

Notes and References

Introduction

1. A. Bikont, 'Co należałoby zmienić w konstytucji', *Gazeta Wyborcza*, 29 Aug. 1989, p. 2.

Chapter 1

1. For an analysis of the problems posed by this simultaneous transition, see A. Przeworski, *Democracy and the Market – Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge: Cambridge University, 1991) ch. 4.
2. E. Barker (trans.), *The Politics of Aristotle*, Bk. III (Oxford: Clarendon Press, 1948) ch. VI, sect. 1.
3. *Ibid.*, Bk. IV, ch. I, sect. 10.
4. For an excellent discussion on the general topic of constitution-making during a transition to democracy, see A. Bonime-Blanc, *Spain's Transition to Democracy: The Politics of Constitution-Making* (London: Westview, 1987) ch. 1.
5. S. Finer, V. Bogdanor and B. Rudden (eds), *Comparing Constitutions* (Oxford: Clarendon Press, 1995) p. 1.
6. G. Sartori, *Comparative Constitutional Engineering* (New York: New York University Press, 1994) p. 202.
7. G. Sartori, 'Constitutionalism: A Preliminary Discussion', *American Political Science Review*, LVI (1962) 862–5.
8. C. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (Boston: Ginn, 1941) p. 121.
9. K. Loewenstein, 'Reflections on the Value of Constitutions', in A. Zurcher (ed.), *Constitutions and Constitutional Trends Since World War II* (New York: New York University Press, 1951) pp. 205–6. For a discussion on typologies of constitutions, see Bonime-Blanc, *Spain's Transition*, p. 9–11.
10. Sartori, 'Constitutionism', at 862.
11. Finer *et al.*, *Comparing Constitutions*, pp. 1–5.
12. Bonime-Blanc, *Spain's Transition* pp. 11.
13. R. Neumann, 'Constitutional Documents of East Central Europe', in A. Zurcher (ed.), *Constitutions and Constitutional Trends* pp. 175–6.
14. Bonime-Blanc, *op. cit.* p. 12.
15. Aristotle divided political science into two parts – legislative science and executive action. Barber (trans.), *The Politics of Aristotle*, Bk. III, ch. VI, sect. 1.
16. J. Lefranc (ed.), *Montesquieu, De l'esprit des lois*, Bk. XI (Paris: Nathan, 1994) p. 83. But Montesquieu did not give the judiciary the position they

were soon to achieve in American thought, an exactly equal status with the legislative and executive branches.

17. M. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon, 1967) p. 13.
 18. However, in several parliamentary democracies the personnel of government have to relinquish their parliamentary seats; for example, the French Fifth Republic and Norway.
 19. C. Rossiter (ed.), *The Federalist Papers* (no. 51, J. Madison) (New York: New American Library, 1964).
 20. *Ibid.* (no. 48, J. Madison).
 21. *Ibid.* (no. 78, A. Hamilton).
 22. 5 US (1 Cranch) 137, 180 (1803) (emphasis in original).
 23. *Ibid.*, at 177.
 24. H. Kelsen, 'Judicial Review of Legislation: A Comparative Study of the Austrian and American Constitutions', *Journal of Politics*, XXIII (1942) 183–200.
 25. M. Cappelletti, 'Repudiating Montesquieu? The Expansion and Legitimacy of "Constitutional Justice"', *Catholic University Law Review*, XXXV (1985) 16.
 26. *Ibid.*, at 7.
 27. Const. of 1948, arts. 134–7 (Italy); The Basic Law 1949, arts. 92–4 (Germany); Const. of 1975, art. 100 (Greece); Const. of 1976 (Portugal); Const. of 1978, arts. 159–65 (Spain); in A. Blaustein and G. Flanz (eds), *Constitutions of the Countries of the World* (New York: Oceana, 1987).
- Judicial review did not take root in England. The English Revolution of 1688 affirmed the principle of the absolute supremacy of parliament, and since then parliament has been seen as the embodiment of the democratic will and thus immune from judicial control.
28. For a comparison of European constitutional court systems, see E. McWhinney, *Supreme Courts and Judicial Law-Making: Constitutional Tribunals and Constitutional Review* (Toronto: University of Toronto Press, 1986).
 29. J. Beardsley, 'Constitutional Review in France', *Supreme Court Review*, XI (1976) 193.
 30. The decision is excerpted in D. Kommers, *Judicial Politics in West Germany* (Beverly Hills: Sage, 1976) pp. 349–55.
 31. A. Vyshinsky, *The Law of the Soviet State* (London: Macmillan, 1948) pp. 339–40. A communist constitution, based on the Stalinist 1936 Constitution, was implemented in each of the Soviet bloc nations and each document shared the same fundamental features.
 32. L. Grigoryan and Y. Dolgoplov, *Fundamentals of Soviet State Law* (Moscow: Foreign Languages Publishing House, 1971) p. 113.
 33. J. Triska, *Constitutions of the Communist-Party States* (Stanford: Hoover, 1968) p. xi.
 34. A. Brewer-Carias, *Judicial Review in Comparative Law* (Cambridge: Cambridge University Press, 1989) pp. 236–7. In 1990, when ethnic conflict broke out in former Yugoslavia, the Constitutional Court was dissolved.

35. K. Kuss, 'New Institutions in Socialist Constitutional Law: The Polish Constitutional Tribunal and the Hungarian Constitutional Council', *Review of Socialist Law*, XII (1986) 343, 352.
36. W. Sokolewicz, 'Democracy, Rule of Law, and Constitutionality', *Droit Polonais Contemporain*, II (1990) 5–6.
37. J. Elster, 'Constitution-Making in Eastern Europe: Rebuilding the Boat In The Open Sea', in J. Hesse (ed.), *Administrative Transformation in Central and Eastern Europe* (Oxford: Blackwell, 1993) p. 178.
38. *Ibid.*, pp. 178–9.
39. *Ibid.*, p. 179.
40. E. McWhinney, *Constitution-making: Principles, Process, Practice* (Toronto: University of Toronto Press, 1981) p. 6.
41. J. Elster, 'Constitutionalism in Eastern Europe: An Introduction', *University of Chicago Law Review*, LVIII (1991) 477.
42. P. Merkl, *The Origin of the West German Republic* (New York: Oxford University Press, 1963) p. 81.
43. Przeworski, *Democracy and the Market* p. 26.

