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## **From the Union of Lublin to the Mutual Guarantee of the Two Nations**

### **ABSTRACT**

The purpose of this study<sup>1</sup> is to show changes in the legal and political nature of the alliance between the Kingdom of Poland and the Grand Duchy of Lithuania over the centuries, from the Union concluded in Lublin in 1569, through the so-called ‘coequatio iuris’ of 1697, until the regulations adopted in the Constitution of May 3, and the “Reciprocal Guarantee of Both Nations” crowning the process and passed at the Four-Year Sejm on October 20, 1791. The study uses a wide range of archival manuscript sources, old prints, parliamentary legislation, and also numerous studies using both old and current literature. The main research goal of the study was to show to what extent the changes in the legal nature of the union of the two countries led to their full unification, which was in the past (and sometimes still is) the interpretation of this process in many studies, and to what extent the federalist character of the Polish-Lithuanian Commonwealth was preserved, which is nowadays the dominant view and which the author of this study is a strong supporter of.

**Key words:** Union of Lublin, Mutual Guarantee of the Two Nations, union of Poland and Lithuania, Polish-Lithuanian Commonwealth

## Introduction

The historical development of the union of Poland and Lithuania has been the subject of numerous studies over the past two centuries. Particularly in the period of Poland's integration into common European structures, this issue has become current again.<sup>2</sup> Interestingly, German scholars have also recently become interested in this issue.<sup>3</sup> The union has been assessed from various points of view and perspectives: political history, history of the political system, economic history, social history, cultural affairs, language, art, etc. For a legal historian, the problem of the evolution of legal regulations shaping the character of the union of the Crown and the Grand Duchy of Lithuania is particularly interesting. Analysing the successive acts of union of the two states makes it possible to trace the changes that occurred in the legal and political structure of the Polish-Lithuanian Commonwealth. It will also be important to try to answer the question of whether this was a federative or unitary entity, and if the latter – starting at what point in time. The discussion on this topic has been ongoing for more than a century and has, as yet, not produced a clear answer.<sup>4</sup>

## Union of Lublin

It is best to start with the notion of union itself, especially its juridical and constitutional connotations. Scholars distinguish between two terms to

<sup>1</sup> This text appeared in Polish in: *Unie międzypaństwowe – Parlamentaryzm – Samorządność. Studia z dziejów ustroju Rzeczypospolitej Obojga Narodów*, ed. W. Uruszczaka, Z. Nogi, M. Zwierzykowski-Kogo, K. Fokta, Wydawnictwo Sejmowe, Warszawa 2020, pp. 65-90.

<sup>2</sup> See i.a.: *Unia lubelska i tradycje integracyjne w Europie Środkowo-Wschodniej*, ed. J. Kłoczowski, P. Kras, H. Łaszkiwicz, Lublin 1999; P. Nowina-Konopka, *Od Unii Jagiellońskiej do Unii Europejskiej*, [in:] *Europa Środkowa – nowy wymiar dziedzictwa*, ed. J. Purchla, Kraków 2002, pp. 51-56, as well as M. Sielski, *Unia lubelska jako projekt integracji w Europie*, *ibid.*, pp. 57-71. Personally, I consider comparisons of the sixteenth-century Union of Lublin with European Union, which was formed more than four centuries later, to be highly risky, considering, for example, the difference in the eras, the social and political formations and legal systems in which these structures arose.

<sup>3</sup> See M. Niendorf, *Die Beziehungen zwischen Polen Und Litauen im historischen Wandel. Rechtliche und politische Aspekte in Mittelalter und Früher Neuzeit*, [in:] *Reiche und Territorien in Ostmitteleuropa. Historische Beziehungen und politische Herrschaftslegitimation*, ed. D. Willoweit, H. Lemberg, München 2006, pp. 129-162. The Lithuanian historian R. Petrauskas also addressed this topic in the pages of the “Zeitschrift für Ostmitteleuropa – Forschung” in the article *Der litauische Blick auf den polnisch-litauischen Staatsverband – “Verlust der Staatlichkeit” oder Bewahrung der Parität*, vol. 53: 2004, no. 3.

<sup>4</sup> Most recently, W. Uruszczak has argued for state unity in the Polish-Lithuanian Commonwealth after 1569, thus questioning the thesis of its federal character. Cf. *idem.*, *Historia państwa i prawa polskiego*, vol. 1 (966–1795), 2<sup>nd</sup> ed., Warszawa 2013, pp. 206-209. Differently G.P. Słowik, J. Głuszek, *Unia czy państwo unitarne? Dylematy twórców Konstytucji 3 Maja wobec relacji Korony i Wielkiego Księstwa Litewskiego*, *Rocznik Stowarzyszenia Naukowców Polaków Litwy*, Rok 2021, T. 21A, s. 42-44

describe a union in a historical sense: “personal union” and “real union”. The former is based primarily on the person of a common monarch and comes into being incidentally (through election, dynastic law, marriage), whereas the latter is based on union also through other bodies and has its origin in a treaty.<sup>5</sup> The union of Poland and Lithuania in the Jagiellonian era was in principle – despite attempts to tighten it – limited to union through the community of dynasties and the person of the ruler. It was not until the end of the Jagiellonian era that the union was transformed into a stronger and more permanent structure. This came to pass on the initiative of Sigismund Augustus at the Sejm in Lublin on 1 July 1569. The Union of Lublin marked the beginning of the coexistence of “the Two Nations”, which was only interrupted after nearly two and a half centuries by the partitions of the Polish-Lithuanian Commonwealth.<sup>6</sup>

Efforts to strengthen the Polish-Lithuanian union were connected, on the one hand, with the struggle for the political emancipation of the nobility in the Grand Duchy from the influence of the powerful Lithuanian magnates, and on the other with the King’s attempt to save the union of the two states, threatened by the increasingly real vision of the end of the common dynasty.

The act of the Union of Lublin begins with the declaration:

iz już Królestwo Polskie i Wielkie Księstwo Litewskie jest jedno nierozdzielne i nieróżne ciało, a także nieróżna ale jedna spolna Rzeczpospolita, która się ze dwu państw i narodów w jeden lud zniosła i spoiła.<sup>7</sup>

[that the Kingdom of Poland and the Grand Duchy of Lithuania are now one indivisible and uniform body, as well as a uniform but single united Commonwealth, which has been brought together from two states and nations into one people].

5 In his textbook, *Historia państwa i prawa polskiego* (op. cit., p. 207), W. Uruszczak casts doubt on this understanding of a real union, stating that “unia realna to termin prawny oznaczający, że dwa państwa powiązane ze sobą zachowują swoją odrębność jako podmioty prawa międzynarodowego, jak też posiadają własne lokalne władze ustawodawcze, sądowe i wykonawcze. Łączy je natomiast wspólny urząd głowy państwa” [a real union is a legal term denoting that two states which are linked to each other retain their distinctness as subjects of international law and have their own local legislative, judicial and executive powers. However, they are united by the common office of head of state]. As an example, he cites Austria-Hungary after 1867, where each part retained its own international legal subjectivity, while the Crown and Lithuania, joining together to form the Polish-Lithuanian Commonwealth, became subject to “jednej suwerennej władzy prawodawczej i wykonawczej” [a single sovereign legislative and executive authority] (p. 208).

6 A similar view is expressed by Andrzej B. Zakrzewski, who claims that the end of the separate nature of the Grand Duchy of Lithuania was the third partition of the Commonwealth. Cf. *idem, Wielkie Księstwo Litewskie (XVI–XVIII w.). Prawo-ustrój-społeczeństwo*, Warszawa 2013, p. 36.

7 *Akta unii Polski z Litwą, 1385–1791*, ed. S. Kutrzeba, W. Semkowicz, Kraków 1932, p. 343; *Volumina Legum* (hereinafter: VL), vol. II, Petersburg 1859, p. 89.

This wording could suggest much more than the Act of the Union of Lublin did in reality, for the particular provisions clearly guaranteed the legal and political autonomy of the Grand Duchy. This resulted in particular from the provision (point 15):

iz przy tytule Wielkiego Księstwa Litewskiego, i dostojęństwach, i urzędziech wszystkich i zacności stanów (...) cale a nienaruszenie zostać ma, gdyż to zjednoczenia i społeczności tej roztargnienia i rozdziału nie czyni.<sup>8</sup>

[that the title of the Grand Duchy of Lithuania, and the high ranks, and all offices and dignities of the estates (...) shall remain intact, as this creates no division or separation in the union and community].

The permanence of the union was to be ensured by a common monarch and a common Sejm. The king, elected in a common election, became the Grand Duke of Lithuania at the same time, *temu obojemu narodowi żeby już wiecznemi czasy jedna głowa, jeden pan i jeden król spolny rozkazował* [for the two nations that for all time one head, one lord and one king shall rule]. Sejms, held in Warsaw, were to bring together representatives of both dignitaries and deputies representing both nations, gathering to *radzić o spolnych potrzebach* [to discuss their shared needs]. Moreover, the Act of Lublin introduced the unity of coinage, differing only in the matrix and the place they were minted. It also allowed for the mutual acquisition of property from each other and freedom of resettlement within the territory of the Commonwealth.

The separateness of the Grand Duchy was manifested in the maintenance of separate central offices (although identical to those of the Crown), a separate Lithuanian administration, army and treasury. Lithuanians also retained their own case law, based on the codification of the Second Statute of Lithuania passed in 1566. It should be noted that the Crown, despite several attempts, did not manage to codify the system of *prawo ziemskie* (land law) until the partitions, and the courts in Poland used Lithuanian law as a supplement.<sup>9</sup>

The last point of the Lublin treaty was a guarantee of its unchanging nature, stating that:

wszystkie rzeczy tu postanowione i obwarowane ani przez JKMość, ani przez pany rady i inne wszystkie stany i posły ziemskie obojga narodów za spólnem zezwoleniem ani pojedynkiem od której części i strony nie mają nigdy wieczne-

<sup>8</sup> Ibidem, p. 91.

