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Did the modern state emerge in the 16th century? Holy Roman Empire and the case of Silesia

Keywords: Silesia, modern state, political system, Silesian administration, Holy Roman Empire

Summary. In the construction of modern states, a particularly important role was played by the combination of supreme, central government, with the dominance of the power of society in the regions. The emergence of the modern state poses many difficulties for legal historians, especially concerning time, but also space. In the area of the Holy Roman Empire, the multiplicity of states and their internal differentiation strengthened the construction of this type of state, an example of which is Silesia, as well as Bavaria, Hesse, or Bohemia. The paper focuses mainly on the administrative factor, but also on the underlying social factor. The construction of a modern administration, sometimes absolutist, encountering local resistance, is one of the most important factors in the emergence of modern states, not only in the 15th century, as the article puts it, but also from the 13th century onwards, as Anglo-Saxon historians would rather boldly have it.

Czy „państwo nowoczesne” powstało w XVI wieku? Święte Cesarstwo Rzymskie i przypadek Śląska

Słowa kluczowe: nowoczesny, system polityczny, Śląsk, śląska administracja, Święte Cesarstwo Rzymskie

Streszczenie. W budowie państw nowoczesnych (modern state), szczególnie ważną rolę odgrywało połączenie rządów zwierzchnich, centralnych, z dominacją władzy społeczeństwa w regionach. Pojawienie się państwa nowoczesnego nastęrcza historykom prawa wiele trudności, zwłaszcza dotyczących czasu, choć i przestrzeni. Na obszarze Świętego Cesarstwa Rzymskiego mnogość państw i ich wewnętrzne zróżnicowanie wzmacniały budowę tego typu państwa, czego przykładem może być i Śląsk, podobnie jak Bawaria, Hesja, czy Czechy. W artykule zwrócono uwagę głównie na czynnik administracyjny, ale i podbudowujący go czynnik społeczny. Budowa nowoczesnej administracji, czasem absolutystycznej, napotykającej na opór lokalny, to jeden z najważniejszych czynników wyłaniania się państw nowoczesnych, nie tylko w XV w. – jak to ujęto w artykule, ale i od wieku XIII, jakby chcieli tego dość odważnie historycy anglosascy.

The monarchical state (Ancient Greek *μοναρχία*, Latin *monarchia*), as defined by Aristotle, was the first of the ‘proper’ positive forms of state. Max Weber, in his sociological theory, posited that it had a monopoly on both legislation and the co-

ercive measures used in it¹. The monarchy, as a monocratic system, was a contradiction of republican rule in modern times. In this sense, the Kingdoms of Spain, France, Denmark, Sweden or England, and finally the Holy Roman Empire of the German Nation, were monarchies in this period, as opposed to the system of mixed monarchies (*monarchia mixta*) that prevailed, for example, in the Polish-Lithuanian Commonwealth (from 1569). Although in Europe, we speak mainly of *stato*, *estado*, *état*, or the German *Staat*, as unitary states, scholars already see in the medieval period the moment of the emergence of modern states, and with this – or perhaps as a basis for this claim – of modern societies. The prerogatives of the king still included the principles mentioned by Charles Tilly of the declaration of war, the conduct of the state, the protection of subjects, in the absolute monarchy in the future three types of power were also specified, the disposal of property and population of the kingdom, or the means of production and state interventionism².

The model of the emergence of the modern state is viewed in different ways today. Benno Teschke, for example, believes that it must exhibit a particular model of wealth production, even if this took place because of pre-modern economic relations (feudalism). Christian Reus-Smit, on the other hand, paid attention to the constitutional order. To this day, a definitive caesura has not been adopted. Most often it is considered to date back to the distant past and is linked to events such as signing of the Treaty of Utrecht (1714), the Peace of Augsburg (1555), or the Council of Constance (1494), and signing of the Peace of Westphalia (1648), which gave the Old Continent a new political, social, and economic face. Some discussions even mention the 13th century. A few writings also argue that the modern state existed much earlier than we might think (Hendrik Spruyt). It was to be based on capitalism, property rights, free trade and cooperation that had existed since the early Renaissance, as well as on the differentiation of societies based on specific territories, even if they were part of a single state³.

