

The Lost Consensus: Liberum Veto of the Polish-Lithuanian Commonwealth

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Abstract

I analyze the decline of the rule of law in the Polish-Lithuanian Commonwealth. I argue that the decline was marked by the emergence of the *liberum veto*, a parliamentary rule that allowed any single deputy to terminate the session and annul any legislation established at the session. While some argue that *liberum veto* represents a case of unanimity rule and therefore constitutes an optimal form of collective decision-making, I show that *liberum veto* was a perversion of consensus politics. The emergence of *liberum veto* was not accompanied by any change in formal rules. This indicates that the maintenance of formal rules is insufficient for the maintenance of the rule of law. For the rule of law to persist, it is necessary that the institutional context and the social narrative remain conducive to the ideas of personal responsibility and liberty.

Conflict, Coercion, and the Rule of Law

Conflict is unavoidable among individuals who seek to complete different plans in the world of limited resources. What follows, societies require conflict mediation for their survival. Most economists call upon government regulation to solve problems generated by social turbulence. However, government intervention has a tendency to deepen the turbulence, not ameliorate it. It creates opportunities for rent seeking, fails to account for the local knowledge, and is costly to enforce. The alternative to ad hoc intervention is institutional conflict resolution also known as the rule of law. Fallon (1996) in his review of literature on the rule of law offers three “values and purposes” common to most conceptions of the rule of law: “First, the Rule of Law should protect against anarchy and the Hobbesian war of all against all. Second, the Rule of Law should allow people to plan their affairs with reasonable confidence that they can know in advance the legal consequences of various actions. Third, the Rule of Law should guarantee against at least some types of official arbitrariness.”

Societies that enjoy the rule of law offer their citizens an environment of peace and equality of opportunities. They promote cooperation and encourage personal responsibility. By ensuring long-term stability, they support investment and promote economic development. Corruption and rent seeking are of no use in the presence of the rule of law. To entice others into collaborative tasks, individuals search opportunities for mutual gain. In the presence of the rule of law, individuals are unable to complete plans for which others do not agree. Thus, while socially desirable, the rule of law is very hard to maintain. Instead, it is susceptible to the emergence of coercive organization. The use of coercion allows individuals to complete plans unobtainable through cooperation, offering great benefits to those who develop coercive advantage.

In the light of the great coercive temptation, is it possible to maintain the rule of law? In this paper I examine how the rule of law declined in the Polish-Lithuanian Commonwealth. I show that, in order to maintain the rule of law, it is not enough that the formal rules remain in place. What also matters is the interpretation of these rules which in turn depends on the institutional grammar. In other words, it is impossible to separate the rule of law from the Wicksellian grammar within which it operates. Thus, the social

narrative, and the social understanding of the rule of law, are as important as the formal rules.

The Rule of Law in the Polish-Lithuanian Commonwealth

The history of the Polish-Lithuanian Commonwealth remains obscure to Western readers, yet it is a hidden gem full of insights. Not many know that in the 16th century, the Commonwealth was considered an equal among European powerhouses, yet two hundred years later neither Poland nor Lithuanian could be found on the map of Europe. The 16th century operates in the imagination of Poles as the highlight of their national history. The Polish-Lithuanian Commonwealth was the largest and most populous state in Europe. Its territory spread over 380,000 square miles and its population was about 11 million. It was a time of peace and prosperity. There were no wars apart from sporadic conflicts along the sparsely populated eastern and southern borders while the price revolution and population growth created a demand for Polish agriculture and forestry exports in Western Europe. It was also the Golden Age of Polish Culture. The Renaissance resulted in the heritage of architecture, paintings, and literature. Political freedoms were on the rise along with religious tolerance to the point that Poland of the 16th century was considered a safe haven for the fugitives of the Reformation and Counterreformation wars (Zamoyski 1988 p. 105-125). Yet, there is no Polish-Lithuanian Commonwealth on the map of Europe in 1800. One could also look in vain for either Lithuania or Poland. It appears that the Polish Golden Age of prosperity and political freedom did not provide sustainable foundations for their long-term existence. Within less than two hundred years the nations were completely erased from the political life of Europe. The Partitions of the Polish–Lithuanian Commonwealth took place in the late 18th century and obliterated sovereign Poland for 123 years. The immediate cause of the partitions was the weakness of the political system skillfully employed by the neighboring states (Zamoyski 1987 p. 212).