Chapter 2

1. T. Cooley, *The General Principles of Constitutional Law* (Boston, 1891) p. 21.
2. K. Wheare, *Modern Constitutions* (London: Oxford University Press, 1951) p. 10.
3. O. Halecki, *History of Poland* (London: Kegan Paul, 1976) pp. 65–130. King Kazimierz had no male successors, and during his reign he obligated the succession of the Polish throne to the Hungarian Dynasty of D'Anjou. Kazimierz's sister, Elizabeth, married the Hungarian King, Karl Robert, during Kazimierz's lifetime, and, upon the death of Kazimierz in 1370, the crown was designated to Kazimierz's nephew, Louis D'Anjou.
4. K. Koranyi, *Powszechna Historia Państwa i Prawa* (Torun: Nakładem Towarzystwa Naukowego, 1966) pp. 180–1.
5. S. Kutrzeba, *Unia Polski z Litwą w Stosunku Dziejowym* (Lwów: B. Poloniecki, 1913) pp. 17–19.
6. H. Olszewski, *Sejm Rzeczypospolitej Epoki Oligarchii* (Poznań: Uniwersytet Adama Mickiewicza, 1962) p. 25.
7. W. Wagner, 'Introduction', in W. Wagner (ed.), *Polish Law Throughout the Ages* (Stanford: Hoover, 1970) p. 5.
8. K. Grzybowski, *Teoria Reprezentacji w Polsce epoki Odrodzenia* (Warsaw: Wydawnictwo Akademii Nauk, 1959) p. 145.
9. W. Goslicki, *The Accomplished Senator* (Miami: American Institute of Polish Culture, 1992) p. 51.
10. *Ibid.* pp. 51–2. Goslicki asserted that the same rule applied to the judiciary and the legislature. *Id.* at 54, 237.
11. *Ibid.*, at 237.
12. *Ibid.*, at 241.
13. The relatively weak bargaining position of King Louis and King Jagiello, who both desired to set up new dynasties in Poland, resulted in the

- transformation of Poland from a hereditary monarchy into an elective kingdom. Monarchs were at first elected within the Jagiellonian dynasty and later elected for life mostly from foreign, royal households. W. Reddaway (ed.), *The Cambridge History of Poland* (London: Cambridge University Press, 1951) pp. 52–3.
14. Wagner, 'Introduction' pp. 3–4. As the Sejm gained in power and prestige, local government, the traditional cornerstone of the decentralized state, began to emerge. The more advanced rural districts created provincial diets, or 'sejmiki', which were given substantial responsibilities, including the collection of all taxes.
 15. J. Maciszewski, 'Szlachta polska i jej panstwo', in W. Krajewski (ed.), *O dialektyce marksistowskiej – Wiedza Powszechna* (Katowice: Wydawnictwo Popularne Nauk, 1986) p. 139. The possibility of civil disobedience against the King in the case of his noncompliance with the rules of his office was known as the 'articulus de non protestanda oboediantia.' Such action could occur only upon the clear failure of the King to execute his duties responsibly, and then only after providing him with notice and an opportunity to rectify the transgression. S. Szczaska, 'Pierwsza ustawa zasadnicza Rzeczypospolitej Polskiej', in M. Kallas (ed.), *Konstytucje Polski. Studia monograficzne z dziejow polskiego konstytucjonalizmu* (Warsaw: Wydawnictwo Sejmowe, 1990) p. 19.
 16. M. Ludwikowski and R. Ludwikowski, 'Stanislaw Orzechowski – Prekursor Szlacheckiego Anarchizmu', *Czasopismo Prawno-Historyczne*, XVI (1980) 1 (quoting S. Orzechowski).
 17. J. Bystron, *Dzieje Obyczajow w Dawnej Polsce, wiek XVI–XVIII* (Warsaw: Panstwowy Instytut Wydawniczy, 1976) pp. 191–200.
 18. B. Lesnodorski, *Dzielo Sejmu Czteroletniego* (Wroclaw: Ossolineum, 1951) p. 63.
 19. R. Ludwikowski and W. Fox, *The Beginning of the Constitutional Era* (Washington, DC: The Catholic University of America Press, 1993), pp. 101–2 (quoting Kollataj, unpublished essay, 'O Konstytucji w Ogolnosci i w Szczegolnosci').
 20. Lesnodorski, op. cit. pp. 61–2.
 21. W. Smolenski, *Przewrot Umyslowy w Polsce Wieku XVIII* (Warsaw: Ksiazka i Wiedza, 1979) pp. 65–9.
 22. A. Ajenkiel, *Polskie Konstytucje* (Warsaw: Wydawnictwo Akademii Nauk, 1983) p. 60.
 23. Ustawa Rządowa 3 Maja 1791, art. 7 [hereinafter 1791 Const.], reprinted in *New Constitution of the Government of Poland* (London: Debrett, 1791).
 24. Plenipotentiaries were to be elected by the burgher class to work with Sejm commissions on municipal issues. 1791 Const., art. 2.
 25. Ibid., art. 7.
 26. Ibid., art. 6.
 27. Ibid., arts. 6, 7.
 28. In the Senate, the King had one vote, and a second in the case of a tie. Ibid., art. 6.
 29. A. Mycielski, *Polskie prawo polityczne* (Warsaw: Wydawnictwo Literackie, 1946) pp. 40–1.

30. 1791 Const., art. 4. The 1791 Constitution did little to change the social position of the Polish serf. Servitudes remained in effect, making the Polish peasant personally dependent on the szlachta and subject to the szlachta's authority.
31. A. Zahorski (ed.), *Konstytucja Majowa* (Warsaw: Państwowe Wydawnictwo Naukowe, 1991) p. 20.
32. J. Hawgood, *Modern Constitutions Since 1787* (London: Macmillan, 1939) p. 9.
33. B. Dembinski, *Polska na Przełomie* (Warsaw: Societe polonaise d'histoire, 1913) p. 4.
34. J. Jedruch, *Constitutions, Elections, and Legislatures of Poland, 1493–1977* (Washington, DC: University Press of America, 1982) pp. 247–8.
35. N. Davies, *God's Playground: A History of Poland*, vol. I (New York: Columbia University, 1982) p. 299.
36. A. Ajnenkiel, 'Polskie Reprezentacje w Ciałach przedstawicielskich państw Zaborczych y Latach 1848–1918', *Czasopismo Prawno-Historyczne*, XXXVI (1984) 155–80.
37. K. Krukowska, 'Konstytucja Rzeczypospolitej Polskiej 1921 r.', in M. Kallas (ed.), *Konstytucja Polski* pp. 70–108.
38. B. Sarnecki, 'Konstytucja marcowa na tle konstytucji współczesnych', *Państwo i Prawo*, XLVI (1991) 6.
39. Const. of 1921, arts. 2, 3 [hereinafter 1921 Constitution], reprinted in *The Polish Handbook* 13 (1925).
40. Hawgood, *Modern Constitutions* p. 336 (citation omitted).
41. The 1921 Constitution applied the name 'Sejm' to the lower chamber only, while in the pre-partition Kingdom of Poland the name Sejm had been applied to the whole legislative branch.
42. *Ibid.*, arts. 4–6, 11, 26.
43. *Ibid.*, arts. 11, 35, 36.
44. H. Roos, *A History of Modern Poland* (London: Eyre & Spottiswoode, 1966) p. 103.
45. 1921 Const., arts. 75, 84. The President appointed members of the judiciary on the recommendation of the Minister of Justice. *Ibid.*
46. A. Polonsky, *Politics in Independent Poland 1921–1939* (London: Oxford University Press, 1972) p. 48.
47. *Ibid.*, p. 100.
48. *Ibid.*, pp. 99–100.
49. Reddaway (ed.), *The Cambridge History of Poland*, pp. 588, 602. With Moscicki as President, Pilsudski was Prime Minister between 1926 and 1928.
50. Polonsky, *op cit.*, at 283.
51. J. Pilsudski, *Pisma Wybrane* (Edinburgh: Edinburgh University Press, 1943) p. 412.
52. H. Izdebski, 'Constitutional Developments in France and Poland since 1791: A Comparative Analysis', in K. Thompson and R. Ludwikowski (eds), *Constitutionalism and Human Rights: America, Poland and France* (New York: University Press of America, 1991) p. 173.