In the case of Silesia discussed here, we will be most interested in the following moments: its pre-constitutional, modern principles of administration and laws, the social separateness of exercising power in relation to the other territories of the Holy Roman Empire that it was a part of, defence and judiciary. On its example, while staying far from generalisations, the author will try to prove that the form in which these problems existed proved that the Empire should be treated as a “modern state”. It was the possible existence of separate administrative forms within a single independent and sovereign state structure that testified to the emergence

¹ B. Dubreuil, *Human Evolution and the Origins of Hierarchies. The State of Nature*, Cambridge 2010, p. 189.

² Ch. Tilly, *Coercion, Capital and European States, AD 990–1992*, Blackwell 1992, p. 225.

³ H. Spruyt, *The Origins, Development, and Possible Decline of the Modern State*, “Annual Review of Political Science” 2002 (1), no. 5, pp. 127–149.

of this form of state. The inspiration of combining the will of the monarch with the grassroots aspirations of societies was realised.

The history of the Silesian political system and individual duchies making up its political organism, are dealt with – with varying degrees of scientific sophistication – in the works by F.W. Pachaly⁴, H. Simon⁵, O. Balzer⁶, H. Wutke⁷, G. Croon⁸, K. Śreniowski⁹, as well as in more recent publications by K. Orzechowski¹⁰ and M. Weber¹¹. A particularly valuable publication dealing with the issue of institutional life and the functioning and evolution of the administration proved to be the work by M. Ptak dedicated to the problems of the system and forms of administration in the Duchy of Głogów¹². The author has painted a remarkably synthesising picture of the origins and evolution of estate assemblies and offices, placing significant emphasis on clarifying the strictly legal conceptual apparatus associated with their existence.

Sixty years after the end of the Thirty Years' War, Heinrich L. Gude's work *Staat von Schlesien* was published in Leipzig. The title can be freely translated as "The Silesian State". The title itself was not an arbitrary way of understanding the role and place of the province in the structures of the state, and its content proves in detail the systemic, social and economic distinctiveness of the province, which

⁴ F.W. Pachaly, *Sammlung verschiedner Schriften über Schlesiens Geschichte und Verfassung*, vol. 1, Breslau 1790.

⁵ H. Simon, *Die Ständische Verfassung von Schlesien*, Breslau 1846.

⁶ O. Balzer, *Historia ustroju Austrii*, Lwów 1899.

⁷ H. Wutke, *Die Entwicklung der öffentlichen Verhältnisse Schlesiens vornämlich unter den Habsburgen*, vol. 1-2, Leipzig 1842-1843. *Idem*, *Die schlesischen Stände, ihr Wesen, ihr Wirken und ihr Werth in alter und neuer Zeit*, Leipzig 1847.

⁸ G. Croon, *Die landständische Verfassung von Schweidnitz-Jauer*, [in:] *Codex Diplomaticus Silesiae*, vol. 27, Breslau 1912.

⁹ K. Śreniowski, *Historia ustroju Śląska*, Katowice-Wrocław 1948.

¹⁰ K. Orzechowski, *Akta do dziejów śląskiego sejmiku (wiek XV-XVIII)*, "Sobótka" 1971, vol. 26, pp. 454-469; *idem*, *Geneza i istota śląskiego conventus publicus*, "Sobótka" 1972, vol. 27, pp. 561-577; *idem*, *Commissions of the Silesian Convention*, "Sobótka" 1974, vol. 29, pp. 35-54; *idem*, *Konwent-sejm-trybunał. Ze studiów nad zgromadzeniami stanowymi feudalnego Śląska*, "Sobótka" 1973, vol. 28, pp. 261-275; *idem*, *Kurie śląskiego sejmiku w XVII i w pierwszej połowie XVIII wieku*, "Sobótka" 1978, vol. 33, pp. 313-331; *idem*, *O śląskich sejmach 1527 r.*, "Czasopismo prawno-historyczne" 1999, vol. 51, issue 1-2, pp. 205-218; *idem*, *Ogólnos Śląskie zgromadzenia stanowe, Warszawa-Wrocław 1979*; *idem*, *Podatek szacunkowy na tle systemu daninowego dawnego Śląska 1527-1740. Studium historyczno-prawne*, Wrocław 1999; *idem*, *Podejmowanie uchwał przez ogólnos Śląskie zgromadzenia stanowe pod rządami Habsburgów*, "Sobótka" 1975, vol. 30, no. 2, pp. 127-140; *idem*, *Porządek obrad śląskiego konwentu*, "Sobótka" 1974, vol. 29, no. 3, pp. 307-324; *idem*, *Sejm i sejmiki w ustroju feudalnego Śląska*, "Sobótka" 1976, vol. 31, pp. 197-207; *idem*, *Urząd zwierzchni i konwent. Z badań nad organizacją śląskiego conventus publicus*, "Sobótka" 1973, vol. 28, pp. 345-359; *idem*, *Z praktyki śląskiego sejmowania w połowie XVI w.*, "Sobótka" 1990, vol. 45, pp. 13-37.

