa płci męskiej do tronu polskiego. Dlaczego Marię Augustę Nepomucenę, córkę elektora, za infantkę polską deklarujemy, zachowując przy narodzie prawo, żadnej preskrypcji podpadać nie mogące, wybrania do tronu drugiego domu po wygaśnięciu pierwszego.

Każdy król, wstępując na tron, wykona przysięgę Bogu i narodowi na zachowanie konstytucji niniejszej, na *pacta conventa*, które ułożone będą z dzisiejszym elektorem saskim jako przeznaczonym do tronu i które tak jak dawne wiązać go będą.

Osoba króla jest święta i bezpieczna od wszystkiego; nic sam przez się nie czyniący, za nic w odpowiedzi narodowi być nie może; nie samowładcą, ale ojcem i głową narodu być powinien i tym go prawo i konstytucja niniejsza być uznaje i deklaruje. Dochody tak jak będą w paktach konwentach opisane i prerogatywy tronowi właściwe, niniejszą konstytucją dla przyszłego elekta zawarowane, tkniętymi być nie będą mogły.

Wszystkie akta publiczne, trybunały, sądy, magistratury, monety, stemple pod królewskim iść powinny imieniem. Król, któremu wszelka moc dobrze czynienia zostawiona być powinna, mieć będzie *ius agratiandi* na śmierć wskazanych prócz *in criminibus status*. Do króla rozporządzenie najwyższe siłami zbrojnym krajowymi w czasie wojny i mianowanie komendantów wojska należeć będzie, z wolą atoli ich odmianą za wolą narodu. Patentować oficerów i mianować urzędników podług prawa niniejszego opisu, nominować biskupów i senatorów podług opisu tegoż prawa oraz ministrów jako urzędników pierwszych władzy wykonawczej jego będzie obowiązkiem.

Straż, czyli rada królewska, do dozoru całości i egzekucji praw królowi oddana, składać się będzie: *1-mo* z prymasa jako głowy duchowieństwa polskiego i jako prezesa Komisji Edukacyjnej, mogącego być wyręczonym w Straży Praw przez pierwszego *ex ordine* biskupa, którzy rezolucji podpisywać nie mogą; *2-do* z pięciu ministrów, to jest ministra policji, ministra pieczęci, ministra *belli*, ministra skarbu, ministra pieczęci do spraw zagranicznych; *3-tio* z dwóch sekretarzy, z których jeden protokół Straży, drugi protokół spraw zagranicznych trzymać będą, obydwa bez votum decydującego.

Następca tronu z małoletności wyszedłszy i przysięgę na konstytucję wykonawszy, na wszystkich Straży posiedzeniach, lecz bez głosu, przytomnym być może.

Marszałek sejmowy, jako na dwa lata wybrany, wchodzić będzie w liczbę zasiadających w Straży bez wdawania się w jej rezolucje, jedynie dla zwołania sejmu gotowego w takim zdarzeniu: gdyby on uznał w przypadkach koniecznego zwołania sejmu

gotowego wymagających rzetelną potrzebę, a król go zwołać wzbraniał się; tedy tenże marszałek do posłów i senatorów wydać powinien listy okólne, zwołując onych na sejm gotowy i powody zwołania tego wyrażając. Przypadki zaś do koniecznego zwołania sejmu są tylko następujące: *1-mo* w gwałtownej potrzebie do prawa narodu ściągającej się, a szczególniej w przypadku wojny ościennej, *2-do* w przypadku wewnętrznego zamieszania grożącego rewolucją kraju lub kolizją między magistraturami, *3-tio* w widocznym powszechnego głodu niebezpieczeństwie, *4-to* w osierociałym stanie Ojczyzny przez śmierć króla lub w niebezpiecznej jego chorobie. Wszystkie rezolucje w Straży roztrząsane będą przez skład wyżej wspomniany. Decyzja królewska po wysłuchaniu wszystkich zdaniach przeważać powinna, aby jedna była w wykonaniu prawa wola. Przeto każda ze Straży rezolucja pod imieniem królewskim i z podpisem ręki jego wychodzić będzie. Powinna jednak być podpisana także przez jednego z ministrów zasiadających w Straży i tak podpisana do posłuszeństwa wiązać będzie, i dopełniona być ma przez komisje lub przez jakiekolwiek magistratury wykonawcze, w tych jednak szczególnie materiach, które wyraźnie niniejszym prawem wyłączone nie są. W przypadku, gdyby żaden z ministrów zasiadających decyzji podpisać nie chciał, król odstąpi od tej decyzji, a gdyby przy niej upierał się, marszałek sejmowy w tym przypadku upraszać się będzie o zwołanie sejmu gotowego; i jeżeli król opóźniać będzie zwołanie, marszałek to wykonać powinien.

Jako nominowanie wszystkich ministrów, tak i wezwanie z nich jednego od każdego administracji wydziału do rady swojej, czyli Straży, króla jest prawem. Wezwanie to ministra do zasiadania w Straży na dwa lata będzie z wonym onego nadal przez króla potwierdzeniem Ministrowie do Straży wezwani w komisjach zasiadać nie mają.

W przypadku zaś, gdyby większość dwóch trzecich części wotów sekretnych obydwóch izb złączonych na sejmie ministra bądź w Straży, bądź w urzędzie odmiany żądała, król natychmiast na jego miejsce innego nominować powinien.

Chcąc, aby Straż Praw narodowych była do ścisłej odpowiedzi narodowi za wszelkie onych przestępstwa, stanowimy, iż gdy ministrowie będą oskarżeni, przez deputację do egzaminowania ich czynności wyznaczoną, o przestępstwo prawa, odpowiadać mają z osób i majątków swoich. W wszelkich takowych oskarżeniach Stany zgromadzone prostą większością wotów izb złączonych odesłać obwinionych ministrów mają do sądów sejmowych po sprawiedliwe i wyrównujące przestępstwu ich ukaranie, lub przy dowiedzionej niewinności od sprawy i kary uwolnienie.

Dla porządnego władzy wykonawczej dopełnienia ustanawiamy oddzielne komisje mające związek ze Strażą i obowiązane do posłuszeństwa tejże Straży. Komisarze do nich wybierani będą przez sejm dla sprawowania urzędów swoich w przeciągu czasu prawem opisanego. Komisje te są: *1-mo* Edukacji, *2-do* Policji, *3-tio* Wojska, *4-to* Skarbu.

Komisje porządkowe wojewódzkie, na tym sejmie ustanowione, równie do dozoru Straży należące, odbierać będą rozkazy przez wyżej wspomniane pośrednicze komisje *respective* co do obiektów każdej z nich władzy i obowiązków.

VIII. Władza sądownicza

Władza sądownicza nie może być wykonywana ani przez władzę prawodawczą, ani przez króla, lecz przez magistratury na ten koniec ustanowione i wybierane. Powinna zaś być tak do miejsc przywiązana, żeby każdy człowiek bliską dla siebie znalazł sprawiedliwość, żeby przestępny widział wszędzie groźną nad sobą rękę krajowego rządu.

1-mo Ustanawiamy przeto sąd pierwszej instancji dla każdego województwa, ziemi i powiatu, do których sędziowie wybierani będą na sejmikach. Sądy pierwszej instancji będą zawsze gotowe i czuwające na oddanie sprawiedliwości tym, którzy jej potrzebują. Od tych sądów iść będzie apelacja na trybunały główne, dla każdej prowincji być mające, złożone równie z osób na sejmikach wybranych. I te sądy, tak pierwszej, jako i ostatniej instancji będą sądami ziemiańskimi dla szlachty i wszystkich właścicielów ziemskich z kimkolwiek *in causis iuris et facti*.

2-do Jurysdykcje zaś sądowe wszystkim miastom, podług prawa sejmu teraźniejszego o miastach wolnych królewskich, zabezpieczamy.

3-tio Sądy referendarskie, dla każdej prowincji osobne, mieć chcemy w sprawach włościan wolnych dawnymi prawami sądowi temu poddanych.

4-to Sądy zadworne asesorskie, relacyjne i kurlandzkie zachowujemy.

5-to Komisje wykonawcze będą miały sądy w sprawach do swej administracji należących.

6-to Oprócz sądów w sprawach cywilnych i kryminalnych dla wszystkich stanów będzie sąd najwyższy sejmowy zwany, do którego przy otwarciu każdego sejmu obrane będą osoby. Do tego sądu należeć będą występki przeciwko narodowi i królowi, czyli *crimina status*.

Nowy kodeks praw cywilnych i kryminalnych przez wyznaczone przez sejm osoby spisać rozkazujemy.

IX. Regencja

Straż będzie oraz regencja, mająca na czele królową albo w jej nieprzytomności prymasa. W tych trzech tylko przypadkach miejsce mieć może regencja: 1-mo

w czasie małoletności króla, 2-do w czasie niemocy trwałe pomieszanie zmysłów sprawującej, 3-tio w przypadku gdyby król był wzięty na wojnie. Mołoletność trwać tylko będzie do lat 18 zupełnych; a niemoc względem trwałego pomieszania zmysłów deklarowana być nie może tylko przez sejm gotowy większością wotów trzech części przeciwko czwartej izb złączonych. W tych przeto trzech przypadkach prymas korony polskiej sejm natychmiast zwołać powinien, a gdyby prymas tę powinność zwłóczył, marszałek sejmowy listy okólne do posłów i senatorów wyda. Sejm gotowy urządzi kolej zasiadania ministrów w regencji i królową do zastąpienia króla w obowiązkach jego umocuje. A gdy król w pierwszym przypadku z małoletności wyjdzie, w drugim do zupełnego przyjdzie zdrowia, w trzecim z niewoli powróci, regencja rachunek z czynności swoich oddać mu powinna i odpowiadać narodowi za czas swego urzędowania, tak jak jest przepisano o Straży na każdym ordynaryjnym sejmie, z osób i majątków swoich.

X. Edukacja dzieci królewskich

Synowie królewscy, których do następstwa tronu konstytucja przeznacza, są pierwszymi dziećmi Ojczyzny, przeto baczność o dobre ich wychowanie do narodu należy, bez uwłoczenia jednak prawom rodzicielskim. Za rządu królewskiego sam król z Strażą i wyznaczonym od Stanów dozorcą edukacji królewiców wychowaniem ich zatrudniać się będzie. Za rządu regencji taż z wspomnianym dozorcą edukację ich powierzoną mieć sobie będzie. W obydwóch przypadkach dozorca od Stanów wyznaczony donosić winien na każdym ordynaryjnym sejmie o edukacji i postępku królewiców. Komisji zaś Edukacyjnej powinnością będzie podać układ instrukcji i edukacji synów królewskich do potwierdzenia sejmowi, a to, aby jednostajnie w wychowaniu ich prawidła wpajały ciągle i wcześnie w umysły przyszłych następców tronu religię, miłość cnoty, Ojczyzny, wolności i konstytucji krajowej.

XI. Siła zbrojna narodowa

Naród winien jest sobie samemu obronę od napaści i dla przestrzegania całości swojej. Wszyscy przeto obywatele są obrońcami całości i swobód narodowych. Wojsko nic innego nie jest tylko wyciągnięta siła obronna i porządna z ogólnej siły narodu. Naród winien wojsku swemu nagrodę i poważanie za to, iż się poświęca jedynie dla jego obrony. Wojsko winno narodowi strzeżenie granic i spokojności powszechnej, słowem winno być jego najsilniejszą tarczą. Aby przeznaczenia tego dopełniło nieomylnie, powinno zostawać ciągle pod posłuszeństwem władzy wykonawczej stosownie do opisów prawa, powinno wykonać przysięgę na wierność narodowi i królowi, i na obronę konstytucji narodowej. Użyte być więc wojsko narodowe może na ogólną kraju obronę, na strzeżenie fortec i granic, lub na pomoc prawu, gdyby kto egzekucji jego nie był posłusznym.

English translation

Based on: J. Bardach (introduction), *Konstytucja 3 maja 1791. 1791 Gegužės 3-osios Konstitucija. The Constitution of May 3, 1791*, Warsaw 2001, pp. 201-217

Government Act of 3 May 1971

In the name of God, one in the Holy Trinity! Stanislaus Augustus, by the grace of God, and the will of the Nation, King of Poland, Grand Duke of Lithuania, Russia, Prussia, Masovia, Samogitia, etc. together with the Confederate States assembled in double number to represent the Polish nation.

Persuaded that our common fate depends entirely upon the establishing and rendering perfect a national constitution; convinced by a long train of experience of many defects in our government, and willing to profit by the present circumstances of Europe, and by the favorable moment which has restored us to ourselves; free from the disgraceful shackles of foreign influence; prizing more than life, and every personal happiness, the political existence, external independence, and internal liberty of the nation, whose care is entrusted to us; desirous, moreover, to deserve the blessing and gratitude, not only of our contemporaries, but also of future generations; in spite of the obstacles caused by passion and for the sake of the public good, for securing our liberty, and maintaining our Fatherland and our possessions; with spiritual zeal and firmness, we do solemnly establish the present Constitution, which we declare wholly inviolable in every part, till such period as shall be prescribed by law, when the nation, if it should think fit, and deem it necessary, may alter by its express will such articles therein as shall be found inadequate. And this present Constitution shall be the standard of all laws and statutes for the future Diets.

I. THE DOMINANT NATIONAL RELIGION

The Holy Roman-Catholic Faith, with all its privi leges and immunities, shall be the dominant national religion. The changing of it for any other faith is forbidden under the penalties of apostasy: but as the same holy religion commands us to love our neigh bors, we therefore owe to all people of whatever persuasion, peace in matters of faith, and the protection of government; consequently we assure, to all persuasions and religions, freedom and liberty, according to the laws of the country, and in all dominions of the Republic.

II. NOBILITY, OR THE EQUESTRIAN ORDER

Revering the memory of our ancestors with gratitude, as the first founders of our liberties, it is but just to acknowledge, in a most solemn manner, that all the preeminence and prerogatives of liberty, both in public and private life, should be insured to this order; especially laws, statutes, and privileges, granted to this order by Casmir the Great, Lewis of Hungary, Ladislaus Jagellon, and his brother Wittoldus, Grand Duke of Lithuania; also by Ladislaus and Casimirus, both Jagellons; by John Albertus, Alexander, Sigismundus the First, and Sigismundus Augustus (the last of the Jagellonic dynasty) are by the present act renewed, confirmed, and declared to be inviolable.

We acknowledge the rank of the noble Equestrian order in Poland to be equal to all degrees of nobility wherever used – all persons of that order to be equal among themselves, not only in the eligibility to all posts of honour, trust, or emolument, but in the enjoyment of all privileges and prerogatives appertaining to the said order: and in particular, we preserve and guarantee to every individual thereof personal liberty and security and security of territorial and moveable property, as they were formerly en joyed; nor shall we even suffer the least encroach ment on either by the Supreme national power (on which the present form of government is established), under any pretext whatsoever, contrary to private rights, either in part, or in the whole; consequently we regard the preservation of personal security and property, as by law ascertained, to be a tie of society, and the very essence of civil liberty, which ought to be considered and respected for ever. It is in this order that we repose the defence of our liberties and the present constitution: it is to their virtue, valour, honour, and patriotism, we recommend its dignity to venerate, and its stability to defend, as the only bulwark of our liberty and existence.

III. TOWNS AND CITIZENS

The law made by the present Diet, entitled, "Our Royal Free Towns Within the Dominions of the Republic," we mean to consider as a part of the present constitution, and promise to maintain it as a new, additional, true, and effectual support, of our common liberties, and our mutual defence.

IV. PEASANTS AND VILLAGERS

This agricultural class of people, the most nume rous in the nation, consequently forming the most considerable part of its force, from whose hands flows the source of our riches, we receive under the protection of national law and government, from the motives of justice, humanity, Christianity, and our own interest well understood: enacting, that whatever

liberties, grants, and conventions, between the pro prietors and villagers, either individually or collectively, may be allowed in future, and entered authentically into; such agreements, according to their true meaning, shall import mutual and reciprocal obligations, binding not only the present contracting parties, but even their successors by inheritance or acquisition – so far that it shall not be in the power of either party to alter at pleasure such contracts, importing grants on one side, and voluntary promise of duties, labour, or payments on the other, according to the manner and conditions therein expressed, whether they are to last perpetually, or for a fixed period. Thus having insured to the proprietors every advantage they have a right to from their villagers, and willing to encourage most effectually the augmentation of the population of our country, we publish and proclaim a perfect and entire liberty to all people, either who may be newly coming to settle, or those who, having emigrated, would return to their native country; and we declare most solemnly, that any person coming into Poland, from whatever part of the world, or returning from abroad, as soon as he sets his foot on the territory of the Republic, becomes free and at liberty to exercise his industry, wherever and in whatever manner he pleases, to settle either in towns or villages, to farm and rent lands and houses, on tenures and contracts, for as long a term as may be agreed on; with liberty to remain, or to remove, after having fulfi lled the obligations he may have volun tarily entered into.

V. FORM OF GOVERNMENT, OR THE DEFINITION OF PUBLIC POWERS

All power in civil society should be derived from the will of the people, its end and object being the preservation and integrity of the State, the civil liberty, and the good order of society, on an equal scale, and on a lasting foundation. Three distinct powers shall compose the government of the Polish nation, according to the present constitution; viz.

1st. Legislative power in the States assembled.

2d. Executive power in the King and the Council of Guardians.

3d. Judicial power in the Jurisdictions existing, or to be established.

VI. THE DIET, OR THE LEGISLATIVE POWER

The Diet, or the Assembly of Estates, shall be divided into two Houses; viz. the House of Deputies, and the House of Senate, where the King is to preside. The former being the representative and central point of Supreme national authority, shall possess the pre-eminence in the Legislature; therefore, all bills are to be decided first in this House.

1st. All General Laws, viz. constitutional, civil, criminal, and perpetual taxes; concerning which matters, the King is to issue his propositions by the circular letters sent before the Dietines to every palatinate and to every district for

deliberation, which coming befo re the House with the opinion expressed in the instructions given to their representatives, shall be taken the first for decision.

2d. Particular Laws, viz. temporal taxes; regulations of the mint; contracting public debts; creating nobles, and other casual recompenses; reparation of public expences, both ordinary and extraordinary; concerning war; peace; ratification of treaties, both political and commercial; all diplomatic acts and conventions relative to the laws of nations; examining and acquitting different executive departments, and familiar subjects arising from the accidental exigencies and circumstances of the State; in which the propositions, coming directly from the Throne into the House of Deputies, are to have preference in discussion before the private bills.

In regard to the House of Senate, it is to consist of Bishops, Palatines, Castellans, and Ministers, under the presidency of the King, who shall have but one vote, and the casting voice in case of parity, which he may give either personally, or by a message to the House. Its power and duty shall be,

1st. Every General Law that passes formally through the House of Deputies is to be sent immediately to this, which is either accepted, or suspended till farther national deliberation, by a majority of votes, as prescribed by law. If accepted, it becomes a law in all its force; if suspended, it shall be resumed at the next Diet; and if it is then agreed to again by the House of Deputies, the Senate must submit to it.

2d. Every Particular Law or Statute of the Diet in matters above specified, as soon as it has been determined by the House of Deputies, and sent up to the Senate, the votes of both Houses shall be jointly computed, and the majority, as described by law, shall be considered as a decree and the will of the Estates.

Those Senators and Ministers who, from their share in executive power, are accountable to the Republic, cannot have an active voice in the Diet, but may be present in order to give necessary explanations to the States.

These ordinary legislative Diets shall have their uninterrupted existence, and be always ready to meet; renewable every two years. The length of sessions shall be determined by the law concerning Diets. If convened out of ordinary session upon some urgent occasion, they shall only deliberate on the subject which occasioned such a call, or on circumstances which may arise out of it.

No law or statute enacted by such ordinary Diet can be altered or annulled by the same.

The compliment of the Diet shall be composed of the number of persons in both Houses, to be deter mined hereafter.

The law concerning the Dietines, or primary elections, as established by the present Diet, shall be regarded as a most essential foundation of civil liberty. As the legislative power cannot be performed by all and because the

nation works through its re presentatives, therefore the deputies elected by the Dietines will be recognized as the representatives of the whole nation in whom the trust of the nation will be vested.

The majority of votes shall decide every thing, and everywhere; therefore we abolish, and utterly an nihilate, liberum veto, all sorts of confederacies and confederate Diets, as contrary to the spirit of the present constitution, as undermining the government, and as being ruinous to society.

Willing to prevent, on one hand, violent and frequent changes in the national constitution, yet, considering on the other, the necessity of perfecting it, after experiencing its effects on public prosperity, we determine the period of every twentyfive years for an Extraordinary Constitutional Diet, to be held purposely for the revision and such alterations of the constitution as may be found requisite; which Diet shall be circumscribed by a separate law hereafter.

VII. THE KING, OR EXECUTIVE POWER

The most perfect government cannot exist or last without an effectual executive power. The happiness of the nation depends on just laws, but the good effects of laws flow only from their execution. Ex perience has taught us that the neglecting this essen tial part of government has overwhelmed Poland with disasters.

Having, therefore, secured to the free Polish nation the right of enacting laws for themselves, the supreme inspection over the executive power, and the choice of their magistrates, we entrust to the King, and his Council, the power of executing the laws.

This Council shall be called Straz, or the Council of Guardians.

The duty of such executive power shall be to watch over the laws, and to see them strictly executed according to their import, even by the means of public force, should it be necessary.

All departments and magistracies are bound to obey its directions. To this power we leave the right of controlling such as are refractory, or of punishing such as are negligent in the execution of their respective offices.

This executive power cannot assume the right of making laws, or of their interpretation. It is expressly forbidden to contract public debts; to alter the repartition of the national income, as fixed by the Diet; to declare war; to conclude definitively any treaty, or any diplomatic act; it is only allowed to carry on negotiations with foreign Courts, and facilitate temporary occurrences, always with reference to the Diet.

The Crown of Poland we declare to be elective in regard to families, and it is settled so for ever.

Having experienced the fatal effects of interregna, periodically subverting government, and being desirous of preventing forever all foreign influence, as well as of insuring to every citizen a perfect tranquillity, we have, from prudent motives, resolved to adopt hereditary succession to our Throne: therefore we enact and declare, that, after the expiration of our life, according to the gracious will of the Almighty, the present Elector of Saxony shall reign over Poland.

The dynasty of future Kings of Poland shall begin in the person of Frederic Augustus, Elector of Saxo ny, with the right of inheritance to the Crown to his male descendants. The eldest son of the reigning King is to succeed his father; and in case the present Elector of Saxony has no male issue, a husband chosen by him (with the consent and approbation of the Republic) for his daughter, shall begin the said dynasty. Hence we declare the Princess Mary-Augus ta Nepomucena, only daughter of the Elector of Saxony, to be Infanta of Poland.

We reserve to the nation, however, the right of electing to the Throne any other house or family, after the extinction of the first.

Every King, on his accession to the Throne, shall take a solemn oath to God and the Nation, to support the present constitution, to fulfil the pacta conventa, which will be settled with the present Elector of Saxony, as appointed to the Crown, and which shall bind him in the same manner as former ones.

The King's person is sacred and inviolable; as no act can proceed immediately from him, he cannot be in any manner responsible to the nation; he is not an absolute monarch, but the father and the head of the people; his revenues, as fixed by the pacta conventa, shall be sacredly preserved. All public acts, the acts of magistracies, and the coin of the kingdom, shall bear his name.

The King, who ought to possess every power of doing good, shall have the right of pardoning those that are condemned to death, except the crimes be against the state.

In time of war he shall have the supreme command of the national forces – he may appoint the comman ders of the army, however, by the will of the States. It shall be his province to patentee officers in the army, and other dignitaries, consonant to the regulations hereafter to be expressed, to appoint Bishops, Sena tors, and Ministers, as members of the executive power.

The King's Council of Guardians is to consist, 1 st. Of the Primate, as the head of the Clergy, and the President of the Commission of Education, or the first Bishop in Ordine.

2d. Of five Ministers, viz. the Minister of Police, Minister of Justice, Minister of War, Minister of Finances, and Minister for the Foreign Affairs.

3d. Of two Secretaries to keep the Protocols, one for the Council, another for the Foreign Department; both, however, without decisive vote.

The hereditary Prince coming of age, and having taken the oath to preserve the constitution, may assist at all sessions of the Council, but shall have no vote therein.

The Marshal of the Diet, being chosen for two years, has also a right to sit in this Council, without taking any share in its resolves; for the end only to call together the Diet, always existing, in the fol lowing case: Should he deem, from the emergencies hereunder specifi ed, the convocation of the Diet absolutely necessary, and the King refusing to do it, the Marshal is bound to issue his circular letters to all Deputies and Senators, adducing real motives for such meeting.

The cases demanding such convocation of the Diet are the following:
1st. In a pressing necessity concerning the law of nations, and particularly in case of a neighboring war.
2d. In case of an internal commotion, menacing with the revolution of the country, or of a collision between Magistratures.
3d. In an evident danger of general famine.
4th. In the orphan state of the country, by demise of the King, or in case of the King's dangerous illness.

All the resolutions of the Council will be taken by the Guardians assembled respectively to the rules above mentioned.

The King's opinion, after that of every Member in the Council has been heard, shall decisively prevail.

Every resolution of this Council shall be issued under the King's signature, countersigned by one of the Ministers sitting therein; and thus signed, shall be obeyed by all executive departments, except in cases expressly exempted by the present constitution.

Should all the Members refuse their countersign to any resolution, the King is obliged to forego his opinion; but if he should persist in it, the Marshal of the Diet may demand the convocation of the Diet; and if the King will not, the Marshal himself shall send his circular letters as above.

The King nominates the Ministers and appoints them for two years to his Council of Guardians.

Ministers composing this Council cannot be employed at the same rime in any other commission or department.

If it should happen that two-thirds of secret votes in both Houses demand the changing of any person, either in the Council, or any executive department, the King is bound to nominate another.

Willing that the Council of Guardians should be responsible to the nation for their actions, we decree that, when these Ministers are denounced and accused before the Diet (by the special Committee appointed for examining

their proceedings) of any transgression of positive law, they are answerable with their per sons and fortunes.

Such impeachments being determined by a simple majority of votes, collected jointly from both Houses, shall be tried immediately by the Diet Tribunal, where the accused are to receive their final judgment and punishment, if found guilty; or to be honourably acquitted, on sufficient proof of innocence.

In order to form a necessary organization of the executive power, we establish hereby separate commissions, connected with the above Council, and subjected to obey its ordinations. The commissars will be elected by the Diet for time prescribed by the laws.

These commissions are, 1st. of Education; 2d. of Police; 3d. of War; 4th. of Treasury.

It is through the medium of these four departments that all the particular orderly commissions, as estab lished by the present Diet, in every palatinate and district, shall depend on, and receive all orders from, the Council of Guardians, in their respective duties and occurrences.

VIII. JUDICIAL POWER

As judicial power is incompatible with the legis lative, nor can be administered by the King, therefore tribunals and magistratures ought to be established and elected. It ought to have local existence, that every citizen should know where to seek justice, and every transgressor can discern the hand of national government. We establish, therefore,

1 st. Primary Courts of Justice for each palatinate and district, composed of Judges chosen at the Dietine, which are always to be ready to administer justice. From these Courts appeals are allowed to the high tribunals, erected one for each of three provinces, in which the Kingdom is divided. Those Courts, both primary and fi nal, shall be for the class of nobles, or equestrian order, and all the proprietors of landed property.

2dly. We determine separate Courts and Jurisdictions for the free royal towns, according to the law fixed by the present Diet.

3dly. Each province shall have a Court of Referen daries for the trial of causes relating to the peasantry, who are all hereby declared free, and in the same manner as those who were so before.