53. Const. of 1935, arts. 16, 17, 20, reprinted in *Constitution of the Republic of Poland* (London: Polish Commission for International Law Cooperation, 1935).
54. Polonsky, op. cit., p. 181.
55. Ibid., p. 389.
56. Ibid., p. 512.
57. Ibid., p. 513. The innovative value of some aspects of the 1935 Constitution was further evidenced by Charles de Gaulle's adoption of certain elements of the document into the French Constitution of 1958. Roos, *A History of Modern Poland*, p. 141.

Chapter 3

1. The PKWN manifesto was quickly passed into law. See Ustawa z dnia 31 grudnia 1944 r., *Dziennik Ustaw*, no. 1, item 3 (1944).
2. R. Staar, *Poland 1944–1962: The Sovietization of a Captive People* (Westport: Greenwood Press, 1975) p. 45.
3. N. Davies, *God's Playground: A History of Poland*, vol. II (New York: Columbia University Press, 1982) pp. 570–1.
4. W. Sokolewicz, 'Instytucje prawnoustrojowe Ludowej', *Panstwo i Prawo*, XLI (1986) 18.
5. 'Declaration of Rights and Liberties', in A. Peaslee (ed.), *Constitutions of Nations* (Concord: The Rumford Press, 1950) p. 822.
6. *Zagadnienia Prawne Konstytucji Polskiej Rzeczypospolitej Ludowej* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1954) p. 166.
7. Poland's communist party system was a hegemonic type, with Communist Party dominance over two reliable satellite parties, the United Peasant Alliance (*Zjednoczone Stronnictwo Ludowe* or ZSL) and the Democratic Alliance (*Stronnictwo Demokratyczne* or SD), respectively representing the peasantry and the intelligentsia.
8. 'Na nowym etapie rozwojowym', *Demokratyczny Przegląd Prawniczy*, X (1948) 1.
9. A. Rzeplinski, *Sadownictwo w Polsce Ludowej* (Warsaw: Wydawnictwo Polskiej Akademii Nauk, 1989) p. 57.
10. A. Rek, 'O roli i zadaniach sadow powszechnych w walce o utrwalenie ludowej praworzadnosci', *Nowe Prawo*, IX (1951) 12.
11. A. Burda, *Introduction to Constitution of the Polish People's Republic* (Warsaw: Polonia Publishing House, 1964) p. 11.
12. B. Bierut, *O konstytucji Polskiej Rzeczypospolitej Ludowej* (Warsaw: Ksiazka i Wiedza, 1952) p. 35.
13. Const. of 1952, preamble [hereinafter 1952 Const.], reprinted in *Constitution of the Polish People's Republic* (Warsaw: Polonia Publishing House, 1953).
14. W. Skrzydlo, 'Z Problematyki Genezy i Istoty Partii Politycznych', *Annales Universitatis Marie Curie-Sklodowska*, V (1958) 64.
15. Within the Party, important policy decrees were formulated by the Politbureau, and only then formally filtered by the Secretariat of the Party, which oversaw the work of the state organs, to the legislature for official

- action. The emergence of a leading group within the Party was a central purpose of democratic centralism; it was intended to maximize Party unity by quelling internal dissent that, if left unchecked, might lead to the formation of factions.
16. M. Cappelletti and W. Cohen, *Comparative Constitutional Law* (New York: Macmillan, 1979) p. 21.
 17. H. Skilling, *The Governments of Communist East Europe* (New York: Crowell, 1966) p. 50.
 18. J. Triska (ed.), *Constitutions of the Communist Party-States* (Stanford: Hoover, 1968) p. xi.
 19. Orzeczenie z dnia 4 czerwca 1955 r., *Orzecznictwo Sadu Najwizszego* 93 (1955).
 20. S. Rozmaryn, *The Sejm and People's Councils in Poland* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1958) p. 13.
 21. D. Olson and M. Simon, 'The Institutional Development of a Minimal Parliament: The Case of the Polish Sejm', in D. Nelson and S. White (eds), *Communist Legislatures in Comparative Perspective* (London: Macmillan, 1982) pp. 47, 51, Table 3.1.
 22. G. Kolankiewicz and P. Lewis, *Poland: Politics, Economics and Society* (London: Pinter, 1988) p. 89.
 23. S. Rozmaryn, 'Kontrola konstytucyjności ustaw', *Panstwo i Prawo*, III (1948) 13.
 24. S. Walczak, 'Przewodnia rola partii a wymiar sprawiedliwosci', *Nowe Prawo*, XLI (1986) 4.
 25. Rek, op. cit., 12.
 26. Statement of Jakub Berman, quoted in T. Toranska, "*Them*": *Stalin's Polish Puppets* (London: Collins Harvill, 1987) p. 331.
 27. L. Lernell, 'Rola i zadania organow wymiaru sprawiedliwosci na tle uchwal Plenum KC PPR', *Demokratyczny Przegląd Prawniczy*, X (1948) 17-18.
 28. A. Lopatka, 'Socjalistyczna a burzuazyjna koncepcja praw i obowiazkow obywatelskich', in J. Letowski (ed.), *Prawa Obywatelskie i administracja Panstwowa* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1983) p. 11.
 29. K. Biskupski, *Wladza i Lud* (Warsaw: Ksiazka i Wiedza, 1956) p. 21.
 30. 1952 Const., arts. 58, 60.
 31. A. Lopatka and R. Wieruszewski, *Podstawowe prawa i obowiazki obywateli PRL w okresie budowy rozwiniętego społeczeństwa socjalistycznego* (Warsaw: Ksiazka i Wiedza, 1976) p. 17.
 32. In June 1956, the legitimacy of communist theory in Poland was shaken by the regime's crushing of worker protests in Poznan. This led to a crisis of identity within the Party, which precipitated a change in leadership. In October 1956, Wladyslaw Gomulka was unanimously elected Party First Secretary 'on the platform of reasserting genuine Leninist principles in state and party life.' The election of Gomulka, himself a victim of Stalinist practices, symbolized the rejection of the Stalinist model of communism based on terror. The PZPR, determined by the Kremlin in 1956 to have 'achieved maturity', was allowed to take direct control of the People's Republic without direct Soviet supervision. Of course, the underlying