<sup>9</sup> Cf. J. Bardach, *O Rzeczpospolitą Obojga Narodów. Dzieje narodu i państwa polskiego*, Warszawa 1998, p. 19-26; *idem*, *Prawo litewskie w Koronie Królestwa Polskiego*, [in:] *Kultura Litwy i Polski w dziejach. Tożsamość i współistnienie*, ed. J. Wyrozumski, Kraków 2000, pp. 51-65.

mi czasy być wzruszane i odmieniane, ale wieczne, całe i mocne zachowane być mają.<sup>10</sup>

[no things determined and established herein shall ever be changed or altered, either by His Majesty, or by the Lords of the Council, or by any other of the estates or deputies of the two nations, by mutual consent or alone, from what part or side, but shall be perpetually preserved, integral and firm.]

In fact, the common legislation of the Sejm after 1569 gradually made the system of Lithuania and the Crown, which formed the Polish-Lithuanian Commonwealth, more similar.<sup>11</sup>

### Coaequatio iuris

The first initiatives to tighten the links between Lithuania and the Crown after the Union of Lublin came from the Lithuanian provincial nobility.

From the 1630s, the Lithuanian nobility demanded the so-called alternation of the Sejm, which demanded that every third Sejm be held in Grodno. This was finally met in 1673. Beginning in 1569, for several decades there was a struggle to ensure that the position of Grand Marshal of Lithuania was equal to that of the Crown Marshal. The hierarchy of land offices in both countries was also gradually made equal.<sup>12</sup>

Aspirations to unify the political system of the Commonwealth were particularly apparent in what is known as the *koekwacja* movement, directed against Lithuanian magnates. Adoption of Polish political solutions was supposed to limit the hegemony of the local magnates and make the position of the Lithuanian nobility equal to that of the Crown nobles.

The concept of the "*koekwacja praw*" (or "co-equation" of rights) was advanced by Lithuanian nobility throughout almost the entire seventeenth century.<sup>13</sup> Initially, it was a call to all the noblemen of the Commonwealth

<sup>10</sup> VL, vol. II, p. 92.

<sup>11</sup> The concept of the Polish-Lithuanian Commonwealth as a unified state body, while maintaining the distinctness of the Grand Duchy of Lithuania, took shape in the first half of the seventeenth century. Earlier, especially in the 1560s, Lithuanians sometimes used the term "Rzeczpospolita Wielkiego Księstwa Litewskiego" [The Commonwealth of the Grand Duchy of Lithuania] or "Rzeczpospolita Litewska" [The Lithuanian Commonwealth]. Cf. A.B. Zakrzewski, *Wielkie Księstwo Litewskie...*, p. 272; T. Ambroziak, *Analiza użycia terminu „rzeczpospolita” w litewskich instrukcjach sejmikowych w latach 1587–1648*, CPH 2013, t. 65, nr 2, pp. 197-214.

<sup>12</sup> A.B. Zakrzewski, op. cit., pp. 276-278.

<sup>13</sup> See J. Malec, *Coaequatio Iurium Stanów Wielkiego Księstwa Litewskiego z Koroną Polską z 1697 roku*, „Acta Baltico-Slavica” 1979, XII, pp. 203-215 as well as T. Wasilewski, *Walka o zrównanie praw szlachty litewskiej z Koroną od unii lubelskiej do początku XVIII wieku*, „Zapiski Historyczne” 1986, t. 51, nr 1, pp. 45-62 and the literature contained therein.

for exorbitance, i.e., the removal of abuses and violations of the existing legal norms; later, new demands were added, such as a prohibition on appealing to royal and Sejm courts against the orders issued by the Lithuanian Tribunal,<sup>14</sup> or bringing the official hierarchy closer to the patterns of the Crown. The aspiration of Lithuanian nobility to replicate the patterns of the Crown system in Lithuania was also manifested in opposition to convening separate Lithuanian Convocations, which were dominated by the local oligarchy.

The “*koekwacja praw*” of 1697 was the first fundamental attempt at a closer union of Lithuania and the Crown since the real union concluded in Lublin. The introduction, signed by the *marszałek izby poselskiej* (Marshall of the Chamber of Deputies) Kazimierz Bieliński, included demands to equalize the rights of Lithuanian courts with those of the Crown, and to limit – and to compare to those existing in the Crown – the powers of the *hetman*, *kanclerz*, *marszałek* and *podskarbi* (the Hetman, Chancellor, Marshal, and Treasurer).<sup>15</sup>

One of the most important provisions of the *koekwacja* was the requirement that court verdicts be written in Polish, and not, as it had been the case until then, in the Ruthenian language. This was a result of the far-reaching cultural Polishisation of the Lithuanian nobility that took place in the sixteenth and seventeenth centuries.<sup>16</sup>

<sup>14</sup> H. Wisner, *Litwa wobec rokoszu (1606-1607)*, „Kwartalnik Historyczny” 1973, t. 79, nr 2, pp. 278-299.

<sup>15</sup> Bibl. Czart. Ms. 521, k. 667. VL, vol. V, p. 417 ff.

<sup>16</sup> Ibidem, p. 418. Cf. *Abrys domowej nieszczęśliwości i wewnętrznej niesnaski, wojny, Korony Polskiej i Wielkiego Księstwa Litewskiego pro informatione potomnym...wyrażony Anno 1721* (written by Fr. Jan Oleszewski), from the manuscript by F.K. Kulczycki, Kraków 1899, p. 4: “Na konwokacyjnej i to stańło: że ruskie pisma w kancelaryjach Wielkiego Księstwa Litewskiego, których dotąd obywatele tego narodu zażywali, i onymi się szczyząc wszelkie akta swoje odprawowali, znieśli i skassowali; i od tego czasu aby wszystkie sprawy po polsku z kancelaryjey, wydawane były, ...” [At the Convocation it was resolved that the Ruthenian script in the chancelleries of the Grand Duchy of Lithuania, which the citizens of that nation had hitherto used to keep all their documents and prided themselves on, was abolished and deleted; and that from now on all matters should be issued in Polish from the chancelleries ...] Oleszewski is opposed to this provision. He writes further (p. 14): “Jeżeli starożytne kancelaryje ruskie w Księstwie Litewskim zniozszy, używanie polskiego pisma postanowiła (koekwacja — dod. J.M.), w cóż dawne akta ruskie i wszystkie prawa, przywileja, swobody, i wolności, i posesje dóbr naszych obróć się, kiedy na ruskich prawach litewskich Księstwo ufundowane będąc, praw swoich przeczytać i onych tłumaczyć nie będzie umiało? zaprawdę, błąd wielki i nieumiejętność w prawie znaczna nastąpi i z wielkiej potrzeby do ruczyny znowu wrócić się trzeba będzie” [If the ancient Ruthenian chancelleries in the Duchy of Lithuania, having abolished the use of Polish writing, decided (*koekwacja* – my addition, J.M. ), what will all the old Ruthenian acts and all the rights, privileges, liberties, freedoms and possessions of our estates turn into, when the Duchy, being founded on the Ruthenian laws of Lithuania, will not be able to read and translate them? in truth, a great mistake and ignorance of the law will occur, and out of great need it will be necessary to return to Ruthenian again]. Meanwhile, as K. Chodynicki writes (*Kilka zagadnień z dziejów wewnętrznych Litwy po Unii Lubelskiej*, Pam. V Powsz. Zjazdu Hist. Pol. w Warszawie, Cz. I: Referaty, Lwów 1930, p. 131): “Postanowienie to z końca XVII wieku nie było bynajmniej jakimś ograniczeniem praw językowych, ale wprost wynikiem istniejących warunków.

In addition to the reorganisation of the judiciary, the *koekwacja* also introduced new rules for the relocation of the army to winter quarters.

Another issue was the restriction of the powers of the *marszałek* (Marshal) of the Grand Duchy of Lithuania in relation to Lithuanian nobility. He was forbidden to summon them before his court and to pass judgement on them on matters that exceeded his competence. If he failed to comply with these restrictions, he could be held responsible before the Tribunal, where he would be subject *penom w prawie pospolitym opisanym* (to the penalties described under common law).<sup>17</sup>

Failure to comply with the provisions of the *koekwacja* was to result in a case being brought before the Tribunal or the court of the Sejm and seizure of property.<sup>18</sup> This allowed the highest officials of the Grand Duchy to be brought before the Tribunal and tried, which previously had not been possible.

The second legal act, complementing the *koekwacja* – issued less than a year later – was the *Porządek sądzenia spraw w Trybunale Wielkiego Księstwa Litewskiego* [Order for the adjudication of cases before the Tribunal of the Grand Duchy of Lithuania].<sup>19</sup>

This document, which was drafted during the congress of Lithuanian nobility in Vilnius in April 1698 and passed with the support of several thousand sabres, was, like the *koekwacja* itself, a manifestation of the nobility's antagonism towards the Sapiehas. It was to be used by the Tribunal of the Grand Duchy, which, under the castellan of Vitebsk, Michał Kocieł, intended to try – in accordance with the law on *koekwacja* – Hetman Kazimierz Sapieha. However, the position of the Grand Hetman of Lithuania was still too strong,

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Język polski w tym okresie zdobył sobie powszechne użycie i posługiwanie się językiem ruskim nawet w aktach urzędowych stało się wprost anachronizmem. Tak więc właściwie ustawa z roku 1696 (!) była jedynie stwierdzeniem istniejących już stosunków” [This decision from the end of the seventeenth century was by no means a restriction of linguistic rights, but a direct result of the existing conditions. The Polish language became widely used in that period, and the use of the Ruthenian language even in official acts had become an anachronism. Thus, in fact, the law of 1696 (!) was only a statement of existing relations]. It is possible that in the eastern areas of the Grand Duchy the Ruthenian language was still in use, and Oleszewski was the *ihumen* (hegumen) of the Boruny monastery, located south-east of Ashmyany, which may explain his reservations (*Wielka Encyklopedia Powszechna Ilustrowana*, Series II, vol. V-VI, Warszawa 1908, p. 129).

<sup>17</sup> VL, vol. V, p. 419.

<sup>18</sup> Ibidem, p. 420: “Inquantumby kto świeżo napisanemu prawu sprzeciwił się, takowy *pro hoste patriae* za dowodem *declaratur sub privatione honorum et bonorum*, o co *forum* każdemu, wolne, lub do Trybunału, lub na Sejm, dobra jego *pro vacanti* podane być mają” [*Inquantumby*, if someone objects to a newly written law, such *pro hoste patriae* as proof *declaratur sub privatione honorum et bonorum*, because of which, *forum* to everyone, freely, or to the Tribunal, or to the Sejm, his property *pro vacanti* shall be given].