The political system was weakened in result of the transformation from the nobles' democracy into the magnates' oligarchy. That process was also marked by the decline of the rule of law. By early 18th century the well-established, centuries-old

principle of policy through consensus evolved into *liberum veto*, a rule that allowed a single deputy to annul the entire parliamentary session. The disagreements were no longer solved through bargaining; there were no negotiations once a powerful deputy voiced his disagreement. *Liberum veto* allowed foreign powers a strong influence over the state's politics: foreign diplomats bribed the deputies who then used the *liberum veto* to prevent any reform or military build-up in the Commonwealth. Finally, in 1732 the Prussia, Austria, and Russia signed a secret agreement to maintain the status quo: ensure that the Commonwealth laws would not change. And even though the first partition would not take place for another forty years, it is impossible to speak of the independent Commonwealth in the time after the treaty.

What is interesting is that formal rules did not change at the time of transformation. Both in the 16th and 17th century the agreement of all deputies was necessary for the enactment of policy. The difference lies in the interpretation of those rules. In the 16th century disagreements spurred negotiations; bargaining and policy reformulation were used to reach an agreement. Only when negotiations failed, would the parliamentary session be terminated. But in the 17th century the disagreement from a single deputy was enough to terminate the Parliamentary session and annul all its work.

The process of constitutional decay unfolded as magnates started to discover that it was becoming easier to coerce nobles into submission than to entice them into cooperation. In the 16th century the king and the magnates actively competed for the support of nobles and this competition nullified their coercive powers. The support of lesser nobles was necessary to be successful in the local and national legislature. The federal structure and the separation of powers between government branches ensured a highly competitive political environment of policy through consensus; conflicts were overcome through negotiations and bargaining.

Although there was no change in the formal rules of the Commonwealth, the institutions that emerged in the 17th century were very different from those of the 16th century. In the 17th century the magnates no longer needed to compete for the support of nobles; the federal legislature was in crisis and the center of the political life have shifted into the provinces. The relationship between magnates and nobles changed from the

cooperation into coercion, and from exchange into dependency. This change in the nature of individual interactions was reflected at the macro-level by the transformation from nobles' democracy into the magnates' oligarchy.

1505 is commonly considered as the year when nobles' democracy came into full bloom. That year nobles obtained the *Nihil Novi* privilege, which guaranteed that no new laws could be implemented without the parliamentary approval. However, there is no specific date that marks the end of the noble's democracy. What we know is that the system of nobles' democracy waned long before the partitions and was replaced with the magnates' oligarchy. And it was the magnates who overtime changed their allegiance and begun to represent the interest of the foreign powers. They blocked political reforms and military spending rendering the Commonwealth easy pray for the adjacent states (Zamoyski 1987 p. 212). *Liberum veto* was a key instrument that allowed the magnates to control the politics of the Commonwealth. Even though *liberum veto* emerged from the rule of consensus, it became a tool of authoritarian politics.

Unanimity Rule and Liberum Veto

The constitutional foundations of the nobles' democracy are best characterized by three charters: *neminem captivabimus*, *nec bona recipiantur*, and *nihil novi*. (Jeđruch 1982) *Nec bona recipiantur* of 1422 promised not to confiscate any property of nobles without a court sentence as well as not to place judgeships in the hands of administrative officials of the crown. This privilege guaranteed nobles the right to private property, and only allowed the confiscation for offenses such as refusal to answer the call to arms in a levee en masse during a national emergency. *Neminem captivabimus* was introduced in 1430 and meant that no noble could be imprisoned or punished without a court sentence. It granted the nobility a guarantee against arbitrary arrest. The king could no longer either punish or imprison any noble at his whim. *Nihil novi* was the last of the three and its creation in 1505 marks the beginning of the First Republic of Poland. Its full name reads *Nihil Novi Nisi Commune Consensus*, which from Latin means "nothing new without the common consent." This law is probably as close as one can get to the conceptual unanimity expressed in the Calculus of Consent (Buchanan and Tullock 1965). It meant

that no changes could be made; no new taxes or regulations could be imposed, without the agreement of all the nobles. In result, this law transferred all legislative power from the king to the parliament.

Buchanan and Tullock (1962) assign a central role to unanimity and demonstrate that it produces optimal collective outcomes. Just as markets produce gains from trade when all participation is voluntary, so does collective action when it is consensual. It encourages the search for mutually beneficial transactions through side compensation. The authors admit that other choice-making rules can be rationally chosen when the cost of reaching the agreement is higher than the externality from inaction. Unanimity is the only rule of collective decision-making that ensures Pareto-improvements. It also encourages the search for mutually beneficial transactions through side compensation.

Delibor Rohac (2008a and b) treats *liberum veto* as if it were a case of the unanimity rule. Similarly, a majority of historians equate *liberum veto* with unanimity. But Rohac is unique in his insistence that *liberum veto* allowed for peaceful cohabitation of diverse religious groups. In Rohac's analysis *liberum veto* was necessitated by the high external costs of religious fractionalization and therefore it was preferred to less inclusive voting rules. This line of thinking about *liberum veto* is contrary to the view accepted among historians of *liberum veto* being responsible for paralyzing the government and bringing on the partitions (see Zamoyski 1980 for a summary of the argument).