- ideological foundations of the system, above all the Party's monopoly on power, remained intact. 2 Davies, *God's Playground*, pp. 585–6.
33. R. Sakwa and S. Crouch, 'Sejm Elections in Communist Poland: An Overview and a Reappraisal', *British Journal of Political Science*, VIII (1978) 404–6. The three legal parties, the PZPR and its two subordinates, ZSL and SD, were grouped in a super-party organization called the Front for National Unity (*Front Jednosci Narodu*). The Front, and not the parties separately, presented the program and the list of candidates to the electorate.
 34. A. Gwizdz and S. Zawadzki, 'Constitutional Law', in L. Kurowski (ed.), *General Principles of Law of the Polish People's Republic* (Warsaw: Polish Scientific Publishers, 1984) p. 25.
 35. The election in 1978 of Pope John Paul II intensified the political role of the Church in Poland and galvanized the people against their communist oppressors. Solidarity directly identified itself with the Catholic Church, incorporating religious symbols into many of its activities. Likewise, the Church mediated negotiations between the government and Solidarity.
 36. J. Lipski, *KOR: A History of the Workers' Defense Committee in Poland* (Berkeley: University of California Press, 1985) pp. 21–36.
 37. 'Kim jesciesmy i dokad dazymy', *Tygodnik Solidarnosc*, 16 Oct. 1981, p. 1.
 38. Rzeplinski, op. cit., p. 94.
 39. However, the restrictions imposed during martial law continued in force, including those laws banning Solidarity, the right to strike and permitting total censorship.
 40. The political implications of such an arrangement were obvious: Many high-ranking Party officials became immunized by the fortuitous event of not having been assigned by the Party to perform any state function.
 41. J. Wroblewski, 'Trybunal Stanu a Trybunal Konstytucyjny – zwiazky instytucjonalne i problemy wspolne', *Panstwo i Prawo*, XLI (1986) 16–17.
 42. M. Reykowski, 'Czy socjalizm jest psychologicznym nieporozumieniem?', *Nowe Drogi*, XLII (1987) 50, 52.
 43. In August 1986, Stanislaw Podemski, a well-known legal commentator of *Polityka* (a weekly oriented toward the more liberal wing of the Communist Party), reflected society's skepticism, stating that the Ombudsman 'might be built into the existing bureaucratic system and will become only one more effective component of the system.' S. Podemski, 'Ostre widzenie', *Polityka*, 9 Aug. 1986, p. 3.
 44. E. Letowska, 'The Ombudsman and Basic Rights', *East European Constitutional Review*, IV (Winter 1995) 63, 65.
 45. Ustawa z dnia 15 lipcu 1987 r. o Rzeczniku Praw Obywatelskich, *Dziennik Ustaw*, no. 21, item 123 (1987).
 46. 'Kierunki Dzialalnosci Rzecznika Praw Obywatelskich', *Biuletyn RPO Materialy*, XIV (1989) 21–2. In 1988 alone, the Ombudsman brought 14 extraordinary appeals to the Supreme Court, lodged 2 motions with the Constitutional Tribunal, and brought more than 20 joint recommendations to various central organs of government.
 47. E. Letowska, 'Zagadnienie rownosci w praktyce polskiego ombudsmana', *Biuletyn RPO Materialy*, XVII (1991) 17–19.

48. K. Działocha, 'Państwo Prawne w warunkach zmian zasadniczych systemu prawa', *Państwo i Prawo*, XLVII (1992) 27.
49. J. Kurczewski, *The Resurrection of Rights in Poland* (Oxford: Clarendon Press, 1993) p. 18.

Chapter 4

1. The Round Table negotiations took place between 6 February and 5 April 1989, and resulted in a unique political plan: a transitional period in which the opposition would function legally within the communist system and accept the hegemony of the Communist Party. In return, it would play a constructive role in helping the government tackle the economic crisis. But the unexpected political victory for Solidarity in the June 1989 parliamentary elections greatly accelerated the decay of communism.
2. For example, Bronisław Geremek, one of the opposition negotiators, rejected a proposal for completely free Sejm elections on the ground that it was too radical for the Soviets.
3. Ustawa z dnia 11 kwietnia 1989 r., *Dziennik Ustaw*, no. 37, item 41 (1989).
4. Two senators were to be chosen by the first-past-the-post system in each of the national voivodships. Both chambers are elected for four-year terms.
5. W. Osiatynski, 'An Interview with General Wojciech Jaruzelski', *East European Constitutional Review*, III (Winter 1994) 47.
6. Z. Sarnecki, 'Zalozenia konstytucji', *Państwo i Prawo*, XLV (1990) 5.
7. Amended Constitution of the Republic of Poland, in A. Blaustein and G. Flanz (eds), *Constitutions of the Countries of the World* (New York: Oceana, 1991) [hereinafter Amended Const.] art. 30.
8. W. Salmonowicz (ed.), *Porozumienia Okraglego Stolu* (Olsztyn: NSZZ Solidarnosc, 1989) p. 5.
9. Amended Const., art. 60.
10. Ustawa z dnia 20 grudnia 1989 r., *Dziennik Ustaw*, no. 73, item 436 (1989).
11. This clause, modeled on pre-war legislation, provoked considerable controversy. Some claimed that judges would be unfairly deprived of their right to participate in the nation's political life. Krassowska, 'Zaufac sedziom', *Gazeta Prawnicza*, 16 Feb. 1990, p. 3.
12. Ustawa z dnia 22 marzec 1990 r., *Dziennik Ustaw*, no. 20, item 121 (1990).
13. Wasilkowska, 'Czas realizacji dawnych idei', *Gazeta Prawnicza*, 1 Feb. 1990, p. 5. Further decentralizing state power, local government reform was recognized as a priority. On 8 March 1990, a new chapter (Chapter VI) was incorporated into the Constitution, entitled 'Local Self-government', and on 27 May 1990 free local elections were held for 52,000 new local 'councilors' who were given exclusive control over municipal administrative matters.
14. Amended Const., art. 27.

15. Several Solidarity senators and deputies had to abstain from voting in order to offset ZSL and SD defections.
16. W. Sokolewicz, 'Kwietniowa Zmiana Konstytucji', *Panstwo i Prawo*, XLIV (1989) 3.
17. In 1990, the PZPR disbanded and reformed on the model of social democratic parties in France and Germany in the hope that it would have a better chance of winning power in democratic Poland. The new party, named the Social Democracy for the Republic of Poland (*Socjal-demokracja Rzeczypospolitej Polskiej* or SdRP), condemned the ideology and practices of the Stalinist era.
18. Ustawa z dnia 29 grudnia, 1989 r. o zmianie konstytucji Polskiej Rzeczypospolitej Ludowej, *Dziennik Ustaw*, no. 75, item 444 (1989).
19. B. Geremek and J. Zakowski, *Rok 1989: Geremek Opowiada, Zakowski Pyta* (Warsaw: Plejada, 1990) p. 376.
20. 'Seym Debates Changes', *Warsaw PAP, Foreign Broadcast Information Service* (Daily Report, Eastern Europe) 46 (2 January 1990).
21. W. Sokolewicz, 'The Relevance of Western Models for Constitution-Building in Poland', in J. Hesse and N. Johnson (eds), *Constitutional Policy and Change in Europe* (Oxford: Oxford University Press, 1995) p. 78.
22. Interview with Dr. Zbigniew Pelczynski, Former Expert Advisor to the Sejm Constitutional Committee (1989–91), in Oxford, England (21 March 1995).
23. For both constitutional drafts, see M. Kallas (ed.), *Projekty Konstytucyjne 1989–1991* (Warsaw: Wydawnictwo Sejmowe, 1992).
24. Professor Geremek notes that the Round Table Sejm, perhaps in part because many of its deputies knew that they held their seats by historical accident and should 'redeem' themselves by good behavior, were actually more cooperative than the next, democratically elected Sejm, given the absence of a developed party system and the likely combination of inexperience and anarchic enthusiasm among the new deputies. Geremek and Zakowski, op. cit., p. 31.
25. Ustawa z dnia 27 wrzesnia 1990 r., *Dziennik Ustaw*, no. 38, item 73 (1990). The presidential campaign yielded two political groupings out of Solidarity – the beginning of a genuine multi-party system. One, the PC, supported Walesa for president and was identified with workers and the Solidarity Union in Gdansk. The other, known by the acronym 'ROAD' (*Ruch Obywatelski Akcja Demokratyczna* or Movement for Citizens' Democratic Action), backed Mazowiecki and was associated with intellectuals and the government in Warsaw. For an excellent discussion of the events leading to the passage of the Small Constitution, see F. Millard, *The Anatomy of the New Poland: Post-Communist Politics in its First Phase* (London: Elgar, 1993).
26. W. Beres and K. Burnetko, *Gliniarz z 'Tygodnika': Rozmowy z bylem ministrem spraw wewnetrznych Krzysztofem Kozlowskim* (Warsaw: BGW, 1991) p. 110.
27. Rogulski, 'Poparcie dla Jana Olszewskiego', *Rzeczpospolita*, 18 December 1991, p. 1. Walesa's concerns centered on Olszewski's criticism of Poland's economic austerity program.
28. W. Fikus, 'Incydent wojskowy', *Rzeczpospolita*, 9 April 1992, p. 1.