<sup>19</sup> *Porządek sądzenia spraw w Trybunale Wielkiego Księstwa Litewskiego z Konstitutii Sejmowych z Koequatiej Praw W.X.L. z Koroną Polską i z Statutu W.X.L. zebrany i opisany. Roku 1698, Miesiąca Aprila, 16 dnia.*

so not only did the trial not take place, but the dispute over the implementation of *Coaequatio Iurium* continued for many years.<sup>20</sup>

Despite the difficulties in its implementation, the *koekwacja praw* was of great importance. It provided a legal basis for bringing the highest officials of the Grand Duchy under tribunal jurisdiction on an equal footing with the rest of the nobility, and introduced social control over state spending, although the enforcement of these powers was not a simple matter. Finally, it was a serious step towards a further strengthening of ties between “*obojga narodów*” (the two nations).

As Piwarski wrote, “‘Republikanci’ litewscy dążąc do ‘koekwacji praw’ przyspieszali w istocie proces zanikania różnic i odrębności prawnych (...) obu krajów”<sup>21</sup> [Lithuanian ‘republicans’ striving for the ‘*koekwacja praw*’ (‘coequation of rights’) significantly accelerated the process of the disappearance of legal differences and distinctions between (...) the two countries]. *Koekwacja* “zacierając różnice w dotychczasowym ustroju naczelnych organów administracji państwowej pomiędzy Koroną a Litwą, wykraczała daleko poza znamieny objaw burzliwej walki szlachty litewskiej z rodzimym możnowładztwem: stanowiła ważne ogniwo w ewolucji ustrojowej całej Rzeczypospolitej polsko-litewskiej: od dwoistości rządowej unii lubelskiej ku jedności rządu w Radzie Nieustającej”<sup>22</sup> [*koekwacja*], in erasing the differences in the system of the main bodies of state administration between the Crown and Lithuania, went far beyond being a symptom of the struggle between the Lithuanian nobility and the local magnates: it was an important link in the evolution of the system of the whole Polish-Lithuanian Commonwealth from the duality of government of the Union of Lublin to the unity of government in the *Rada Nieustająca* (Permanent Council)]. At the same time, this was the end of the activity of the Lithuanian nobility striving for a political rapprochement between the two nations.<sup>23</sup>

<sup>20</sup> The struggle to implement the provisions of the *koekwacja* is reflected in a number of documents from the period. Cf. B. Czart. Ms. 192, pp. 29-40, 262-266, 354, 451-453.

<sup>21</sup> K. Piwarski, *Opozycja litewska pod koniec XVII wieku*, [w:] *Pamiętnik V Powszechnego Zjazdu Historyków Polskich w Warszawie*, Lwów 1930, p. 271.

<sup>22</sup> J. Woliński, *Koekwacja praw na Litwie 1697 r.*, [w:] *O naprawę Rzeczypospolitej XVII-XVIII w*, Warszawa 1965, p. 192.

<sup>23</sup> A.B. Zakrzewski draws attention to the paradoxical situation in which the reforms aiming to equalise the rights of both parts of the Commonwealth made them similar to each other, at the same time creating conditions conducive to unification. At the same time, Lithuania, while maintaining legal and political equivalence with the Crown, was increasingly perceived as one of the three provinces, alongside Małopolska (Lesser Poland) and Wielkopolska (Greater Poland) (op. cit., p. 280-281. See also: *idem*, *Paradoksy unifikacji prawa i ustroju Wielkiego Księstwa Litewskiego i Korony XVI-XVIII w.*, CPH 1999, t. 51, nr 1-2, pp. 219-238).



## Further attempts to tighten the union between Poland and Lithuania in the 18<sup>th</sup> century

The next stage of intensification of unification tendencies, which took place in the second half of the eighteenth century, was characterised by the Polish side taking the initiative, with the provinces of the Grand Duchy of Lithuania – this time – defending their prerogatives and rights resulting from the state dualism guaranteed by the act of union.

The reign of Stanisław August Poniatowski was marked by a gradual reshaping of the legal relationship between the two constituent parts of the *Rzeczpospolita szlachecka* (Republic of Nobles) – the Crown and the Grand Duchy of Lithuania. These transformations, aimed at a stronger centralisation of the executive apparatus of the state, brought with them a number of proposals and practical solutions aimed at creating new collegiate government institutions common to the Crown and Lithuania. This was to lead to a closer union of the two nations, without, however, being in conflict with the provisions of the Union of Lublin<sup>24</sup>. This was, moreover, guaranteed by the Cardinal Laws first adopted in 1768 and then renewed in 1775<sup>25</sup>. These stated that:

Wielkie Księstwo Litewskie, unią z Koroną wieczyście spojone, według warunków swoich jako też inne prowincje i ziemie, jedno ciało Rzeczypospolitej składające, jako z tymże ciałem swoim nierozdzielnie zostawać będą, uroczyście sobie przyrzekamy.<sup>26</sup>

<sup>24</sup> The provisions of the Union of Lublin were understood in a similar manner in the seventeenth century, which is confirmed by the “Odpowiedź Litwinom z pokojowej kancelarii królewskiej” [Response to the Lithuanians from the King’s Peace Chancellery] of 19 January 1694: “Taka jest a Volumina Legum deklaracja, że te oboje państwa od dawnych czasów w jedno złączone są, a to takie jedno, iż nie tylko w jeden animusz albo w jedną myśl, w jedną zgodę, w jedną miłość, w jedną spólną przyjaźń, acz i to wszystko tak jest, ale też ktemu w jedno ciało, a ciało nie różne, nie rozdzielne, jakie przywileje spólne omawiają spólne są. A zatym sama rzecz pokazuje, iż w jedną Rzeczpospolitą jednego ludu, który się przez związek i spojenie dwóch narodów w jedność jednostajną nierozdzielną zniósł; spoił. Tak iż już jako te państwa nie są dwa ciała tak też dwie Rzeczypospolite być nie mogą a jedna Rzeczpospolita z tych narodów spojona, zatym spólne sejmy i rady mieć zawsze mają pod jednym królem i pod jedną głową” [This is a *Volumina Legum* declaration that the two states have been united as one since time immemorial, and that they are so united that they are not only united in one spirit or thought, in one accord, in one love, in one friendship, even though all this is so, but also united in one body, and the body is not different, not separate, the privileges of which are discussed together. And thus the thing itself shows, that into one Republic of one people, which through the union and merging of two nations into one uniform inseparable unity; joined. Therefore, as the states are not two bodies, neither can they be two Commonwealths, but one Commonwealth united from these nations, and common assemblies and councils are always to be held under one king and head]. Bibl. Czart., Ms. 184, p. 35.

<sup>25</sup> VL, vol. VII, p. 279; vol. VIII, p. 49-50.

<sup>26</sup> Ibidem, point IX.

[The Grand Duchy of Lithuania, eternally joined with the Crown by a union, according to its own conditions, with other provinces and lands constituting the one body of the Commonwealth will be inseparable from that body, do solemnly pledge.]

The only real sign of rapprochement between Lithuania and the Crown in 1764–1787 was the establishment of two new joint institutions: *Rada Nieustająca* (Permanent Council) and *Komisja Edukacji Narodowej* (Commission of National Education). Especially the former was of great importance as a governmental body with broad powers and responsibilities.

While the creation of *Komisja Edukacji Narodowej* did not resonate at all in Lithuania, the project to establish a joint government provoked a fierce discussion in the forum of the Sejm.<sup>27</sup> The main issue was to guarantee a sufficient number of seats for Lithuanians on the council. Deputies from the Grand Duchy initially demanded parity with the Crown, eventually agreeing to a ratio of 1:2, thus placing an equal sign between the three provinces of the Commonwealth: Małopolska (Lesser Poland), Wielkopolska (Greater Poland) and Lithuania.<sup>28</sup>

A characteristic feature of the particularism of the Lithuanian nobility at that time was its constant demand that the union be preserved in an unchanged form and that all the distinctions belonging to the Grand Duchy be preserved, both in the system and in judicial law.

<sup>27</sup> See J. Malec, *Szkice z dziejów federalizmu i myśli federalistycznej w nowożytnej Europie*, Kraków 2003, p. 73 ff.

<sup>28</sup> Wincenty Skrzetuski understood Lithuania's position vis à vis the Crown in two ways. He wrote: *Podział jej polityczny, czyli do prawa krajowego stosowany, jest na Wielką Polskę, Małą Polskę i Litwę. Wszędy albowiem o trzech prowincjach i o trzech narodach wzmianka, i we wszystkich rządu tyczących się okolicznościach, trzy te narody porządek między sobą, przodkowania kolej i równość zachowują. Ze zaś Litwa później do Polski przyłączona, ma swój osobny skarb, osobne wojsko, osobny Trybunał, osobnych wojny i pokoju ministrów i osobne niektóre prawa, stąd drugi polityczny Królestwa podział na Koronę i Wielkie Księstwo Litewskie* [The political division of Poland, that is, the division applied to national law, is between Greater Poland, Lesser Poland and Lithuania. For everywhere three provinces and three nations are mentioned, and in all governmental circumstances, these three nations maintain order among themselves, their succession and equality. As Lithuania was later incorporated into Poland, it had its own separate treasury, separate army, separate tribunal, separate ministers of war and peace, and separate laws, hence the second political division of the Kingdom into the Crown and the Grand Duchy of Lithuania] (W. Skrzetuski, *Prawo politycy narodu polskiego*, t. 1, Warszawa 1782, p. 13. According to A.B. Zakrzewski, the Grand Duchy of Lithuania was, in a legal sense, alongside the Crown, one of the two parts of the Polish-Lithuanian Commonwealth (after all, it was "the two" and not "three" nations – J.M.), but in practice it was more and more often treated as one of the three provinces (*idem*, *The Wielkie Księstwo Litewskie...*, p. 281. This, however, did not result from a desire to diminish the importance of Lithuania, but above all from the proportions between the Crown and Lithuania, which after the incorporation of the provinces of Podlachia, Volhynia, Kiev and Bratslav to Poland in 1569, both in terms of size and income constituted one third of the Commonwealth.

## Four-year Sejm

A fundamental step in the further unification and stronger union of the Crown and Lithuania took place during the Four-Year Sejm.