4thly. Courts, curial and assessorial, tribunals for Courland, and relational, are hereby confirmed.

5thly. Executive commissions shall have judicial power in the matters relative to their administration.

6thly. Besides all these civil and criminal Courts, there shall be one supreme general tribunal for all the classes, called the Diet Tribunal or Court,

composed of persons chosen at the opening of every Diet. This tribunal is to try all the persons accused of crimes against the State.
Lastly, we shall appoint a Committee for the forming a civil and criminal code of laws, by persons whom the Diet shall elect for that purpose.

IX. REGENCY

The same Council of Inspection is to compose the Regency, with the Queen at their head, or, in her absence, with the Primate of the kingdom. The Regency may take place only, 1st. During the King's minority. 2d. In case of the King's settled alienation of reason. 3d. In case of the King's being made a prisoner of war.

Minority is to be considered till eighteen years are completed, and the malady must be declared in the existing Diet by the plurality of three-fourths of votes of both combined Houses against one-fourth.

When the King comes of age, or recovers his health, or returns from captivity, the Regency shall cease, and shall be accountable to him, and responsib le to the nation in their persons and fortunes, for their actions during their office.

X. EDUCATION OF THE KING'S CHILDREN

The King's sons, being designed successors to the Crown, are the first children of the country. Thence the care of their proper education, without encroa ching, however, on the right of their parents, devolves naturally upon the nation.

During the King's life, the King himself, with the Council, and a Tutor, appointed by the States, shall superintend the education of the Princes.

In time of a Regency, it shall be intrusted with this direction, jointly with the above-mentioned Tutor.

In both cases this Tutor, named by the States, is to make his report before each ordinary Diet of the education and progress of the Princes. The Commission, or Board of Education, is obliged to bring before the Diet, for the approbation, an instruction or plan for the education of the Princes, founded on religion, love of virtue, of country, of liberty, and the constitution.

XI. NATIONAL FORCE, OR THE ARMY

The nation is bound to preserve its possessions against invasion; therefore all inhabitants are natural defenders of their country and its liberties.

The army is only an extract of defensive regular force, from the general mass of national strength.

The nation owes to the army reward and respect, because of its devoting itself wholly for the defence of the country.

The army owes to the nation, to guard the frontiers against enemies, and to maintain public tranquillity within: in a word, it ought to be the strongest shield in the nation.

That these ends may be fully answered, the army should ever remain under the subordination and obedience to the executive power; it shall therefore take an oath, according to law, of fi delity to the nation, and to the King, and to maintain the national constitution. This national force, therefore, shall be employed for the general defence of the country, for garrisoning fortresses, guarding frontiers, and assis ting the civil power in the execution of the law against those that are refractory.

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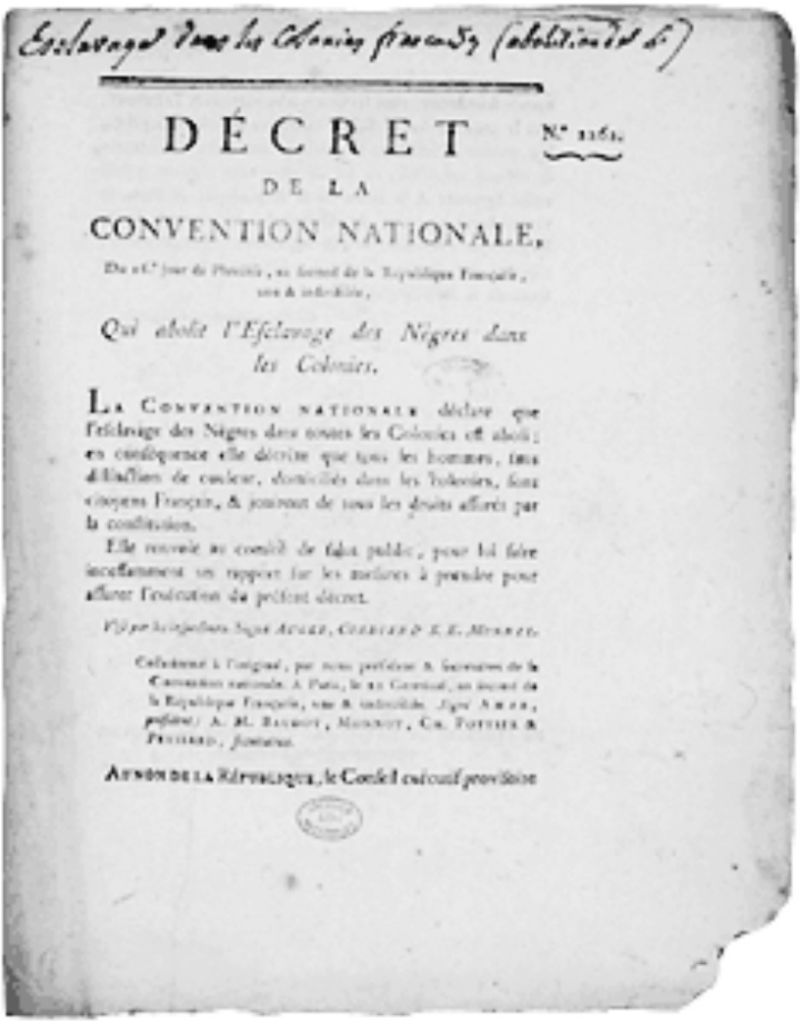
XV

THE DECREE OF THE NATIONAL CONVENTION OF 4 FEBRUARY 1794 ABOLISHING SLAVERY IN ALL THE COLONIES



Esclavage dans les Colonies françoises (abolition de l')

DÉCRET

N.° 1161.

DE LA

CONVENTION NATIONALE,

Du 16.e Jour de Pluviôse, an second de la République Française, une & indivisible,

Qui abolit l'Eſclavage des Nègres dans les Colonies.

LA CONVENTION NATIONALE déclare que l'eſclavage des Nègres dans toutes les Colonies eſt aboli; en conſéquence elle décrète que tous les hommes, tant Blancs que de couleur, domiciliés dans les Colonies, ſont citoyens Français, & jouiront de tous les droits aſſurés par la conſtitution.

Elle renvoie au comité de ſalut public, pour lui faire inceſſamment un rapport ſur les meſures à prendre pour aſſurer l'exécution du préſent décret.

Vû par les Inſpecteurs. Signé AUBRY, CORDIER & E. MONNEL.

Collationné à l'original, par nous préſident & ſecrétaires de la Convention nationale. A Paris, le 16 Ventôſe, an ſecond de la République Française, une & indiviſible. Signé AUBRY, préſident; A. M. BAUDOT, MONNOT, CH. POTTIER & PEYSSARD, ſecrétaires.

AU NOM DE LA République, le Conſeil exécutif proviſoire

The Decree of the National Convention of 4 February 1794 Abolishing Slavery in all the Colonies

THE DECREE OF THE NATIONAL CONVENTION OF 4 FEBRUARY 1794 ABOLISHING SLAVERY IN ALL THE COLONIES

The Atlantic trade in African slaves was started by the Portuguese in the first half of 15th century (around 1440), mainly to supply workforce for sugar plantations in Madera and on the São Tomé island. Until the second half of 16th century, trade in slaves was rather insignificant, especially when compared with the centuries to follow. Starting in the 17th century, however, when sugar plantations in Brazil covered more and more area, and began to generate considerable income, the need to import workers from Africa increased considerably. Production of sugar started also on the Caribbean. By the end of 17th century, exploitation of slaves for the needs of tobacco production in the states of Virginia and of Maryland was becoming increasingly popular. During the 17th century, almost 1.9 million of people were carried away from Africa as slaves. In the following century, labour of slaves was used throughout the New World, and around 6 million of inhabitants of Africa were brought there for that purpose. The slaves, if they did survive the journey to their destination, lived on average for 5 – 6 years. They were not regarded as people – in Article 44 of the edict of 1685 (Code norie), issued for French colonies, slaves were referred to as "property". At the same time (1688), the Community of Friends, founded by Pennsylvania Quarks, expressed as first some objections against trading in people. A hundred years later, Quarks also founded Pennsylvania Abolition Society, which did score some success – introducing the ban on trade in children and pregnant women, and on separating family members by sale (1780). Meanwhile, in Europe representatives of Enlightenment have also raised the issue - Montesquieu, like the Encyclopedists, regarded slavery as contrary to human nature. In 1788, one year before the assembly of French States-General, convened by king Louis XVI, Jean-Pierre Brissot, after his return from London and under the influence of British abolitionist T. Clarkson, founded in Paris the Société des Amis des Noirs. Its members included some representatives of aristocracy, who were soon to become renowned in French National Assembly, such as marquis Condorcet, marquis de La Fayette, and Mount de Mirabeau. French Revolution, and especially the Declaration of the Rights of Man and Citizen, seemed to make it possible to solve the problem of slavery. The revolt of Mulattoes and of free Negroes on San Domingue in the autumn of 1790 gave a good opportunity for that. There were 40 thousand of colonists and 450 thousand of slaves living on the island at the time. In May 1791, the Constituent Assembly, afraid to loose the colony,

and even though Robespierre opposed it strongly, deprived the free non-white population of political rights. Any acts of law concerning the colony were to be adopted solely upon the proposal of assembly of white colonists. This, however, did not calm down the anti-colonist feelings at San Domingue, where a subsequent uprising broke out on 22 August. The Constitution of 1791, like the American Declaration of Independence, did not mention the issue of slavery. Only a couple of years later, in 1793, in a totally new political context, during the time of sheer terror under the rule of the Committee of Public Safety, and after the Société des Amis des Noirs was dissolved, Léger-Félicité Sonthonax, the French Commissioner of San Domingue, finally abolished the slavery, and on 4 February 1794, the National Convention, upon the proposal of Danton and Delacroix, and anticipating the loss of San Domingue, as well as British or Spanish intervention, granted this right to all French colonies. This, however, not was the end of the struggle, as in 1802 (on 20 May), the slavery in French colonies was restored .

Original text

Decret de la Convention Nationale qui abolit l'Esclavage des Negres dans las Colonies

La Convention nationale déclare que l'esclavage des Nègres dans toutes les colonies est aboli; en conséquence, elle décrète que tous les hommes, sans distinction de couleur, domiciliés dans les colonies, sont citoyens français, et jouiront de tous les droits assurés par la constitution.

Elle renvoie au comité de salut public pour lui faire incessamment un rapport sur les measures à prendre pour l'exécution du présent décret.

English translation

Based on: Lynn Hunt (ed.), *The French Revolution and Human Rights: A Brief Documentary History*, Boston/New York: Bedford/St. Martin's 1996, pp. 115-116.

Decree of the National Convention of 4 February 1794, Abolishing Slavery in all the Colonies

The National Convention declares the abolition of Negro slavery in all the colonies; in consequence it decrees that all men, without distinction of color, residing in the colonies are French citizens and will enjoy all the rights assured by the constitution.

It asks the Committee of Public Safety to make a report as soon as possible on the measures that should be taken to assure the execution of the present decree.

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XVI

THE DECREE OF THE NATIONAL CONVENTION OF THE 22ND DAY OF PRAIRIAL IN THE MATTER OF THE ORGANISATION AND COMPETENCES OF THE REVOLUTIONARY TRIBUNAL

ÉGALITÉ LIBERTÉ

INDÉPENDANCE.

Le Tribunal Révolutionnaire à ſes Concitoyens Révolutionnaires.

CITOYENS!

Nous venons d'employer les premiers momens de notre exiſtence à nous mettre en état de remplir dignement la tâche que vous nous avez impoſée, en écartant de nous toute influence particulière qui pût nous faire oublier un inſtant que nous ſommes des Juges Révolutionnaires.

Notre premier acte a été de prononcer le ſerment ſuivant:

Nous jurons à la face de l'ÊTRE SUPRÊME & des Révolutionnaires qui nous ont inſtitués de n'avoir égard à aucune ſollicitation directe ou indirecte, relative aux Jugemens que nous ſommes appelés à porter, & d'exercer envers ceux d'entre nous qui violeroient ce Serment ſacré la même ſévérité que nous deſtinons aux ennemis du Peuple.

Nous avons enſuite arrêté qu'aucun de nous ne pourra ſortir de la Maiſon Commune juſqu'à ce que notre miſſion ſoit terminée.

Après avoir pris ces précautions pour juger avec impartialité, nous avons mis notre premier ſoin à multiplier autour de nous les lumières. En conſéquence nous invitons tous les Citoyens Révolutionnaires à nous faire parvenir les renſeignemens qu'ils peuvent avoir ſur les manœuvres des ennemis de la Liberté; & pour l'authenticité des opérations, tout Citoyen qui aura à communiquer avec le Tribunal devra le faire par écrit & le ſigner.

CITOYENS! vous êtes debout, le ſalut de la Patrie vous commande la conſtance, la fermeté & l'union. Perſévérez, dans ſix jours la Liberté ſera aſſurée dans la République.

ALEXANDRE BOUSQUET, Préſident.
FRANÇOIS ROMILLY, Vice-Préſident.
VAUCHÉ-DUFOUR, Vice-Préſident.

Mardi 22 Juillet l'an 3.

The Decree of the National Convention of the 22nd Day of Prairial in the Matter of the Organisation and Competences of the Revolutionary Tribunal

THE DECREE OF THE NATIONAL CONVENTION OF THE 22ND DAY OF PRAIRIAL IN THE MATTER OF THE ORGANISATION AND COMPETENCES OF THE REVOLUTIONARY TRIBUNAL

The Decree of the National Convention of 10 June 1794 (the 22nd day of the month of Prairial, year II) concerned the organisation and range of competences of the Revolutionary Tribunal, created on 6 April 1793 by the Legislative Assembly. The Decree simplified to the maximal degree the procedure before the Tribunal, forbade any previous hearings of suspects, enabled sentencing without the hearing of witnesses and deprived defendants of the right to defence. This procedure came close to the procedure applied to persons who were "outlawed', which depended on a simple confirmation of the identity of the condemned man. The Decree uncommonly broadly and imprecisely defined the notion of "enemy of the people". It was enough, for example, to state that the activity of a defined person had a negative influence on public customs or exposed to danger the purity of revolutionary principles in order to recognise him as an enemy of the people. The Decree foresaw only one punishment – the death penalty. The decision-making bench consisted of jurors, apart from the judges. The fundamental directive of their activity was to make an appropriate decision supported by their love towards the motherland.

The Decree from the month of Prairial was announced against the background of increasing struggles for power within the governing elite, including among the members of the Committee for Public Safety. This was, therefore, from the beginning regarded as a tool of Robespierre's group intended to eliminate political opponents physically. Such a qualification of the Decree was facilitated by the appointment of Robespierre's followers to the main posts in the Tribunal (Chairman Dumas, Deputy Chairman Coffinhal) and by the wording of one of the last paragraphs, in which were annulled in a general way (without any particular enumeration) all the earlier provisions which were in contradiction with the Decree, which might also have embraced the Decree of the Convention forbidding the bringing of charges against members of the Convention without its consent. The addition of paragraph 21 of the Decree, in which it was stated that the report of the Convention Commission in which a similar interpretation was excluded constituted an attachment to the Decree, allowed for a removal of the danger of bringing members of the Convention before the Tribunal on the application of the Prosecutor or the Committee for Public Safety.

The reorganisation of the Revolutionary Tribunal in Paris also arose from the earlier liquidation of provincial revolutionary tribunals and the intention of centralising and institutionalising the terror in order to prevent acts of popular (spontaneous) terror. The statute on suspected persons of September 1793 led to a doubling of the number of people detained in Parisian prisons. "The prisons must be cleansed," said Barère, a member of the Committee for Public Safety, and the simplified procedure before the Tribunal was supposed to facilitate this. The aim of equipping the Tribunal with extraordinary entitlements was clearly outlined by the author of the project of the Decree, Georges Couthon: "The time necessary for the punishment of enemies is only the time necessary for their identification. The matter does not concern their punishment but their annihilation. The matter does not concern the giving of a terrifying example but either the extermination of the supporters of tyranny or our death together with that of the Republic." Couthon had earlier prepared a project for the calling of a new Revolutionary Tribunal acting in Provence, where opposition to the Revolution was quite widespread. This (rejected) project contained the solutions which Couthon proposed in the Prairial Decree. The Decree of 10 June 1794 was passed by the Convention without discussion. The attempt to adopt it was criticised by Robespierre as an action in essence supporting the enemies of the people.

The Revolutionary Tribunal acted uncommonly intensively on the basis of the Prairial Decree: from 6 April 1793 (when it was created) to 10 June 1794, 1251 death sentences were issued, but from 10 June to 27 July 1794 there were as many as 1376 such sentences (with only 278 verdicts of not guilty). After the fall of Robespierre, the decree was repealed.

[Translator's note: Prairial was the ninth month of the French Republican calendar, running from May 20/21 to June 18/19]

Original text

La loi du 22 prairial an 2 – 10 juin 1794 concernant le tribunal révolutionnaire. Organisation et compétence.

1. Il y aura au tribunal révolutionnaire un président et quatre vice-présidants, un accusateur public, quatre substitutes de l'accusateur public et douze juges.
2. Les jurés seront au nombre de cinquante.

3. Les diverses fonctions seront exercées par les citoyens dont les noms suivent: [….] Tribunal révolutionnaire se divisera par sections, composées de douze members, savoir: trois juges et neuf jurés, lesquels jurés ne pourront juger en moindre nombre que celui de sept.
4. Le tribunal révolutionnaire est institué pour punir les ennemis du people.
5. Les ennemis du people sont ceux qui cherchent à anéantir la liberté publique, soit par la force, soit par la ruse.
6. Sont réputés ennemis du people ceux qui auront provoqué le rétablissment de la royauté, ou cherché à avilir ou à dissoudre la Convention nationale et le gouvernement révolutionnaire et républicain dont elle est le centre;
Ceux qui auront trahi la république dans le commandement des places et des armées, ou dans toute autre function militaire; entretenu des intelligences avec les ennemis de la République, travaillé à faire manquer les approvisionnements ou le service des armées;
Ceux qui auront cherché à empêcher les approvisionnements de Paris, ou à causer la disette dans la République;
Ceux qui auront secondé les projets des ennemis de la France, soit en favorisant la retraîte et l'impunité des conspirateurs et de l'aristocratie, soit en persécutant et calomniant le patriotisme, soit en corrompant les mandataires du people, soit en abusant des principes de la révolution, des lois ou des mesures du Gouvernement, par des applications fausses et perfides;
Ceux qui auront trompé le people ou les représentants du people, pour les induire à des démarches contraires aux intérêts de la liberté;
Ceux qui auront cherché à inspirer le découragement pour favoriser les enterprises des tyranrs ligués contre la République;
Ceux qui auront répandu de fausses nouvelles pour diviser ou pour troubler le people;
Ceux qui auront cherché à égarer l'opinion, et à empêcher l'instruction du people, à dépraver les moeurs, et à corrompre la conscience publique, à altérer l'energie et la pureté des principes révolutionnaires et républicains, ou à en arrêter les progrès, soit par des écrits contre révolutionnaires ou insidieux, soit par toute autre machination;
Les fournisseurs de mauvaise foi qui compromettent le salut de la République, ou les dilapidateurs de la fortune publique autres que ceux compris dans les dispositions de la loi du 7 frimaire;
Ceux qui, étant chargés de fonctions publiques, en abusent pour servir les ennemis de la révolution, pour véxer les patriots et pour opprimer le people;
Enfin, tous ceux qui sont designés dans les lois précédantes, relatives à la punition des conspirateurs et contre-révolutionnaires, et qui, par quelques moyens que ce soit et de quelques dehors qu'ils se couvrent, auront attenté à la liberté, à l'unité, à la sûreté de la République, ou travaillé à en empêcher l'affermissement.
7. La peine portée contre tous les délits dont la connaisance appartient au tribunal révolutionnaire, est la mort.

8. La prevue nécessaire pour condamner les ennemis du people est tout espèce de documents, soit materielle, soit morale, soit verbale, soit écrite, qui peut naturellement obtenir l'assentiment de tout esprit juste et raisonnable; la règle des jugement est la conscience des jurés éclairés par l'amour de la patrie; leur but, le triomphe de la République, et la ruine de ses ennemis; la procédure, les moyens simples que bon sens indique pour parvenir à la connaissance de la vérité, dans les formes que la loi détermine. Elle se borne aux points suivants:

9. Tout citoyen a le droit de saisir et de traduire devant les magistrates les conspirateurs et les contre-révolutionnaires. Il est tenu de les dénoncer des qu'il les connaît.

10. Nul ne pourra traduire personne au tribunal révolutionnaire, si ce n'est la Convention nationale, le comité de salut public, le comité de sûreté générale, les représentants du people commissaires de la Convention, et l'accusateur public du tribunal révolutionnaire.

11. Les autorités constituées en général ne pourront exercer ce droit, sans en avoir prévenu le comité de salut public et le comité de sûreté générale, et obtenu leur autorisation.

12. L'accusé sera interrogé à l'audience et en public: la formalité de l'interrogatoire secret qui précède est supprimée comme superflue; elle ne pourra avoir lieu que dans les circonstances particulières où elle serait jugée utile à la connaissance de la vérité.

13. S'il existe des preuves, soit materielles, soit morales, indépendamment de la preuve testimoniale, il ne sera point entendu de témoins, à moins que cette formalité ne paraisse nécessaire, soit pour découvrir des complices, soit pour d'autres considérations majeures d'intérêt public.

14. Dans le cas où il y aurait lieu à cette preuve, l'accusateur public fera appeler les témoins qui peuvent éclairer la justice, sans distinction de témoins à charge ou à décharge.

15. Toutes les dépositions seront faites en public; et aucune déposition écrite ne sera reçue, à moins que les témoins ne soient dans l'impossibilité de se transporter au tribunal; et dans ce cas, il sera nécessaire d'une autorisation expresse des comités de salut public et de sûreté générale.

16. La loi donne pour défenseurs aux patriots calomniés des jurés patriots: elle n'en accorde point aux conspirateurs.

17. Les débats finis, les jures formeront leurs déclarations, et les juges prononceront la peine de la manière déterminée par les lois. Le président posera question avec clarté, précision et simplicité. Si elle était présentée d'une manière équivoque ou inexacte, le jury pourrait demander qu'elle fût posée d'une autre manière.

18. L'accusateur public ne pourra, de sa propre autorité, renvoyer un prévenu adressé au tribunal, ou qu'il y aurait fait traduire lui-même; dans le cas où il n'y aurait pas matière à une accusation devant le tribunal, il en fera un rapport écrit et motivé à la chambre du conseil, qui prononcera. Mais aucun prévenu ne pourra être mis hors de

jugement, avant que la décision de la chambre ait été communiqué aux comités de salut public et de sûreté générale, qui l'examineront.
19. Il sera fait un registre double des personnes traduites au tribunal révolutionnaire, l'un pour l'accusateur public, et l'autre au tribunal, sur lequel seront inscrit tous les prévenus, à mesure qu'ils seront traduits.
20. La Convention déroge à toutes celles des lois précédantes qui ne concerneraient point le présent décret, et n'entend pas que les lois concernant l'organisation des tribunaux ordinaires s'appliquent aux crimes de contre-révolution et à l'action du Tribunal révolutionnaire.
21. Le rapport du comité sera joint au présent décret comme instruction.

English translation

The Decree of the National Convention of the 22nd Day of Prairial in the Matter of the Organisation and Competences of the Revolutionary Tribunal

1. The Tribunal will consist of the Chairman, 4 Deputy Chairmen, the Public Prosecutor, 4 Deputy Public Prosecutors and 12 Judges.
2. There will be 50 jurors.
3. Particular functions will be fulfilled by the following citizens:

[…]
The Revolutionary Tribunal will be divided into sections consisting of 12 members, namely 3 judges and 9 jurors, with the proviso that the jurors cannot judge if their number is smaller than seven.
4. The Revolutionary Tribunal is created in order to punish the enemies of the people.
5. The enemies of the people are those who would destroy public liberties by force or subterfuge.
6. Those will be regarded as enemies of the people:
Who undertake attempts to restore the monarchy or to cover with shame or dissolve the National Convention and the Revolutionary and Republican Government, which is its centre;
Who betray the Revolution as military commanders or who fulfil any other military function; who enter into intelligence cooperation with enemies of the Republic, or who cause shortages in supplies or in equipment for the army;

Who try to hinder the delivery of supplies to Paris or to cause shortages and privations in the state;
Who try to support the enemies of France either by creating favourable conditions only for the removal and impunity of plotters and aristocrats, or by persecuting and slandering patriotism, or by corrupting the mandataries of the people, or by violating the principles of the Revolution, statutes or means established by the government, by false and perfidious actions;
Who cheat the people or the representatives of the people in order to incline them to actions that contradict the interests of liberty;
Who try to weaken the spirit of courage in order to support the undertakings of tyrants united against the Republic;
Who propagate false information in order to divide or incite the people;
Who try to mislead public opinion or hinder its enlightenment, destroy customs and violate public morality, defile the energy and purity of the Revolutionary and Republican principles or hinder their development either through counter-revolutionary or insidious texts or by any other intrigues;
Who are suppliers and who from ill will expose the security of the Republic to danger and who are wasters of public goods, other than those mentioned in the statute of the 7th day of Frimaire [Translator's note: Frimaire was the third month of the French Republican calendar, running from November 21/23 to December 20/22];
Who fulfil public functions and who violate them in order to support the enemies of the Republic, offend patriots or oppress the people;
Finally who in previous statutes concerning the punishment of plotters and counter-revolutionaries were defined as enemies of the people and who by any means and in whatever form make an assault on the liberty, unity and security of the Republic or who act against its strengthening.

7. The punishment for the crimes which come under the jurisdiction of the Revolutionary Tribunal is death.

8. The evidence that is necessary for the conviction of enemies of the people includes all manner of documents, whether material, legal, written or oral, which can be recognised by every sensible mind; the basis for the sentence will be the awareness of the jurors enlightened by love towards the motherland; their aim is the triumph of the Republic and the annihilation of its enemies; the procedure, with the application of simple means, which common sense indicates in order to reach the truth, is defined by the law. The principles of this procedure are as follows.

9. Every citizen has the right to apprehend and to bring before the judges plotters and counter-revolutionaries. He has the obligation to denounce them at the time of their recognition.

10. The accused can be brought before the Revolutionary Tribunal only by the National Convention, representatives of the people established by the

Convention, the Committee of Public Safety, the Committee for General Security and the Public Prosecutor in the Revolutionary Tribunal.
11. Authorities established generally may fulfil the above entitlements on prior receipt of the agreement of the Committee for Public Safety and the Committee for General Security.
12. The accused will be judged publicly in a trial; as it is deemed unnecessary, there will be no private questioning earlier, unless particular circumstances make such questioning necessary for the establishing of the truth.
13. If there exists any material or legal evidence, independent of witnesses, there will be no questioning of witnesses, unless this is deemed necessary to reveal accomplices or some other important public interest.
14. If such proof needs to be obtained, the Public Prosecutor will call witnesses, both for the prosecution and the defence, who might enlighten the judges.
15. All statements will be made publicly and no written statement will be permitted unless the witness cannot appear personally before the Tribunal; in such a case it will be necessary to obtain the permission of the Committee of Public Safety and the Committee of General Security.
16. The defenders of falsely accused patriots will be the jurors, in accordance with the statute; the statute does not allow plotters to have defenders.
17. On completion of the debate, the jurors will present their opinion and the judges will announce the punishment in accordance with the provisions of the law. The Chairman will ask the jurors questions in a way that is clear, precise and simple. If the questions are ambiguous or not concrete, the jurors will be able to demand a different formulation of them.
18. The Public Prosecutor cannot by his own decision release a suspect brought before the Tribunal, even if he himself brought him before the Tribunal; in the case when the case does not belong to the Tribunal, he will prepare a written report and present it to the Advisory Chamber, which will make the decision. No suspect may be removed from jurisdiction before the decision of the Chamber has been presented and approved by the Committee for Public Safety and the Committee for General Security.
19. A double register of persons brought before the Revolutionary Tribunal will be created, one for the Public Prosecutor and the other for the Tribunal, in which will be written the names of all the suspects brought before the Tribunal.
20. The Convention repeals all the provisions of earlier statutes which remain in contradiction with this decree and states that the provisions concerning ordinary tribunals do not apply in the case of crimes of counter-revolution and to the actions of the Revolutionary Tribunal.
21. The report of the Convention Commission [preparing the project of the decree] will be attached to this decree as its interpretation. [...]