29. Groblewski, 'Wiceministrowie odchodza i wracaja', *Rzeczpospolita*, 20 August 1992, p. 3. A parliamentary commission subsequently found the charges of conspiracy unfounded.
30. 'Polacy niezadowoleni z rozwoju demokracji', *Rzeczpospolita*, 19 December 1991, p. 1.
31. 'Nuzaca demokracja', *Gazeta Wyborcza*, 11 August 1992, p. 1.
32. 'Mala Konstytucja Uchwalona', *Gazeta Wyborcza*, 17 Oct. 1992, p. 1. The Small Constitution was supported by the seven coalition parties plus the communist successor parties, the PSL and SLD.
33. *Ustawa Konstytucyjna z Dnia 17 Pazdziernika 1992 o Wzajemnych Stosunkach Miedzy Wladza Ustawodawcza i Wykonawcza Rzeczypospolitej Polskiej oraz utrzymane w mocy przepisy konstytucyjne* (Warsaw: Wydawnictwo Sejmowe, 1993)[hereinafter Small Const.] art. 23.
34. The decree power has not yet been granted to a government in Poland.
35. On 28 March 1993, the Government for the first time requested expedited legislative process when it submitted a modified version of Mass Privatization Program legislation, which had been previously rejected by the Sejm. The resubmitted version was approved by the Sejm on 30 April 1993.
36. Small constitution art. 28, sect. 2.
37. *Ibid.*, art. 35.
38. The 'constructive vote of no confidence' hails from German constitutional theory, particularly from that of C. J. Friedrich as applied in the German Constitution of 1949.
39. D. Warszawski, 'Regulamin', *Gazeta Wyborcza*, 4 August 1992, p. 5.
40. W. Osiatynski, 'Skazani na oryginalnosc', *Gazeta Wyborcza*, 29 Aug. 1992, p. 8.
41. Semprich, 'Senate Commission Criticizes Small Constitution', *Rzeczpospolita*, 4 Sept. 1992, p. 2, available in *NEXIS, NEWS Library, PNBUL File*.
42. Included in the system of regular courts are regional courts, voivodship courts and appeals courts, which hear appeals from voivodship courts.
43. Orzeczenia z dnia 20 wrzesznia 1991 r., *Orzecznictwo Sadu Najwyzszego* 43 (1992).
44. D. Warszawski, 'Belwederska karta obywatelska', *Gazeta Wyborcza*, 18 Nov. 1992, p. 3.
45. *Sprawozdanie stenograficzne z posiedzenia Sejmu RP z dnia 21, 22, i 23 stycznia oraz 3 i 4 lutego 1993 r.* (Warsaw: Wydawnictwo Sejmowe, 1993) p. 20 (statement of D. Tusk).
46. Orzeczenie z dnia 17 pazdziernika 1991r., *Orzecznictwo Sadu Najwyzszego* 96 (1992).
47. Ustawa z dnia 17 maja 1989 r. o stosunku Panstwa do Kosciola Katolickiego, *Dziennik Ustaw*, no. 29, item 154 (1989).
48. Ustawa z dnia 29 maja 1989 r. o zmianie niektorych przepisow prawa karnego, *Dziennik Ustaw*, no. 34, item 180 (1989).
49. E. Letowska, *Po co ludziom konstytucja* (Warsaw: Helsinki Foundation for Human Rights, 1995) p. 11.
50. 'Sprawozdanie Rzecznika Praw Obywatelskich za okres 1 XII 1990 r.-19 XI 1991 r.', *Panstwo i Prawo*, XLVII (1992) 3-16.

51. Ustawa z dnia 23 kwietnia 1992 r., *Dziennik Ustaw*, no. 41, item 176 (1992).
52. For the six drafts prepared in 1992–3, see *Projekty Konstytucji, Komisja Konstytucyjna Zgromadzenia Narodowego* (Warsaw: Wydawnictwo Sejmowe, 1993).
53. ‘Projekt konstytucji’, *Rzeczpospolita*, June 21, 1996, p. 1.
54. ‘Projekt konstytucji z 19 czerwc 1996 r.’, *Rzeczpospolita*, June 21, 1996, p. 16 (articles 55 and 57).
55. J. de Weydenthal, ‘Poland to vote on New Constitution’, *Radio Free Europe/Radio Liberty Newline*, No. 8, Part II, 10 April, 1997.
56. L. Leszczynski, ‘Delay Problems in the Polish Constitution-Making Process’, *Journal of Constitutional Law in Eastern and Central Europe*, I (1994) 238.
57. J. Linz, ‘The Perils of Presidentialism’, *Journal of Democracy*, I (Winter 1990) 52.
58. J. Linz, ‘Transitions to Democracy’, *Washington Quarterly*, XIII (Summer 1990) 153–4; A. Lijphart (ed.), *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992).
59. D. Horowitz, ‘Comparing Democratic Systems’, *Journal of Democracy*, I (Fall 1990) 78.
60. E. Rosolak, ‘Sukces – to prezydent, porazki – to my’, *Trybuna*, 16 Nov. 1991, p. 1.
61. W. Osiatynski, ‘Bronislaw Geremek on Constitution-Making in Poland’, *East European Constitutional Review*, IV (Winter 1995) 44.
62. ‘Raport z Badania ‘Oceny wpływu kluczowych instytucji i organizacji oraz ich głównych przedstawicieli na sprawy kraju’’, *Centrum Badania Opinii Społecznej* (January 1993) 3.
63. ‘Raport z Badania ‘Opinii publiczna o projekcie Karty Praw i Wolności’,’ *Centrum Badania Opinii Społecznej*, (March 1993) 2.
64. J. Elster, ‘Human Rights and the Constitution-Making Process’, in A. Rzeplinski (ed.), *Constitutionalism & Human Rights* (Warsaw: Helsinki Foundation for Human Rights, 1992) p. 25.
65. I. Grudzinska-Gross (ed.), *Constitutionalism in East Central Europe* (New York: American Council of Learned Societies, 1994) p.43 (statement of T. Mazowiecki).
66. To have force, the concordat must be ratified by the Sejm and signed by the President, and in July 1994 Parliament passed a resolution postponing ratification until after the passage of a new constitution.
67. A. Rapaczynski, ‘Constitutional Politics in Poland: A Report of the Constitutional Committee of the Polish Parliament’, *University of Chicago Law Review*, LVIII (1991) 604.