The political writing of the period advocated centralisation and unification of the state to the fullest extent possible, seeing this as a means to strengthen the failing Commonwealth. Stanisław August Poniatowski himself was particularly strongly in favour of this.<sup>29</sup> At the same time, people did not speak against the union itself, trying to justify it by the desire to develop the provisions of the Union of Lublin and to strengthen the ties of union.

This was reflected in the Cardinal Laws of 1791, which fully accepted the relationship of union between Poland and Lithuania.

One of the most urgent matters was the reorganisation of the military. As a result of the great unpopularity of the *Departament Wojska Rady Nieustającej* (Military Department of the Permanent Council), as well as of the Council itself, it was decided that the administration of the military would be entrusted to another magistracy. Slowly the idea of creating a single joint military commission began to emerge. This was debated for over a month. Eventually, the Lithuanian deputies, after a long delay, agreed to establish a single Military Commission for both nations, reserving a third of the seats and holding every third meeting in Lithuania.<sup>30</sup>

In spite of the King's efforts, on 19 January 1789 the *Rada Nieustająca* (Permanent Council) was abolished by a large majority of votes,<sup>31</sup> mainly due to its heavy dependence on neighbouring powers, particularly Russia. It was to be reinstated, albeit for a short time, by the Grodno Sejm in 1793.

At the end of 1789, two separate laws were passed – one each for the Crown and Lithuania – on the *komisje porządkowe cywilno-wojskowe* (Civil and Military Order Commissions), which were the first modern bodies of territorial government in Poland.<sup>32</sup> However, the differences in the organisation of the commissions were only minor.

<sup>29</sup> See the royal project *Ucalenie unii Wielkiego Księstwa Litewskiego z Koroną Polską* [Saving the Union of the Grand Duchy of Lithuania with the Crown of Poland] preserved as a manuscript in the collections of the Library of the Czartoryski Museum in Kraków (Bibl. Czart., Ms. 817, no 14, k. 63-72) as well as a later version in the Archiwum Głównym Akt Dawnych (hereinafter: AGAD, Central Archives of Historical Records in Warsaw) (AGAD, Arch. Publ. Potockich 313/II).

<sup>30</sup> Cf. T. Korzon, *Wewnętrzne dzieje Polski za Stanisława Augusta (1764–1795)*, t. 5, Kraków – Warszawa 1897, p. 30-31. After passage of the *Zaręczenia wzajemnego obojga narodów* (Mutual Guarantee of the Two Nations) there were changes in the composition of the committee, with Lithuania receiving an equal number of seats to the Crown.

<sup>31</sup> W. Kalinka, *Sejm Czteroletni*, t. 1, Lwów 1884, pp. 368-377; VL., vol. IX, p. 64.

<sup>32</sup> H. Izdebski, *Historia administracji*, 3<sup>rd</sup> ed., Warszawa 1996, pp. 56-57; J. Malec, D. Malec, *Historia administracji i myśli administracyjnej*, 2<sup>nd</sup> ed., Kraków 2003, pp. 72-73.

The next stage in the work of the Sejm was the preparation of a wide-ranging plan for reform of the system of the state, which was to have an influence on the mutual relations between the two constituent parts of the Commonwealth, the Crown and Lithuania.

On 7 September 1789, a deputation was appointed to improve the form of government,<sup>33</sup> which

prawa kardynalne, magistratur zwierzchnich obowiązki, władzę i między niemi stosowność zgoła całą rządu politycznego państw Rzeczypospolitej formę opisze, (...) całkowite zaś dzieło do decyzji (...) stanom Rzeczypospolitej przyniesie.<sup>34</sup>

[Cardinal Laws, the duties of the supreme magistrates, their authority, and between them the entire form of the political government of the states of the Commonwealth, (...) will describe the entire work to be decided upon (...) by the estates of the Commonwealth]

Editing of the draft was entrusted to Ignacy Potocki.

He drew up and on 17 December 1789 submitted to the Sejm the draft of the *Zasady do poprawy formy rządu* (Principles for the Improvement of the Form of Government), which was accepted on 23 December<sup>35</sup> and debated a day later.<sup>36</sup> The *Zasady*, while formulating certain fundamental laws, omitted the question of Poland's relations with Lithuania.

The deputation initially only submitted to the Sejm a draft law on *sejmiki* (local assemblies). The Cardinal Laws were to be drafted last, as it was hoped that they might be omitted from the final draft.<sup>37</sup> "Sejm zażądał jednak całości. Po dłuższych debatach i ponagleniach deputacja wypracowała obszerny projekt nowej formy rządu i złożyła go w izbie skonfederowanych stanów z początkiem sierpnia 1790 r."<sup>38</sup> [The Sejm, however, demanded it in full. After lengthy

33 B. Leśnodorski, *Dzieło Sejmu Czteroletniego (1788–1792)*, Wrocław 1951, p. 145. The act on its establishment was promulgated on 10 September. Cf. also W. Kalinka, *Sejm Czteroletni*, p. 627. As called for by the Sejm resolution establishing the deputation, it began to receive anonymous drafts, usually referred to as "thoughts", "views" or "prospects". Some of them also dealt with the affairs of the Lithuanian hinterlands. The "Thoughts to improve the government" proposed, among other things, to increase the number of senators in the Grand Duchy by appointing a *kasztelan* (castellan) in each *powiat* (county) (AGAD, Archiwum Publiczne Potockich [APP] 98, p. 168). We find the same thing in another draft, except that the proposal was limited to giving county marshals (*marszałki powiatowe*) the right to sit in the Senate (AGAD, Archiwum Sejmu Wielkiego [ASW] 15: *Różne pisma sejmowe*, k. 63).

34 VL., vol. IX, pp. 107–108.

35 W. Kalinka, op. cit., p. 652–662.

36 VL., vol. IX, pp. 157–159.

37 *Zbiór mów i pism niektórych w czasie sejmu stanów skonfederowanych roku 1788*, w Wilnie w drukarni JKM przy Akademii, t. III, p. 1 ff. As well as H. Kołłątaj, *O ustanowieniu i upadku Konstytucji 3 maja*, 1793, vol. I, p. 195.

38 B. Leśnodorski, *Dzieło Sejmu*, p. 153.

debates and much prodding, the deputation worked out an extensive draft of a new form of government, and submitted it to the Chamber of the confederated estates at the beginning of August 1790].

The draft began with the Cardinal Laws, the first of which was an article defining the mutual relations between the Crown and the Grand Duchy:

I. Prowincje koronne i Wielkie Księstwo Litewskie unią wieczyście spojone według warunków swoich jako też inne ziemie jedno ciało Rzeczypospolitej Polskiej składające, z tymże ciałem swoim nierozdzielnie zostawać będą. To prawo za kardynalne uroczyście uznajemy.<sup>39</sup>

[The Crown Provinces and the Grand Duchy of Lithuania, joined in perpetuity according to their own conditions, with other lands constituting the one body of the Commonwealth of Poland, shall remain inseparable from that body. We solemnly declare this law to be cardinal].

This formulation came from the pen of Ignacy Potocki. It is noteworthy that this text is in its entirety nearly a verbatim repetition of Article IX of the Cardinal Laws of 1768 and 1775.<sup>40</sup> The only fundamental difference lies in the fact that Potocki introduced a slightly different name, suggesting greater unity of the state body – *Rzeczpospolita Polska* (Commonwealth of Poland) (instead of the former *Rzeczpospolita Obojga Narodów* [the Polish-Lithuanian Commonwealth or the Commonwealth of the Two Nations]).

Looking further, a certain similarity can also be found here to the formulations of the Pragmatic Sanction issued by Charles VI in 1713, declaring all Habsburg lands to be a “nierozzerwalna (*unzertrennlich*)” (inseparable) and “niepodzielna (*unzertheilig*)” (indivisible) whole.<sup>41</sup>

The first point of the draft, while not undermining the nature of the union of the two nations resulting from the terms of the Union of Lublin, defined the Commonwealth as one inseparable body.<sup>42</sup> However, this did not constitute a novelty in relation to similar formulations of the Union of 1569,<sup>43</sup> as well as the Cardinal Laws mentioned above.

<sup>39</sup> AGAD, APP, 99 (*Oryginał projektu do konstytucji od Deputacji na Sejmie Czteroletnim zanesionego z którego projekt drukowano*).

<sup>40</sup> Por. VL., vol. VII, p. 279 and vol. VIII, pp. 49-50.

<sup>41</sup> Cf. *Kodeks prawa politycznego*, compiled by S. Starzyński, Lwów 1903, p. 227-229.

<sup>42</sup> As in the Act of the Union of Lublin, this by no means implied a unitarian nature of the Polish-Lithuanian state, which retained its dualistic form, only appearing in international relations as a single state body.

<sup>43</sup> *Iż już Polska i Wielkie Księstwo Litewskie, jest jedno nierozdzielne i nieróżne ciało, a także nie różna ale jedna spólna Rzeczpospolita: która się z dwu państw i narodów w jeden lud zniosła i spoiła* [That now Poland and the Grand Duchy of Lithuania are one indivisible and uniform body, as well as a uniform but single united Commonwealth, which has been brought together from two states and nations into one people], VL., vol. II, p. 770.

It can therefore be concluded that the deputation draft did not introduce major changes to the relationship between the two nations.

In the final draft of the Cardinal Laws of January 1791, which was passed first by the Sejm nearly verbatim, there was some rewording in the matter of interest to us here. Article I of the given draft was replaced by two rather significantly expanded articles:

V. Królestwo Polskie i Wielkie Księstwo Litewskie z wszystkimi księstwami, województwami, ziemiami, powiatami, feudami, wszelkimi miastami i portami do siebie należącymi, wieczystą unią podług uroczystych warunków nawzajem złączone, na zawsze w nienaruszonym związku, złączeniu i całości zostawać ma. (W tekście zawartym w Volumina Legum słowo całości zastąpiono słowem “trwałości”. Ponadto dodano: *Nie będzie się godziło na żadnym sejmie, ani komużkolwiek bądź, żadnej części zamieniać, tym bardziej od ciała Rzeczypospolitej oddzielać, ustępować, lub oddzielenie albo zamianę przedsiębrać*).