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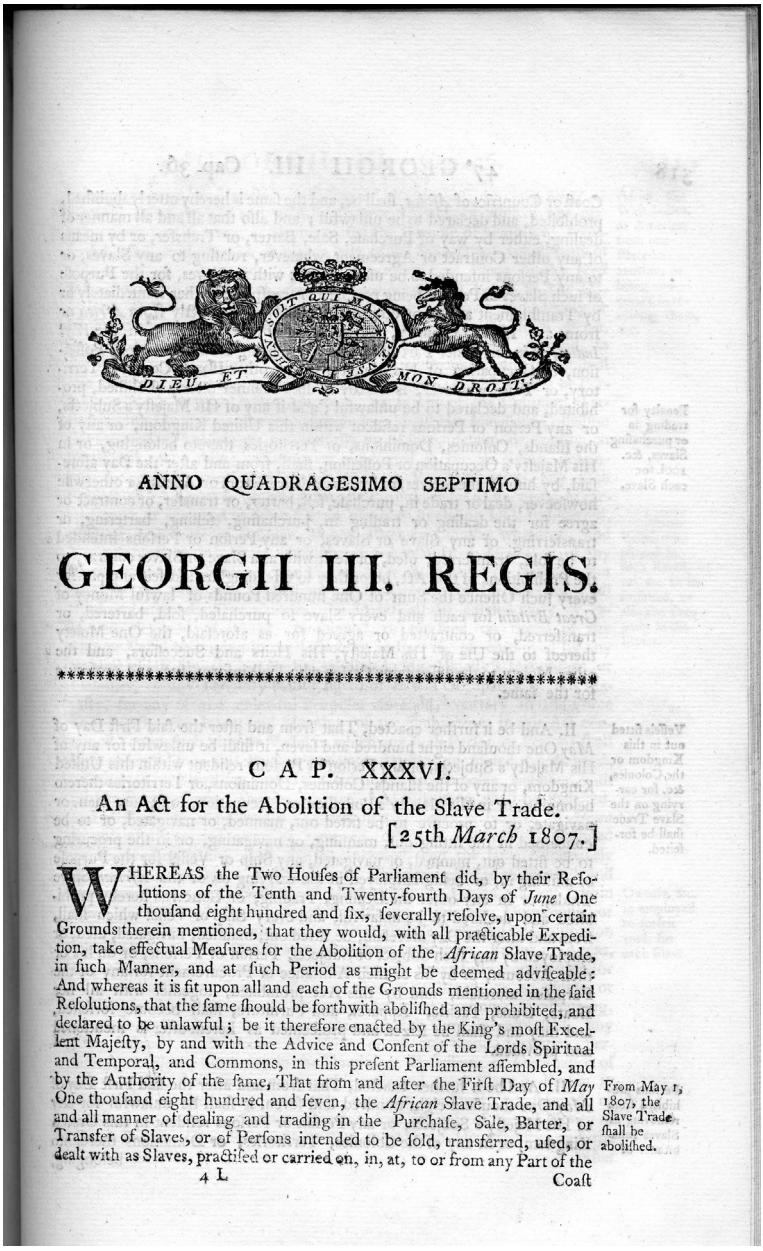
XVII
DECLARATION OF THE BRITISH PARLIAMENT OF 1807 FOR THE ABOLITION OF THE SLAVE TRADE



ANNO QUADRAGESIMO SEPTIMO

GEORGII III. REGIS.

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CAP. XXXVI.

An Act for the Abolition of the Slave Trade.

[25th *March* 1807.]

WHEREAS the Two Houſes of Parliament did, by their Reſolutions of the Tenth and Twenty-fourth Days of *June* One thouſand eight hundred and ſix, ſeverally reſolve, upon certain Grounds therein mentioned, that they would, with all practicable Expedition, take effectual Meaſures for the Abolition of the *African* Slave Trade, in ſuch Manner, and at ſuch Period as might be deemed adviſeable: And whereas it is fit upon all and each of the Grounds mentioned in the ſaid Reſolutions, that the ſame ſhould be forthwith aboliſhed and prohibited, and declared to be unlawful; be it therefore enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That from and after the Firſt Day of *May* One thouſand eight hundred and ſeven, the *African* Slave Trade, and all and all manner of dealing and trading in the Purchaſe, Sale, Barter, or Transfer of Slaves, or of Perſons intended to be ſold, transferred, uſed, or dealt with as Slaves, practiſed or carried on, in, at, to or from any Part of the

From May 1, 1807, the Slave Trade ſhall be aboliſhed.

4 L Coaſt

Declaration of the British Parliament of 1807 for the Abolition of the Slave Trade

DECLARATION OF THE BRITISH PARLIAMENT OF 1807 FOR THE ABOLITION OF THE SLAVE TRADE

The beginnings of slave trade in England (later on in the United Kingdom) go back to 1562, during the reign of Elizabeth I, when John Hawkins led the first slaving expedition to Africa. With time, the slave trade between Africa and North American colonies became a very profitable business, and over the decades hundreds of thousands people were brought to America by force.

The elites of the New World not always approved of such practice. In 1775, the Slavery Abolition Society was founded in English colonies in North America. Thomas Jefferson (1743-1826), who later became the President of the United States of America, was among key activists of the movement to improve the situation of slaves. Being himself an owner of a vast estate in Virginia and of numerous slaves, he proposed that the State Parliament of that state adopts a bill for abolishing slavery, but his proposal was rejected. He included the condemnation of the slave trade in the draft Declaration of Independence, but the passage was deleted. During the War of Independence (1775–1783), the State of Vermont adopted a state constitution (1777) abolishing the slavery in that state, while the United States Constitution of 1787 allowed individual states to regulate themselves the issue of slavery. The majority of southern states kept slavery legal and the trade in slaves intensified again when the war was over.

The developments in America acted as a spur for a group of English Quakers who in 1783 filed a petition to the British Parliament demanding that slavery be abolished. In 1787, the first edition of a book written by a former African slave – Quobna Ottobah Cugoano, and entitled *Thoughts and Sentiments on the Evil of Slavery and Commerce of the Human Species,* was published in London. The book described the inhuman conditions of slave trade, and its autor called for slave trade abolition. This work contributed to the popularisation of abolitionists ideas.

On 4 February 1794, the French National Convention issued a decree abolishing slavery in the French colonies, but on 20 May 1802 the slavery was reinstated there. The French indecisiveness was visible in the approach to the issue of slavery in Haiti (called San Domingo, Saint Dominigue at the time), where the largest slave uprising took place.

Quakers and other radical Christian groups rejecting slavery on religious grounds were among the social groups in England demanding, at the beginnings of 19th century, that slavery be prohibited. They regarded slavery

as immoral and believed it brought disgrace to humankind. At the beginning of 19th century, such gropus held around 35-40 seats in the British Parliament which allowed them to conduct a campaign against slavery on the political arena. The parliamentary group conducting the campaign was headed by William Wilberforce. The events on Haiti – won battles with the French, and establishment of the government by former slaves in 1804 – contributed to the increase of the number of abolitionists in England.

On 25 March 1807, the Parliament of the United Kingdom passed an Act for the Abolition of the Slave Trade.

From the legal point of view, the Act explicitly prohibited to buy, transport and sell slaves in the British Empire but did not abolish slavery as such. A law that did abolish slavery (Slavery Abolition Act) was not adopted until 1833.

It is worth noting that in March 1807 both the British Parliament and the American Parliament outlawed the slave trade. The British act entered into force on 1 May 1807, and the American – on 1 January 1808. Soon after, British authorities declared that all ships transporting slaves from Africa will be treated as pirate ships while their crews will be punished for breaking the law. In America, the scale of anti-slavery efforts were less intense, and the slavery still formally existed in the southern states.

Latest research shows that between 1808 and 1860 British authorities freed approximately 150 000 African slaves transported by ships over the Atlantic, and that they also used to take actions against local (African) rulers (e.g. in Lagos) who profited from the slave trade. During the Congress of Vienna in 1815, the British government insisted that Spain, Portugal, France and the Netherlands adopt some kind of regulations similar to the British act and outlaw the slave trade in their colonies (which had been done by e.g. Denmark). However, the Iberian Peninsula countries (Spain and Portugal) were granted consent to maintain such trade, which was justified with the necessity to supplement their labour force reserves. On 23 September 1817, British government entered into agreement with Spain, in which the latter pledged to abolish slave trade north of the equator immediately, while south of the equator – not until 1820. However, trading in slaves on the route between Africa and Brazil continued to develop. In the following years, the British authorities took action against the Arab slave trade, particularly in Zanzibar (the slave market there was closed in 1873). In the 19th century, when the British Empire, which covered vast areas of the globe, was founded and the British law was becoming popular, a significant reduction of slave trade and of slavery itself was observed.

Brazil was the last country in the Western Hemisphere to abolish slavery and formally free slaves in 1888. Social and cultural consequences of the slave trade were visible still in the 20th century in many countries of the world

(in the British Commonwealth as well). To counteract such phenomena, the Slavery Convention was signed in Geneva on 25 September 1926 which abolished the slave trade. Similar acts were adopted also in the second half of the 20th century, yet in many countries the problem of slavery still remains unsolved.

Original text

Based on: http://home.wxs.nl/~pdavis/Documents.htm

Declaration of the British Parliament of 1807 for the Abolition of the Slave Trade

I. Whereas the Two Houses of Parliament did, by their Resolutions of the Tenth and Twenty-fourth days of June One Thousand eight hundred and six, severally resolve, upon certain Grounds therein mentioned, that they would, with all practicable Expedition, take effectual Measures for the Abolition of the African Slave Trade in such Manner, and at such Period as might be deemed advisable, And whereas it is fit upon all and each of the Grounds mentioned in the said Resolutions, that the same should be forthwith abolished and prohibited, and declared to be unlawful;

From May 1, 1807, the Slave trade shall be abolished.

Penalty for trading in or purchasing Slaves, etc. 100 £ for each Slave.
Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of May One thousand eight hundred and seven, the African Slave Trade, and all and all manner of dealing and trading in the Purchase, Sale, Barter, or Transfer of Slaves, or of Persons intended to be sold, transferred, used, or dealt with as Slaves, practiced or carried on, in, at, to or from any Part of the Coast or Countries of Africa, shall be, and the same is hereby utterly abolished, prohibited, and declared to be unlawful; and also that all and all manner of dealing, either by way of Purchase, Sale, Barter, or Transfer, or by means of any other Contract or Agreement whatever, relating to any Slaves, or to any Persons intended to be used or dealt with as Slaves, for the Purpose of such Slaves or Persons being removed or transported either immediately or by Transshipment at Sea or otherwise, directly or indirectly from Africa, or from any Island, Country, Territory, or Place whatever, in the West Indies, or in any other part of America, not being in the Dominion, Possession, or Occupation

of His Majesty, to any other Island, Country, Territory, or Place what ever, is hereby in like Manner utterly abolished, prohibited, and declared to be unlawful; and if any of His Majesty's Subjects, or any Person or Persons resident within this United Kingdom, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesties Occupation or Possession, shall from and after the Day aforesaid, by him or themselves, or by his or their Factors or Agents or otherwise howsoever, deal or trade in, purchase, sell, barter, or transfer, or contract or agree for the dealing or trading in, purchasing, selling, bartering, or transferring of any Slave or Slaves, or any Person or Persons intended to be sold, transferred, used, or dealt with as a Slave or Slaves contrary to the Prohibitions of this Act, he or they so offending shall forfeit and pay for every such Offence the Sum of One hundred Pounds of lawful Money of Great Britain for each and every Slave so purchased, sold, bartered, or transferred, or contracted or agreed for as aforesaid, the One Moiety thereof to the Use of His Majesty, His Heirs and Successors, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Vessels fitted out in this Kingdom or the Colonies, etc. for carrying on the Slave Trade shall be forfeited.

II. And be it further enacted, that from and after the said First Day of May One thousand eight hundred and seven, it shall be unlawful for any of His Majesty's Subjects, or any Person or Persons resident within this United Kingdom, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesty's Possession or Occupation, to fit out, man, or navigate, or to procure to be fitted out, manned, or navigated, or to be concerned in the fitting out, manning, or navigating, or in the procuring to be fitted out, manned, or navigated, any Ship or Vessel for the Purpose of assisting in, or being employed in the carrying on of the African Slave Trade, or in any other the Dealing, Trading, or Concerns hereby prohibited and declared to be unlawful, and every Ship or Vessel which shall, from and after the Day aforesaid, be fitted out, manned, navigated, used, or employed by any such Subject or Subjects, Person or Persons, or on his or their Account, or by his or their Assistance or Procurement for any of the Purposes aforesaid, and by this Act prohibited, together with all her Boats, Guns, Tackle, Apparel, and Furniture, shall become forfeited, and may and shall be seized and prosecuted as herein-after is mentioned and provided.

Persons prohibited from carrying as Slaves Inhabitants of Africa, the West Indies, or America, from one Place to another, or being concerned in receiving them etc.

Vessels employed in such Removal,etc. to be forfeited, as also the Property in the Slaves.

Owners, etc. so employed to forfeit 100 £ for each Slave.

III. And be it further enacted, That from and after the said First Day of May, One thousand eight hundred and seven, it shall be unlawful for any of His Majesty's

Subjects, or any Person or persons, resident in this United Kingdom, or in any of the Colonies, Territories, or Dominions thereunto belonging or in His Majesty's Possession or Occupation, to carry away or remove, or knowingly and willfully to procure, aid, or assist in the carrying away or removing, as Slaves, or for the purpose of being sold, transferred, used, or dealt with as Slaves, any of the Subjects or Inhabitants of Africa, or any Island, Country, Territory, or Place in the West Indies, or any part of America whatsoever, not being in the Dominion, Possession, or Occupation of his Majesty, either immediately or by Transshipment at Sea or otherwise, directly or indirectly from Africa or from any such Island, Country, Territory, or Place as aforesaid, to any other Island, Country, Territory, or Place whatever, and that it shall also be unlawful for any of His Majesty's Subjects, or any Person or Persons resident in this United Kingdom, or in any of the Colonies, Territories, or Dominions thereunto belonging, or in His Majesty's Possession or Occupation, knowingly and willfully to receive, detain, or confine on board, or to be aiding, assisting, or concerned in the receiving, detaining, or confining on board of any Ship or Vessel whatever, any such Subject or Inhabitant as aforesaid, for the Purpose of his or her being so carried away or removed as aforesaid, or of his or her being sold, transferred used, or dealt with as a Slave, in any Place or Country whatever; and if any Subject or Inhabitant, Subjects or Inhabitants of Africa, or of any Island, Country, Territory, or Place in the West Indies or America, not being in the Dominion, Possession, or Occupation of His Majesty, shall from and after the Day aforesaid, be so unlawfully carried away or removed, detained, confined, transshipped, or received on board of any Ship or Vessel belonging in the Whole or in Part to, or employed by any Subject of His Majesty, or Person residing in His Majesty's Dominions or Colonies, or any Territory belonging to or in the Occupation of His Majesty, for any of the unlawful Purposes aforesaid, contrary to the Force and Effect, true Intent and Meaning of the Prohibitions in this Act contained, every such Ship or Vessel in which any such Person or Persons shall be so unlawfully carried away or removed, detained, confined, transshipped, or received on board for any of the said unlawful Purposes, together with all her Boats, Guns, Tackle, Apparel, and Furniture, shall be forfeited, and all Property or pretended Property in any Slaves or Natives of Africa so unlawfully carried away or removed, detained, confined, transshipped or received on board, shall also be forfeited, and the same respectively shall and may be seized and prosecuted as herein after is mentioned and provided; and every Subject of His Majesty, or Person resident within this United Kingdom, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesty's Possession or Occupation who shall, as Owner, Part Owner, Freighter or Shipper, Factor or Agent, Captain, Mate, Supercargo, or Surgeon, so unlawfully carry away or remove, detain, confine, transship, or receive on board, or be aiding or assisting in the carrying away, removing, detaining, confining, transshipping, or receiving on board, for any of the unlawful Purposes aforesaid, any such Subject or Inhabitant of Africa, or of any Island, Country, Territory, or Place, not being in the Dominion, Possession, or Occupation of His Majesty, shall forfeit and pay for each and every Slave or Person

so unlawful carried away, removed, detained, confined, transshipped, or received on board, the Sum of One hundred Pounds of lawful Money of Great Britain, One Moiety thereof to the Use of His Majesty, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Subjects of Africa, etc. unlawfully carried away and imported into any British Colony, etc. as Slaves, shall be forfeited to His Majesty.

IV. And be it further enacted, That if any Subject or Inhabitant, Subjects or Inhabitants of Africa, or of any Island, Country, Territory, or Place, not being in the Dominion, Possession, or Occupation of His Majesty, who shall, at any Time from and after the Day aforesaid, have been unlawfully carried away or removed from Africa, or from any Island, Country, Territory, or Place, in the West Indies or America, not being in the Dominion, Possession, or Occupation of His Majesty, contrary to any of the Prohibitions or Provisions in this Act contained, shall be imported or brought into any Island, Colony, Plantation, or Territory, in the Dominion, Possession, or Occupation of His Majesty, and there sold or disposed of as a Slave or Slaves, or placed, detained, or kept in a State of Slavery, such Subject or Inhabitant, Subjects or Inhabitants, so unlawfully carried away, or removed and imported, shall and may be seized and prosecuted, as forfeited to His Majesty, by such Person or Persons, in such Courts, and in such Manner and Form, as any Goods or Merchandize unlawfully imported into the same Island, Colony, Plantation, or Territory, may now be seized and prosecuted therein, by virtue of any Act or Acts of Parliament now in force for regulating the Navigation and Trade of his Majesty's Colonies and Plantations, and shall and may, after his or their Condemnation, be disposed of in Manner herein-after mentioned and provided.

Insurances on Transactions concerning the Slave Trade not lawful. Penalty 100 £ and treble the Amount of the Premium.

V. And be it further enacted, That from and after the said First Day of May One Thousand eight hundred and seven, all Insurances whatsoever to be effected upon or in respect to any of the trading, dealing, carrying, removing, transshipping, or other Transactions by this Act prohibited, shall be also prohibited and declared to be unlawful; and if any of His Majesty's Subject's, or any Person or Persons resident within this United Kingdom, or within any of the Islands, Colonies, Dominions, or Territories thereunto belonging, or in His Majesty's Possession or Occupation, shall knowingly and willfully subscribe, effect, or make, or cause or procure to be subscribed, effected, or made, any such unlawful Insurances or Insurance, he or they shall forfeit and pay for every such Offence the Sum of One hundred Pounds for every such Insurance, and also Treble the Amount paid or agreed to be paid as the Premium of any such Insurance, the One Moiety thereof to the Use of His Majesty, His Heirs

and Successors, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Act shall not affect the trading in Slaves, exported from Africa in Vessels cleared out from Great Britain on or before May 1, 1807, and landed in the West Indies by March 1, 1808, etc.

VI. Provided always, That nothing herein contained shall extend, or be deemed or construed to extend, to prohibit or render unlawful the dealing or trading in the Purchase, Sale, Barter, or Transfer, or the carrying away or removing for the Purpose of being sold, transferred, used, or dealt with as Slaves, or the detaining or confining for the Purpose of being so carried away or removed, of any Slaves which shall be exported, carried, or removed from Africa, in any Ship or Vessel which, on or before the said First Day of May One thousand eight hundred and seven, shall have been lawfully cleared out from Great Britain according to the Law now in force for regulating the carrying of Slaves from Africa, or to prohibit or render unlawful the manning or navigating any such Ship or Vessel, or to make void any Insurance thereon, so as the Slaves to be carried therein shall be finally landed in the West Indies on or before the First Day of March One thousand eight hundred and eight, unless prevented by Capture, the Loss of the Vessel, by the Appearance of an Enemy upon the Coast, or other unavoidable Necessity, the Proof whereof shall lie upon the Party charged; any Thing herein before contained to the contrary notwithstanding.

Slaves taken as Prize of War, or seized as Forfeitures, shall be condemned as prize, or forfeited to the King, for the Purpose of putting an End to their Slavery, and may be enlisted etc.

VII. And whereas it may happen, That during the present or future Wars, Ships or Vessels may be seized or detained as Prize, on board whereof Slaves or Natives of Africa, carried and detained as Slaves, being the Property of His Majesty's Enemies, or otherwise liable to Condemnation as Prize of War, may be taken or found, and it is necessary to direct in what manner such Slaves or Natives of Africa shall be hereafter treated and disposed of: And whereas it is also necessary to direct and provide for the Treatment and Disposal of any Slaves or Natives of Africa carried, removed, treated or dealt with as Slaves, who shall be unlawfully carried away or removed contrary to the Prohibitions aforesaid, or any of them, and shall be afterwards found on board any Ship or Vessel liable to Seizure under this Act, or any other Act of Parliament made for restraining or prohibiting the African Slave Trade, or shall be elsewhere lawfully seized as forfeited under this or any other such Act of Parliament as aforesaid; and it is expedient to encourage the Captors, Seizors, and Prosecutors thereof; Be it therefore further enacted, That all Slaves and all Natives of Africa, treated, dealt with, carried, kept, or detained as Slaves which shall at any Time from and after the

said First Day of May next be seized or taken as Prize of War, or liable to Forfeiture, under this or any other Act of Parliament made for restraining or prohibiting the African Slave Trade, shall and may, for the Purposes only of Seizure, Prosecution, and Condemnation as Prize or as Forfeitures, be considered, treated, taken, and adjudged as Slaves and Property in the same manner as Negro Slaves have been heretofore considered, treated, taken, and adjudged, when seized as Prize of War, or as forfeited for any Offence against the Laws of Trade and Navigation respectively, but the same shall be condemned as Prize of War, or as forfeited to the sole Use of His Majesty, His Heirs and Successors, for the Purpose only of divesting and bearing all other Property, Right, Title, or Interest whatever, which before existed, or might afterwards be set up or claimed in or to such Slaves or Natives of Africa so seized, prosecuted, and condemned; and the same nevertheless shall in no case be liable to be sold, disposed of, treated or dealt with as Slaves, by or on the Part of His Majesty, His Heirs or Successors, or by or on the Part of any Person or Persons claiming or to claim from, by, or under His Majesty, His Heirs and Successors, or under or by force of any such Sentence or Condemnation: Provided always, that it shall be lawful for His Majesty, His Heirs and Successors, and such Officers, Civil or Military, as shall, by any general or special Order of the King in Council, be from Time to Time appointed and empowered to receive, protect, and provide for such Natives of Africa as shall be so condemned, either to enter and enlist the same, or any of them, into His Majesty's Land or Sea Service, as Soldiers, Seamen, or Marines, or to bind the same, or any of them, whether of full Age or not, as Apprentices, for any Term not exceeding Fourteen Years, to such Person or Persons, in such Place or Places, and upon such Terms and Conditions, and subject to such Regulations, as to His Majesty shall seem meet, and shall by any general of special Order of His Majesty in Council be in that Behalf directed and appointed; and any Indenture of Apprenticeship duly made and executed, by any Person or Person to be for the Purpose appointed by any such Order in Council, for any Term not exceeding Fourteen Years, shall be of the same Force and Effect as if the party thereby bound as an Apprentice had himself or herself, when of full Age upon good Consideration, duly executed the same; and every such Native of Africa who shall be so enlisted or entered as aforesaid into any of His Majesty's Land or Sea Forces as a Soldier, Seaman, or Marine, shall be considered, treated, and dealt with in all Respects as if he had voluntarily so enlisted or entered himself.

Certain Bounties shall be paid for such Slaves to the Captors as Head Money is paid under 45 G.3. c.72. § 5.

VIII. Provided also, and be it further enacted, That where any Slaves or Natives of Africa, taken as Prize of War by any of His Majesty's Ships of War, or Privateers duly commissioned, shall be finally condemned as such to His Majesty's Use as aforesaid, there shall be paid to the Captors thereof by the Treasurer of His Majesty's Navy, in like Manner as the Bounty called Head Money is now paid by virtue of an Act of

Parliament, made in the Forty-fifth Year of His Majesty's Reign, intituled, An Act for the Encouragement of Seamen, and for the better and more effectually manning His Majesty's Navy during the present War, such Bounty as His Majesty, His Heirs and Successors, shall have directed by any Order in Council, so as the same shall not exceed the Sum of Forty Pounds lawful Money of Great Britain for every Man, or Thirty Pounds of like Money for every Woman, or Ten Pounds of like Money for every Child or Person not above Fourteen Years old, that shall be so taken and condemned, and shall be delivered over in good Health to the proper Officer or Officers, Civil or Military, so appointed as aforesaid to receive, protect, and provide for the same; which Bounties shall be divided amongst the Officers, Seamen, Marines, and Soldiers on Board His Majesty's Ships of War, or hired armed Ships, in Manner, Form, and Proportion, as by His Majesty's Proclamation for granting the Distribution of Prizes already issued, or to be issued for the Purpose is or shall be directed and appointed, and amongst the Owners, Officers, and Seamen of any private Ship or Vessel of War, in such Manner and Proportion as, by an Agreement in Writing that they shall have entered into for that Purpose, shall be directed.

IX. Provided always, and be it further enacted, That in order to entitle the Captors to receive the said Bounty Money, the Numbers of Men, Women, and Children, so taken, condemned, and delivered over, shall be proved to the Commissioners of His Majesty's Navy, by producing, instead of the Oaths and Certificates prescribed by the said Act as to Head Money, a Copy, duly certified, of the Sentence or Decree of Condemnation, whereby the Numbers of Men, Women, and Children, so taken and condemned, shall appear to have been distinctly proved; and also, by producing a Certificate under the Hand of the said Officer or Officers, Military or Civil, so appointed as aforesaid, and to whom the same shall have been delivered, acknowledging that he or they hath or have received the same, to be disposed of according to His Majesty's Instructions and Regulations as aforesaid.

X. Provided also, and be it further enacted, That in any Cases in which Doubts shall arise whether the party or parties claiming such Bounty Money is or are entitled thereto, the same shall be summarily determined by the Judge of the High Court of Admiralty, or by the Judge of any Court of Admiralty in which the Prize shall have been adjudged, subject nevertheless to an Appeal to the Lord Commissioners of Appeals in Prize Causes.

On Condemnation of Forfeitures of Slaves for Offences against this Act, these shall be paid to the Prosecutor 13 £ for a Man, 10 £ for a Woman, and 3 £ for a Child etc.