Chapter 5

1. W. Komarnicki, *Polskie Prawo Polityczne* (Warsaw: Nakładem Księgarni F. Hościacka, 1922) p. 471.
2. W. Jaworski, *Trybunał Konstytucyjny* (Krakow: Nakładem Krakowskiej Spółki Wydawniczej, 1924) p. 58.

3. 'Ankieta w sprawie rewizji konstytucji polskiej i ordynacji Wyborczej, opinia A. Peretiatkowicza', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, VI (1925) 438.
4. W. Starszewski, 'Srodki zabezpieczenia', *Ruch, Prawniczy, Ekonomiczny i Socjologiczny*, V (1925) 248.
5. E. Zwierzchowski, 'Geneza oraz organizacja i funkcjonowanie sadowej kontroli konstytucyjnosci aktow normatywnych w Polsce', *Studia Juridica Silesiana*, VII (1990) 8.
6. A. Peretiatkowicz, *Reforma konstytucji polskiej* (Warsaw: Nakladem Ksiegarni F. Hoesicka, 1927) p. 37.
7. M. Krol, 'Zmiany i przekształcenia zwyczajowe konstytucji', *Rocznik Prawniczy Wilenski*, XXXII (1931) 86 (quoting W. Makowski).
8. A. Gwidz, 'Trybunał Konstytucyjny', in *Kontrola konstytucyjnosci prawa* (Warsaw: Wydawnictwo Sejmowe, 1987) p. 134.
9. S. Rozmaryn, 'Kontrola Konstytucyjnosci ustaw', *Panstwo i Prawo*, III (1948) 20.
10. M. Wierzbowski, 'Administrative Procedure in Eastern Europe', *Comparative Law Year Book*, I (1977) 226-7.
11. J. Makowski, 'Materiały do projektu przyszłej konstytucji', *Panstwo i Prawo*, II (1947) 43.
12. J. Zakrzewska, 'Prezentacja Trybunału Konstytucyjnego', in *Polsko-Holenderskie Kolokwium* (Warsaw: Trybunał Konstytucyjny, 1991) pp. 4, 5.
13. 'Niektore zagadnienia polityczno-prawne w swietle III Plenum KC PZPR', *Panstwo i Prawo*, X (1955) 369. The intellectual opposition did not intend to depart from Marxism; its proponents made attempts at 'purging Communism of abuses', 'reforming Marxism', and 'going back to sources'. See L. Kolakowski, *Main Currents of Marxism: Its Rise, Growth, and Dissolution* (Oxford: Clarendon Press, 1978).
14. 'Sesja naukowa katedr prawa państwowego', *Panstwo i Prawo*, XVI (1961) 1054.
15. A. Burda, 'Kontrola Konstytucyjnosci Ustaw', *Panstwo i Prawo*, XX (1965) 867; F. Siemienski, *Organy Przedstawicielskie w systemie organow panstwa socjalistycznego* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1964) pp. 265-71.
16. S. Rozmaryn, *Konstytucja jako ustawa zasadnicza Polskiej Rzeczypospolitej Ludowej* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1967) p. 202.
17. J. Kowalski, 'Problemy reformy systemu politycznego Polskiej Rzeczypospolitej Ludowej', *Panstwo i Prawo*, XXXVI (1981) 6.
18. A. Gwidz, 'Trybunał Konstytucyjny', *Panstwo i Prawo*, XXXVIII (1983) 7-8.
19. J. Stembrowicz, 'Trybunał Konstytucyjny', *Tygodnik Powszechny*, 7 April 1985, p. 3.
20. See Ustawa o Naczelnym Sadzie Administracyjnym oraz o zmianie ustawy – Kodeks Postepowania Administracyjnego, *Dziennik Ustaw*, no. 4, item 8 (1980).
21. Orzeczenie z dnia 6 luty 1981 r., *Orzecznictwo Naczelnego Sadu Administracyjnego w 1981 r.* 27 (1981).
22. 'Kim jesteśmy i dokad dazymy', *Tygodnik Solidarnosc*, 16 Oct. 1981, p. 1.
23. Zakrzewska, op. cit., p. 7.

24. 'Uchwała IX Nadzwyczajnego Zjazdu' in *IX Nadzwyczajny Zjazd Polskiej Zjednoczonej Partii Robotniczej: 14–20 lipca 1981* (1983).
25. 'Uchwała Ogólnopolskiego Zjazdu Adwokatów z dnia 4 stycznia 1981' (art. 14), in *Palestra*, XXV (1981) 198.
26. Interview with Hubert Izdebski, Professor of Legal History, University of Warsaw, in Warsaw, Poland (June 3, 1993).
27. J. Stembrowicz, 'Trybunał Konstytucyjny', *Tygodnik Powszechny*, 7 April 1985, p. 3.
28. Interview with Mirosław Wyrzykowski, Professor of Constitutional Law, University of Warsaw, in Warsaw, Poland (23 May 1993).
29. Interview with Hubert Izdebski, Professor of Legal History, University of Warsaw, in Warsaw, Poland (25 Nov. 1991). Professor Izdebski has argued that the addition of article 33a into the Constitution was done 'almost exclusively for foreign consumption. The regime hoped to repeat Czechoslovakia's "creation" in 1968 of a constitutional court, simply passing a constitutional amendment without ever actually implementing it. However, after the declaration of martial law, the opposition grew stronger and even more vocal, and the regime had to concede.' Ibid.
30. Z. Czeszejko-Sochacki, *Trybunał Konstytucyjny PRL* (Warsaw: Książka i Wiedza, 1986) pp. 46–9.
31. Zakrzewska, op. cit., pp. 6–7.
32. Czeszejko-Sochacki, op. cit., pp. 20–1.
33. Ustawa z dnia 29 kwietnia 1985 o Trybunale Konstytucyjnym, *Dziennik Ustaw*, no. 22, item 98, (1985)[hereinafter 1985 Act].
34. 'Trybunał Konstytucyjny', *Rzeczpospolita*, 28 Feb. 1985, p. 1.
35. Statement by Deputy Edward Szymanski, *Rzeczpospolita*, 15 March 1985, p. 5.
36. A. Kruszewski, 'Straznych naszych praw', *Prawo i Życie*, 16 March 1985, p. 4.
37. R. Walczak, 'Przewodnia rola partii a wymiar sprawiedliwości', *Nowe Prawo*, XLI (1986) 4.
38. After 1989, the process of selecting Tribunal justices became more politicized, as the potential political role of the Tribunal became apparent. In the 1993 election of Tribunal justices, opposition parties tried to force the majority parties (SLD and PSL) to place at least some of their candidates on the Tribunal bench. But the majority parties refused.
39. 1985 Act, supra n. 33, art. 6.
40. Ibid., art. 19. Until 1989, the oath taken by Tribunal justices was heavily laden with communist rhetoric, committing them to 'furthering the ideals of the socialist state'. The six new 'Solidarity justices' elected in 1989 refused to take this oath, and the functioning of the Tribunal was halted for two months until Parliament drafted and passed a new Tribunal oath.
41. 1985 Act, art. 26.
42. Judgment U 8/90 of 15 January 1991, 1991 *Orzecznictwo Tryb. Konst.* 134.
43. Judgment U 5/86 of 6 Nov. 1986, 1986 *Orzecznictwo Tryb. Konst.* 7.
44. Stembrowicz, op. cit., p. ix.
45. Despite the absence of an individual right of petition, the Tribunal receives numerous constitutional complaints from citizens. In 1989