VI. Królestwo Polskie i Wielkie Księstwo Litewskie ze wszystkimi księstwami, województwami, ziemiami i powiatami, z których się teraz Rzeczpospolita składa i napotym składać będzie, jest i na zawsze być ma Rzeczpospolitą wolną i nikomu niepodległą, która Rzeczpospolita jedno i nierozdzielne składając ciało, sama w stanie szlacheckim prawa dla narodu stanowi, jest mocna i tym tylko naród posłuszeństwo winien.<sup>44</sup>

[V. The Kingdom of Poland and the Grand Duchy of Lithuania, with all their principalities, provinces, lands, counties, fiefs, and all cities and ports belonging to them, bound together in a permanent union according to solemn conditions, are to remain forever in an inviolable union, in unity, in their entirety. (In the text contained in the *Volumina Legum*, the word “całość” [entirety] was replaced by the word “trwałość” [permanency]. Moreover, the following was added: “There shall be no consent at any Sejm or by anyone else that any part of the Commonwealth be changed, even less be separated from the body of the Commonwealth, ceded, or to undertake to separate or exchange it”).

VI. The Kingdom of Poland and the Grand Duchy of Lithuania, together with all the principalities, provinces, lands and counties of which the Commonwealth now consists and hereafter shall consist, is and forever shall be a free Commonwealth, dependent on no one, the Commonwealth consisting of one and indivisible flesh, itself the estate of nobility, establishes the laws for the nation, is strong, and to only this does the nation owe its allegiance.]

It is easily apparent that the sentences added in the final version, both in Article V (as contained in *Volumina Legum*) and in Article VI, were intended to emphasise the independence, full sovereignty and inalienability of the territories

<sup>44</sup> AGAD, ASW, 13, p. 660, 667 and VL., vol. IX, pp. 203-204.

comprising the Commonwealth. This was by all means understandable given the political situation in which Poland found itself at the time, and it was also a reference to the guarantees of inviolability of Polish territory contained in the Treaty following the First Partition.<sup>45</sup>

Compared with the first deputation draft, there was a difference in nomenclature. The terms *provincje koronne i Wielkie Księstwo Litewskie* [the Crown Provinces and the Grand Duchy of Lithuania] were replaced by the terms *Królestwo Polskie i Wielkie Księstwo Litewskie* [the Kingdom of Poland and the Grand Duchy of Lithuania], and the name *Rzeczpospolita Polska* (Commonwealth of Poland) proposed by Potocki was not introduced. More importantly, in place of the wording about the inseparability of all lands from the body of the Commonwealth, the new draft spoke of a *nienaruszonym związku, złączeniu i trwałości* [inviolable union, in unity and in permanency]. This gave the impression of a stronger emphasis on the union itself, arising more from the phrasing of union and unity rather than indivisibility.

Thus, neither did the last edition of the Cardinal Laws produce any significant changes to the general concept on which the union between Poland and Lithuania had been founded at the Sejm of Lublin of 1569. Even the Cardinal Laws approved at the Sejm of Grodno in 1793 were more similar in content (concerning the relations between Lithuania and the Crown) to the concept contained in the draft by Ignacy Potocki.<sup>46</sup> Naturally, this did not preordain actual rapprochement between the two nations through the creation of common institutions in the spirit of the centralisation of the state apparatus propagated at the time.

## The Union and the Governance Act of 1791

The Governance Act passed on 3rd May 1791 silently ignored the issue of the Polish-Lithuanian Union.<sup>47</sup> It did not include the previously commonly used

<sup>45</sup> Cf. VL., vol. VIII, Art. IV, p. 22, Art. IV, p. 32, Art. VI, p. 45.

<sup>46</sup> *Królestwo Polskie i Wielkie Księstwo Litewskie ze wszystkimi księstwami, województwami, ziemiami i powiatami według praw im służących w jedno i nierozdzielne ciało jak jest spojone, tak być ma na zawsze Rzeczpospolitą nierozdzielną, wolną, nikomu nie podległą, której władza najwyższa prawodawcza zamyka się w sejmie* [The Kingdom of Poland and the Grand Duchy of Lithuania, together with all the principalities, provinces, lands and counties in accordance with the rights due them, shall be joined as one indivisible body, and shall be forever inseparable, free and subject to no one, the supreme legislative power of which shall be vested in the Sejm]. Cited in Z. Radwańskim, *Prawa kardynalne w Polsce*, Poznań, 1952, p. 178.

<sup>47</sup> According to A.B. Zakrzewski, this was the result of concessions made by representatives from the Grand Duchy, who, due to the difficult situation the state faced, agreed to this issue being settled in the course of the subsequent work of the Sejm, op. cit. pp. 284-285. This was also the case, as evidenced by the adoption on 20 October 1791 of the *Zaręczenie Wzajemnego Obojga Narodów* [Mutual Guarantee of the Two Nations], which was later recognised as a constituent part of the Constitution of the Third of May.

term *Rzeczpospolita Obojga Narodów* [Polish-Lithuanian Commonwealth or the Commonwealth of the Two Nations], or *Rzeczpospolita* [Commonwealth] in the sense of a union of two states. The state is referred to as the *Ojczyzna* [Fatherland], or *Polska* [Poland], and the confederated states are defined in the preamble to the Constitution as representatives of the *naród polski* [Polish nation]. The only mention of the Grand Duchy of Lithuania occurs in the title of the monarch and the signature of the marshal of the Lithuanian confederation.<sup>48</sup>

It is generally believed that by creating a uniform Polish state, the Constitution abolished the relationship of real union that had existed since 1569.<sup>49</sup> There are no grounds for this, even though “zapewne taka była cicha intencja Stanisława Augusta”<sup>50</sup> [surely this was the quiet intention of Stanisław August], especially in view of the subsequent legislation of the Four-Year Sejm, in which there is still explicit mention of the relationship of union, or even of its renewal.<sup>51</sup> What is indisputable, however, is the fact that the Constitution of the Third of May consolidated power in the central level of the state, thus weakening the actual union itself, which from that time on existed more as a manifestation of political tradition than as a real union of two independent state bodies linked by the person of the monarch and a common legislative body. In the latter sense, the real union had already lost its former character with the establishment of the *Rada Nieustająca* (Permanent Council).

The *Ustawa Rządowa* (Governance Act) introduced a common supreme executive authority, the *Straż Praw* (Guardians of the Laws), and joint government commissions, of which only two, Military and National Education were joint commissions at that time. The other two, the Police and the Treasury, did not merge until a few months later (the first in June, the second in October), and not without considerable opposition from the representatives of the Lithuanian Province. The constitution left separate, though identical in name and competence, central and local offices, a separate judiciary, and sessions of the provincial Sejm.

<sup>48</sup> J. Bardach, *Konstytucja 3 maja a unia polsko-litewska*, „Przegląd Historyczny” 1991, t. 82, nr 3-4, p. 389.

<sup>49</sup> Cf. S. Kutrzeba, *Unia Polski z Litwą*, Lwów 1914, p. 209; B. Leśnodorski, *Dzieło Sejmu*, p. 239-241; id., *Institutions polonaises au siècle des Lumières*, Warszawa 1962, pp. 31-32; J. Michalski, *Zagadnienie unii polsko-litewskiej w czasach panowania Stanisława Augusta*, „Zapiski Historyczne” 1986, t. 51, nr 1, p. 114.

<sup>50</sup> Ibidem.

<sup>51</sup> Cf. VL., vol. IX, p. 316. Just two days after the adoption of the Constitution, the *Deklaracja Stanów Zgromadzonych* [Declaration of the Assembled Estates] of 5 May saw a return to Union terminology. It speaks of the “państwach Korony Polskiej i Wielkiego Księstwa Litewskiego” [states of the Polish Crown and the Grand Duchy of Lithuania] and the instigators of the “Obojga Narodów” [Two Nations]. J. Bardach rightly sees this as “chęci upewnienia Litwinów, że dualistyczna organizacja państwowa nie uległa zmianie” [a desire to reassure the Lithuanians that the dual nature of the state had not changed]. (op. cit., p. 398). Cf. also *Konstytucja 3 maja 1791 r.*, red. J. Kowecki, Warszawa 1981, p. 105.



At this point, some attention should be devoted to the notion of the term *naród* [nation], which was often used in different senses at that time. In the legal acts of this period, we can find both the phrasing of two nations, the Polish and Lithuanian (e.g. *Rzeczpospolita Obojga Narodów* [The Commonwealth of the Two Nations], *Komisja Wojska Obojga Narodów* [The Commission for the Military of the Two Nations], etc.), as well as, especially in the text of the Constitution of the Third of May, the notion of one Polish nation (e.g. *trzy władze rząd narodu polskiego składać powinny, stany skonfederowane, w liczbie podwójnej naród Polski reprezentujące* [three powers the government of the Polish nation should consist of, the confederated estates, double in numbers representing the Polish nation], etc.). As far as the nature of Poland's relationship with Lithuania is concerned, it seems that the use of the concept of one nation did not have much formal or legal significance. As a result of the complete Polonisation of the Lithuanian nobility in the eighteenth century, the notion of two separate nations became less and less meaningful, and the replacement of this notion with the term one nation was primarily intended to mean the community of the noble estate. For Lithuanians, what was more important than marking the separateness of the nation was to secure the separate prerogatives of the Lithuanian province and ensure it a legal and political position equal to the Crown within the Commonwealth.<sup>52</sup> Speaking of themselves as a separate Lithuanian nation, they probably understood this more in the realm of tradition than a real sense of national distinctiveness. Paraphrasing the expression once used by the Ruthenians, one can therefore assume, in regard to the Lithuanian nobility, that they were *gente Lithuani natione Poloni* [of Lithuanian descent, of the Polish nation].

<sup>52</sup> This is evidenced by *sejmiki* instructions in Lithuania, which are cited extensively by J. Bardach, op. cit., p. 395 ff. He writes, among other things, that "instrukcje sejmikowe (...) zmierzały, najogólniej rzecz ujmując, do utrzymania politycznej podmiotowości Wielkiego Księstwa i cechujących go odrębności w funkcjonowaniu Sejmu, strukturze władz i sądownictwa. Podstawami tego partykularyzmu - bo nie separatyzmu - były akt Unii lubelskiej i III Statut litewski. Formułując te postulaty sejmik wileński stwierdzał (...) że ma się nimi rządzić „Naród Polski”, poświadczając istnienie w tym czasie - wśród szlachty przynajmniej - dwuszczeblowego pojęcia Narodu Polskiego jako całości obejmującej Koroniarzy i Litwinów" [the instructions for the *sejmiki* (...) were in general aimed at maintaining the political subjectivity of the Grand Duchy and its distinctiveness in the functioning of the Sejm, the structure of the authorities and the judiciary. The basis for this particularism - not separatism - was the Act of the Union of Lublin and the Third Statute of Lithuania. In formulating these postulates, the Vilnius *sejmik* stated (...) that they were to be governed by the "Polish Nation", thus confirming the existence at the time - among the nobility at least - of a two-tier concept of the Polish Nation as a whole comprising those from the Crown and Lithuanians]. (op. cit., p. 397).