XI. Provided also, and be it further enacted, That on the Condemnation to the Use of his Majesty, His Heirs and Successors, in Manner aforesaid, of any Slaves or Natives of Africa, seized and prosecuted as forfeited for any Offence against this Act,

or any other Act of Parliament made for the restraining or prohibiting the African Slave Trade (except in the Case of Seizures made at Sea by the Commanders or Officers of His Majesty's Ships or Vessels or War) there shall be paid to and to the Use of the Person who shall have sued, informed, and prosecuted the same to Condemnation, the Sums of Thirteen Pounds lawful Money aforesaid for every Man, of Ten Pounds like Money for every Woman, and of Three Pounds like Money for every Child or person under the Age of Fourteen Years, that shall be so condemned and delivered over in good Health to the said Civil or Military Officer so to be appointed to receive, protect, and provide for the same, and also the like Sums to and to the Use of the Governor or Commander in Chief of any Colony or Plantation wherein such Seizure shall have been made; but in Cases of any such Seizures made at Sea by the Commanders or Officers of His Majesty's Ships or Vessels of War, for Forfeiture under this Act, or any other Act of Parliament made for the restraining or prohibiting the African Slave Trade, there shall be paid to the Commander of Officer who shall so seize, inform, and prosecute for every man so condemned and delivered over, the Sum of Twenty Pounds like Money, for every Woman the Sum of Fifteen Pounds like Money, and for every Child or person under the Age of Fourteen Years the Sum of Five Pounds like Money, subject nevertheless to such Distribution of the said Bounties or Rewards for the said Seizures made at Sea as His Majesty, His Heirs and Successors, shall think fit to order and direct by any other Order of Council made for that Purpose; for all which Payments so to be made as Bounties or Rewards upon Seizures and Prosecutions for Offences against this Act, or any other Act of Parliament made for restraining the African Slave Trade, the Officer or Officers, Civil or Military, so to be appointed as aforesaid to receive, protect, and provide for such Slaves or Natives of Africa so to be condemned and delivered over, shall, after the Condemnation and Receipt thereof as aforesaid, grant Certificates in favour of the Governor and Party seizing, informing, and prosecuting as aforesaid respectively, or the latter alone (as the Case may be) addressed to the Lords Commissioners of his Majesty's Treasury; who, upon the Production to them of any such Certificate, and of an authentic Copy, duly certified, of the Sentence of Condemnation of the said Slaves or Africans to His Majesty's Use as aforesaid, and also of a Receipt under the Hand of such Officer or Officers so appointed as aforesaid, specifying that such Slaves or Africans have by him or them been received in good Health as aforesaid, shall direct Payment to be made from and out of the Consolidated Fund of Great Britain of the Amount of the Monies specified in such Certificate, to the lawful Holders of the same, or the Persons entitled to the Benefit thereof respectively.

XII. And be it further enacted, That if any Person shall willfully and fraudulently forge or counterfeit any such Certificate, Copy of Sentence of Condemnation, or Receipt as aforesaid, or any Part thereof, or shall knowingly and willfully utter or publish the same, knowing it to he forged or counterfeited, with Intent to defraud His Majesty, His Heirs and Successors, or any other Person or Persons whatever, the

Party so offending shall, on Conviction, suffer Death as in Cases of Felony, without Benefit of Clergy.

XIII. And be it further enacted, That the several Pecuniary Penalties or Forfeitures imposed and inflicted by this Act, shall and may be sued for, prosecuted, and recovered in any Court of Record in Great Britain, or in any Court of Record or Vice Admiralty in any Part of His Majesty's Dominions wherein the Offence was committed, or where the Offender may be found after the Commission of such Offence; and that in all Cases of Seizure of any Ships, Vessels, Slaves or pretended Slaves, Goods or Effects, for any Forfeiture under this Act, the same shall and may respectively be sued for; prosecuted and recovered in any Court of Record in Great Britain or in any Court of Record or Vice Admiralty in any Part of His Majesty's Dominions in or nearest to which such Seizures may be made, or to which such Ships or Vessels, Slaves or pretended Slaves, Goods or Effects (if seized at Sea or without the Limits of any British Jurisdiction) may most conveniently be carried for Trial, and all the said Penalties and Forfeitures, whether pecuniary or specific (unless where it is expressly otherwise provided for by this Act) shall go and belong to such Person and Persons in such Shares and Proportions, and shall and may be sued for and prosecuted, tried, recovered, distributed, and applied in such and the like Manner and by the same Ways and Means, and subject to the same Rules and Directions, as any Penalties or Forfeitures incurred in Great Britain, and in the British Colonies or Plantations in America respectively, by force of any Act of Parliament relating to the Trade and Revenues of the said British Colonies or Plantations in America, now go and belong to, and may now be sued for, prosecuted, tried, recovered, distributed and applied respectively in Great Britain or in the said Colonies or Plantations respectively, under and by virtue of a certain Act of Parliament made in the Fourth Year of His present Majesty, intituled: An Act for granting certain Duties in the British Colonies and Plantations in America, for continuing, amending, and making perpetual an Act passed in the Sixth Year of the Reign of His late Majesty, King George the Second, intituled: 'an Act for the better securing and encouraging the Trade of His Majesty's Sugar Colonies in America; for applying the Produce of such Duties to arise by virtue of the said Act towards defraying the Expences of defending, protecting, and securing the said Colonies and Plantations; for explaining an Act made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled: "An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation trade, and for altering and disallowing several Drawbacks on Exports from this Kingdom, and more effectively preventing the clandestine Conveyance of Goods to and from the said Colonies and Plantations, and improving and securing the Trade between the same and Great Britain."'

Seizures may be made by Officers of Customs or Excise, or Navy.

XIV. And be it further enacted, That all Ships and Vessels, Slaves or Natives of Africa, carried, conveyed, or dealt with as Slaves, and all other Goods and Effects

that shall or may become forfeited for any Offence committed against this Act, shall and may be seized by any Officer of His Majesty's Customs or Excise, or by the Commanders or Officers of any of His Majesty's Ships or Vessels of War, who, in making and prosecuting any such Seizures, shall have the Benefit of all the Provisions made by the said Act of the Fourth Year of His present Majesty, or any other Act of Parliament made for the Protection of Officers seizing and prosecuting for any Offence against the said Act, or any other Act of Parliament relating to the Trade and Revenues of the British Colonies or Plantations in America.

XV. And be it further enacted, That all Offences committed against this Act may be inquired of, tried, determined, and dealt with as Misdemeanors, as if the same had been respectively committed within the Body of the County of Middlesex.

His Majesty may make Regulations for Disposal of Negroes after their Apprenticeship.

XVI. Provided also, and be it further enacted, That it shall and may be lawful for his Majesty in Council, from Time to Time to make such Orders and Regulations for the future Disposal and Support of such Negroes as shall have been bound Apprentices under this Act, after the term of their Apprenticeship shall have expired, as to His Majesty shall seem meet, and as may prevent such Negroes from becoming at any Time chargeable upon the Island in which they shall have been so bound Apprentices as aforesaid.

XVII. Provided always, and be it further enacted, That none of the Provisions of any Act as to enlisting for any limited Period of Service, or as to any Rules or Regulations for the granting any Pensions or Allowances to any Soldiers discharged after certain Periods of Service, shall extend, or be deemed or construed in any Manner to extend, to any Negroes so enlisting and serving in any of His Majesty's Forces.

XVIII. And be it further enacted, That if any Action or Suit shall be commenced either in Great Britain or elsewhere, against any Person or Persons for any Thing done in pursuance of this Act, the Defendant or Defendants in such Action or Suit may plead the General Issue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon, and that the same was done in pursuance and by the Authority of this Act; and if it shall appear so to have been done, the Jury shall find for the Defendant or Defendants; and if the Plaintiff shall be nonsuited or discontinue his Action after the Defendant or Defendants shall have appeared, or if Judgement shall be given upon any Verdict or Demurrer against the Plaintiff, the Defendant or Defendants shall recover Treble Costs and have the like Remedy for the same, as Defendants have in other Cases by Law.

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XVIII
CONSTITUTION OF THE KINGDOM OF SWEDEN OF 1809 – INTRODUCTION OF THE OFFICE OF PROCURATOR

A commemorative coin of the 150th anniversary of the Instrument of Government of 1809

CONSTITUTION OF THE KINGDOM OF SWEDEN OF 1809 – INTRODUCTION OF THE OFFICE OF PROCURATOR

The origins of the office of procurator in Sweden are seen in the function of the so-called 'crown provost', who was authorised to supervise public prosecutors' activity since mid-17th century. In the course of time, his duties were taken over by the office of the crown prosecutor at the Supreme Court of Appeal.

In 1713, under the reign of Charles XII of Sweden, who participated in the Third Northern War, the so-called 'Highest Procurator' institution (*Högste ombudsmannen*) was introduced. The *Högste ombudsmannen* was a civil servant appointed by the king (rather than elected by the Parliament) who could control the work of public offices. When law was violated in important matters, he could start legal proceedings. The King agreed to establish the office trying to pacify the internal situation in Sweden during his stay in Turkey after the lost Battle of Poltava (1709). During the King's almost 13-year stay outside Sweden, the efficiency of Swedish public administration deteriorated significantly. In 1719, the name of the office was changed to "Chancellor of Justice" (*Justitiekanslern*), yet its powers remained the same. In 1766, the right to appoint the Chancellor became one of the Parliament's powers, which partly changed the scope of the Chancellor's activity. When Gustav III became King of Sweden (1772), the right to appoint the Chancellor was again taken over by the king, and the office of the Chancellor was included in the Council of State, which also comprised ministers who deliberated under the monarch's leadership.

At the end of 18th century, the territory of Sweden also included Finland and a part of Western Pomerania (Stralsund, Wismar, and Rügen). The country was going through a crisis after the assassination of king Gustav III (1792) and due to economic underdevelopment and the rivalry of European countries (France, England and Russia) fighting on the continent for domination in Sweden. The first reforms were introduced by King Gustav IV, who enclosed land first in Scania (1803), and then in the whole country (1807). This gave the most numerous social group – peasantry – a basis for economic and social development.

After the peace of Tilsit (1807), Russia again attempted to conquer Finland and finally managed to do it in 1809. Under the influence of these events, King Gustav IV was dethroned in March 1809 and forced to leave Sweden (he died in Switzerland in 1837). Then the Parliament adopted new constitutional rules, the so-called *Regeringsform,* which actually were the constitution of

the Kingdom of Sweden. Its text was prepared by a commission with Hans Järta as its secretary. The constitution introduced Montesquieu's separation of powers. The executive power was to be the king's responsibility, and the monarch had to ask the Council of State for opinion on every issue. The Parliament (*Riksdag*) consisted of four classes (the nobility, Lutheran clergy, bourgeoisie and peasantry), and was to control the actions of the king and the Council of State. The division of powers outlined in the Constitution was aimed to protect Sweden from the restoration of absolute monarchy (under the reign of Charles XII) or the domination of the Parliament (1766–1772). One of its main provisions was the introduction of the office of procurator (Swedish *ombudsman* means proxy, agent, institution) and retaining the *Justitiekanslern* institution.

The Swedish Constitution of 6 June 1809 introduced the office of procurator, elected by the Riksdag rather than appointed by the king or the Government. The procurator was accountable only to the Riksdag, and the scope of his powers placed him between politics and law. The procurator's responsibilities originally included the protection of citizens' rights against the violation of law on the part of civil servants, and the protection of the collection of laws adopted by the Riksdag and implemented by relevant executive bodies. He was entitled to intervene in cases where civil servants openly violated the law, and to file charges not only against civil servants of public or municipal administration, but also against judges in issues related to their judgements. That last power seemed controversial and disputable to the contemporaries, as it could challenge the principle of judicial independence. The Parliament was summoned once in four years, which limited its real possibility to control the activity of the king and the Council of State. This, however, could be done by the procurator, permanently in office, who was obliged to report annually to the Parliament on the inspections undertaken. The procurator was also entitled to choose six lawyers to be employed in his office.

The Constitution also retained the institution of the Chancellor of Justice, who acted on behalf of the monarch and supervised the observance of law by offices. Until 1840, he could participate in the government's meetings if debates concerned legal issues. The office could be taken by a person with experience as a judge. In some respect, the activity of the procurator was meant to counterbalance the office of the Chancellor of Justice.

Under the decision of the Swedish Parliament of 21 August 1810, a French marshal Jean Baptiste Bernadotte came to power (he died in 1844 as Charles XIV John), who initiated a new dynasty on the Swedish throne. Political changes did not impede further social transformations in Sweden in the 19th and the 20th century. The office of procurator was also adopted by other Scandinavian countries (Finland in 1919, Denmark in 1953-1954,

and Norway in 1961) and in other countries throughout the world, although the powers differ from the Swedish model.

After the introduction of the Constitution in 1809, the four-class Riksdag (bicameral in 1866-1969) designated electors on a proportional basis, who jointly elected a procurator (later also the Procurator of Military Affairs).

The powers of the original office of the procurator have changed in the Swedish legal system (e.g. in 1941, 1975). The office was created with the aim to ensure parliamentary control over the activity of public (royal) offices and to improve their functioning. In the course of time, the procurator ceased to supervise the work of civil servants and turned into an office which ensured law and order as well as the defence of citizens. Since 15 May 1915, apart from the Procurator of Civil Affairs, (*Justitieombudsman*), there has also been the Procurator of Military Affairs (*Militieombudsman*). This enabled soldiers of all ranks to file individual complaints related to the functioning of the armed forces without violating military discipline. During the first one hundred years of existence of the office, the procurator lodged more than 8 thousand complaints concerning the activity of some offices.

At present, the powers of the Procurator of Civil Affairs include prosecuting crimes and prosecutor's activity. A procurator typically notifies an appropriate office of the breach of law, or directly notifies an office that committed the offence, adding the negative evaluation of the conduct. Such disciplinary activity often leads to an agreement between the aggrieved party and the office (civil servant) responsible for abuses.

In Sweden, the activity of a procurator is limited by the impossibility to control the government's activity. He may suggest amendments to a given legislation, which are then examined by the Riksdag. Pursuant to the Constitution of Sweden (passed on 6 March 1974, in force since 1 January 1975), each Swedish citizen familiar with the law can be elected procurator, and only in practice do the additional regulations impose the requirement of having legal education. The office may be entrusted to a civil servant or a Member of Parliament, although there have been attempts to appeal against the provision. Pursuant to Article 98 of the Constitution of 1975, the main responsibility of a procurator is to supervise whether the law is observed.

Original text

The text of the first Constitution of Sweden, available in an electronic version, is presented to complement the description of the activities of the Procurator of Civil Affairs in modern times. The establishment of the office of the Procurator in the state constitution guaranteed his efficient and unhindered activities in defence of the wronged people.

Regeringsform

§ 27.

Till justitiekansler må konungen nämna en lagfaren, skicklig och oväldig man, som i domarevärf varit nyttjad. Honom såsom konungens högste ombudsman åligge förnämligast att föra eller genom de under honom ställde fiskaler låta föra konungens talan i mål, som röra allmän säkerhet och kronans rätt, samt att, å konungens vägnar, hafva tillsyn öfver rättvisans handhafvande och i sådan egenskap beifra fel, som af domare och embetsmän begångna blifva.

§ 96.

Riksens ständer skola vid hvarje riksdag förordna en för lagkunskap och utmärkt redlighet känd man att såsom deras ombud efter den instruktion, de för honom komma att utfärda, hafva tillsyn öfver lagarnes efterlefnad af domare och embetsmän samt att vid vederbörliga domstolar i laga ordning tilltalla dem, som uti sina embetens utöfning af väld, mannamån eller annan orsak någon olaglighet begå eller underlåta att sina ämbetsplikter behörigen fullgöra. Vare dock han i all måtto underkastad samma ansvar och pligt, som allmän lag och rättegångsordning för aktorer utstaka.

§ 97.

Denne riksens ständers justitieombudsman väljes af riksens ständer genom elektorer, till ett lika antal af hvarje stånd nämnde. Sedan ibland dessa elektorer en genom lottning utgått, skola de öfrige samfäldt och icke efter stånd först medelst slutne sedlar hvar för sig uppgifva den man, som de finna böra komma under omröstning. Falla dervid rösterne till mera än hälften af de röstande elektorernas antal på en man, vare han behörigen vald. Äro åter rösterne så delade emellan flere, att en sådan full pluralitet för någon icke äger rum, anställes ny votering med slutna sedlar till antagande af den, som de flesta rösterne erhållit, eller om han icke antages, af den, som näst efter honom utaf de flesta elektorerna blifvit kallad, och så vidare. Enär någon af de i denna ordning under omröstning stälde blifvit af elektorernas pluralitet antagen, upphöre valförrättningen och varde han af riksens ständer till

embetet förordnad. Den, åt hvilken detta embete blifvit anförtrodt, kan vid påföljande riksdagar i den nu föreskrifna ordning dertill åter väljas.

Elektorerna böra vid samma tillfälle, då de justitieombudsmannen utse, och på enahanda sätt välja en man af de egenskaper, som hos denne embetsman erfordras, att honom efterträda, i fall han innan nästföljande riksdagen skulle med döden afgå.

[redigera] § 98.

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[redigera] § 99.

Riksens ständers justitieombudsman må, när han det nödigt anser, kunna öfvervara högsta domstolens, rikets allmänna ärenders beredning, nedre justitierevisionens, hofrätternes, kollegiernes och alla lägre domstolars öfverläggningar och beslut, dock utan rättighet att sin mening dervid yttra, samt äga tillgång till alla domstolars, kollegiers och embetsverks protokoll och handlingar. Konungens embetsmän i allmänhet vare skyldige att lämna justitieombudsmannen laglig handräckning, samt alla fiskaler, att medelst aktioners utförande honom biträda, då han det äskar.

[redigera] § 100.

Justitieombudsmannen åligge att vid hvarje riksdag till riksens ständer aflämna en allmän redogörelse för sin förvaltning af det honom förtrodda embete samt deruti utreda lagskipningens tillstånd i riket, anmärka lagarnes och författningarnes brister och uppgifva förslag till deras förbättring. Vare han ock skyldig att emellan riksdagarna årligen ett utlåtande öfver dessa ämnen genom trycket kungöra.

§ 101.

Skulle den oförmodade händelse inträffa, att antingen hela konungens högsta domstol eller af dess ledamöter en eller flere funnes hafva af egennytta, vrångvisa eller försumlighet så orätt dömt, att derigenom någon emot tydlig lag och sakens utredda och behörigen styrkta förhållande mistat eller kunnat mista lif, personlig frihet, ära och egendom, vare riksens ständers justitieombudsman pliktig, äfvensom konungens justitiekansler berättigad att vid den rikets domstol, som här nedanföre bestämmes, den felaktige under tilltal ställa samt till ansvar efter rikets lag befordra.

§ 102.

Denna domstol, som riksrätt kallas, skall i sådant fall bestå af

* presidenten uti konungens och rikets Svea hofrätt, hvilken deruti före ordet,
* presidenterne uti alla rikets kollegier,
* fyra de äldste statsråd,

* högste befälhafvaren öfver de i hufvudstaden tjenstgörande trupper,
* högste närvarande befälhafvaren för den vid hufvudstaden förlagda eskadern af arméns flotta,
* tvenne de äldsta råd i Svea hofrätt och
* det äldsta råd i hvarje af rikets kollegier.

Då antingen justitiekansleren eller justitieombudsmannen finner sig befogad att högsta domstolen samfäldt eller särskilde dess ledamöter inför riksrätten tilltala, äske han hos presidenten i konungens och rikets Svea hofrätt, såsom riksrättens ordförande, laglig kallelse å den eller dem, som skola tilltalas. Presidenten i hofrätten foge derefter anstalt om riksrättens sammanträde för att kallelsen utfärda och målet vidare i laglig ordning behandla. Skulle emot förmodan han detta underlåta eller någon af de öfrige förenämnde embetsmän undandraga sig att uti riksrätten deltaga, stånde de, för en sådan uppsåtlig försummelse af deras embetsplikt till lagligt ansvar. Hafva en eller flere af riksrättens ledamöter laga förfall, eller finnes emot någon af dem laga jäf, vare ändock rätten domför, om tolf deruti sitta. Är presidenten i hofrätten af laga förfall eller jäf hindrad, företräde dess ställe den äldste i tjenst varande presidenten. Denna domstol äge, sedan ransakningen fulländad är, och domen efter lag fälld, att densamma för öppna dörrar afkunna. Ingen hafve magt att sådan dom ändra, konungen dock obetaget att göra nåd, hvilken likväl icke må sträcka sig till den dömdes återinsättande i rikets tjenst.

§ 106.

Finner utskottet af dessa protokoll, att någon statsminister, statsråd, hofkansler, statssekreterare eller annan ledamot af statsrådet eller den embetsman, som i kommandomål konungen råd gifvit, uppenbarligen handlat emot denna regeringsforms tydliga föreskrift eller tillstyrkt någon öfverträdelse deraf och af andra rikets gällande lagar eller underlåtit att göra föreställningar emot sådana öfverträdelser eller dem vållat och befrämjat genom uppsåtligt fördöljande af någon upplysning, då äge konstitutionsutskottet att ställa en sådan under tilltal af justitieombudsmannen inför riksrätten, hvaruti i stället för statsråd fyra de äldste justitieråd, tvenne af frälse och tvenne af ofrälse stånd, i dessa fall komma att säte taga, och gånge härmed som i 101 och 102 §§ om tilltal emot högsta domstolen föreskrifves. Då statsrådets ledamöter eller konungens rådgifvare i kommandomål finnas hafva, på sätt ofvanberördt är, gjort sig till ansvar skyldige, döme dem riksrätten efter allmän lag och den särskilda författning, som till bestämmande af sådant ansvar utaf konungen och riksens ständer fastställd varder.

§ 108.

Till tryckfrihetens vård skola riksens ständer vid hvarje riksdag förordna sex för kunskaper och lärdom kände män jemte justitieombudsmannen, som bland dem före ordet. Desse kommitterade, af hvilka två, utom justitieombudsmannen, skola vara

lagfarne, äge sådan befattning att, i händelse någon författare eller boktryckare innan tryckningen, sjelf öfverlämnar dem en skrift och begär deras yttrande, huruvida åtal deråefter tryckfrihetslagen, kan äga rum, skola justitieombudsmannen och minst trenne kommitterade, hvaraf en lagfaren, ett sådant yttrande skriftligen afgifva. Förklara de deruti, att skriften må tryckas, vare då både författare och boktryckare från allt ansvar frie, och ligge det å kommiterade. Desse kommiterade skola väljas af riksens ständer genom sex af hvarje stånd utsedde elektorer, som röste samfält och icke ståndsvis. Afgår emellan riksdagarne någon af de kommiterade, välje de öfrige en behörig man att det lediga rummet intaga.

English translation

Based on: *The Constitution of Sweden*, translated by S. V. Thorelli, with an introduction by E. Hastad, Stockholm 1954, pp. 35-39.

Constitution of the Kingdom of Sweden of 1809 – Introduction of the Office of Procurator

§ 96

The Riksdag shall appoint two citizens of known legal ability and outstanding integrity, the one as Procurator of Civil Affairs, and the other as Procurator of Military Affairs, to supervise the observance of the laws and statutes in the capacity of representatives of the Riksdag, according to instructions issued by the Riksdag. The Procurator of Military Affairs shall supervise matters which by law, enacted as provided in Article 87, Section 1, have been described as military matters, as well as offi cials and employees remunerated from appropriations for the armed forces. The Procurator of Civil Affairs shall supervise the observance of laws and statutes as applied in all other matters by the courts and by public officials and employees. In accordance with the division of duties stated above, these procurators shall institute proceedings before the competent courts against those who, in the execution of their offi cial duties, have through partiality, favoritism or other cause committed any unlawful act or neglected to perform their official duties properly. The procurators shall be subject in all respects to the same responsibility and obligation as are prescribed for public prosecutors by general civil and criminal laws and the laws of procedure.

§ 97

The Procurators of Civil and Military Affairs shall be elected by the Riksdag for the time and in the manner provided by The Riksdag Act; and at the same time a deputy for each of them shall also be appointed. The deputy shall possess the same qualifi cations as the procurator and exercise the office in his stead in the cases provided for by the instructions for the office of procurator. If a procurator or his deputy no longer enjoys the confidence of the Riksdag, the Riksdag may, on request by the committee examining his conduct in office, discharge him before the end of the time for which he has been elected.

§ 98

In the event of the Procurator of Civil Affairs or the Procurator of Military Affairs resigning the trust confided in him or of a procurator's office otherwise becoming vacant, the deputy shall immediately take over the office; and election of a new procurator shall be undertaken by the Riksdag as soon as possible. In the event of a deputy resigning the trust confided in him or being installed in the office of procurator, or of his office otherwise becoming vacant, a new election of a deputy shall be undertaken. Should an election be necessary while the Riksdag is not in session, the powers of that body with regard to this matter shall be exercised by those Commissioners of the Bank of Sweden and the National Debt Office who are elected by the Riksdag.

§ 99

The Procurator of Civil Affairs and the Procurator of Military Affairs may, whenever they consider it necessary in the exercise of their duties, attend the deliberations and decisions of the Supreme Court, the Supreme Administrative Court, the Secretariat of the Supreme Court, the Courts of Appeal, the administrative boards or the institutions established in their place, and all the lower courts, but shall have no right to express their views on such occasions; they shall also have access to the minutes and records of all courts, administrative boards and public offices. The King's officials in general are bound to afford the Procurators of Civil and Military Affairs lawful assistance, and all public prosecutors shall aid them in the bringing of actions when requested to do so.

§ 100

It shall be the duty of the Procurator of Civil Affairs and the Procurator of Military Affairs separately to present to the Riksdag an annual report on the administration of his office, in which each shall give an account of the

administration of justice throughout the realm in the area defined in Article 96 as subject to his supervision, to call attention to defects in the laws and statutes and make suggestions for their improvement.

§ 101

Should it happen, contrary to expectation, that either the entire Supreme Court, or one or more of its members, is found to have rendered, by reason of self-interest, iniquity or negligence, such a wrongful judgment, in conflict with clear law and evidence of facts duly established, that it causes or might have caused someone loss of life, personal liberty, honor or property; or if the Supreme Administrative Court or one or more of its members, is found to have been guilty of such conduct in the hearing of administrative cases on appeal, it shall be the duty of the Procurator of Civil Affairs, or in military cases as described in Article 96, the Procurator of Military Affairs, as it shall be within the power of the King's Attorney General, to institute proceedings against the offender before the court of the realm hereinafter provided and to call him to responsibility in accordance with the law of the realm.

§ 102

This Court, to be known as the Court of Impeachment, shall in such cases be composed of the President of the Svea Court of Appeal, who shall preside, the presidents of all the administrative boards of the realm; and, in actions against the Supreme Court, the four senior justices of the Supreme Administrative Court, or, if the Supreme Administrative Court is arraigned, the four senior justices of the Supreme Court; and in both cases, the commandant of the troops on duty in the capital city; the highest officer present of the units of the fleet stationed at the capital city; the two senior members of the Svea Court of Appeal; and the senior member of each of the administrative boards of the realm. When the Attorney General, the Procurator of Civil Affairs, or the Procurator of Military Affairs considers himself justified in prosecuting the Supreme Court as a whole, or individual members thereof, before the Court of Impeachment, or the Attorney General or the Procurator of Civil Affairs considers himself justified in bringing such an action against the Supreme Administrative Court as a whole or individual members thereof, he shall request the President of the Svea Court of Appeal, as President of the Court of Impeachment, to issue a summons in legal form to the person or persons to be prosecuted. The President of the Court of Appeal shall then make arrangements for the meeting of the Court of Impeachment in order that the summons may be issued and the matter dealt with further according to law. Should he, contrary to expectation, fail to do this, or should any of the above mentioned officials refuse to participate in the Court of Impeachment, they shall be legally responsible for such intentional neglect

of their official duty. If one or more members of the Court of Impeachment has a legitimate excuse, or if there is legal ground for disqualification of any of them, a quorum shall nevertheless exist if the Court consists of twelve persons. If the President of the Court of Appeal is prevented from acting by a legitimate excuse or legal ground of disqualification, the senior of the presidents in service shall take his place. After the trial has been terminated and the sentence pronounced in accordance with law, the Court shall hand down the judgment in open session. No one shall have the power to modify this judgment; the King, however, may grant pardon, which shall not extend to a reinstatement of the convicted person in the service of the realm. (...)