- alone, 794 complaints were submitted to the Tribunal by citizens. So far, all cases initiated by the Tribunal have been based on constitutional complaints received from citizens.
46. Stembrowicz, op. cit., p. ix.
 47. Opinion of Deputy A. Klafkowski, quoted by Z. Czeszejko-Sochacki, op. cit., at 55.
 48. Opinion of Deputy W. Zakrzewski, in the report from a meeting of the Sejm on 29 April 1985, in Czeszejko-Sochacki, op. cit., at 57.
 49. A. Lopatka, 'Socjalistyczna a burżuazyjna koncepcja praw i obowiazkow obywatelskich', in J. Letowski (ed.), *Prawa Obywatelskie i Administracja Panstwowa* (Warsaw: Panstwowe Wydawnictwo Naukowe, 1983) pp. 14-15.
 50. Zakrzewska, op. cit., at 17.
 51. 'Wchodzi w zycie ustawa o Trybunale Konstytucyjnym', *Zycie Warszawy*, 2 Jan. 1986, pp. 1, 6.
 52. L. Garlicki, 'Constitutional Politics in Poland', *Saint Louis University Law Journal*, XXXII (1988) 725.
 53. Ustawa z dnia 29 grudnia 1989 o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, *Dziennik Ustaw*, no. 75, item 444 (1989).
 54. Ustawa z dnia 29 maja 1989 o przekazaniu dotychczasowych kompetencji Rady Panstwa Prezydentowi Polskiej Rzeczypospolitej Ludowej i innym organom panstwowym, *Dziennik Ustaw*, no. 34, item 178 (1989).
 55. Ustawa z dnia 29 maja 1989, *Dziennik Ustaw*, No. 34, item 178 (1989).

Chapter 6

1. Judgment K 1/88 of 30 Nov. 1988, 1988 *Orzecznictwo Tryb. Konst.* 72.
2. L. Garlicki, 'Constitutional Developments in Poland', *Saint Louis University Law Journal*, XXXII (1988) 734.
3. M. Cappelletti, 'Repudiating Montesquieu? The Expansion and Legitimacy of "Constitutional Justice"', *Catholic University Law Review*, XXXV (1985) 8.
4. Judgment U 5/86 of 6 Nov. 1986, 1986 *Orzecznictwo Tryb. Konst.* 7; Judgment U 1/86 of 28 May 1986, 1986 *Orzecznictwo Tryb. Konst.* 32.
5. Ustawa z dnia 14 lipca 1961 r. o gospodarce terenami w miastach i osiedlach, *Dziennik Ustaw*, no. 22, item 156 (1961).
6. Rozporządzenie Rady Ministrów z dnia 16 wrzesnia 1985 w sprawie szczegolowych zasad i trybu oddawania w uzytkowanie wieczyste gruntow i sprzedazy nieruchomosci panstwowych, *Dziennik Ustaw*, no. 47, item 239 (1985).
7. Judgment U 5/86, at 6.
8. Judgment U 3/86 of 16 June 1986, 1986 *Orzecznictwo Tryb. Konst.* 59.
9. Ustawa z dnia 26 pazdziernika 1982 o wychowaniu w trzezwosci i przeciwdzialaniu alkoholizmowi, *Dziennik Ustaw*, no. 35, item 230 (1982).
10. Rozporządzenie Rady Ministrów z dnia 28 pazdziernika 1983 w sprawie okreslenia liczby punktow sprzedazy napojow alkoholowych, *Dziennik Ustaw*, no. 60, item 273 (1983).
11. Judgment U 3/86, supra n. 8, at 72.

12. J. Zakrzewska, 'Prezentacja Trybunalu Konstytucyjnego', in *Polsko-Holenderskie Kolokwium* (Warsaw: Trybunal Konstytucyjny, 1991) p. 19.
13. For example, this was true about the Land Reform Decree issued in 1944 by the PKWN, which nationalized property in eastern Poland. Although the PKWN is illegitimate today, invalidation of the Land Reform Decree would disrupt the current system of land ownership. Recognizing this problem, the Constitutional Tribunal upheld the Land Reform Decree despite its questionable legal origin. Judgment W 3/89 of 19 Sept. 1990, 1990 *Orzecznictwo Tryb. Konst.* 173.
14. Judgment K 11/93 of 9 Nov. 1993, 1993 *Orzecznictwo Tryb. Konst.* 356–7. In another separation of powers case, in August 1995 President Walesa challenged the constitutionality of a privatization bill before the Tribunal. He asserted that the legislation violated the separation of powers between executive and legislative branches by giving the members of Parliament too much control over privatization. The Tribunal agreed and declared unconstitutional the provisions of the privatization bill giving the Sejm a veto over sell-offs of key industries.
15. Judgment K 11/90 of 30 Jan. 1991, 1991 *Orzecznictwo Tryb. Konst.* 27; Judgment U 12/92 of 20 April 1993, 1993 *Orzecznictwo Tryb. Konst.* 92.
16. Judgment U 1/92 of 7 Oct. 1992, 1992 (II) *Orzecznictwo Tryb. Konst.* 157.
17. Judgment U 6/92 of 19 June 1992, 1992 (I) *Orzecznictwo Tryb. Konst.* 196.
18. The law required all radio and television broadcasters to respect 'Christian values' in the contents of their programs. Judgment W 3/93 of 6 July 1994, 1994 *Orzecznictwo Tryb. Konst.* 154 (holding that the Christian values clause may not be interpreted as giving the National Broadcasting Council the right prospectively to evaluate radio and television programs because all forms of prior censorship are unconstitutional). Other controversial Tribunal decisions include Judgment W 7/94 of 14 Oct. 1994, 1994 *Orzecznictwo Tryb. Konst.* 204 (holding that the President of Poland may dismiss the chairman of the National Radio and Television Council only if the chairman committed a gross violation of law and if this violation is confirmed by a regular court decision); Judgment K 11/94 of 23 Sept. 1994, 1994 *Orzecznictwo Tryb. Konst.* 93 (holding that an electoral statute's requirement that all candidates submit written statements indicating whether they have ever been a collaborator with security organs may not provide grounds for subsequent revocation of a parliamentary mandate if a candidate lies on the written statement).
19. Zakrzewska, *op. cit.*, p. 15.
20. Judgment K 8/91 of 7 Jan. 1992, 1992 (I) *Orzecznictwo Tryb. Konst.* 76, 84.
21. Ustawa z dnia 12 października 1990 o Strazy Granicznej, *Dziennik Ustaw*, no. 78, item 462 (1990).
22. See, for example, Judgment W 3/93, at 157–8 (referring to the European Convention on Human Rights to condemn any form of prior restraint censorship in radio and television); Judgment K 17/92 of 29 Sept. 1993, 1993 (II) *Orzecznictwo Tryb. Konst.* 297, 309 (quoting the European Convention on Human Rights to invalidate a statute limiting access to the courts in certain unemployment benefits disputes).