## The mutual guarantee of the two nations

The culmination of the process of shaping the relationship between Poland and Lithuania at the Four-Year Sejm was the adoption of the Sejm Constitution entitled the *Zaręczenie wzajemne obojga narodów* [The Mutual Guarantee of the Two Nations], on 20 October 1791. This was connected with the need to reach a compromise during the establishment of the last common central magistracy – the *Komisja Skarbu* [Treasury Commission].

Reporting on the draft, Marshal of the Lithuanian Confederation Kazimierz Nestor Sapieha declared that Lithuania:

godzi się na jeden skarb, na jedną onego administracją; warunki tylko udzielnosc jej dowodzące pragnie mieć zachowane. Aby mimo zatrzymania równej liczby ministrów i urzędników nadwornych dla prowincji litewskiej, z temiż samemi tytułami i obowiązkami, jakie Korona kiedykolwiek mieć będzie, równa i taka połowa osób z Litwy jaka będzie z prowincjów koronnych determinowana składała kommissją skarbową i wojskową i prezydencja w nich równym wymiarem czasu, raz przy Litwie drugi raz przy Koronie zostawała (...).

[agrees to one treasury, one single administration; wishes to retain only the conditions that are indicative of its sovereignty. Although an equal number of ministers and court officials will be retained for the Lithuanian provinces, with the same titles and duties as in the case of the Crown at any time, an equal number of persons named from Lithuania as are appointed from the Crown provinces will constitute the treasury and military commissions, and the presidency of these commissions will be held for an equal period of time, alternating between Lithuania and the Crown (...)].

Summarizing the Act, Sapieha noted:

Panowaniu Zygmunta Augusta winny narody unią. Panowaniu Stanisława Augusta winne będą tym silniejsze spojenie z oznaką udzielnosci swojej.<sup>53</sup>

[To the reign of Sigismund Augustus belongs the union of the nations. To the reign of Stanisław Augustus shall belong a stronger union with the mark of sovereignty]

<sup>53</sup> AGAD, ASW, 22, k. 292-293. The Marshal of the Sejm, Stanisław Małachowski, referred to his statement the day after the “Zaręczenia” was passed, saying, “Oddzielne lubo prowincji nazwiska w dwuchsetnym lat biegu z okładem utrzymujące się nierozdzielne zawsze sprawiało obywatelstwo, bo tak szczylić się Polak być z tej prowincji jak i z drugiej; odnawia się tylko słodka pamięć spojenia tych dwóch narodów, która i następności miłą będzie, gdy spojry, że za Zygmunta Augusta zrzędzone, a za Stanisława Augusta w pełnej braterskiej harmonii wspanialszym pamięci przywiedzeniem jest uczzone” [Separate or provincial names, though preserved for over two hundred years, have

*Zaręczenie wzajemne obojga narodów* – the Mutual Guarantee of the Two Nations – was a compact, rather brief text. Apart from an introduction and a conclusion justifying its adoption, it was divided into five points containing guarantees for the Lithuanian province. Referring to the union between the Crown and Lithuania, as well as to the uniform law for the government of the entire state, the Constitution of the Third of May, the *Zaręczenie* established joint administration over the army and the treasury. However, this provision was subject to certain important conditions.

Firstly, the Grand Duchy of Lithuania was guaranteed an equal number of representatives as the Crown in the joint military and treasury commissions. The police commission remained unchanged in its composition (one third of commissioners from Lithuania, two thirds from the Crown) (...) *jako skutek dobrowolnego zezwolenia Wielkiego Księstwa Litewskiego* [as a result of the voluntary consent of the Grand Duchy of Lithuania], a concession which could never in future set a precedent for the establishment of other joint institutions. In all newly established magistrate offices, it was also necessary to ensure that Lithuania was represented in equal numbers.

Secondly, they undertook to maintain in the Grand Duchy of Lithuania the same number of ministers and national<sup>54</sup> officials as in the Crown, with the same titles and powers.

Thirdly, in the Committees of the Military and of the Treasury, the chairmanship was to be held alternately by Lithuania and the Crown for the same period of time.

Fourthly, the treasury for Lithuanian public revenue was to remain in the Grand Duchy of Lithuania.

Fifthly, court cases of the Treasury Commission concerning Lithuanian citizens and affairs should continue to be examined by a separate treasury court for the Grand Duchy, composed of persons not belonging to the commission, and acting according to law specific to Lithuania.

These principles were all considered *artykuły aktu unii* (articles of the act of union) between the Crown and the Grand Duchy of Lithuania, with the same force as the earlier provisions of the Union of Lublin. The *Zaręczenie* (Guarantee) was to be a *pactorum conventorum* article binding on both the current monarch

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always made for inseparable citizenship, as it was a matter of pride for a Pole to be from one province as from another; only the sweet memory of the union of these two nations is renewed, which will be pleasing to posterity too, when it is seen that during the reign of Sigismund Augustus it was arranged, and during the reign of Stanisław Augustus it was honoured in full fraternal harmony in a more splendid way]. *Ibidem*, p. 315.

<sup>54</sup> Perhaps instead of [transl. note: in the original Polish text] “narodowych” (national) this should be “nadwornych” (court). So, at least, it was in the Sapieha’s address, AGAD, ASW 22, k. 292 and in W. Smoleński, *Sprawa stosunku Polski do Litwy na Sejmie Wielkim*, [w:] *Księga Pamiątkowa ku czci Bolesława Orzechowicza*, Lwów 1916, p. 443.

and his successors.<sup>55</sup> It was eventually incorporated as a constituent part into the Constitution of the Third of May, thus restoring the dualistic character of the state that had been ignored in the Government Act.

Assessing the role and significance of this act, Kołłątaj wrote:

Szlachetna, a raczej braterska ofiara prowincji koronnych ułatwiła wszystko. Ponowione zostały między Litwą i Koroną święte unii śluby; zapadła pamiętna ustawa, na mocy której do wszystkich magistratur rządowych połowa obywateli litewskich, a połowa koronnych obierana być miała; choć Litwa trzeciej części, ani w ludności, ani w bogactwach, względem Korony nie wynosi<sup>56</sup>

[The noble, or rather fraternal sacrifice of the Crown provinces made everything easier. Renewed were the sacred vows of union between Lithuania and the Crown; issued was a memorable law, by force of which to all governmental magistracies half citizens of Lithuania and half the citizens of the Crown were to be elected, even though Lithuania does not constitute a third in either population or wealth relative to the Crown].

The role of the *Zaręczenie* manifested itself not only in guaranteeing the rights of the Grand Duchy of Lithuania – which were being increasingly reduced at that time – but also, and perhaps most importantly, in unifying and centralising the administration at the central level. Although the establishment of exclusively common institutions in the future was not explicitly stipulated, a real basis for this was created, ensuring that Lithuania would have an equal share with the Crown in all unified magistracies. While giving Lithuania a sense of distinctiveness, and above all equality, the *Zaręczenie* simultaneously streamlined the executive apparatus of the state.

In local administration, separate offices were left as before – although they were identical in name and in the scope of their competences – with an obligation when new offices were established in the Crown, to create the same in Lithuania.

Thus, by agreeing to merge the treasury commissions, Lithuania obtained confirmation of the federal character of the state and a position equal to that of the other two Crown provinces combined.<sup>57</sup> Taking into account the fact that

<sup>55</sup> VL., vol. IX, p. 318 (filed on 22 X 1791 r.).

<sup>56</sup> H. Kołłątaj, *O ustanowieniu i upadku konstytucji polskiej 3 maja 1791*, Biblioteka Mrówki, vol. 146-151 (n.d.), p. 324.

<sup>57</sup> A similar assessment is found in K. Waga, *Zaręczenie wzajemne obojga narodów*, „Przegląd Wileński” 1926, R. IX, nr 8, even arguing that the appropriate historical holiday in Lithuania should be “nie dzień 3 maja (...), lecz dzień 20 października, w którym kraj nasz chociaż częściowo odzyskał swą samodzielność” [not 3 May but 20 October, the day when our country at least partially regained its independence]. W. Kamieniecki adds that “była to ze strony Korony znaczna koncesja” [this was

in the course of the eighteenth century the Grand Duchy was more and more frequently treated as just one of the three provinces of the Commonwealth, it is fair to say that the *Zaręczenie* was a highly favourable act for Lithuania and did not in any way diminish its actual rights and distinctiveness.<sup>58</sup>

The adoption of the *Zaręczenie wzajemne obojga narodów* [Mutual Guarantee of the Two Nations] was the capstone of the process of shaping relations between Poland and Lithuania under the reign of the last king of the Commonwealth, Stanisław August Poniatowski. The importance attached to this act is demonstrated by the fact that “w rocznicę koronacji Stanisława Augusta senatorowie i posłowie litewscy z okazji zjednoczenia skarbów i wojska dali w pałacu radziwiłłowskim bal, na którym był obecny król i posłowie zagraniczni”<sup>59</sup> [on the anniversary of Stanisław August’s coronation, Lithuanian senators and deputies held a ball at Radziwiłł Palace to celebrate the union of the treasury and the military, at which the King and foreign emissaries were present]. A commemorative medal was also minted with a Latin inscription engraved on the rim: The closest union, concluded by Stanisław August, originally established under Zygmunt August.<sup>60</sup> It was not without reason that the *Zaręczenie* was described as a renewal of the act of union. “Wypada ocenić wysoko rozum polityczny i rozważę parlamentarystów polskich i litewskich, którzy” [The political wisdom and prudence of the Polish and Lithuanian parliamentarians should be highly appreciated, because they], as Juliusz Bardach emphasised, “umieli powiązać walkę o suwerenność

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a significant concession by the Crown] made “w imię wzmocnienia wspólnego organizmu” [in the name of strengthening the common body]. (*Litwa a Konstytucja 3 maja*, Warszawa 1917, p. 22). An additional confirmation of the more favourable situation of the Grand Duchy than before was the Act filed on 2 November 1791: “Rozkład województw, ziem i powiatów z oznaczeniem miast, a w nich miejsc konstytucyjnych dla sejmików w prowincjach koronnych i W. Ks. Litewskiego” [The distribution of provinces, lands and counties with the designation of cities, and in them constitutional seats for *sejmiki* in the provinces of the Crown and Grand Duchy of Lithuania], granting Lithuania 14 more deputies, while Wielkopolska increased its number of seats by only two and Małopolska by 11]. VL., vol. IX, pp. 326-338; J. Bardach, *Konstytucja 3 maja a unia*, op. cit., p. 408.