§ 106

If the Committee discovers from these minutes that any member of the Council of State has manifestly acted in violation of the fundamental or general laws of the realm, or has supported such violation or neglected to make representations against it, or has occasioned or encouraged it by willful concealment of any information, or that the Councilor of State submitting a matter to the King has failed to refuse his countersignature or signature to a decision of the King in the cases contemplated in Article 38 of this Instrument of Government, the Committee on the Constitution shall cause an action to be brought against such person by the Procurator of Civil Affairs before the Court of Impeachment, and the proceedings shall be instituted in accordance with the provisions of Articles 101 and 102 regarding proceedings against the Supreme Administrative Court. Whenever members of the Council of State are found guilty in the manner mentioned above, the Court of Impeachment shall sentence them in accordance with general civil and criminal law and with, the special statute defi ning their responsibility to be enacted by the King and the Riksdag. (...)

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XIX
THE 1861 EMANCIPATION MANIFESTO OF TZAR ALEXANDER II

Alphonse Mucha. The Abolition of Serfdom in Russia. 1914. Tempera on canvas. Mucha Museum, Prague, Czech Republic

THE 1861 EMANCIPATION MANIFESTO OF TZAR ALEXANDER II

Issued by Alexander II on 19 February 1861, a manifesto on enfranchisement of peasants was one of the first crucial legal acts, giving rise to the so called era of great reforms in Russia in the 1860s. Like other regulations released at that time, it was an attempt to modernize the country, and was probably aimed at extinguishing the atmosphere of social ferment, which was intensified after the Crimean war.

In the historiography, the enfranchisement of peasantry as an outcome of the 1861 manifesto undoubtedly marked the end of the epoch of serfdom in Russia and the beginning of forming of the new state towards market economy. However, this tendency was flawed by relatively considerable weakness of „Russian bourgeoisie" up to 1917.

Enfranchisement of peasantry was regulated by about twenty different legal acts and, while its character was absolutely binding, it allowed for certain exceptions and concerned only the European part of Russia. The exception was among others the Kingdom of Poland, where the enfranchisement was executed three years later, on 19 February 1864, as a consequence of the outbreak of the January Uprising. Also in other parts of the empire enfranchisement was effectuated later, except for Siberia, where serfdom did not in fact exist. In other regions, the enfranchisement reform was formally over in 1870.

The regulation bestowed the property upon serfs. It did not however grant the land automatically (despite the declared abolishing of serfdom "with land"). With the issuing of the manifesto, peasants could no longer be treated as subjects of trade (formerly they could be bought, sold or donated). They could now draw up civil contracts, including taking on obligations and purchasing both personal and real property. They had right to effectively marry without the consent of the landlord. What is more important, they could also move to the middle class, if they studied, dealt with trade or production. Since the issuing of the manifesto they have become subjects to jurisdiction of common courts of law, and only in minor cases to the so called *volostny* courts.

As a matter of fact, particularly during the first years after issuing of the manifesto, very often these rights were not realized, for peasants did not have money to make their rights effective. However in the course of the next years, many started to learn to use them.

According to the words of the tzar Alexander II, the core of the issuing of the regulation was the concept of granting land to peasants without granting

them freedom, the reason for this being pragmatic concerns: both political and economic. Manifesto and administrative act (*polozhenie*) considered all land as a property of the former landlords. Peasants received from them so called allotment of land, which they were to redeem. The transient period of redemption was relatively long. In principle the state lent peasants 80 per cent of the price of allotment, but nevertheless peasants had to collect for that purpose a sufficient amount of money. The transient period used to be prolonged up to 49 years. The peasants received thus personal freedom, but in fact without land. Also for this reason the aspects of personal serfdom did not vanish entirely. In some cases, land was allotted to communes (*obshchina*) which in turn distributed individual allotments. It was in accordance with already popular in Russia, the so called socialization of the land. In such cases the land was divided "equally", depending on the number of family members entitled to receive it from *obschchina* and depending on the quality of the soil (which was divided into three categories). This state of affairs implied in turn obligations on the part of a peasant to his commune, which he could not leave without paying for his part of the land. A part of the divided land could also be kept by the landlord.

Therefore, frequently a peasant did not turn into a "free man", and in the transient period, he was legally considered as "temporarily obligated" (*vremenno obiazannykh*) to former payments. Quite often, the former owners tried to extend in time the temporary obligations to such an extent that in 1881 another national regulation was issued prohibiting such practices. It took place 20 years after issuing of the emancipation manifesto. On average, "temporary obligations" lasted for 9 years.

Despite the drawbacks, the enfranchisement was an unprecedented regulation, which should be assessed as a crucial step towards the reconstruction of the strictly feudal social structure in Russia. The enfranchisement included over 15 million peasants (69 per cent of over 22 million who were subjects to personal serfdom) which was over 20 per cent of the whole population. In the broader sense, it was one of the factors of forming in Russia local governments both in the country, and in the cities.

Original text

Based on: Internet

Всемилостивѣйшій манифестъ
ОБЪ ОТМѢНѢ КРЕПОСТНАГО ПРАВА.
Божіею милостію
МЫ, АЛЕКСАНДРЪ ВТОРЫЙ,
Императоръ и Самодержецъ Всероссійскій, Царь Польскій, великій Князь Финляндскій,
и прочая, и прочая, и прочая.

Объявляемъ всѣмъ Нашимъ вѣрноподданнымъ.

Божіимъ Провидѣніемъ и священнымъ закономъ престолонаслѣдія бывъ призваны на прародительскій Всероссійскій Престолъ, въ соотвѣтствіе сему призванію Мы положили въ сердцѣ Своемъ обѣтъ обнимать Нашею Царскою любовію и попеченіемъ всѣхъ Нашихъ вѣрноподданныхъ всякаго званія и состоянія, отъ благородно владѣющаго мечемъ на защиту Отечества до скромно работающаго ремесленнымъ орудіемъ, отъ проходящаго высшую службу государственную до проводящаго на полѣ борозду сохою или плугомъ.

Вникая въ положеніе званій и состояній въ составѣ государства, Мы усмотрѣли, что государственное законодательство, дѣятельно благоустрояя высшія и среднія сословія, опредѣляя ихъ обязанности, права и преимущества, не достигло равномѣрной дѣятельности въ отношеніи къ людямъ крѣпостнымъ, такъ названнымъ потому, что они, частію старыми законами, частію обычаемъ, потомственно укрѣплены подъ властію помѣщиковъ, на которыхъ съ тѣмъ вмѣстѣ лежитъ обязанность устроять ихъ благосостояніе. Права помѣщиковъ были донынѣ обширны и не опредѣлены съ точностію закономъ, мѣсто котораго заступали преданіе, обычай и добрая воля помѣщика. Въ лучшихъ случаяхъ изъ сего происходили добрыя патріархальныя отношенія искренней правдивой попечительности и благотворительности помѣщика и добродушнаго повиновеенія крестьянъ. Но при уменьшеніи простоты нравовъ, при умноженіи разнообразія отношеній, при уменьшеніи непосредственныхъ отеческихъ отношеній помѣщиковъ къ крестьянамъ, при впаденіи иногда помѣщичьихъ правъ въ руки людей, ищущихъ только собственной выгоды, добрыя отношенія ослабѣвали, и открывался путь произволу, отяготительному для крестьянъ, и неблагопріятному для ихъ благосостоянія, чему въ крестьянахъ отвѣчала неподвижность къ улучшеніямъ въ собственномъ бытѣ.

Усматривали сіе и приснопамятные предшественники Наши и принимали мѣры къ измѣненію на лучшее положеніе крестьянъ; но это были мѣры, частію нерѣшительныя, предложенныя добровольному, свободолюбивому дѣйствованію помѣщиковъ, частію рѣшительныя только для нѣкоторыхъ мѣстностей, по требованію особенныхъ обстоятельствъ, или въ видѣ опыта. Такъ императоръ Александръ I-й издалъ постановленіе о свободныхъ хлѣбопашцахъ, и въ Бозѣ почившій родитель Нашъ Николай I-й постановленіе о обязанныхъ крестьянахъ. Въ губерніяхъ западныхъ инвентарными правилами опредѣлены надѣленіе крестьянъ землею и ихъ повинности. Но постановленія о свободныхъ хлѣбопашцахъ и обязанныхъ крестьянахъ приведены въ дѣйствіе въ весьма малыхъ размѣрахъ.

Такимъ образомъ Мы убѣдились, что дѣло измѣненія положенія крѣпостныхъ людей на лучшее есть для Насъ завѣщаніе предшественниковъ Нашихъ и жребій, чрезъ теченіе событій, поданный Намъ рукою Провидѣнія.

Мы начали сіе дѣло актомъ Нашего довѣрія къ россійскому дворянству, къ извѣданной великими опытали преданности его Престолу и готовности его къ пожертвованіямъ на пользу Отечества. Самому дворянству предоставили Мы, по собственному вызову его, составить предположенія о новомъ устройствѣ быта крестьянъ, при чемъ дворянамъ предлежало ограничить свои права на крестьянъ и подъять трудности преобразованія, не безъ уменьшенія своихъ выгодъ. И довѣріе Наше оправдалось. Въ губернскихъ комитетахъ, въ лицѣ членовъ ихъ, облеченныхъ довѣріемъ всего дворянскаго общества каждой губерніи, дворянство добровольно отказалось отъ права на личность крѣпостныхъ людей. Въ сихъ комитетахъ, по собраніи потребныхъ свѣдѣній, составлены предположенія о новомъ устройствѣ быта находящихся въ крѣпостномъ состояніи людей, и о ихъ отношеніяхъ къ помѣщикамъ.

Сіи предположенія, оказавшіяся, какъ и можно было ожидать по свойству дѣла, разнообразными, сличены, соглашены, сведены въ правильный составъ, исправлены и дополнены въ главномъ по сему дѣлу комитетѣ; и составленныя такимъ образомъ новыя положенія о помѣщичьихъ крестьянахъ и дворовыхъ людяхъ разсмотрѣны въ Государственномъ Совѣтѣ.

Призвавъ Бога въ помощь, Мы рѣшились дать сему дѣлу исполнительное движеніе.

Въ силу означенныхъ новыхъ положеній, крѣпостные люди получатъ въ свое время полныя права свободныхъ сельскихъ обывателей.

Помѣщики, сохраняя право собственности на всѣ принадлежащія имъ земли, предоставляютъ крестьянамъ, за установленныя повинности, въ постоянное пользованіе усадебную ихъ осѣдлость, и сверхъ того, для обезпеченія быта ихъ и исполненія обязанностей ихъ предъ правительствомъ, опредѣленное въ положеніяхъ количество полевой земли и другихъ угодій.

Пользуясь симъ поземельнымъ надѣломъ, крестьяне за сіе обязаны исполнять въ пользу помѣщиковъ опредѣленныя въ положеніяхъ повинности. Въ семъ состояніи, которое есть переходное, крестьяне именуются временно-обязанными.

Вмѣстѣ съ тѣмъ имъ дается право выкупать усадебную ихъ осѣдлость, и съ согласія помѣщиковъ они могутъ пріобрѣтать въ собственность полевыя земли и другія угодья, отведенныя имъ въ постоянное пользованіе. Съ таковымъ пріобрѣтеніемъ въ собственость опредѣленнаго количества земли, крестьяне освободятся отъ обязанностей къ помѣщикамъ по выкупленной землѣ и вступятъ въ рѣшительное состояніе свободныхъ крестьянъ-собственниковъ.

Особымъ положеніемъ о дворовыхъ людяхъ опредѣляется для нихъ переходное состояніе, приспособленное къ ихъ занятіямъ и потребностямъ; по истеченіи двухлѣтняго срока отъ дня изданія сего положенія, они получатъ полное освобожденіе и срочныя льготы.

На сихъ главныхъ началахъ составленными положеніями опредѣляется будущее устройство крестьянъ и дворовыхъ людей, установляется порядокъ общественнаго крестьянскаго управленія, и указываются подробно даруемыя крестьянамъ и дворовымъ людямъ права и возлагаемыя на нихъ обязанности въ отношеніи къ правительству и къ помѣщикамъ.

Хотя же сіи положенія, общія, мѣстныя, и особыя дополнительныя правила для нѣкоторыхъ особыхъ мѣстностей, для имѣній мелкопомѣстныхъ владѣльцевъ и для крестьянъ, работающихъ на помѣщичьихъ фабрикахъ и заводахъ, по возможности приспособлены къ мѣстнымъ хозяйственнымъ потребностямъ и обычаямъ: впрочемъ. дабы сохранить обычный порядокъ тамъ, гдѣ онъ представляетъ обоюдныя выгоды, Мы предоставляемъ помѣщикамъ дѣлать съ крестьянами добровольныя соглшенія, и заключать условія о размѣрѣ поземельнаго надѣла крестьянъ и о слѣдующихъ за оный повинностяхъ, съ соблюденіемъ правилъ, постановленныхъ для огражденія ненарушимости таковыхъ договоровъ.

Какъ новое устройство, по неизбѣжной многочисленности требуемыхъ онымъ перемѣнъ, не можетъ быть произведено вдругъ, а потребуется для сего время, примѣрно не менѣе двухъ лѣтъ; то въ теченіе сего времени, въ отвращеніе замѣшательства, и для соблюденія общественной и частной пользы, существующій донынѣ въ помѣщичьихъ имѣніяхъ порядокъ долженъ быть сохраненъ дотолѣ, когда, по совершеніи надлежащихъ приготовленій, открытъ будетъ новый порядокъ.

Для правильнаго достиженія сего, Мы признали за благо повелѣть:

1) Открыть въ каждой губерніи губернское по крестьянскимъ дѣламъ присутствіе, которому ввѣряется высшее завѣдываніе дѣлами крестьянскихъ обществъ, водворенныхъ на помѣщичьихъ земляхъ.

2) Для разсмотрѣнія на мѣстахъ недоразумѣній и споровъ, могущихъ возникнуть при исполненіи новыхъ положеній, назначить въ уѣздахъ мировыхъ посредниковъ, и образовать изъ нихъ уѣздные мировые съѣзды.

3) За тѣмъ образовать въ помѣщичьихъ имѣніяхъ мірскія управленія, для чего, оставляя сельскія общества въ нынѣшнем ихъ составѣ, открыть въ значительныхъ селеніяхъ волостныя управленія, а мелкія сельскія общества соединить подъ одно волостное управленіе.

4) Составить, повѣрить и утвердить по каждому сельскому обществу или имѣнію уставную грамоту, въ которой будетъ исчислено, на основаніи мѣстнаго положенія, количество земли, предоставляемой крестьянамъ въ постоянное пользованіе, и размѣръ повинностей, причитающихся съ нихъ въ пользу помѣщика, какъ за землю, такъ и за другія отъ него выгоды.

5) Сіи уставныя грамоты приводить въ исполненіе по мѣрѣ утвержденія ихъ для каждаго имѣнія, а окончательно по всѣмъ имѣніямъ ввести въ дѣйствіе въ теченіе двухъ лѣтъ, со дня изданія настоящаго Манифеста.

6) До истеченія сего срока, крестьянамъ и дворовымъ людямъ пребывать въ прежнемъ повиновеніи помѣщикамъ, и безпрекословно исполнять прежнія ихъ обязанности.

7) Помѣщикамъ сохранить наблюденіе за порядкомъ въ ихъ имѣніяхъ, съ правомъ суда и расправы, впредь до образованія волостей и открытія волостныхъ судовъ.

Обращая вниманіе на неизбѣжныя трудности предпріемлемаго преобразованія, Мы первѣе всего возлагаемъ упованіе на всеблагое Провидѣніе Божіе, покровительствующее Россіи.

За симъ полагаемся на доблестную о благѣ общемъ ревность благороднаго дворянскаго сословія, которому не можемъ не изъявить отъ Насъ и отъ всего Отечества заслуженной признательности за безкорыстное дѣйствованіе къ осуществленію Нашихъ предначертаній. Россія не забудетъ, что оно добровольно, побуждаясь только уваженіемъ къ достоинству человѣка и христіанскою любовію къ ближнимъ, отказалось отъ упраздняемаго нынѣ крѣпостнаго права и положило основаніе новой хозяйственной будущности крестьянъ. Ожидаемъ несомнѣнно, что оно также благородно употребитъ дальнѣйшее тщаніе къ приведенію въ исполненіе новыхъ положеній въ добромъ порядкѣ, въ духѣ мира и доброжелательства; и что каждый владѣлецъ довершитъ въ предѣлахъ своего имѣнія великій гражданскій подвигъ всего сословія, устроивъ бытъ водворенныхъ на его землѣ крестьянъ и его дворовыхъ людей на выгодныхъ для обѣихъ сторонъ условіяхъ и тѣмъ дастъ сельскому населенію добрый примѣръ и поощреніе къ точному и добросовѣстному исполненію государственныхъ постановленій.

Имѣющіяся въ виду примѣры щедрой попечительности владѣльцевъ о благѣ крестьянъ, и признательности крестьянъ къ благодѣтельной попечительности владѣльцевъ, утверждаютъ Нашу надежду, что взаимными

добровольными соглашеніями разрѣшится бо́льшая часть затрудненій, неизбѣжныхъ въ нѣкоторыхъ случаяхъ примѣненія общихъ правилъ къ разнообразвымъ обстоятельствамъ отдѣльныхъ имѣній, и что симъ способомъ облегчится переходъ отъ стараго порядка къ новому и на будущее время упрочится взаимное довѣріе, доброе согласіе и единодушное стремленіе къ общей пользѣ.

Для удобнѣйшаго же приведенія въ дѣйствіе тѣхъ соглашеній между владѣльцами и крестьянами, по которымъ сіи будутъ пріобрѣтать въ собственность, вмѣстѣ съ усадьбами, и полевыя угодья, отъ Правительства будутъ оказаны пособія, на основаніи особыхъ правилъ, выдачею ссудъ и переводомъ лежащихъ на имѣніяхъ долговъ.

Полагаемся и на здравый смыслъ Нашего народа.

Когда мысль Правительства о упраздненіи крѣпостнаго права распространилась между не приготовленными къ ней крестьянами: возникали было частныя недоразумѣнія. Но общій здравый смыслъ не поколебался въ томъ убѣжденіи, что и по естественному разсужденію, свободно пользующійся благами общества взаимно долженъ служить благу общества исполненіемъ нѣкоторыхъ обязанностей, и по закону христіянскому, *всякая душа должна повиноваться властямъ предержащимъ* (Рим. 13, 1), *воздавать всѣмъ до́лжное,* и въ особенности кому до́лжно, *урокъ, дань, страхъ, честь* (Рим. 13, 7); что законно пріобрѣтенныя помѣщиками права не могутъ быть взяты отъ нихъ безъ приличнаго вознагражденія или добровольной уступки; что было бы противно всякой справедливости пользоваться отъ помѣщиковъ землею и не нести за сіе соотвѣтствѣнной повинности.

И теперь съ надеждою ожидаемъ, что крѣпостные люди, при открывающейся для нихъ новой будущности, поймутъ и съ благодарностію примутъ важное пожертвованіе, сдѣланное благороднымъ дворянствомъ для улучшенія ихъ быта.

Они вразумятся, что получая для себя болѣе твердое основаніе собственности, и бо́льшую свободу располагать своимъ хозяйствомъ, они становятся обязанными, предъ обществомъ и предъ самими собою, благотворность новаго закона дополнить вѣрнымъ, благонамѣреннымъ и прилежнымъ употребленіемъ въ дѣло дарованныхъ имъ правъ. Самый благотворный законъ не можетъ людей сдѣлать благополучными, если они не потрудятся сами устроять свое благополучіе подъ покровительствомъ закона. Довольство пріобрѣтается и увеличивается не иначе, какъ неослабнымъ трудомъ, благоразумнымъ употребленіемъ силъ и средствъ, строгою бережливостію, и вообще честною въ страхѣ Божіемъ жизнію.

Исполнители приготовительныхъ дѣйствій къ новому устройству крестьянскаго быта и самаго введенія въ сіе устройство употребятъ бдительное

попеченіе, чтобы сіе совершалось правильнымъ, спокойнымъ движеніемъ, съ наблюденіемъ удобности временъ, дабы вниманіе земледѣльцевъ не было отвлечено отъ ихъ необходимыхъ земледѣльческихъ занятій. Пусть они тщательно воздѣлывлютъ землю и собираютъ плоды ея, чтобы потомъ изъ хорошо наполненной житницы взять сѣмена для посѣва на землѣ постояннаго пользованія или на землѣ пріобрѣтенной въ собственность.

Осѣни себя крестнымъ знаменіемъ, православный народъ, и призови съ Нами Божіе благословеніе на твой свободный трудъ, залогъ твоего домашняго благополучія и блага общественнаго.

Данъ въ Санктпетербургѣ, въ девятнадцатый день Февраля, въ лѣто отъ Рождества Христова тысяча восемьсотъ шестьдесятъ первое, царствованія же Нашего въ седьмое.

На подлинномъ Собственною Его Императорскаго Величества рукою подписано:

«АЛЕКСАНДРЪ».

English translation

Based on: Internet

Declaration of Alexander II Emancipating the Serfs of 1861

By the Grace of God We, Alexander II, Emperor and Autocrat of All Russia, King of Poland, Grand Duke of Finland, and so forth, make known to all Our faithful subjects:

Called by Divine Providence and by the sacred right of inheritance to the throne of Our Russian ancestors, We vowed in Our heart to fulfil the mission which is entrusted to Us and to surround with Our affection and Our Imperial solicitude all Our faithful subjects of every rank and condition, from the soldier who nobly defends the country to the humble artisan who works in industry; from the career official of the state to the ploughman who tills the soil.

Examining the condition of classes and professions comprising the state, We became convinced that the present state legislation favors the upper and middle classes, defines their obligations, rights, and privileges, but does not equally favor the serfs, so designated because in part from old laws and in

part from custom they have been hereditarily subjected to the authority of landowners, who in turn were obligated to provide for their well-being. Rights of nobles have been hitherto very broad and legally ill defined, because they stem from tradition, custom, and the good will of the noblemen. In most cases this has led to the establishment of good patriarchal relations based on the sincere, just concern and benevolence on the part of the nobles, and on affectionate submission on the part of the peasants. Because of the decline of the simplicity of morals, because of an increase in the diversity of relations, because of the weakening of the direct paternal attitude of nobles toward the peasants, and because noble rights fell sometimes into the hands of people exclusively concerned with their personal interests, good relations weakened. The way was opened for arbitrariness burdensome for the peasants and detrimental to their welfare, causing them to be indifferent to the improvement of their own existence.

These facts had already attracted the attention of Our predecessors of glorious memory, and they had adopted measures aimed at improving the conditions of the peasants; but these measures were ineffective, partly because they depended on the free, generous action of nobles, and partly because they affected only some localities, by virtue of special circumstances or as an experiment. Thus Alexander I issued a decree on free farmers, and the late Imperial Russian Emperor Nicholas, Our beloved father, promulgated one dealing with the serfs. In the Western guberniias, inventory regulations determine the peasant land allotments and their obligations. But decrees on free farmers and serfs have been carried out on a limited scale only.

We thus became convinced that the problem of improving the condition of serfs was a sacred inheritance bequeathed to Us by Our predecessors, a mission which, in the course of events, Divine Providence has called upon Us to fulfil.

We have begun this task by expressing our confidence in the Russian nobility, which has proved on so many occasions its devotion to the Throne, and its readiness to make sacrifices for the welfare of the country.

We have left to the nobles themselves, in accordance with their own wishes, the task of preparing proposals for the new organization of peasant life, proposals that would limit their rights over the peasants, and the realization of which would inflict on them some material losses. Our confidence was justified. Through members of the guberniia committees, who had the trust of the nobles' gatherings, the nobility voluntarily renounced its right to own serfs. These committees, after collecting the necessary data, have formulated proposals on a new arrangement for serfs and their relationship with the nobles.

These proposals were diverse, because of the nature of the problem. They have been compared, collated, systematized, rectified, and finalized in the

Main Committee instituted for that purpose; and these new arrangements dealing with the peasants and domestics of the nobility have been examined in the State Council.

Having invoked Divine assistance, we have resolved to execute this task.

On the basis of the above mentioned new arrangements, the serfs will receive in time the full rights of free rural inhabitants.

The nobles, while retaining their property rights on all the lands belonging to them, grant the peasants perpetual use of their domicile in return for a specified obligation; and, to assure their livelihood as well as to guarantee fulfillment of their obligations toward the government, grant them a portion of arable land fixed by the said arrangements, as well as other property.

While enjoying these land allotments, the peasants are obliged, in return, to fulfill obligations to the noblemen fixed by the same arrangements. In this condition, which is temporary, the peasants are temporarily obligated.

At the same time, they are granted the right to purchase their domicile, and, with the consent of the nobles, they may acquire in full ownership the arable lands and other properties which are allotted them for permanent use. Following such acquisition of full ownership of land, the peasants will be freed from their obligations to the nobles for the land thus purchased and will become free peasant landowners.

A special decree dealing with domestics will establish a temporary status for them, adapted to their occupations and their needs. At the end of two years from the day of the promulgation of this decree, they shall receive full freedom and some temporary immunities.

In accordance with the fundamental principles of these arrangements, the future organization of peasants and domestics will be determined, the order of general peasant administration will be established, and the rights given to the peasants and to the domestics will be spelled out in detail, as will the obligations imposed on them toward the government and the nobles.

Although these arrangements, general as well as local, and the special supplementary rules affecting some particular localities, estates of petty nobles, and peasants working in factories and enterprises of the nobles, have been as far as possible adapted to economic necessities and local customs; nevertheless, to preserve the existing order where it presents reciprocal advantages, we leave it to the nobles to reach a friendly understanding with the peasants and to reach agreements on the extent of the land allotment and the obligations stemming from it, observing, at the same time, the established rules to guarantee the inviolability of such agreements.

This new arrangement, because of its complexity, cannot be put into effect immediately; a time of not less than two years is necessary. During this period, to avoid all misunderstanding and to protect public and private

interests, the order actually existing on the estates of nobles should be maintained until the new order shall become effective.

Towards that end, we have deemed it advisable:

1. To establish in each guberniia a special Office of Peasant Affairs, which will be entrusted with the affairs of the peasant land communes established on the estates of the nobility.
2. To appoint in every used justices of the peace to solve all misunderstandings and disputes which may arise from the new arrangement, and to organize from these justices district assemblies.
3. To organize Peace Offices on the estates of the nobles, leaving the peasant land communes as they are, and to open volost offices in the large villages and unite small peasant land communes under one volost office.
4. To formulate, verify, and confirm in each village commune or estate a charter which would enumerate, on the basis of local conditions, the amount of land allotted to the peasants for permanent use, and the scope of their obligations to the nobleman for the land as well as for other advantages which are granted.
5. To put these charters into practice as they are gradually approved on each estate, and to put them into effect everywhere within two years from the date of publication of this manifesto.
6. Until that time, peasants and domestics must be obedient towards their nobles, and scrupulously fulfill their former obligations.
7. The nobles will continue to keep order on their estates, with the right of jurisdiction and of police, until the organization of volosts and of volost courts.

Aware of the unavoidable difficulties of this reform, We place Our confidence above all in the graciousness of Divine Providence, which watches over Russia.

We also rely upon the zealous devotion of Our nobility, to whom We express Our gratitude and that of the entire country as well, for the unselfish support it has given to the realization of Our designs. Russia will not forget that the nobility, motivated by its respect for the dignity of man and its Christian love of its neighbor, has voluntarily renounced serfdom, and has laid the foundation of a new economic future for the peasants. We also expect that it will continue to express further concern for the realization of the new arrangement in a spirit of peace and benevolence, and that each nobleman will realize, on his estate, the great civic act of the entire group by organizing the lives of his peasants and his domestics on mutually advantageous terms, thereby setting for the rural population a good example of a punctual and conscientious execution of state regulations.