23. Interview with Leonard Lukaszuk, Former Justice of the Polish Constitutional Tribunal, in Warsaw, Poland (21 July 1994). The Tribunal often refers to its own previous decisions to support its verdicts.
24. Judgment K 7/89 of 22 Sept. 1989, 1989 *Orzecznictwo Tryb. Konst.* 112; Judgment U. 2/89 of 3 July 1989, 1989 *Orzecznictwo Tryb. Konst.* 205.
25. M. Pietrzak, 'Demokratyczne panstwo prawne', *Gazeta Prawnicza*, 16 May 1989, p. 9.
26. Judgment K 7/90 of 9 August 1990, 1990 *Orzecznictwo Tryb. Konst.* 51–2.
27. Ustawa z dnia 24 maja 1990 o zmianie niektórych przepisow o zaopatrzeniu emerytalnym, *Dziennik Ustaw*, no. 36, item 206 (1990). President Jaruzelski, for the first time exercising the 'presidential inquiry' procedure of initiating Tribunal review, insisted that the Pension Act was unconstitutional because it abrogated retirement pensions already established or 'vested' by law. The Tribunal rejected this claim, but at the same time stated in very clear terms that it recognized the constitutional importance of this principle.
28. Judgment K 7/90, at 51–2.
29. *Ibid.*, at 53–4.
30. See for example Judgment P 2/92 of 1 June 1993, 1993 (II) *Orzecznictwo Tryb. Konst.* 217, 227 (finding that the 'principle of social justice' requires the state to provide unemployment benefits and invalidating legislation that 'unjustly' limited such benefits).
31. Ustawa z dnia 4 kwietnia 1991 o zmianie ustawy o utworzeniu Glownej Komisji Badania Zbrodni Hitlerowskich w Polsce, *Dziennik Ustaw*, no. 45, item 195 (1991).
32. Judgment S 6/91 of 25 Sept. 1991, 1991 *Orzecznictwo Tryb. Konst.* 290, 294.
33. Stalinist crimes are defined as crimes against humanity. Importantly, the Tribunal held that the law did not violate the principle of nonretroactivity by allowing the punishment of criminal acts which had occurred beyond the statute of limitations or which had been the subject of previously promulgated amnesty laws.
34. Judgment K 7/90 of 22 August 1990, 1990 *Orzecznictwo Tryb. Konst.* 42.
35. Ustawa z dnia 17 pazdziernika 1991 o rewaloryzacji emerytur i rent, *Dziennik Ustaw*, no. 104, item 450 (1991).
36. Judgment K 14/91 of 11 Feb. 1992, 1992 (I) *Orzecznictwo Tryb. Konst.* 93.
37. *Ibid.*, at 119, 128. The Tribunal also held that not every modification of pension rights was automatically unconstitutional, as economic crisis could warrant modifications. It stated, however, that it was Parliament's duty to adopt the least restrictive method to avoid the crisis, and that failure to do so renders the legislation unconstitutional.
38. See for example Judgment K 6/91 of 23 March 1992, 1992 (I) *Orzecznictwo Tryb. Konst.* 58, 66–7 (upholding legislation that suspended nursing benefits for those living in state nursing homes, and noting that '[t]here is a close link between social benefits and the social-economic situation of the nation').
39. Judgment K 18/92 of 30 Nov. 1993, 1993 (II) *Orzecznictwo Tryb. Konst.* 396.
40. *Ibid.*, at 403.

41. Ustawa z dnia 9 listopada 1990 o przejeciu majatku bylyj Polskiej Zjednoczonej Partii Robotniczej, *Dziennik Ustaw*, no. 16, item 72 (1990).
42. Judgment K 3/91 of 25 Feb. 1992, 1992 *Orzecznictwo Tryb. Konst.* 9.
43. *Ibid.*, at 21–3. The petitioners also urged that this form of nationalization was alien to Polish law, but the Tribunal rejected this argument as hypocritical, noting the Party's own nationalizations after World War II. 'As is well known, the communist state often engaged in such nationalization. . . . The plaintiffs ignored this historic fact when they claimed that this type of transfer of property to the State Treasury was alien to Polish law.' *Ibid.*, at 17–18.
44. Judgment K 8/91 of 7 Jan. 1992, 1992 (I) *Orzecznictwo Tryb. Konst.* 76, 81–2 (invalidating legislation depriving Border Guards access to courts to seek remedies for service-related rights violations, because 'access to courts' is a fundamental component of the 'democratic state of law').
45. Judgment K 17/92 of 29 Sept. 1993, 1993 (II) *Orzecznictwo Tryb. Konst.* 297, 309 (invalidating legislation precluding access to courts for individuals defending unemployment benefits).
46. Judgment K 11/93 of 9 Nov. 1993, 1993 (II) *Orzecznictwo Tryb. Konst.* 350, 356–63. In 1991, the Tribunal declared that legal acts passed by the state must be officially published to be enforceable. Judgment S 2/91 of 27 Feb. 1991, 1991 *Orzecznictwo Tryb. Konst.* 119–28.
47. Judgment U 7/97 of 17 Sept. 1988, 1988 *Orzecznictwo Tryb. Konst.* 14.
48. See for example Judgment K 7/92 of 6 April 1993, 1993 *Orzecznictwo Tryb. Konst.* 75, 81–2 (holding that the provision of the unemployment law, which prevented the unemployed from getting benefits if their spouse earned twice the average national salary, violated the principle of equality); Judgment U 2/91 of 17 Dec. 1991, 1991 *Orzecznictwo Tryb. Konst.* 149, 159 (holding that a special tax for environmental repair in polluted provinces violated the principle of equality before the law).
49. See for example Judgment K 6/89, at 107–8.
50. Judgment K 1/91 of 28 May 1991, 1991 *Orzecznictwo Tryb. Konst.* 81, 94.
51. Judgment Kw 1/89, of 9 May 1989, 1989 *Orzecznictwo Tryb. Konst.* 59.
52. Judgment K 1/91, at 94.
53. Judgment K 3/89 of 26 Sept. 1989, *Orzecznictwo Tryb. Konst.* 84, 93.
54. Judgment K 6/89, at 110.
55. *Ibid.*, at 108.
56. Judgment Kw 5/91 of 24 Sept. 1991, 1991 *Orzecznictwo Tryb. Konst.* 96, 103. On 6 April 1993 the Tribunal decided that the right to unemployment benefits should be granted irrespective of the spouse's income. Under the 1991 law an individual was not entitled to unemployment benefits if his or her spouse received income greater than twice the national average. The Tribunal found this regulation to violate the principle of equality. Judgment W. 3/93 of 6 April 1993, 1993 *Orzecznictwo Tryb. Konst.* 161, 168.
57. Zakrzewska, *op. cit.*, p. 21.
58. Interview with Jerzy Jaskiernia, Former Chairman of the Sejm Legislative Commission, in Warsaw, Poland (18 July 1994).
59. *Ibid.*
60. E. Letowska, 'Five Obstacles to Building a State of Law', *Commissioner for Civil Rights Protection: Materials*, XIX (1991) 40.

61. J. Kroner, 'Kosztowny triumf prawa', *Rzeczpospolita*, 12 Feb. 1992, p. 1.
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