<sup>58</sup> It is therefore difficult to agree with the view of B. Leśnodorski that the union of Poland and Lithuania was abolished at the time of the Great Sejm, cf. id.: *Institutions polonaises*, p. 31. Worth citing here is the view of a scholar of Polish-Lithuanian history, G. Błaszczuk, who wrote: *Litwa była prowincją Rzeczypospolitej, wspólnego państwa polsko-litewskiego, ale nie była prowincją polską* [Lithuania was a province of the Commonwealth, the joint Polish-Lithuanian state, but it was not a Polish province] (*idem, Rzeczypospolita w latach 1569-1795. Węzłowe problemy stosunków polsko-litewskich*, „Zapiski Historyczne” 1998, vol. 63, no. 1, p. 64 – cited in A.B. Zakrzewski, op. cit., p. 285).

<sup>59</sup> W. Smoleński, *Sprawa stosunku Polski*, p. 444.

<sup>60</sup> N. Kostomarov, *Poslednije gody Rieczipospolitej*, t. 1, ed. II, Petersburg 1886, p. 537. Cited in J. Bardach, op. cit., p. 404 ff., who states that the medal had not been found until then in Polish collections, but that it might be found in Petersburg, where Kostomarov came across it more than 120 years ago.

zewnątrzną, o zreformowanie organizacji państwowej z tradycją unii i zachowaniem podmiotowości Wielkiego Księstwa. Raz jeszcze potwierdziły swoją wartość rozwiązania kompromisowe, a także walor parlamentu jako forum ich realizacji”<sup>61</sup> [knew how to link the struggle for external sovereignty and reform of the organisation of the state with the tradition of union and the preservation of the subjectivity of the Grand Duchy. Once again, compromise solutions proved their worth, as well as the value of parliament as a forum for them to be realised].

It seems, therefore, that despite the unitarian tendencies that appeared at that time, the Polish-Lithuanian Commonwealth retained its federal shape, more and more clearly assuming the form described in literature as a unitary state, which is characterised by having a basis in a common constitution, common supreme organs of power, and at the same time retaining a number of legal and political distinctions.<sup>62</sup>

## Sejm in Grodno

Finally, it is only right to devote some space to the period of the 1793 Grodno Sejm, which is usually ignored in works on the Polish-Lithuanian union, and to the next regulation of the legal character of the union it made.<sup>63</sup>

In the Cardinal Laws passed in 1793, two articles were devoted to the issue of Lithuania's relationship with the Crown:

Artykuł I: Królestwo Polskie i Wielkie Księstwo Litewskie ze wszystkimi księstwami, województwami, ziemiami i powiatami, z których jest złożone i na potom składać się będzie, według praw im służących w jedno i nierozdzielne ciało jak jest spojone, tak być ma na zawsze Rzeczpospolitą nierozdzielną, wolną i nikomu niepodległą (...).

Artykuł VI: Wielkie Księstwo Litewskie unią z Koroną wieczyście spojone, według warunków swoich jedno ciało Rzeczypospolitej składające z tymże ciałem swoim nierozdzielnie zostawać będzie. Prawa zatem i przywileje, a mianowicie te, z którymi do Rzplitej prowincje przystąpiły i osobom w nich mieszkającym służące legitime nadane i dotąd urzędownie valide nie zadysputowane, w całości dotrzymane im będą. A nadto żeby na przyszły czas z kancelaryj narodowych nic

<sup>61</sup> J. Bardach, *Konstytucja 3 maja a Zaręczenie Wzajemne Obojga Narodów 1791 roku*, „Studia Iuridica” 1992, t. 24, p. 25 ff.

<sup>62</sup> On the characteristics of unitary states and federal states, cf. J. Jellinek, *Ogólna nauka o państwie*, Warszawa 1921, pp. 620-646, and among more recent work S. Schepers, *Le droit fédéral en Europe. Un essai historique*, Bruxelles 1991, p. 17 ff.

<sup>63</sup> Cf. the literature on the relationship between Poland and Lithuania in the eighteenth century cited above. Some space has been devoted to this topic only in J. Michalski, *Zagadnienie unii polsko-litewskiej*, op. cit., pp. 126-128.

przeciwnego prawom nie wychodziło, do WW. kanclerzów Obojga Narodów, pod obowiązkiem i urzędu ich, i przysięgi, pilna bacznosc należeć będzie.<sup>64</sup>

[Article I: The Kingdom of Poland and the Grand Duchy of Lithuania, together with all the duchies, provinces, lands, and counties of which it is composed and hereafter shall be composed, is a single and indivisible body, and so shall it be forever an indivisible Commonwealth, free and dependent on no one (...).

Article VI: The Grand Duchy of Lithuania, forever united with the Crown in a union, shall according to its own conditions form one body of the Commonwealth and shall remain inseparable from that body. The rights and privileges, namely, those with which the provinces acceded to the Commonwealth and those serving those residing therein, which have been legitimately and undisputedly granted, shall be fully observed. Moreover, in order that in future nothing contrary to the laws of the Commonwealth may emerge from the national chancelleries, the Chancellors of the Two Nations, under the duties of their office and their oaths, are to guard this closely].

Comparing these provisions with earlier regulations, one may conclude that the Grodno Cardinal Laws also did not differ substantially from the formulations of 1569, 1768 and 1775 (the Commonwealth as a single and inseparable body forever united), or from the Cardinal Laws adopted at the Four-Year Sejm (no absolute ban on any future changes to the nature of the union, a similarity of the phrases and expressions used to describe the legal content of the union).<sup>65</sup> Also, the terminology used in the Grodno Constitution to describe the two constituent parts of the Commonwealth did not differ much from that used at the Four-Year Sejm. The treaty concluded with Russia in July 1793 referred to the *Rzeczypospolitej Polska* [Commonwealth of Poland] and the *Królestwo Polskie* [Kingdom of Poland], both of which referred to the state as a whole.<sup>66</sup> In other places, the following forms appear: *Rzeczpospolita*; *Królestwo Polskie i Wielkie Księstwo Litewskie*; *provincia litewska*; *provincia Wielkiego Księstwa Litewskiego*; *Wielkie Księstwo Litewskie i Korona*; *Rzeczpospolita Polska i Wielkie Księstwo Litewskie*; *Korona i Litwa*; *provincia koronna*; *państwa*

<sup>64</sup> *Volumina Legum* (VL), vol. X, ed. Z. Kaczmarczyk, Poznań 1952, pp. 110-111.

<sup>65</sup> "W ogóle prawa kardynalne sejmu grodzieńskiego w bardzo wielu artykułach brzmią tak samo, jak prawa kardynalne z r. 1791, a niekiedy także jak prawa kardynalne z r. 1768" [In general, many articles in the Cardinal Laws of the Grodno Sejm sound the same as the Cardinal Laws of 1791, and sometimes also as the Cardinal Laws of 1768]. S. Cheliński, *Organizacja państwa według ustaw sejmu grodzieńskiego z roku 1793*, Warszawa 1918, p. 4, note 1.

<sup>66</sup> VL, vol. X, p. 15. Even during the Four-Year Sejm this form was used sporadically. In the Constitution of the Third of May, only the term "naród polski" (Polish nation) was used, while the term "Rzeczpospolita Polska" can only be found in the above-mentioned draft of the Cardinal Laws of August 1790, and in the draft of the Constitution by Fr Piattoli, who, however, made a distinction between "*La République de Pologne et le Grand Duché de Lithuanie*" (AGAD, APP, 98, p. 702 ff. and 197, p. 534 ff.).

*Rzeczypospolitej; województwa i ziemie Obojga Narodów; Rzeczypospolita składa się z dwu prowincji: polskiej i litewskiej* [the Commonwealth; the Kingdom of Poland and the Grand Duchy of Lithuania; the Province of Lithuania; the Province of the Grand Duchy of Lithuania; the Grand Duchy of Lithuania and the Crown; the Commonwealth of Poland and the Grand Duchy of Lithuania; the Crown and Lithuania; the Crown Province; the states of the Commonwealth; the voivodships and lands of the Two Nations; the Commonwealth consists of two provinces: the Polish and the Lithuanian]. This variety and imprecision are characteristic for the entire Poniatowski era, and the Grodno Sejm contributes nothing new in this respect.

There is no doubt, however, that changes were made in the structure of the central governmental institutions at the last Sejm of the pre-partition Commonwealth. The *Rada Nieustająca* [Permanent Council], which had been abolished by the Four-Year Sejm, was reinstated, with thirteen members from the Crown Province and eleven from the Grand Duchy of Lithuania. The Police Commission and the Military Commission remained joint institutions for the entire state, but seated in two locations, which meant that in matters concerning the Grand Duchy they were to meet in Vilnius.<sup>67</sup> The Treasury Commission was divided according to the rules from before the Great Sejm into a Crown Commission and a Lithuanian Commission with its seat in Grodno.<sup>68</sup> The joint Commission of National Education was retained. The so-called Sejm *alternata*, according to which every third ordinary Sejm was to be held in Grodno.<sup>69</sup> A complete novelty was the replacement of the former three provinces (Lesser Poland, Greater Poland, and Lithuania) with only two: the Crown and Lithuania.<sup>70</sup>

<sup>67</sup> “Komisja Policji w Wielkim Księstwie Litewskim (...) raz na zawsze w mieście Wilnie utrzymywać się ma” [The Police Commission in the Grand Duchy of Lithuania (...) is to be maintained in the city of Vilnius once and for all] (VL, t. X, s. 187). “Komisja Wojskowa (...) zaś w Koronie w Warszawie, a w Litwie w Wilnie odprawiać się ma” [The Military Commission (...) is to meet in Warsaw in the Crown and in Vilnius in Lithuania] (ibidem, p. 188).