The examples of the generous concern of the nobles for the welfare of peasants, and the gratitude of the latter for that concern give Us the hope that a mutual understanding will solve most of the difficulties, which in some cases will be inevitable during the application of general rules to the diverse conditions on some estates, and that thereby the transition from the old order to the new will be facilitated, and that in the future mutual confidence will be strengthened, and a good understanding and a unanimous tendency towards the general good, will evolve.

To facilitate the realization of these agreements between the nobles and the peasants, by which the latter may acquire in full ownership their domicile and their land, the government will lend assistance, under special regulations, by means of loans or transfer of debts encumbering an estate.

We rely upon the common sense of Our people. When the government advanced the idea of abolishing serfdom, there developed a partial misunderstanding among the unprepared peasants. Some were concerned about freedom and unconcerned about obligations. But, generally, the common sense of the country has not wavered, because it has realized that every individual who enjoys freely the benefits of society owes it in return certain positive obligations; according to Christian law every individual is subject to higher authority (*Romans*, chap. xiii, 1); everyone must fulfill his obligations, and, above all, pay tribute, dues, respect, and honor (Ibid., chap. xi, 7). What legally belongs to nobles cannot be taken away from them without adequate compensation, or through their voluntary concession; it would be contrary to all justice to use the land of the nobles without assuming responsibility for it.

And now We confidently expect that the freed serfs, on the eve of a new future which is opening to them, will appreciate and recognize the considerable sacrifices which the nobility has made on their behalf.

They should understand that by acquiring property and greater freedom to dispose of their possessions, they have an obligation to society and to themselves to live up to the letter of the new law by a loyal and judicious use of the rights which are now granted to them. However beneficial a law may be, it cannot make people happy if they do not themselves organize their happiness under protection of the law. Abundance is acquired only through hard work, wise use of strength and resources, strict economy, and above all, through an honest God-fearing life.

The authorities who prepared the new way of life for the peasants and who will be responsible for its inauguration will have to see that this task is accomplished with calmness and regularity, taking the timing into account in order not to divert the attention of cultivators away from their agricultural work. Let them zealously work the soil and harvest its fruits so that they will have a full granary of seeds to return to the soil which will be theirs.

And now, Orthodox people, make the sign of the cross, and join with Us to invoke God's blessing upon your free labor, the sure pledge of your personal well being and the public prosperity.

Given at St. Petersburg, March 3, the year of Grace 1861, and the seventh of Our reign.

Alexander

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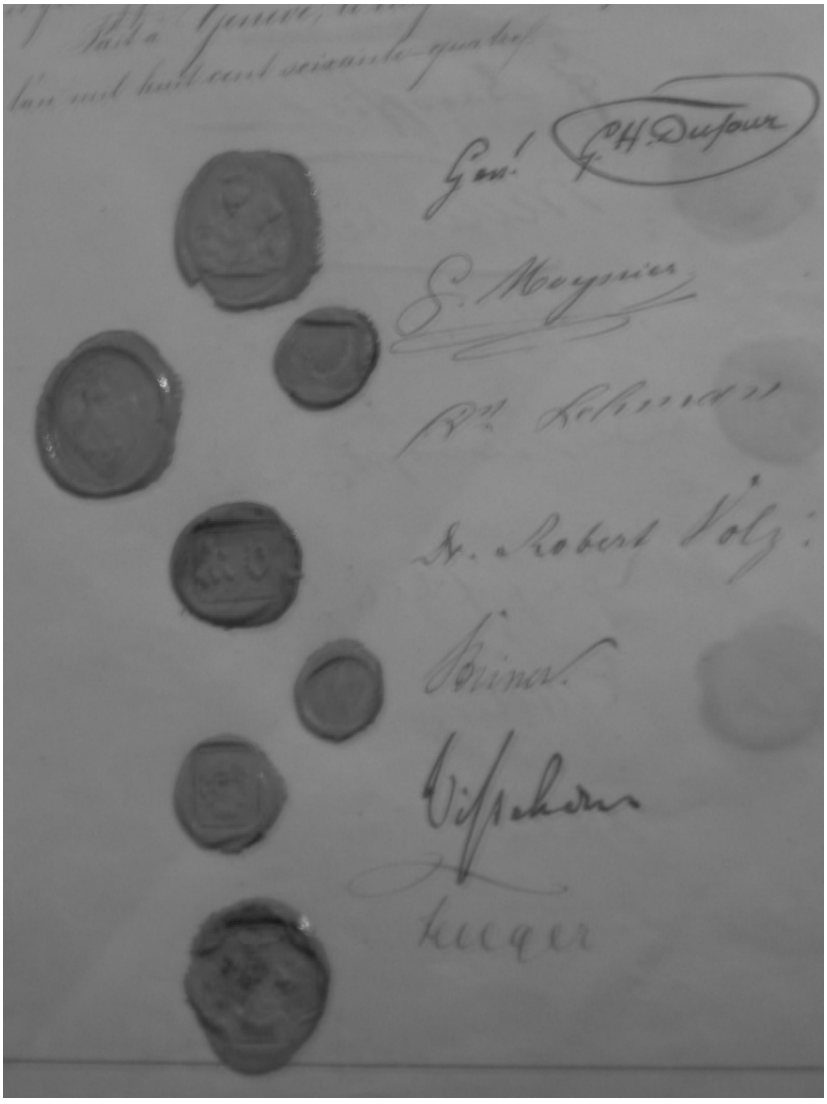
XX

CONVENTIONS FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF 1864 AND 1906



The signature page of the original Geneva Convention of 1864, bearing the signature of several delegates
Museum in Geneva, Switzerlan

CONVENTIONS FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF 1864 AND 1906

The Geneva Conventions emerged as a sign of opposition of man against the horrors of war. Sacrifice and determination of numerous people made it possibile to save wounded soldiers and cure them more safely. Florence Nightingale (1820–1910) and her activity during the Crimean War (1853–1856) may serve here as one among numerous examples. In summer 1859, Jean Henri Dunant (1828–1910), a Swiss businessman, went to Italy to meet Emperor Napoleon III and ask him for intervention concerning impediments to trade with Algeria, controlled by France at the time. Accidentally, on 24 June 1859 he witnessed the Battle of Solferino during which around 40 000 soldiers were killed or wounded. Seeing the tragic fate of the wounded soldiers left without any care, Dunant started to organise the treatment for them himself. After returning to Geneva, in 1862 he wrote and published a book in which he described his own experience with the horrors of war and called for establishment of an international organisation which would provide assistance and care to wounded soldiers. He also called for signing an international treaty which would guarantee immunity and protection to the wounded on the battlefield, to medical personnel, and to hospital facilities.

On 9 February 1863 in Geneva, Henri Dunant established a committee, called the Geneva Committee or the "Committee of Five" (from the number of its founders: Henri Dunant, Gustave Moynier, Louis Appia, Théodore Maunoir and Guillaume-Henri Dufour). Its main object was to implement the tasks presented by Dunant in his book. Dunant (and other members of the Committee) drew inspiration also from the Calvinist religious mentality.

One of the first initiatives of the Committee was to organize an international conference in Geneva, between 26 and 29 October 1863. The conference was attended by representatives of Austria, Baden, Bavaria, France, Great Britain, Hanover, Hesse, Italy, the Netherlands, Prussia, Russia, Saxony, Spain, Sweden, and several organisations. On 29 October 1863, the conference participants adopted the final resolution in which they expressed their support for the objectives of the Committee, and this provided an impetus for undertaking further efforts. The Swiss Federation authorities extended invitations to the governments of all European states, and to some governments of North and South America (United States, Mexico, Brazil), to participate in the meeting dedicated to improve the condition of soldiers

wounded during war operations. Finally, the conference organised between 8 and 22 August 1864 was attended by representatives of 16 countries. On 22 August 1864, the First Geneva Convention was signed by representatives of 12 of those countries (Baden, Belgium, Denmark, France, Hesse, Italy, the Netherlands, Portugal, Prussia, Spain, Switzerland and Wurttemberg)

The original Convention text was prepared by the organisers (Geneva Committee). The original document was drawn up in French and the government of the Swiss Federation became its depository (as in the case of the 1906 Convention).

The Convention consisted of 10 articles. Its main provisions, maintained and developed in later documents, focused on a number of main assumptions: (a) provision of assistance to wounded soldiers irrespective of their military rank, nationality or the side they fight for; (b) medical staff, military transport services and the chaplains should have their immunity guaranteed (even when they are on the territory of the enemy); (c) ambulances and military hospitals should be recognized as neutral and protected by the belligerents; (d) red cross on a white ground (the reverse of the Swiss flag) shall be the emblem of medical personnel and all hospitals.

In addition, the Convention imposed an obligation to establish a separate Red Cross society recognised by the government of a country which signed the Geneva Convention. The Polish Red Cross was established on 15 April 1919.

In 1864, representatives of Geneva Committee, Louis Appia and Charles van de Velde – a Dutch army captain, for the first time in history provided assistance to the wounded under the emblem of the red cross during an armed conflict. In 1876, the International Committee of the Red Cross was established as the institution coordinating the activities of the national Red Cross societies.

In October 1868, the second conference was organised in Geneva with the aim to define in more detail some of the provisions adopted in 1864, in particularly those which referred to military operations at sea. Supplementary articles to the Convention were adopted on 20 October 1868, but they were not ratified and therefore did not enter into force (they did enter into force in 1899).

At the Peace Conference in the Hague in 1899 it was recommended that yet another conference be held to revise the provisions of the First Geneva Conference of 1864. Between 11 June and 7 July 1906, the Swiss government organised such conference in Geneva, attended by delegations of 35 countries. The materials for the conference debate were prepared by the International Committee of the Red Cross. The provisions then adopted replaced the 1864 Convention. The new Convention of 6 July 1906 was divided into eight

chapters (33 articles) and specified more precisely the principles for action. Some new provisions were introduced, concerning burial of the dead and passing on information about the wounded, dead or sick (Poland acceded to the 1906 Convention on 19 July 1919).

The experience of the World War I led to further modification of 1906 Convention, resulting in the Third Geneva Convention of 29 July 1929 (in fact there were two conventions: for the amelioration of the condition of the wounded and sick in armed forces in the field, and on the treatment of prisoners of war). Also after the World War II, a new Geneva Convention was adopted - on 12 August 1949 - replacing the 1929 Convention. It consisted of four documents:

for the amelioration of the condition of the wounded and sick in armed forces in the field (First Convention);

for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea (Second Convention), relating to the treatment of prisoners of war (Third Convention), and relating to the protection of civilian persons in time of war (Foruth Convention) (supplemented in 1954, 1974, and 1977).

The Geneva Conventions were violated during World War I and II, as well as in later conflicts. Nevertheless, they became one of the pillars of international law, enabling punishment of war crimes during the trials after World War II (and later conflicts).

Original text

Based on: www.icrc.org

Convention de Geneve du 22 août 1864

pour l'amélioration du sort des militaires blessés dans les armées en campagne. Genève, 22 août 1864.

Art. 1.

Les ambulances et les hôpitaux militaires seront reconnus neutres, et, comme tels, protégés et respectés par les belligérants, aussi longtemps qu'il s'y trouvera des malades ou des blessés. La neutralité cesserait si ces ambulances ou ces hôpitaux étaient gardés par une force militaire.

Art. 2.

Le personnel des hôpitaux et des ambulances, comprenant l'intendance, le Service de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

Art. 3.

Les personnes désignées dans l'article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent. Dans ces circonstances, lorsque ces personnes cesseront leurs fonctions, elles seront remises aux avant-postes ennemis par les soins de l'armée occupante.

Art. 4.

Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachées à ces hôpitaux ne pourront, en se retirant, emporter que les objets qui seront leur propriété particulière. Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

Art. 5.

Les habitants du pays qui porteront secours aux blessés seront respectés et demeureront libres. Les généraux des Puissances belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence. Tout blessé recueilli et soigné dans une maison y servira de sauvegarde. L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

Art. 6.

Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiennent. Les commandants en chef auront la faculté de remettre immédiatement aux avant-postes ennemis les militaires ennemis blessés pendant le combat, lorsque les circonstances le permettront et du consentement des deux partis. Seront renvoyés dans leur pays ceux qui, après guérison, seront reconnus incapables de servir. Les autres pourront être également renvoyés, à condition de ne pas reprendre les armes pendant la durée de la guerre. Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

Art. 7.

Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau

national. Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire. Le drapeau et le brassard porteront croix rouge sur fond blanc.

Art. 8.

Les détails d'exécution de la présente Convention seront réglés par les commandants en chef des armées belligérantes, d'après les instructions de leurs gouvernements respectifs, et conformément aux principes généraux énoncés dans cette Convention.

Art. 9.

Les Hautes Puissances contractantes sont convenues de communiquer la présente Convention aux gouvernements qui n'ont pu envoyer des plénipotentiaires à la Conférence internationale de Genève, en les invitant à y accéder; le protocole est à cet effet laissé ouvert.
(...)

Convention pour l'amélioration du sort des blessés et malades dans les armées en campagne. Genève, 6 juillet 1906.

CHAPITRE PREMIER
DES BLESSES ET MALADES

Art. 1.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

Art. 2.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles; ils auront, notamment, la faculté de convenir :

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers;

De remettre à un Etat neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'Etat neutre de les interner jusqu'à la fin des hostilités.

Art. 3.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

Art. 4.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leurs pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

Art. 5.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

CHAPITRE II
DES FORMATIONS ET ETABLISSEMENTS SANITAIRES

Art. 6.

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

Art. 7.

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

Art. 8.

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6:

1° Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés;

2° Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier;

3° Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

CHAPITRE III
DU PERSONNEL

Art. 9.

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

Art. 10.

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque Etat doit notifier à l'autre, soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

Art. 11.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

Art. 12.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leurs pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

Art. 13.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

CHAPITRE IV
DU MATERIEL

Art. 14.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

Art. 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

Art. 16.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

CHAPITRE V
DES CONVOIS D'EVACUATION

Art. 17.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes:

1° Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2° Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

CHAPITRE VI
DU SIGNE DISTINCTIF

Art. 18.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par interversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

Art. 19.

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

Art. 20.

Le personnel protégé en vertu des articles 9, alinéa 1er, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

Art. 21.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

Art. 22.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

Art. 23.

L'emblème de la croix rouge sur fond blanc et les mots „Croix-Rouge" ou „Croix de Genève" ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

CHAPITRE VII
DE L'APPLICATION ET DE L'EXECUTION DE LA CONVENTION

Art. 24.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

Art. 25.

Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

Art. 26.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

CHAPITRE VIII
DE LA REPRESSION DES ABUS ET DES INFRACTIONS

Art. 27.

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de ' Croix-Rouge ' ou ' Croix de Genève ', notamment, dans un but commercial, par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

Art. 28.

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

DISPOSITIONS GENERALES

(...)

English translation

Based on: D. Schindler, J. Toman, *The Laws of Armed Conflicts*, Martinus Nihjoff Publisher 1988, pp. 280-281 and pp. 301-310.

Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864

Art. 1.

Ambulances and military hospitals shall be recognized as neutral, and as such, protected and respected by the belligerents as long as they accommodate wounded and sick.

Neutrality shall end if the said ambulances or hospitals should be held by a military force.

Art. 2.

Hospital and ambulance personnel, including the quarter-master's staff, the medical, administrative and transport services, and the chaplains, shall have the benefit of the same neutrality when on duty, and while there remain any wounded to be brought in or assisted.

Art. 3.

The persons designated in the preceding Article may, even after enemy occupation, continue to discharge their functions in the hospital or ambulance with which they serve, or may withdraw to rejoin the units to which they belong.

When in these circumstances they cease from their functions, such persons shall be delivered to the enemy outposts by the occupying forces.

Art. 4.

The material of military hospitals being subject to the laws of war, the persons attached to such hospitals may take with them, on withdrawing, only the articles which are their own personal property.

Ambulances, on the contrary, under similar circumstances, shall retain their equipment.

Art. 5.

Inhabitants of the country who bring help to the wounded shall be respected and shall remain free. Generals of the belligerent Powers shall

make it their duty to notify the inhabitants of the appeal made to their humanity, and of the neutrality which humane conduct will confer.

The presence of any wounded combatant receiving shelter and care in a house shall ensure its protection. An inhabitant who has given shelter to the wounded shall be exempted from billeting and from a portion of such war contributions as may be levied.

Art. 6.

Wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for.

Commanders-in-Chief may hand over immediately to the enemy outposts enemy combatants wounded during an engagement, when circumstances allow and subject to the agreement of both parties.

Those who, after their recovery, are recognized as being unfit for further service, shall be repatriated.

The others may likewise be sent back, on condition that they shall not again, for the duration of hostilities, take up arms.

Evacuation parties, and the personnel conducting them, shall be considered as being absolutely neutral.

Art. 7.

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuation parties. It should in all circumstances be accompanied by the national flag.

An armlet may also be worn by personnel enjoying neutrality but its issue shall be left to the military authorities.

Both flag and armlet shall bear a red cross on a white ground.

Art. 8.

The implementing of the present Convention shall be arranged by the Commanders-in-Chief of the belligerent armies following the instructions of their respective Governments and in accordance with the general principles set forth in this Convention.

Art. 9.

The High Contracting Parties have agreed to communicate the present Convention with an invitation to accede thereto to Governments unable to appoint Plenipotentiaries to the International Conference at Geneva. The Protocol has accordingly been left open.

Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.
Geneva, 6 July 1906.

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on 22 August 1864, for the amelioration of the condition of the wounded or sick in armies in the field,

Have decided to conclude a new convention to that effect, and have appointed as their Plenipotentiaries:

(Here follow the names of Plenipotentiaries)

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

CHAPTER I
THE SICK AND WOUNDED

Art. 1.

Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave his wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and "matériel" of his sanitary service to assist in caring for them.

Art. 2.

Subject to the care that must be taken of them under the preceding Article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper.

They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

Art. 3.

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

Art. 4.

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

Art. 5.

Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

CHAPTER II
SANITARY FORMATIONS AND ESTABLISHMENTS

Art. 6.

Mobile sanitary formations (i.e., those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

Art. 7.

The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

Art. 8.

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self defense or in defense of its sick and wounded.

2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III
PERSONNEL

Art. 9.

The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be considered as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in section 2 of Article 8.

Art. 10.

The personnel of volunteer aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

Art. 11.

A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent

who has accepted such assistance is required to notify the enemy before making any use thereof.

Art. 12.

Persons described in Articles 9, 10, and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

Art. 13.

While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

CHAPTER IV
MATERIEL

Art. 14.

If mobile sanitary formations fall into the power of the enemy, they shall retain their „matériel", including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

Art. 15.

Buildings and "materiel" pertaining to fixed establishments shall remain subject to the laws of war, but cannot be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

Art. 16.

The "matériel" of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property and, as such, will be respected under all circumstances, save that it

is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

CHAPTER V
CONVOYS OF EVACUATION

Art. 17.

Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in Article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary "matériel", as provided for in Article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the ordinary vehicles, trains, and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway "matériel" and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI
DISTINCTIVE EMBLEM

Art. 18.

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Art. 19.

This emblem appears on flags and brassards, as well as upon all "matériel" appertaining to the sanitary service, with the permission of the competent military authority.

Art. 20.

The personnel protected in virtue of the first paragraph of Article 9, and Articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

Art. 21.

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

Art. 22.

The sanitary formations of neutral countries which, under the conditions set forth in Article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

Art. 23.

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and "matériel" protected by the convention.

CHAPTER VII
APPLICATION AND EXECUTION OF THE CONVENTION

Art. 24.

The provisions of the present Convention are obligatory only on the Contracting Powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent Powers should not be signatory to the Convention;

Art. 25.

It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

Art. 26.

The signatory governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

CHAPTER VIII
REPRESSION OF ABUSES AND INFRACTIONS

Art. 27.

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Art 28.

In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and ill treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present convention.

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XXI
DECREE OF THE COUNCIL OF PEOPLE'S COMMISSARS OF 1917

Soviet Propaganda Poster

DECREE OF THE COUNCIL OF PEOPLE'S COMMISSARS OF 1917
(DECREE ON COURT NUMBER 1)

When the Bolshevik party headed by Vladimir Lenin took over the power in Russia, his government was quite widely rejected by many political circles, including the legal and administrative circles in the capital of the country Petrograd, and in Moscow. Lenin's radical political programme, which assumed the so-called socialisation of land through its exclusion from trade, an immediate stop to the war, and in particular the will to establish a *workers and peasants' government*, and to take over factories to be state property (the so-called workers' control over production), led to the boycott of the new government. The Bolsheviks did not intend to share the power with others either, and the coalition government they created with the radical wing of the Socialist Revolutionary Party survived only a few months.

While drafting the new legal system, Lenin, a lawyer by education, was convinced that direct democracy, where people *would not be constrained by any laws or any regulations whatsoever*, was necessary in the country. As a supporter of *legal nihilism* and a Marxist at the same time, he supported the creation of a system of unwritten law in the interest of the *class acting as the state power*. He was also afraid of the reaction of anti-Bolshevik forces. On numerous occasions, he referred to the example of the French revolution, which had to implement radical measures to defend the revolution. Similarly to Jacobins and numerous radical organisations existing in Russia since 1870s, he referred to such measures as *terror*. Similar views were proclaimed by Lenin's associates, themselves also lawyers, despite the fact that the Bolshevik party, a radical movement which argued for profound social transformations, had very few people with such education.

The planned legal system was therefore to be based on peculiar law in action. Lawyers were not invited to create it, since the concept of the new law was based on unwritten rules, which was supposed to be the implementation of the idea of direct democracy.

The *Decree on Court No 1* abolished all judicial bodies which existed before the Bolsheviks took over the power, and replaced them with local courts (referred to as *people's courts* since March 1918), established on the basis of elections. Along with the courts, the institutions of the Bar, prosecutors, notaries, private complainants in a public prosecution, and other judiciary institutions not listed in the decree were abolished. The most important provisions of the decree stated that in their judgments and verdicts, new courts could refer to the regulations of the ousted governments only as long

as they did not contradict the revolutionary conscience (*revolucyonnaja sovest'*) and the revolutionary conceptions of law (*revolucyonnoje pravosoznanye*). The material jurisdiction of local courts only covered a small catalogue of cases with a small amount of the claim, explicitly listed in the Decree. Other crimes which exceeded that value and acts against the revolution were entrusted to the so-called revolutionary tribunals, established in the last paragraph of the Decree. This led to a legal dualism in the country, where political crimes came under the material jurisdiction of separate courts (special courts).

The *Decree on Court* was the first legal act in history which abolished almost the whole of the legal system in force in the country. It proved to be the implementation of a radical utopia, which often leads to the contradiction of the ideas it proclaims (Alexis de Tocqueville). In the name of the declared broad direct democracy, the *Decree on Court No. 1* introduced a legal system devoid of any guarantee of the observance of any laws and of civil rights in particular. Non-Bolshevik lawyers alarmed that the state was deprived of any legal system at all. The analysts of the subject emphasized on numerous occasions that the *Decree on Court No. 1* introduced a legal dualism in the Bolshevik Russia by creating a system of extraordinary bodies (*revolutionary tribunals*) along with people's courts. They also pointed out the fact that the Decree led to a fast politization of law by explicitly pronouncing the political programmes of two parties which were nominally in power to be in contradiction with the new legal system. The provisions of the Decree led to the negation of many institutions which are recognised as fundamental in a modern state, in particular the institution of *nullum crimen, nulla poena, sine lege,* or to the negation of all formal and legal guarantees in the legal system (particularly in the penal law system). The *Decree on Court No. 1* remained in force during the whole period of the civil war in the USSR (i.e. until 1921), forming a basis for the system of discretionary regulations on which various original concepts were built, but which in terms of law were mainly used to build a new legal system and fight the opponents of the new authorities.

Original text

Based on: *Sobranije Uzakonenij i Rasporjażenij Rabocze-Krestijanskogo Prawitiel'stwa*, 1917/1918 no. 4, item 50, reprinted in: *Dekriety Sowietskoj Własti*, vol. I, Moscow 1957.

Декрет
Совета Народных Коммиссаров

Совет Народных Комиссаров постановляет:

1. Упразднить доныне существующие общие судебные установления, как-то: окружные суды, судебные палаты и Правительствующий сенат со всеми департаментами, военные и морские суды всех наименований, а также коммерческие суды, заменяя все эти установления судами, образуемыми на основании демократических выборов.О порядке дальнейшего направления и движения неоконченных дел будет издан особый декрет.Течение всех сроков приостанавливается, считая с 25 октября с.г. впредь до особого декрета.

2. Приостановить действие существующего доныне института мировых судей, заменяя мировых судей, избираемых доныне непрямыми выборами, местными судами в лице постоянного местного судьи и двух очередных заседателей, приглашаемых на каждую сессию по особым спискам очередных судей. Местные судьи избираются впредь на основании прямых демократических выборов, а до назначения таковых выборов временно – районными и волостными, а где таковых нет, уездными, городскими и губернскими Советами рабочих, солдатских и крестьянских депутатов.

Этими же Советами составляются списки очередных заседателей и определяется очередь их явки на сессию.

Прежние мировые судьи не лишаются права, при изъявлении ими на то согласия, быть избранными в местные судьи как временно Советами, так и окончательно на демократических выборах.

Местные суды решают все гражданские дела ценой до 3000 руб., а уголовные дела, если обвиняемому угрожает наказание не свыше 2 лет лишения свободы и если гражданский иск не превышает 3000 руб. Приговоры и решения местных судов окончательны и обжалованию в апелляционном порядке не подлежат. По делам, по коим присуждено денежное взыскание свыше 100 руб. или лишение свободы свыше 7 дней, допускается просьба о кассации. Кассационной инстанцией является уездный, а в столицах – столичный съезд местных судей.

Для разрешения уголовных дел на фронтах местные суды тем же порядком избираются полковыми советами, а где их нет, полковыми комитетами.

О судопроизводстве по прочим судебным делам будет издан особый декрет.

3. Упразднить доныне существовавшие институты судебных следователей, прокурорского надзора, а равно и институты присяжной и частной адвокатуры.

Впредь до преобразования всего порядка судопроизводства предварительное следствие по уголовным делам возлагается на местных судей единолично, причем постановления их о личном задержании и о предании суду должны быть подтверждены постановлением всего местного суда.

В роли же обвинителей и защитников, допускаемых и в стадии предварительного следствия, а по гражданским делам поверенными, допускаются все не опороченные граждане обоего пола, пользующиеся гражданскими правами [...].

5. Местные суды решают дела именем Российской Республики и руководятся в своих решениях и приговорах законами свергнутых правительств лишь постольку, поскольку таковые не отменены революцией и не противоречат революционной совести и революционному правосознанию.

Примечание: Отмененными признаются все законы, противоречащие декретам Центрального Исполнительного Комитета Советов рабочих, солдатских и крестьянских депутатов и Рабочего и Крестьянского правительства, а также программам-минимум Российской социал-демократической рабочей партии и партии социалистов-революционеров.

6. По всем спорным гражданским, а также и частно-уголовным делам стороны могут обращаться к третейскому суду. Порядок третейского суда будет определен особым декретом.

7. Право помилования и восстановления в правах лиц, осужденных по уголовным делам, впредь принадлежит судебной власти.

Для борьбы против контрреволюционных сил в видах принятия мер ограждения от них революции и ее завоеваний, а равно для решения дел о борьбе с мародерством и хищничеством, саботажем и прочими злоупотреблениями торговцев, промышленников, чиновников и прочих лиц, учреждаются рабочие и крестьянские революционные трибуналы в составе одного председателя и шести очередных заседателей, избираемых губернскими или городскими Советами рабочих, солдатских и крестьянских депутатов.