Liberum veto was first used in 1652. Taking advantage from a legal loophole, a deputy from Northern Lithuania ended the Parliamentary session. He effectively prevented any further negotiations and bargaining. And since the legislation of each parliamentary assembly was treated as a unified whole, his veto also nullified everything that was done in that session. This was not the first time that the assembly ended without any agreement. This has happened in the past on multiple occasions. But it was the first time that a veto of a single person allowed the secession. The second veto was repeated seventeen years later, then the next one was voiced after ten years. The rarity ended in 1696. From then until 1733 *liberum veto* was a common characteristic of the parliamentary process.

Even though *liberum veto* emerged from the long tradition of consensus politics, it cannot be considered a form of consensus politics, only its perversion. Buchanan and Tullock (1962 p. 76) argue that certain equality is necessary for the emergence of a constitution. This condition is fulfilled when there are no clearly predictable bases for the formation of permanent coalitions. I believe that this equality no longer existed at the time of the first *liberum veto* in 1652. Neither did the constitution of the nobles' democracy (I explore the decay of the constitution elsewhere). In the Kingdom of Poland conceptual unanimity existed as long as nobles were free to shop between different magnates. The competition between the magnates nullified their coercive abilities.

Rohac argues that the *liberum veto*, even in the time of no Sejm deliberation, was a better alternative to one group overruling another group. But what he fails to notice is that the *liberum veto* was no different from such overruling. Thus, the emergence of *liberum veto* is equivalent to the death of the rule of law. In its traditional sense the rule of consensus meant "I do not allow" led to further negotiations, it was followed by reconciliation and search for a satisfying, mutually beneficial deal. The conversation mattered. Having the whole Sejm stop because of one person's "no" meant that this person had no need of making concessions to others. It indicated their limitless power. The noble capable of voicing the veto was no longer afraid of his neighbors. He was not afraid of taking the holdout position. Nullifying the work of the general assembly allowed him to strengthen the importance of his local Sejmik.

During the time of true consensus seeking magnates had to make side payment to nobles in order to gain their support. In the 17th century magnates no longer needed together with the side payments because the rest of the nobles grew extremely dependent on the magnates. With the economic changes of the late 16th century, the power of the magnates rose giving them the power equal to that of the king. It is necessary to acknowledge that unanimity rule will not yield Pareto improvements if it is not accompanied with opportunities for negotiations, bargaining and side payments. The process of consensus seeking that accompanies the unanimity rule is necessary for the mutually beneficial trades to occur. Having unanimity rule without that process is like having prices that are not the outcome of the market process. In both cases the static institution is meaningless.

Liberum veto was not conducive to consensus seeking. Instead, it was an institutional perversion that emerged in the 17th century from the true unanimity, which characterized political life in the 16th century. What most indicates that the rule of law no longer existed at the time of *liberum veto* is the historical evidence that not all vetoes were treated in the same way. It is reasonable to suspect that those vetoes voiced by deputies backed by powerful magnates were treated seriously, whereas vetoes voiced by lesser nobility were ignored. Interestingly enough, one of the failed *liberum veto* attempts also weakens Rohac's argument of *liberum veto* guaranteeing religious diversity in Poland: in 1658 Sejm passed the law expelling the Arian Sect from Poland despite the veto of Wiszowaty. (Jędruch p. 132)

Conclusions

Formal rules are like colors, they depend on the environment in which they exist; the same color looks differently in different spaces. The appearance of wall color changes with the amount of light, with the size of the room and even with the color and placement of furniture. This context dependency is crucial for the understanding of the rule of law.

In the 17th century witnessed voting rule known as *liberum veto* emerged in the Polish-Lithuanian Commonwealth. It allowed any single deputy to terminate the Parliamentary session and nullify any legislation established at the session. Most believe that *liberum veto* was the embodiment of the unanimity rule but disagree on its impact on the effectiveness of the state. I show the *liberum veto* should not be thought of as an example of the unanimity principle. There was nothing unanimous about it. Instead we should be puzzled by the transformation in the informal rules of policy making that eradicated the tradition of convents and self-governance. From being the source of deliberation, the deputy's disagreement became enough to nullify the parliamentary session. *Liberum veto* marked the decline in the rule of law and contributed to the death of nobles' democracy in the Polish-Lithuanian Commonwealth. Its history indicates that it is not enough that the formal rules remain unaltered. Rule of law declines when the institutional environment stops being conducive to the ideas of personal responsibility and liberty.

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