<sup>68</sup> Ibidem, p. 211.

<sup>69</sup> Noteworthy are the considerations of the Russian emissary Sievers, concerning the preservation of the Sejm *alternata*, communicated to the Empress before the opening of the Grodno Sejm: As for Grodno (...) there is, on the one hand, the need to reward Lithuania, since Warsaw is the capital of the country, and in Warsaw the Sejm is more influenced by the court and the party; while Lithuania has always been favourable to Russia and is easier to lead; but on the other hand, Grodno being closer to the borders of those provinces which have been annexed by Russia, and therefore the Sejm held there will be a reminder of the residents of those provinces that they once belonged to Poland. D. Iłowajski, *Sejm grodzieński roku 1793. Ostatni sejm Rzeczypospolitej Polskiej*, transl. M. Iwanowski, Poznań 1872, p. 100-101.

<sup>70</sup> “Odtąd Rzplita Nasza dwie tylko będzie miała prowincje, to jest Polską i Litewską. Koronna prowincja z dziesięciu województw składać się będzie (...) W. Ks. Lit. z ośmiu województw” [Henceforth, our Commonwealth will have only two provinces, that is, the Polish and Lithuanian. The Crown Province will consist of ten voivodships (...) The Grand Duchy of Lithuania will consist of eight voivodships]. VL, vol. X, p. 309.



## Conclusion

To sum up, it may be stated that the thesis that the Grodno Constitutions restored the state dualism abolished at the Great Sejm is closely related to the concept found in older literature of the full unification of the Commonwealth in 1791.<sup>71</sup> More recent research in this area indicates that the federal character of the state was maintained by the Four-Year Sejm, which – as emphasised above – found its particular expression in the resolution adopted on 20 October 1791, the *Zaręczeniu Wzajemnym Obojga Narodów* or Mutual Guarantee of the Two Nations. The legislation of the Sejm of Grodno did not introduce any fundamental changes. The relevant provisions of the Cardinal Laws did not differ significantly from earlier formulations; the dualism of governmental commissions was less pronounced than it had been prior to 1788; the division into two, instead of three, provinces was adopted. Thus, while in terms of the political system 1793 brought a significant regression, the legal character of the Polish-Lithuanian Union underwent only a slight correction, consisting in a partial relaxation of the executive institutions which had been centralised in the previous period. Although the clash between unitary and federal tendencies, which was characteristic of the reign of Stanisław August, resulted in a revival of the aspirations to fuller autonomy for the Lithuanian Province in the period of the Targowica Confederation and the Grodno Sejm, this in practice amounted to ensuring greater independence for Lithuanians in governmental commissions.

The federal character of the Polish-Lithuanian Commonwealth, which began with the Union of Lublin, lasted as long as the Commonwealth itself did,<sup>72</sup> taking the shape of a closer union only in the second half of the eighteenth

<sup>71</sup> Cf. S. Kutrzeba, *Unia Polski z Litwą*, op. cit., p. 209; idem, *Historia Polski w zarysie*, t. 2: *Litwa*, Lwów 1914, p. 200, 215; O. Halecki, *Dzieje unii jagiellońskiej*, vol. II, Kraków 1919, p. 353; B. Leśnodorski, *Dzieło Sejmu Czteroletniego (1788–1792)*, op. cit., p. 249 as well as the above-mentioned W. Uruszczyk (see note 4), who dates the unitary nature of the state to the period after 1569.

<sup>72</sup> Similar views were expressed by O. Halecki, *L'évolution historique de l'union polono-lithuanienne*, "Le Monde Slave" 1926, nr 5, p. 292; F. I. Leontowicz, *K istorii administratiwnago stroja litowskago gosudarstwa*, Warszawa 1899, pp. 38–39; M. A. Jučas, *Litowskaja szlachta*, p. 409, and A. Sapoka, *Didysis Varsuos reformu lietuviskoji Enciklopedija*, t. 4, Kaunas 1937, p. 686. This view is confirmed in more recent works: J. Malec, *Problem stosunku Polski do Litwy w dobie Sejmu Wielkiego (1788–1792)*, „Czasopismo Prawno-Historyczne” 1982, t. 34, nr 1, p. 46 ff.; J. Bardach, *Konstytucja 3 maja a unia polsko-litewska*, op. cit., p. 404 ff.; idem, *Konstytucja 3 maja a Zaręczenie Wzajemne Obojga Narodów 1791 roku*, op. cit., p. 2, p. 24 ff. and idem *Od aktu w Krewie do Zaręczenia Wzajemnego Obojga Narodów (1385–1791)*, [in:] *Unia lubelska i tradycje integracyjne*, op. cit., p. 26 ff.; T. Wasilewski, *Wielkie Księstwo Litewskie w dobie Rzeczypospolitej Obojga Narodów (1569–1795). Federacja dwóch państw i narodów czy państwo jednolite?*, „Lithuania” 1990, nr 1, p. 76; J. Ochmański, *Historia Litwy*, 3<sup>rd</sup> ed., Warszawa-Wrocław 1990, p. 178, and Z. Szczyńska, *Ustawa Rządowa z 1791 r.*, [in:] *Konstytucje polskie. Studia monograficzne (...)*, ed. M. Kallas, vol. I, Warszawa 1990, p. 58, who emphasises that the *Zaręczenie* entered into the order of constitutional law while maintaining the federal character of the Polish-Lithuanian state.

century.<sup>73</sup> Although the year 1795 brought the centuries-old union of Poland and Lithuania to an end, it did not erase it from the memory of subsequent generations. The best proof of the irrepressibility of the idea of the union is the fact that – as Mościcki once argued – “unia przetrwała moralnie rozbiory i mimo waśnięcej polityki zaborców, zadokumentowana została silniej od pergaminów i gęstych pieczęci stałym w ciągu okresu porozbiorowego obustronnym ciężeniem ludności, choćby przez sam fakt nieustannego uczestnictwa we wspólnych poczynaniach wyzwoleńczych”<sup>74</sup> [the union survived the partitions morally and, in spite of the policies of the partitioning powers trying to saw strife, was documented more strongly than with parchments and thick seals by the lasting mutual ties of the population during the post-partition period, if only by the mere fact of their constant participation in common liberation efforts]. Juliusz Bardach goes even further in his assessment, adding that “jeśli naród litewski przetrwał, zachowując świadomość swojej odrębności i tradycję własnej państwowości, by w 1918 roku uzyskać niepodległość, to była w tym i częśćka zasługi tych, którzy na Sejmie Czteroletnim działali skutecznie w imię utrzymania odrębności i praw Wielkiego Księstwa w ramach Rzeczypospolitej Obojga Narodów”<sup>75</sup> [if the Lithuanian nation survived, retaining the awareness of its distinctiveness and the tradition of its own statehood, to then gain independence in 1918, this was also in part due to the achievements of those who took effective action at the Four-Year Sejm in the name of maintaining the distinctiveness and rights of the Grand Duchy within the framework of the Polish-Lithuanian Commonwealth].

73 Paweł Jasienica also pointed this out, writing “Sejm Czteroletni wcale nie pozbawił państwa charakteru federacji, nadał jej tylko formy ściślejsze, bardziej odpowiadające potrzebom czasów nowych. (...) zapędziwszy się trochę zbyt daleko literą tekstu Konstytucji, Zaręczeniem Wzajemnym obwarował, ułatwił dalsze trwanie poczucia odrębności Wielkiego Księstwa” [The Four-Year Sejm did not deprive the state of the nature of a federation, but merely gave it a stricter form, more suited to the needs of the new times. (...) having gone a little too far with the letter of the text of the Constitution, it made it easier for the sense of separateness of the Grand Duchy to persist by means of the Mutual Guarantee]. He summed it up with the following reflection: “Konstytucja 3 maja wcale nie skasowała odrębności litewskiej. Żaden akt prawny nie może skasować egzystencji stworzonej przez dzieje. Otworzyła jedynie drogę do ściślejszych, doskonalszych form związku” [The Constitution of the Third of May did not erase Lithuanian separateness at all. No legal act can erase an existence created by history. It only opened the way to closer, more perfect forms of union]. P. Jasienica, *Rzeczpospolita Obojga Narodów. Część trzecia: Dzieje agonii*, 3<sup>rd</sup> ed., Warszawa 1985, p. 295-297, 348.

74 M. Mościcki, *Litwa i Korona w epoce porozbiorowej*, Warszawa 1920, p. 11.

75 J. Bardach, *Konstytucja 3 maja z Zaręczeniem...*, p. 26.

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**SUMMARY****From the Union of Lublin to the Mutual Guarantee of the Two Nations**

The Polish-Lithuanian Union and its historical evolution has been the subject of numerous works over the past two centuries. The Union has been analysed from many different angles and points of view. For a historian of law, evolution of the legal regulations, shaping the nature of the alliance between the Kingdom of Poland and the Grand Duchy of Lithuania, is particularly interesting. Subjecting the consecutive Union acts to analysis, one might follow the structural changes that occurred within the legal systems of both countries. They lead to the following conclusions. The Union, concluded in Lublin in 1569, and the legislative acts of the Sejm that followed in the later years, rendered the two legal systems similar, creating an internally dualistic, but externally uniform state, i.e. the Polish-Lithuanian Commonwealth. The so called “*coequatio iuris*” of 1697 played an important part in the process, leading to a further tightening of the union by equalling the judiciary and the structure of central offices in both parts of the Commonwealth. In the times of King Stanislaw August Poniatowski, first unitarist postulates emerged, and new joint governmental institutions were established, including the Permanent Council and the Commission of National Education. The Constitution of May 3 itself remained silent about the issue of the Polish-Lithuanian Union, but the “Reciprocal Guarantee of Both Nations,” adopted on 20 October 1791, safeguarded the rights of Lithuanians in the newly established joint magistratures. The “Guarantee” was given the legal effect tantamount to that of the provisions of the Union of Lublin, and it became part of the Governmental Act. Believed to be the “act of union” of the Kingdom of Poland and the Grand Duchy of Lithuania, it constituted a crowning achievement of the legal evolution of the two nations.