8. Для производства же по этим делам предварительного следствия при тех же Советах образуются особые следственные комиссии [...].

English translation

Text prepared partly on the basis of the Internet library archives of University of Toronto (https://tspace.library.utoronto.ca/citd/RussianHeritage/12.NR/12.L/Bunyan291-296.htm).

Decree of the Council of People's Commissars of 1917

On Court

The Council of People's Commissars herewith resolves:

1. To abolish all existing general legal institutions, such as circuit courts, courts chambers, and the Governing Senate with all its departments, military and naval courts of all grades, and commercial courts; thus replaycing all these institutions with courts established on the basis of democratic elections.

On the mode on further jurisdiction and proceeding uncompleted cases a separate decree will be issued.

Flow of time limitations shall be suspended, as of 25 October of the current year until issuing another decree.

2. To abolish the existing institution of justices of the peace and to replace the justices of the peace, heretofore elected by indirect vote, by local courts represented by a permanent local judge and two jurors summoned for each session from a special list of jurors. Local judges are henceforth to be elected on the basis of direct democratic elections, and until these elections have been held they shall be provisionally appointed by district and commune Soviets, or, in the absence of such, by county, city, or guberniia Soviets of Workers', Soldiers', and Peasants' Deputies. The same soviets create lists of forthcoming jurors and specify their order to act during the session

Previous justices of the peace are not dismissed with their rights after giving an accept to be elected local judges by the Soviets, or, finally, within democratic elections.

[...]. Local courts solve all civil cases within an amount of claim of 3,000 rubles as well as criminal cases when accused is possible to be sentenced to a punishment of 2 years of lacking of freedom. Verdicts of local courts are to be final and they are not to be revied in an appeal order. In cases, when a fine above 100 rubles has been sentenced arequest for of cassation is possible to be made. A cassational stage is a visiting, and in [region] capitals – social congress of local judges.

3. To abolish the existing institutions of investigating magistrates, the procurator's office, as well as the institution of counselors-at-law, and private attorneys.

Pending the reformation of the entire system of legal procedure, preliminary investigations in criminal cases will be made by local judges singly, but their orders of detention and indictment must be confi rmed by the decision of the entire local court.

The functions of prosecutors and counsels for the defense, which may begin even with the preliminary investigation, and in civil cases – by attorneys, may be performed by all citizens of moral integrity, regardless of sex, who enjoy civil rights. [...].

5. Local courts will try cases in the name of the Russian Republic and will be guided in their rulings and verdicts by the laws of the deposed governments only in so far as those laws have not been annulled by the revolution and do not contradict the revolutionary conscience and the revolutionary conceptions of law.

Note: All those laws shall be considered void which contradict either the decrees of the Central Executive Committee of Soviets of Workers', Soldiers', and Peasants' Deputies and the Workers' and Peasants' Government, or the minimum program of the Russian Social Democratic Labor Party and the Party of Socialist-Revolutionists.

6. In all disputed civil and criminal cases the parties may resort to the arbitration court. The procedure of the arbitration court will be determined by a special decree.

7. The right of pardon and the restitution of rights of persons convicted in criminal cases will belong henceforth to judicial authorities.

8. In order to fight counter-revolution having a will to take means of revolution and its achievements, as well as to try cases against profiteering, speculation, sabotage, and other abuses of merchants, manufacturers, officials, and other persons, revolutionary tribunals of workmen and peasants are hereby established. [These tribunals will] consist of a chairman and six jurors, which are to serve in turn and are to be elected by the guberniia and district Soviets of Workers', Soldiers', and Peasants' Deputies.

For the conduct of the preliminary investigation of such cases, special investigating commissions will be formed under the above Soviets. [...]

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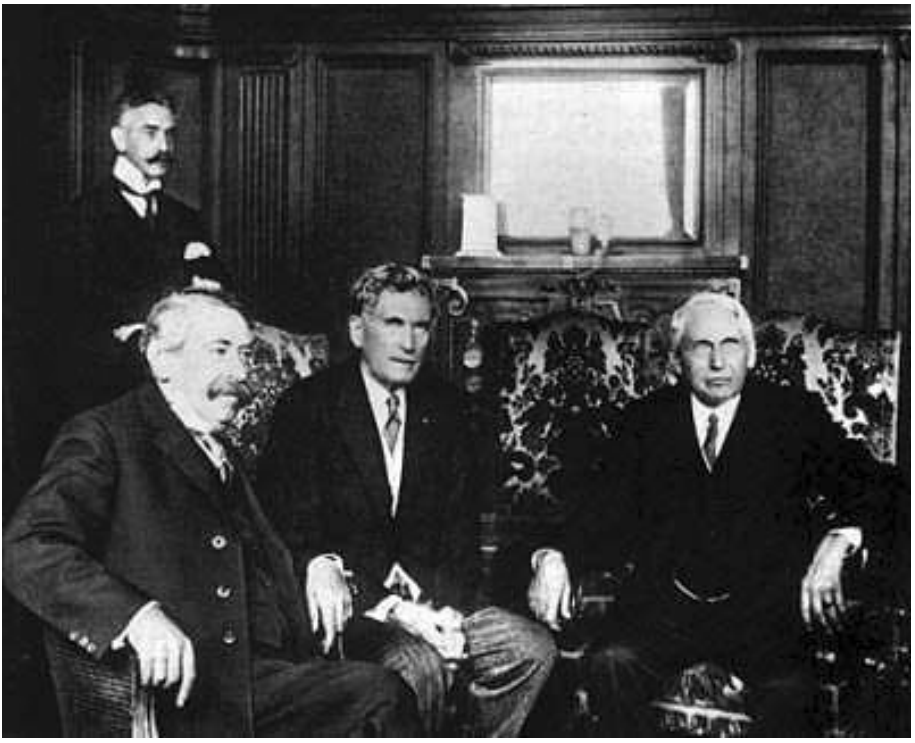
XXII
BRIAND-KELLOGG PACT OF 1928



A. Briand, M. Herrick and F. Kellogg after the signing of the treaty

BRIAND-KELLOGG PACT OF 1928

The First World War (1914–1918), which ended with the Treaty of Versailles (1919), failed to solve many problems concerning international politics. The League of Nations, in which many hopes had been vested, did not soothe the then (and ancient) arguments. The Treaty of Locarno of 1926 concluded between France, the United Kingdom, Germany, Italy, Belgium, Czechoslovakia and Poland did not guarantee peace in Europe. Guarantee of inviolability of the western border of Germany created a possibility for the eastern border revision leading to new conflicts. In the tense international situation the superpowers took measures to ensure mutual security should any armed conflict broke out.

Strong pacifist movements that were developing in the Western Europe and in the United States after the First World War constituted the background of political actions. An American lawyer, Salmon Oliver Levinson (1865–1941), postulated the outlawry of war, by which he initiated a new social movement that was becoming widely popular in Anglo-Saxon societies.

On 7 March 1927, the Ambassador of Poland addressed the League of Nations with a proposal to conclude a collective security pact and to abandon war in international relations. The proposal was rejected by the UK which considered the situation in its colonies. Yet, on 24 September 1927, the League of Nations managed to pass a declaration condemning aggressive war. It was not, however, a normative document such as other resolutions of the League of Nations.

A crucial event was a speech made by Aristide Briand (1862–1932), a French Minister for Foreign Affairs and ex-Prime Minister for several terms, who proposed the US government on 20 June 1927 to conclude a bilateral friendship pact. The French government's actual aim was to receive a guaranty of security from America in case of another war in Europe. In response to the proposal, the US Secretary of State under President Calvin Coolidge made suggestions to several countries to conclude a pact which would ban war and exclude it from international politics. Preceded by many debates, the pact was signed on 27 August 1928 in Paris. Thus, it is sometimes called the Pact of Paris or the Kellogg-Briand Pact.

The Pact was signed by the representatives of the following 15 countries: Australia, Belgium, Czechoslovakia, France, India, Ireland, Japan, Canada, Germany, New Zealand, Union of South Africa, the United Kingdom, Italy and the United States of America. The document was an exception in world politics in the interwar period. As a so-called open treaty, it was open to

each country which would have liked to join it unilaterally. The Pact was concise in form and consisted of a preamble and three articles. The first article stated that the parties renounced war as an instrument of national policy in their relation with one another. In the second article the parties bound themselves to settle any international disputes by pacific means only. In the final article the rules of its ratification and coming into effect were set out.

The Pact may seem terse, yet its adoption was preceded by long-lasting and complex political negotiations. No specific sanctions were provided for breaching the Pact, which might be considered as its weakest point.

The Pact entered into force on 24 July 1929 after the last signatories deposited their ratification documents in Washington. Until then, the Pact had been signed by other countries: Afghanistan, Albania, Austria, Bulgaria, China, Denmark, Dominican Republic, Egypt, Estonia, Finland, Guatemala, Spain, Iceland, Cuba, Latvia, Liberia, Lithuania, Nicaragua, Norway, Panama, Peru, Portugal, Romania, the USSR, the Kingdom of Slovenes, Croats and Serbs (Yugoslavia), Siam, Sweden, Turkey, Hungary and the USSR. When nd World War II broke out, the Pact had been signed by 62 countries, which made it the most accepted international treaty in the interwar period.

As early as works on the Pact began, there were difficulties concerning its interpretation that focused on the three issues: acceptability of non-aggressive (defensive) war, its compliance with the provisions of the League of Nations and of the Treaty of Locarno and the so-called neutral states issue. The ban on all war, suggested under the pressure of pacifist movements, was replaced by the ban on aggressive war, yet the definition of armed aggression was not specified. The countries kept the right to defense themselves against aggression, which was seen as an obvious right of each country and a sign of its sovereignty. Other difficulties resulted from the noncompliance of the Pact of Paris with some articles of the Treaty of Versailles (especially Art. 16) and with the Treaty of Locarno. The status of neutral states, which was *de facto* achieved by each signatory state of the Pact of Paris, caused further problems. On the other hand, the functioning of neutral states on the international arena was not limited to a ban on wars, it also included other forms of involvement.

The provisions of the Pact became a basis for the adoption of the so-called Litvinov Protocol (known also as the Moscow Protocol) which was signed by the governments of the USSR, Poland, Estonia, Latvia and Romania on 9 February 1929.

On its adoption, the Briand-Kellogg Pact was some kind of a security guarantee for France, while for the United States and the UK it was both a successful propaganda and an attempt to secure their spheres of influence. Similarly, each signatory state achieved some *ad hoc* goal. It should, however,

be stressed that shortly following the ratification of the Pact, armed conflicts broke out which annulled its meaning (e.g. the Sino-Soviet conflict in 1929 and the Second Sino-Japanese War of 1931-1932 over Manchuria, Italian aggression in Ethiopia in 1935 and the Sino-Japanese War initiated in 1937). The Pact of Paris failed to guarantee peace also in Europe, and ten years after it had been signed World War II broke out. Yet, due to the Pact aggressive war was condemned by the emerging international law, which annulled the centuries-long tradition (it has been confirmed by e.g. the United Nations Charter). Due to the Pact of Paris it was possible to bring accusations of crimes against peace in trials that were held after World War II for the Pact was concluded outside the League of Nations and did not cease be applicable after its dissolution. However, no accusations were brought invoking the Pact against e.g. the USSR or Italian leaders or Japan's Emperor Hirohito who were responsible for infringing its provisions.

Original text

Based on: *United States Statutes at Large*, vol. 46, part 2, p. 2343.

Briand-Kellogg Pact of 1928

Whereas a Treaty between the President of the United States Of America, the President of the German Reich, His Majesty the King of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland, and the President of the Czechoslovak Republic, providing for the renunciation of war as an instrument of national policy, was concluded and signed by their respective Plenipotontiaries at Paris on the twenty-seventh day of August, one thousand nine hundred and twentyeight, the original of which Treaty, being in the English and the French languages, is word for word as follows:

(...)

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has, come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war a should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a Treaty and for that purpose have appointed as their Respective Plenipotentiaries (…) who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

Art. 1.

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

Art. 2.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Art. 3.

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as; between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certifi ed copy of the Treaty and of every instrument of ratifi cation or adherence. It shall also be the duty of the Government of the United States

telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratifi cation or adherence.

In Faith whereof the respective Plenipotentiaries have signed this Treaty in the French and English languages both texts having equal force, and hereunto affix their seals.

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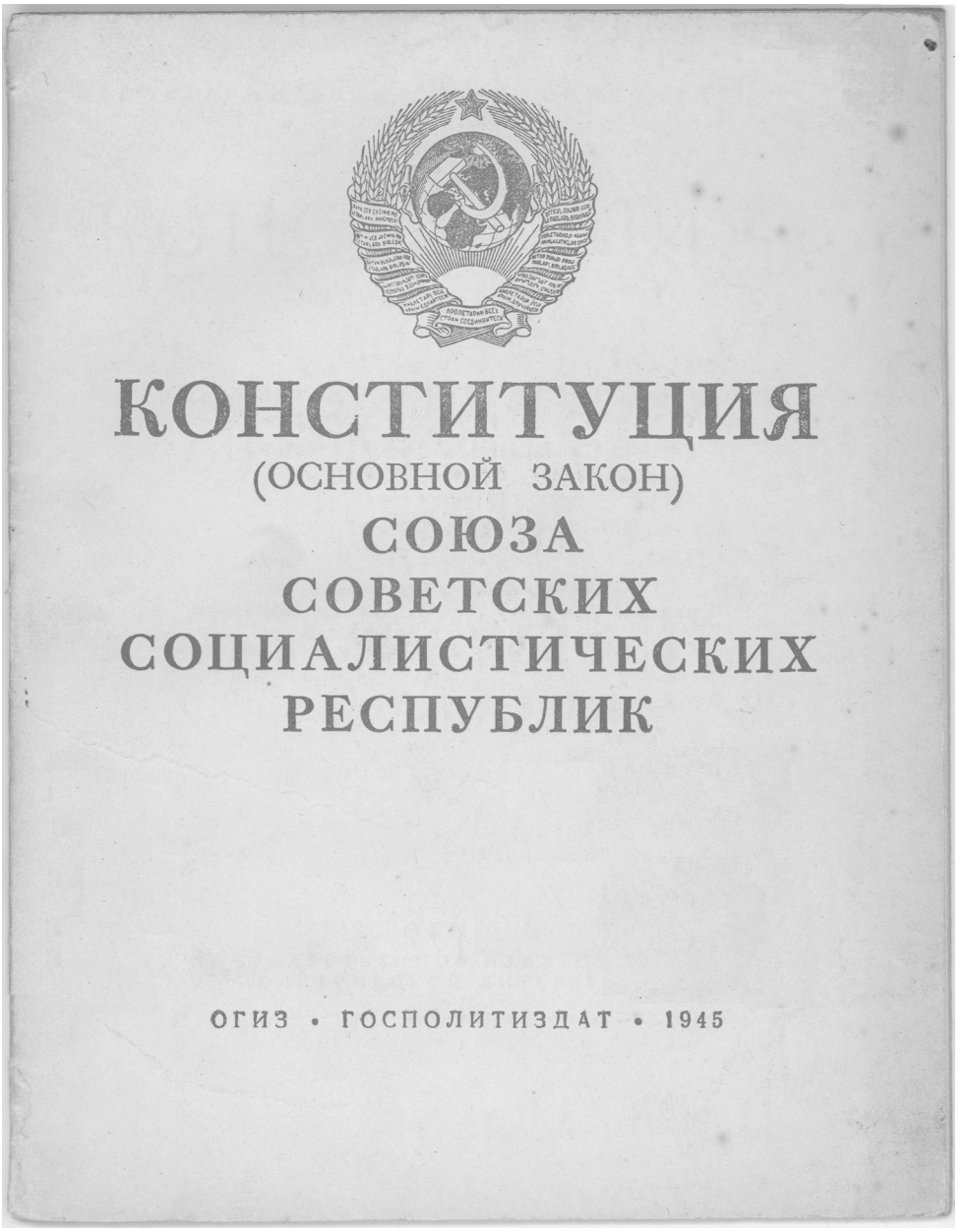
XXIII
USSR CONSTITUTION OF 1936



USSR Constitution of 1936

USSR CONSTITUTION OF 1936

The USSR Constitution, adopted by the Congress of the Soviets on 5 December 1936, was the third constitution of the state referred to by researchers as *utopia in power*. The previous constitutions, adopted in July 1918 and in 1924 respectively, marked the subsequent stages of Bolshevik state legal structure. The 1918 Constitution was the most revolutionary one, and it severly limited the citizen rights of large social groups (the 1918 Constitution defined such groups *expressis verbis*). The first Bolshevik constitution was highly ideological, relatively imprecise, and it included some *de lege ferenda* postulates. The 1924 Constitution, on the other hand, was to be the constitution of the era of the so-called New Economic Policy which provided for private companies, interchange of goods between town and country, and some departure from collectivization of agriculture. The Constitution introduced, for the first time in USSR history, the model of *socialist federalism,* providing for the transfer of many issues and most of ministries (people's commissary offices) to a local level. In practice, however, the powers of local authorities were virtually non-existent. The 1936 USSR Constitution was passed as the act ending the NEP and introducing the so-called classless society. The Constitution was passed after the strenuous and blood stained collectivization of agriculture and industrialization of 1928–1929, which gave economic priority to heavy industry, and introduced the famous Stalin's "five-year plans" (the so-called great breakthrough). Both, before its adoption and thereafter, it was officially referred to as the *Stalin Constitution*. The name was used until 1956, and was in fact inaccurate since Joseph Stalin (1879–1953), who then held a dictator's power in the USSR, did not actively participate in drafting the Constitution. In February 1935, he merely came forward with a proposal to pass it. He also submitted, together with two associates, some remarks concerning the draft, and delivered an occasional lecture before the Constitution was passed. The major part in drafting the Constitution was played by the Bolsheviks who held power during the Lenin era, and who opposed Stalin, first of all by Nikolai Bukharin (1888–1938), Aleksei Rykov (1881–1938), and Karl Radek (1885–1939). Bukharin privately boasted that he wrote almost the entire text of the Constitution himself, with only a little help from Radek. The *old Bolsheviks* hoped, as did a large part of society, that the new constitution will extend the scope of liberalisation of Stalin's power system by reducing the revolutionary legal regulations. But the opposite happened. Soon after the Constitution was adopted, the so-called Great Purge (1937–1938) began in the USSR, with repressions on an unprecedented scale, resulting in death of almost all old Bolsheviks,

including the majority of members of the commission which had drafted the Constitution. During the Great Purge and later on, the provisions of the Constitution were totally ignored and remained no more than a dead letter. This did not prevent some Western writers from praising democratic values of the Stalin Constitution. The statement by Romain Rolland, who declared that it was the "most democratic constitution in the world", went down in history.

The *Stalin Constitution* was amended on numerous occassions. On 15 March 1944, the Supreme Soviet of the USSR passed an amendment to the Constitution which stated that the republics within the USSR had the right to establish diplomatic relations with other states, and to have their representation on the international arena. This provision was probably aimed at securing the USSR a larger number of votes at the forum of future United Nations Organisation (the USSR ultimately received 3 votes in the UN, nominally next to Belarus and Ukraine).

The Constitution declared that the Union of Soviet Socialist Republics was *a socialist state of workers and peasants*. All power in the country was to belong to the working people while other classes were to be *ultimately eliminated* prior to the adoption of the Constitution.

The most important change, as compared to earlier USSR legislation, was making all citizens equal at law. Thus the category ceased to exist of people deprived of several public rights due to their origin or profession performed before 1917, which existed until 1936. Such people were called *lishenets* (i.e. people deprived of rights). As regards the citizen rights, the Constitution guaranteed rights mainly of economic character, such as the right to work, the right to rest and leisure, the right to maintenance in old age, the right to education, and equal rights of men and women. It also introduced freedom of speech, freedom of the press, freedom of assembly, inviolability of the person, of the homes of citizens, and privacy of correspondence. The political rights included the freedom to unite in the organisations listed in the Constitution which, however, did not mention any political organisation other than the Communist Party. Referral in the Constitution to the Communist Party as the *leading core of all organizations of the working people, both public and state* was repeated in the 1977 USSR Constitution and in basic laws of communist states. In Poland, an analogous provision was introduced in the amendment to the Constitution of the People's Republic of Poland in 1976.

The legislative power belonged to the Supreme Soviet of the USSR, consisting of two chambers. It met twice a year on sessions which lasted for several days. Between the sessions, the powers of the Supreme Soviet of the USSR were exercised by its Presidium which issued statutory orders. Such orders had to be approved at the nearest session of the Supreme Soviet. However, until the very end of the USSR existence, there had never been

a case of the Supreme Council not approving an order issued by the Presidium between sessions. The executive power belonged to the Council of People's Commissars (since 1946 – the Council of Ministers) of the USSR. The judicial power was executed by the courts with people's jurors, and such courts were not granted, even declaratorily, any independence by the Constitution. The Constitution also sanctioned the existence of special courts in the USSR.

The 1936 USSR Constitution proved to be the longest lasting law of that country. It was formally in force for over 40 years. It laid down the fundamental features of socialist (or communist) constitutionalism, where the dominant role belonged to the authorities which were not, or were to a very limited extent, included in the Constitution and in other regulations. According to the Constitution, the state was ruled by several-person bodies which rendered the declared *rule of the people* purely decorative. The *Stalin Constitution* introduced several rules, in particular the rights and freedoms, only declaratorily, without any guarantees of their implementation. It also established a very wide, though not exhaustive, catalogue of citizens' duties toward the state. Constitutions of the so-called people's democratic countries, including the Constitution of the People's Republic of Poland, adopted by the Sejm on 22 July 1952, were modelled on the *Stalin Constitution*. Before its adoption, Joseph Stalin himself introduced over 50 amendments to the text he received, out of which 14 were included in the preamble.

The *Stalin Constitution* was formally replaced by the USSR Constitution of 1977, which remained in force till the end of USSR existence (i.e. till December 1991). There were numerous similarities between the two. The system of power and state administration bodies was the same, as did the system of the *means of production* owned by the state, the collectivized and in fact nationalised land, and the declaration of citizen rights without any formal guarantees that they will be observed. The *Stalin Constitution* introduced, moreover, the territorial division of the country considered as the most effective and preserved until today.

Original text

Based on: *Konstitucija SSSR*, Moscow 1936.

Конституция СССР 1936 года

Глава I
Общественное устройство

Статья 1. Союз Советских Социалистических Республик есть социалистическое государство рабочих и крестьян.
Статья 2. Политическую основу СССР составляют Советы депутатов трудящихся, выросшие и окрепшие в результате свержения власти помещиков и капиталистов и завоевания диктатуры пролетариата.
Статья 3. Вся власть в СССР принадлежит трудящимся города и деревни в лице Советов депутатов трудящихся.
Статья 4. Экономическую основу СССР составляют социалистическая система хозяйства и социалистическая собственность на орудия и средства производства, утвердившиеся в результате ликвидации капиталистической системы хозяйства, отмены частной собственности на орудия и средства производства и уничтожения эксплуатации человека человеком.
Статья 5. Социалистическая собственность в СССР имеет либо форму государственной собственности (всенародное достояние), либо форму кооперативно-колхозной собственности (собственность отдельных колхозов, собственность кооперативных объединений).
Статья 6. Земля, ее недра, воды, леса, заводы, фабрики, шахты, рудники, железнодорожный, водный и воздушный транспорт, банки, средства связи, организованные государством крупные сельскохозяйственные предприятия (совхозы, машинно-тракторные станции и т.п.), а также коммунальные предприятия и основной жилищный фонд в городах и промышленных пунктах являются государственной собственностью, то есть всенародным достоянием.
Статья 7. Общественные предприятия в колхозах и кооперативных организациях с их живым и мертвым инвентарем, производимая колхозами и кооперативными организациями продукция, равно как их общественные постройки составляют общественную, социалистическую собственность колхозов и кооперативных организаций. Каждый колхозный двор, кроме основного дохода от общественного колхозного хозяйства, имеет в личном пользовании небольшой приусадебный участок земли и в личной собственности подсобное хозяйство на приусадебном участке, жилой дом, продуктивный скот, птицу и мелкий сельскохозяйственный инвентарь - согласно устава сельскохозяйственной артели.

Статья 8. Земля, занимаемая колхозами, закрепляется за ними в бесплатное и бессрочное пользование, то есть навечно.
Статья 9. Наряду с социалистической системой хозяйства, являющейся господствующей формой хозяйства в СССР, допускается законом мелкое частное хозяйство единоличных крестьян и кустарей, основанное на личном труде и исключающее эксплуатацию чужого труда.
Статья 10. Право личной собственности граждан на их трудовые доходы и сбережения, на жилой дом и подсобное домашнее хозяйство, на предметы домашнего хозяйства и обихода, на предметы личного потребления и удобства, равно как право наследования личной собственности граждан – охраняются законом.
Статья 11. Хозяйственная жизнь СССР определяется и направляется государственным народнохозяйственным планом в интересах увеличения общественного богатства, неуклонного подъема материального и культурного уровня трудящихся, укрепления независимости СССР и усиления его обороноспособности.
Статья 12. Труд в СССР является обязанностью и делом чести каждого способного к труду гражданина по принципу: „кто не работает, тот не ест". В СССР осуществляется принцип социализма: „от каждого по его способности, каждому - по его труду".

[...]

Глава X
сновные права и обязанности граждан

Статья 118. Граждане СССР имеют право на труд, то есть право на получение гарантированной работы с оплатой их труда в соответствии с его количеством и качеством. Право на труд обеспечивается социалистической организацией народного хозяйства, неуклонным ростом производительных сил советского общества, устранением возможности хозяйственных кризисов и ликвидацией безработицы.
Статья 119. Граждане СССР имеют право на отдых.
Право на отдых обеспечивается сокращением рабочего дня для подавляющего большинства рабочих до 7 часов, установлением ежегодных отпусков рабочим и служащим с сохранением заработной платы, предоставлением для обслуживания трудящихся широкой сети санаториев, домов отдыха, клубов.
Статья 120. Граждане СССР имеют право на материальное обеспечение в старости, а также - в случае болезни и потери трудоспособности.
Это право обеспечивается широким развитием социального страхования рабочих и служащих за счет государства, бесплатной медицинской помощью трудящимся, предоставлением в пользование трудящимся широкой сети курортов.
Статья 121. Граждане СССР имеют право на образование.

Это право обеспечивается всеобщеобязательным начальным образованием, бесплатностью образования, включая высшее образование, системой государственных стипендий подавляющему большинству учащихся в высшей школе, обучением в школах на родном языке, организацией на заводах, в совхозах, машинно-тракторных станциях и колхозах бесплатного производственного, технического и агрономического обучения трудящихся.

Статья 122. Женщине в СССР предоставляются равные права с мужчиной во всех областях хозяйственной, государственной, культурной и общественно-политической жизни.

Возможность осуществления этих прав женщин обеспечивается предоставлением женщине равного с мужчиной права на труд, оплату труда, отдых, социальное страхование и образование, государственной охраной интересов матери и ребенка, предоставлением женщине при беременности отпусков с сохранением содержания, широкой сетью родильных домов, детских яслей и садов.

Статья 123. Равноправие граждан СССР, независимо от их национальности и расы, во всех областях хозяйственной, государственной, культурной и общественно-политической жизни является непреложным законом.

Какое бы то ни было прямое или косвенное ограничение прав или, наоборот, установление прямых или косвенных преимуществ граждан в зависимости от их расовой и национальной принадлежности, равно как всякая проповедь расовой или национальной исключительности, или ненависти и пренебрежения - караются законом.

Статья 124. В целях обеспечения за гражданами свободы совести церковь в СССР отделена от государства и школа от церкви. Свобода отправления религиозных культов и свобода антирелигиозной пропаганды признается за всеми гражданами.

Статья 125. В соответствии с интересами трудящихся и в целях укрепления социалистического строя гражданам СССР гарантируется законом:

а) свобода слова,

б) свобода печати,

в) свобода собраний и митингов,

г) свобода уличных шествий и демонстраций.

Эти права граждан обеспечиваются предоставлением трудящимся и их организациям типографий, запасов бумаги, общественных зданий, улиц, средств связи и других материальных условий, необходимых для их осуществления.

Статья 126. В соответствии с интересами трудящихся и в целях развития организационной самодеятельности и политической активности народных масс гражданам СССР обеспечивается право объединения в общественные организации: профессиональные союзы, кооперативные объединения, организации молодежи, спортивные и оборонные организации, культурные, технические и научные общества, а наиболее активные и сознательные граждане из рядов рабочего класса и других слоев трудящихся объединяются во Всесоюзную коммунистическую

партию (большевиков), являющуюся передовым отрядом трудящихся в их борьбе за укрепление и развитие социалистического строя и представляющую руководящее ядро всех организаций трудящихся, как общественных, так и государственных.

Статья 127. Гражданам СССР обеспечивается неприкосновенность личности. Никто не может быть подвергнут аресту иначе как по постановлению суда или с санкции прокурора.

Статья 128. Неприкосновенность жилища граждан и тайна переписки охраняются законом.

Статья 129. СССР предоставляет право убежища иностранным гражданам, преследуемым за защиту интересов трудящихся, или научную деятельность, или национально-освободительную борьбу.

Статья 130. Каждый гражданин СССР обязан соблюдать Конституцию Союза Советских Социалистических Республик, исполнять законы, блюсти дисциплину труда, честно относиться к общественному долгу, уважать правила социалистического общежития.

Статья 131. Каждый гражданин СССР обязан беречь и укреплять общественную, социалистическую собственность, как священную и неприкосновенную основу советского строя, как источник богатства и могущества родины, как источник зажиточной и культурной жизни всех трудящихся.

Лица, покушающиеся на общественную, социалистическую собственность, являются врагами народа.

Статья 132. Всеобщая воинская обязанность является законом.

Воинская служба в Рабоче-Крестьянской Красной Армии представляет почетную обязанность граждан СССР.

Статья 133. Защита Отечества есть священный долг каждого гражданина СССР. Измена родине: нарушение присяги, переход на сторону врага, нанесение ущерба военной мощи государства, шпионаж - караются по всей строгости закона, как самое тяжкое злодеяние.

[...]

English translation

Based on: F. J. M. Feldbrugge, *Constitutions of the USSR. A Parallel Analysis*, Leiden 1978.

USSR Constitution of 1936

Chapter I
The Organization of Soviet Society

Art. 1.

The Union of Soviet Socialist Republics is a socialist state of workers and peasants.

Art. 2.

The Soviets of Working People's Deputies, which grew and attained strength as a result of the overthrow of the landlords and capitalists and the achievement of the dictatorship of the proletariat, constitute the political foundation of the U.S.S.R.

Art. 3.

In the U.S.S.R. all power belongs to the working people of town and country as represented by the Soviets of Working People's Deputies.

Art. 4.

The socialist system of economy and the socialist ownership of the means and instruments of production firmly established as a result of the abolition of the capitalist system of economy, the abrogation of private ownership of the means and instruments of production and the abolition of the exploitation of man by man, constitute' the economic foundation of the U.S.S.R.

Art. 5.

Socialist property in the U.S.S.R. exists either in the form of state property (the possession of the whole people), or in the form of cooperative and collective-farm property (that of a collective farm or property of a cooperative association).

Art. 6.

The land, its natural deposits, waters, forests, mills, factories, mines, rail, water and air transport, banks, post, telegraph and telephones, large state-organized agricultural enterprises (state farms, machine and tractor stations and the like) as well as municipal enterprises and the bulk of the

dwelling houses in the cities and industrial localities, are state property, that is, belong to the whole people.

Art. 7.

Public enterprises in collective farms and cooperative organizations, with their livestock and implements, the products of the collective farms and cooperative organizations, as well as their common buildings, constitute the common socialist property of the collective farms and cooperative organizations. In addition to its basic income from the public collective-farm enterprise, every household in a collective farm has for its personal use a small plot of land attached to the dwelling and, as its personal property, a subsidiary establishment on the plot, a dwelling house, livestock, poultry and minor agricultural implements in accordance with the statutes of the agricultural artel.

Art. 8.

The land occupied by collective farms is secured to them for their use free of charge and for an unlimited time, that is, in perpetuity.

Art. 9.

Alongside the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits the small private economy of individual peasants and handicraftsman based on their personal labour and precluding the exploitation of the labour of others.

Art. 10.

The right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiary household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law.

Art. 11.

The economic life of the U.S.S.R. is determined and directed by the state national economic plan with the aim of increasing the public wealth, of steadily improving the material conditions of the working people and raising their cultural level, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity.

Art. 12.

In the U.S.S.R. work is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall he eat."

The principle applied in the U.S.S.R. is that of socialism: "From each according to his ability, to each according to his work."

[...]

Chapter X
Fundamental Rights and Duties of Citizens

Art. 118.

Citizens of the U.S.S.R. have the right to work, that is, are guaranteed the right to employment and payment for their work in accordance With its quantity and quality. The right to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.

Art. 119.

Citizens of the U.S.S.R. have the right to rest and leisure. The right to rest and leisure is ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, the institution of annual vacations with full pay for workers and employees and the provision of a wide network of sanatoria, rest homes and clubs for the accommodation of the working people.

Art. 120.

Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or loss of capacity to work. This right is ensured by the extensive development of social insurance of workers and employees at state expense, free medical service for the working people and the provision of a wide network of health resorts for the use of the working people.

Art. 121.

Citizens of the U.S.S.R. have the right to education. This right is ensured by universal, compulsory elementary education; by education, including higher education, being free of charge; by the system of state stipends for the overwhelming majority of students in the universities and colleges; by instruction in schools being conducted in the native language, and by the organization in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people.

Art. 122.

Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, state, cultural, social and political life. The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, pre-maternity and maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

Art. 123.

Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law. Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

Art. 124.

In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens.

Art. 125.

In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law:

freedom of speech;

freedom of the press;

freedom of assembly, including the holding of mass meetings;

freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of these rights.

Art. 126.

In conformity with the interests of the working people, and in order to develop the organizational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are ensured the right to unite in public

organizations trade unions, cooperative associations, youth organizations,' sport and defence organizations, cultural, technical and scientifi c societies; and the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and state.

Art. 127.

Citizens of the U.S.S.R. are guaranteed inviolability of the person. No person may be placed under arrest except by decision of a court or with the sanction of a procurator.

Art. 128.

The inviolability of the homes of citizens and privacy of correspondence are protected by law.

Art. 129.

The U.S.S.R. affords the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for their scientific activities, or for their struggle for national liberation.

Art. 130.

It is the duty of every citizen of the U.S.S.R. to abide by the Constitution of the Union of Soviet Socialist Republics, to observe the laws, to maintain labour discipline, honestly to perform public duties, and to respect the rules of socialist intercourse.

Art. 131.

It is the duty of every citizen of the U.S.S.R. to safeguard and strengthen public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperous and cultured life of all the working people.

Persons committing offences against public, socialist property are enemies of the people.

Art. 132.

Universal military service is law. Military service in the Workers' and Peasants' Red Army is an honourable duty of the citizens of the U.S.S.R.

Art. 133.

To defend the fatherland is the sacred duty of every citizen of the U.S.S.R. Treason to the country--violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage is punishable with all the severity of the law as the most heinous of crimes.

[...]

Bibliographical note:

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XXIV

AGREEMENT AND CHARTER OF INTERNATIONAL MILITARY TRIBUNAL IN NUREMBERG OF 1945

Exterior view of the Palace of Justice in Nuremberg famous for being the location of the Nuremberg Trials.
Nuremberg, Germany, between November 20, 1945, and October 1, 1946

AGREEMENT AND CHARTER OF INTERNATIONAL MILITARY TRIBUNAL IN NUREMBERG OF 1945

The issue of prosecution of people responsible for the initiation of an armed conflict and for crimes committed during military operations was the subject of intense discussion of the leaders of Western democracies already in the beginning of World War II. The further course of the war and in particular the consequences of the outbreak of the conflict between Germany and the USSR on 22 June 1941 resulted in the situation where one of the countries responsible for the outbreak of World War II became a political and military ally of the Western democracies and took part in the preparations to prosecute the committed crimes although it committed similar crimes itself. Before the outbreak of World War II, there was no purely legal definition of war crimes which could be used in international law. There were, however, legal acts which contained some references on the subject. They include e.g. the Hague Convention (IV) of 1907 respecting the Laws and Customs of War on Land. However, it did not include any sanctions against persons or states which violated it. The Treaty of Versailles of 28 June 1919 called for punishing war criminals but in practice it did not bring about any effects (the case of Kaiser Wilhelm II) The Pact of Paris (Kellogg-Briand Pact) ruled out a war as the means of international policy but did not establish any sanctions for its violation. Before the outbreak of World War II, Germany was also obliged to observe bilateral non-aggression pacts (e.g. the pact with Poland of 1934) which were eventually violated.

In the first years of World War II, the governments of the states occupied by the Third Reich appealed against it using diplomatic means, condemning the Nazi Germany terror on the occupied territories (e.g. the appeals of President E. Beneš and of Prime Minister W. Sikorski). President Franklin D. Roosevel and Prime Minister Winston Churchill used similar tone in the Atlantic Charter signed on 13 August 1941. During a conference in St. James's Palace in London on 13 January 1942, which was called at the initiative of the government of Poland and Czechoslovakia and attended by the representatives of Belgium, France, Greece, Luxembourg, Netherlands, Norway and Yugoslavia, a declaration was adopted which called for a court trial of criminals responsible for the violation of international law. President F. D. Roosevelt, in consultation with the government of The United Kingdom, called for the creation of the United Nations War Crimes Commission. The Commission was established on 20 October 1943. On 30 October 1943, Roosevelt, Churchill and Stalin adopted the so-called Moscow Declaration according to which all war criminals should be sent back to the countries

where they had committed the crimes. In January 1944 National War Crimes Offices were established and started to prepare the lists of war criminals. In addition, the Commission prepared a draft charter of the International Military Tribunal, based on the model of the Hague Tribunal, and started preparations to prosecute the criminals. Three types of crimes were defined. The prepared materials were submitted to the American authorities which approved them in May 1945 and started negotiations with the allies.

The Nuremberg Tribunal worked on the basis of the agreement signed in London on 8 August 1945 by the four powers: the USA, the USSR, the UK and France, which were joined by another 19 countries (Australia, Belgium, Czechoslovakia, Denmark, Ethiopia, Greece, Haiti, Honduras, India, Luxembourg, the Netherlands, Norway, New Zealand, Panama, Paraguay, Poland, Uruguay, Venezuela, Yugoslavia). The document is known as the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. The Charter of the International Military Tribunal which described in detail the powers, structure and rules of the Tribunal's operation was an integral part of this Agreement.

The Indictment was presented on 18 October 1945. One of the accused, Martin Bormann, was tried in absentia. The total of 403 hearings were held in public. The Tribunal heard evidence from 33 prosecution witnesses, 61 defence witnesses and 19 accused. In addition, 143 written testimonies of witnesses were read out.

Pursuant to the agreement of 19 January 1946, a separate Tribunal was established for the prosecution of criminals in the Far East.

The Charter of the International Military Tribunal defined three basic types of crimes: (1) crimes against peace, namely planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing; (2) war crimes, namely violations of the laws or customs of war, also those laid down in international conventions, including murder of soldiers, deportation, forced labour, killing of hostages, plunder of property, destruction of property, etc.; (3) crimes against humanity- namely, murder, extermination of civilian population, deportation, persecutions on political, racial or religious grounds against any civilian population.

The statute of the Tribunal discarded the immunity exercised by the head of state or any other person while performing state and legal functions. The penalty, including the death penalty, was to be adjudicated by the judges. The judgment of the Nuremberg Tribunal was final and could not be appealed against. The right of clemency belonged to the Allied Control Council. The indictment included also criminal organisations or groups, including the government of the Reich, SS, SD, Gestapo, S.A., the leaders

of the National Socialist party, the general army headquarters or the chief commanders of German military forces.

Alfred Jodl, Alfred Rosenberg, Arthur Seyss-Inquart, Ernst Kaltenbrunner, Fritz Sauckel, Hans Frank, Hermann Göring, Joachim von Ribbentrop, Julius Streicher, Wilhelm Keitel and Wilhelm Frick were sentenced to death. Hermann Göring committed suicide before the execution, while others (except for Martin Bormann) were hanged on 16 October 1946. Erich Raeder, Rudolf Hess and Walter Funk were sentenced to life imprisonment, Albert Speer and Baldur von Schirach to 20 years, Constantin von Neurath to 15 years and Karl Dönitz to 10 years. In addition, Franz von Papen, Hans Fritzsche and Hjalmar Schacht were acquitted.

The documentation of the trials before the Nuremberg Tribunal includes 22 volumes of protocols along with the sentence and 12 volumes of the proceedings documentation presented during the trial.

The trial of war criminals in Europe and the Middle East contributed to the development of international law the main element of which was the so-called Nuremberg law: (1) London agreement of 8 August 1945, along with the Charter of the International Military Tribunal, (2) the judgment of the Nuremberg Tribunal on main German war criminals announced on 30 September and 1 October 1946 after a year-long trial; and (3) proposals prepared by the UN International Law Commission (operating since 1947). On 11 December 1946 The United Nations General Assembly passed the Resolution 95(I) in which it affirmed the validity of the three acts consituting the Nuremberg law, namely the London Agreement of 8 August 1945, the Charter of the International Military Tribunal and the judgment of the Nuremberg Tribunal. The Resolution 177 (II) of the UN of 21 November 1947 declared that the principles of international law included in the Charter of the Nuremberg Tribunal and in the verdict of the Nuremberg Tribunal became the basis for the works of the UN International Law Commission. On 10 December 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights which presented the principles in 30 articles. The Nuremberg law contributed to the definition of fundamental legal terms related to human rights protection on the international forum. The collection of legal acts is supplemented by two other documents: the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and the Convention on the Protection of Victims of War of 12 August 1949. The draft code of offences against the peace and security of mankind was not adopted for numerous reasons, but the Commission presented the results of its work in the form of 7 principles: (1) Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment; (2) The fact that internal law does not impose a penalty for an act which constitutes a crime under

international law does not relieve the person who committed the act from responsibility under international law; (3) The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law; (4) The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him; (5) Any person charged with a crime under international law has the right to a fair trial on the facts and law; (6) it presents in detail the three types of international crimes: crimes against peace, war crimes and crimes against humanity.

Original text

Based on: *Trials of War Criminals Before the Nueremberg Military Tribunals under the Control Council Law no. 10*, vol. 1, Nuernberg 1949, pp. xi-xvi.

Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis of 1945 ("London Agreement")

Whereas the United Nations have from time to time made declarations of their intention that war criminals shall be brought to justice;

And whereas the Moscow Declaration of 30 October 1943, on German atrocities in Occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

And whereas this Declaration was stated to be without prejudice to the case of major criminals whose offences have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

Now therefore the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet

Socialist Republics (hereinafter called „the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Art. 1.

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Art. 2.

The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Art. 3.

Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavours to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Art. 4.

Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Art. 5.

Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Art. 6.

Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

Art. 7.

This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention

to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

In witness whereof the undersigned have signed the present Agreement.

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Art. 1.

In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Art. 2.

The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his Incapacity for some other mason to fulfill his functions, his alternate shall take his place.

Art. 3.

Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

Art. 4.

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the Selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for Successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Art. 5.

In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

Art. 6.

The Tribunal established by the Agreement referred to In Article I hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the Jurisdiction of the Tribunal for which there shall be Individual responsibility:

(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of International treaties agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) WAR CRIMES: Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deortation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Art. 7.

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Art. 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Art. 9.

At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Art. 10.

In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Art. 11.

Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group organization.

Art. 12.

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if be has not been found or if the Tribunal for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Art. 13.

The Tribunal shall draw up rules for its procedure These rules shall not be inconsistent with the provisions of this Charter.

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Art. 14.

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

(a) to agree upon a plan of the individual work of each of the Chief prosecutors and his staff,

(b) to settle the final designation of major war criminals to be tried by tile Tribunal,

(c) to improve the Indictment and the documents to be submitted therewith,

(d) to lodge the Indictment and the accompanying documents with the Tribunal, to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be. tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Art. 15.

The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(a) investigation, collection, and production before or at the Trial of all necessary evidence,

(b) the preparation of the indictment for approval by the Committee in accordance. with paragraph (c) of Article 14 hereof,

(c) the preliminary examination of all necessary witnesses and of the Defendants,

(d) to act as prosecutor at the Trial,

(e) to appoint representatives to carry out such duties as may be assigned to them,

(f) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Art. 16.

In order to ensure fair trial for the Defendants, the following Procedure shall be followed:

(a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.

(b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.

(e) A defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Art. 17.

The Tribunal shall have the power

(a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,

(b) to interrogate any Defendant,

(c) to require the production of documents and other evidentiary material,

(d) to administer oaths to witnesses, (e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Art. 18.

The Tribunal shall

(a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,

(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,

(c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Art. 19.

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Art. 20.

The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Art. 21.

The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Art. 22.

The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Art. 23.

One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him.

The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Art. 24.

The proceedings at the Trial shall take the following course:

(a) The Indictment shall be read in court.

(b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".

(c) The Prosecution shall make an opening statement.

(d) The Tribunal shall ask the Prosecution and the Defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.

(f) The Tribunal may put any question to any witness and to any Defendant, at any time.

(g) The Prosecution and the Defense shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.

(h) The Defense shall address the court.

(i) The Prosecution shall address the court.

(j) Each Defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

Art. 25.

All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI. JUDGMENT AND SENTENCE

Art. 26.

The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Art. 27.

The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Art. 28.

In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Art. 29.

In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter

the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to tile Committee established under Article 14 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Art. 30.

The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

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XXV
CHARTER OF THE UNITED NATIONS OF 1945

United Nations Charter signing ceremony

CHARTER OF THE UNITED NATIONS OF 1945

The experience of World War I, the lack of effective international cooperation under the League of Nations, the fiasco of the ban on aggressive war, and, most of all, the atrocities of World War II made it clear to the sovereigns of anti-Nazi coalition states that apart from winning the War, their task was also to establish an international organization that would safeguard peace and security, and would constitute a forum for solving conflicts in a peaceful way.

The first manifestation of the will of states taking part in war operations to secure lasting peace in the world and to denounce aggression was the St. James Agreement, signed in London on 12 June 1941 by the United Kingdom, the following countries represented by their governments-in-exile: Belgium, the Netherlands, Luxemburg, Czechoslovakia, Poland, Norway, Yugoslavia, and Greece; and by France represented by General de Gaulle.

The initial concept of international organization was defined during a meeting, that took place on 14 August 1941, between President Roosevelt and Prime Minister Winston Churchill, concluded with signing the Atlantic Charter. Out of eight points of the Agreement two referred directly to the need to establish an international organization safeguarding lasting peace between all the countries. Moreover, basic principles of international justice were underlined, as well as the need of economic and social cooperation. The Charter was supported by ten countries, namely: the USSR, Belgium, the Netherlands, Luxembourg, Czechoslovakia, Poland, Norway, Yugoslavia, Greece, and France.

On the first day of 1942, the United States, the United Kingdom, the USSR and China, joined by another 22 countries including Poland, signed a document, later referred to as the Declaration by the United Nations, pledging to employ their full resources in the war and not to seek to negotiate any separate peace agreements.

The actions aimed at establishing an international organization basing on "sovereign equality of all peace loving states, open to all such states in order to maintain international peace and security" became more intense on 30 October 1943, when the Moscow Declaration was signed by the United States, the United Kingdom, the USSR and China.

Two months later, during the Yalta Conference, leaders of three allied powers declared the necessity to acknowledge major responsibility resting on the United Nations for restoring peace and rejecting war.

In three years, the allies reached an agreement on establishing an international organization, whose main task would be to ensure peace and

security in the world. The representatives of the United States, the USSR, the United Kingdom and China, gathered in Dumbarton Oaks, concluded the preparatory works on 7 October 1944, presenting to the remaining representatives of the United Nations a draft statute of the organization to be. After the international debate ended, the representatives of countries that before March 1945 had declared the war against Nazi Germany and Japan, and acceded to the Declaration by the United Nations, were invited to take part in the conference in San Francisco, starting on 25 April 1945.

After the two-months long final negotiations, the Charter of the United Nations was signed on 26 June 1945 by representatives of 50 countries. Poland, even though it was not represented at the conference, as western powers did not recognize its Provisional Government, being a signatory of the Declaration of the United Nations of 1942, signed the Charter two months later and became one of the 51 original members of the United Nations Organization then established.

From the perspective of public international law, the Charter of the United Nations is an open multi party agreement, establishing an international organization and specifying its functions. The document, amended three times, consists of a preamble and 111 articles in 19 chapters. The Statute of the International Court of Justice constitutes an integral part of the Charter, and all the members of the United Nations are *ipso facto* parties to the Statute.

In Article 1 of the Charter, the major purposes of the United Nations are defined, including: to maintain international peace and security, to bring about by peaceful means settlement of international disputes, to develop friendly relations among nations, to achieve economic, social, cultural and humanitarian co-operation, to respect human rights and fundamental freedoms, and to be a centre for harmonizing the international actions.

In pursuit of those purposes, in line with Article 2 of the UN Charter, the member states shall fulfill in good faith the obligations assumed by them in accordance with the Charter, shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered, and shall refrain in their mutual relations from the threat or use of force. Overcoming the principle that states are bound only by norms adopted voluntarily, to maintain peace and security which are superior values, the UN ensures that states that are not its Members act in accordance with the principles expressed in the Charter.

The foundation of the UN, expressed in the Charter, is the principle of sovereign equality and independence of its Member States, according to which the UN is no authorized to intervene in matters which are essentially within the domestic jurisdiction of any state, with the exception

of application of enforcement measures under Chapter Vll, which has given rise to many controversies.

Even though the UN is based on the principle of settling disputes by peaceful means, the Charter contains measures regulating the use by Security Council of measures, including use of force in case the peace is threatened or breached, or in case of acts of aggression. The assessment whether a given conflict constitutes a threat of peace lies with the Security Council, which seems to be interpreting the concept more and more widely, incorporating into it, *inter alia*, human right abuse on a large scale.

In its remaining part, the Charter regulates the organization, functions and voting procedures in the UN organs, namely: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

The Charter of the United Nations entered into force on 24 October 1945, after it had been ratified by the United States, the United Kingdom, France, the USSR, China, and most of the signatories. To celebrate the anniversary, the United Nations Day has been established on that day. Since 2006, when Monte Negro ratified the Charter, the United Nations has had 192 members. The Charter is the second most widely recognized international treaty, after Convention on the Rights of the Child.

The position of the Charter among international agreements is special, comparable to that of constitutions in national legal systems. In case of discrepancies between UN members obligations resulting from the Charter and from any other agreement, the provisions of the Charter predominate.

The fact that the Charter was drawn up in five languages, equally authentic, namely in English, French, Spanish, Russian and Chinese, has often given rise to disputes as to its interpretation, most intense at the time of cold war when both the Security Council and General Assembly became a stage for conflict between the United States and the socialist countries.

The Charter of the United Nations, because of the historical context of its establishment, apart from being the UN organizational statute, is most of all a declaration of an idea, indicating ambitious tasks that should be strived for by the whole international community. Even though the Charter neither confers upon the UN any powers independent from the will of the states, nor creates any transnational authority capable of imposing desirable behaviours of the members of international community, for 60 years it has defined the most important, though respected in various degree, yet generally accepted, principles of peaceful coexistence between states.

Original text

Based on: Text of the Charter published on the UN website: www.un.org

Charter of the United Nations of 1945

Introductory note

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968.

The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from eighteen to twenty-seven. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from twenty-seven to fifty-four.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a "vote, of any seven members of the Security Council", the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

PREAMBLE

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH

THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Art. 1.

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and

encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Art. 2.

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in ccordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.

CHAPTER II
MEMBERSHIP

Art. 3.

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

Art. 4.

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Art. 5.

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council.

The exercise of these rights and privileges may be restored by the Security Council.

Art. 6.

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III
ORGANS

Art. 7.

1. There are established as the principal organs of the United Nations:

a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Art. 8.

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV
THE GENERAL ASSEMBLY
COMPOSITION

Art. 9.

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

FUNCTIONS and POWERS

Art. 10.

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Art. 11.

1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Art. 12.

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Art. 13.

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Art. 14.

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

(...)

VOTING

Art. 18.

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a twothirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

(...)

PROCEDURE

(...)

CHAPTER V
THE SECURITY COUNCIL
COMPOSITION

Art. 23.

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

FUNCTIONS and POWERS

Art. 24.

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Art. 25.

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Art. 26.

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and

economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

VOTING

Art. 27.

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

PROCEDURE

(...)

CHAPTER VI
PACIFIC SETTLEMENT OF DISPUTES

Art. 33.

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Art. 34.

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Art. 35.

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Art. 36.

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Art. 37.

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Art. 38.

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII
ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Art. 39.

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Art. 40.

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Art. 41.

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Art. 42.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Art. 43.

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Art. 44.

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate

in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Art. 45.

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Art. 46.

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Art. 47.

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Art. 48.

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they remembers.

Art. 49.

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Art. 50.

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Art. 51.

Nothing in the present Charter shall impair the inherent right of individual or collective selfdefence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII
REGIONAL ARRANGEMENTS
(...)

CHAPTER IX
INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION
(...)

CHAPTER X
THE ECONOMIC AND SOCIAL COUNCIL
(...)

CHAPTER XI
DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES
(...)

CHAPTER XII
INTERNATIONAL TRUSTEESHIP SYSTEM
(...)

CHAPTER XIII
THE TRUSTEESHIP COUNCIL

(...)

CHAPTER XIV
THE INTERNATIONAL COURT OF JUSTICE

Art. 92.

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Art. 93.

1. All Members of the United Nations are ipso facto parties to the Statute of the nternational Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Art. 94.

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Art. 95.

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Art. 96.

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV
THE SECRETARIAT

Art. 97.

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Art. 98.

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Art. 99.

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Art. 100.

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

(...)

CHAPTER XVI
MISCELLANEOUS PROVISIONS

Art. 102.

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Art. 103.

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Art. 104.

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Art. 105.

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII
TRANSITIONAL SECURITY ARRANGEMENTS

(…)

CHAPTER XVIII
AMENDMENTS

(…)

CHAPTER XIX
RATIFICATION AND SIGNATURE

(…)

STATUTE OF THE
INTERNATIONAL COURT OF JUSTICE

Art. 1.

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I
ORGANIZATION OF THE COURT

Art. 2.

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Art. 3.

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Art. 4.

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

(...)

Art. 13.

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

(...)

Art. 21.

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Art. 22.

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

(...)

Art. 25.

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Art. 26.

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

(...)

CHAPTER II
COMPETENCE OF THE COURT

Art. 34.

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Art. 35.

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Art. 36.

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;
b. any question of international law;
c. the existence of any fact which, if established, would constitute a breach of an international obligation;
d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37.

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Art. 38.

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations;
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III
PROCEDURE

(...)

CHAPTER IV
ADVISORY OPINIONS
(...)

CHAPTER V
AMENDMENT
(...)

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