¹¹ M. Weber, *Die schlesischen Polizei- und Landesordnungen der Frühen Neuzeit*, Köln-Wiemar-Wien 1996.

¹² M. Ptak, *Zgromadzenia i urzędy stanowe księstwa głogowskiego od początku XIV w. do 1742 r.*, Wrocław 1991.

was further developed in the work. Interestingly, the author himself has remained independent in his views and there is no indication to the contrary. He was writing at a time when the subjection of Silesia to the Habsburg dynasty was undeniable, and Prussian aspirations to own it, expressed as late as 1740, did not exist at all. He pointed mainly to a special form of government, but also to dependency, public/social interests and customs separate from the rest of the state, divergent development, and common military interests. He compared its conquest in the Middle Ages to that of Ancient Greece and derived many other myths not from his imagination but from existing, often now unknown sagas that are a separate cultural element, comparing the Jablunkov Pass to Thermopylae¹³.

The title of the work itself indicated a way of perceiving Silesia as a separate structure, whose existence as such had to be understood in the world of that time. And it is this ‘understanding’ and the fact of Silesia functioning in this way that is the first clue to the possibility of defining Silesian society as a modern society, inhabiting a modern state. Interestingly, in 2005, Kazimierz Orzechowski, an outstanding scholar of Silesian history, founder and doyen of the Wrocław school of history of law, based on decades of his own research, proved in his work “*Historia ustroju Śląska*” how important for the existence of “poly-distinctiveness” of this part of the state, indicating at the same time the principles which determined the existence of a modern state. If the principles he enumerated had been adopted here, we must necessarily classify the Holy Roman Empire as a modern state¹⁴.

A modern state must accommodate some “parts”, understood as follows. First, a “part” must be a naturally distinct area, often geographically based, demographically and politically distinct. Second, such a part must be a historical structure, be a “historical fact”, not the result of a subsequent assumption. Third, it should be a limited political structure. It must conform to the classical definition of a state (Georg Jelinek) and be a territorial unity, a unity of population and power, “but only so far as not to become a state.” Fourth, there must be territories where power is/was autonomous, not delegated. Fifthly, such a part should be directly subordinate to the state, *i.e.*, the entities exercising power in it should be directly subordinate to the “highest authority of the state as a whole,” and the laws enacted should directly reach the centre of the state. In conclusion, “Silesia, in its past, even exceeded these requirements”¹⁵. Thus, Kazimierz Orzechowski pointed out the systemic factors that distinguished Silesia in geopolitical and social terms. What is particularly important is that we will always deny it the title of complete ‘state’ or ‘statistically special state’, as suggested by the cognitively optimistic criteria and

¹³ H.L. Gude, *Staat von Schlesien*, Frankfurt–Leipzig 1708.

¹⁴ K. Orzechowski, *Historia ustroju Śląska (1201–1740)*, Wrocław 2005.

¹⁵ Cited in: *ibidem*, p. 12.

arguments put forward, for example, in the eighteenth century by Friedrich Gude or Friedrich Pachaly¹⁶.

Silesia is now regarded by historiography as one of the five parts of the Kingdom of Bohemia, along with Bohemia proper (*Böhmen*), Moravia (*Mähren*), and both Lusatias (*Ober- und Niederlausitz*). It thus belonged to the broader group of the so-called *Erbland*, states – as opposed to Reich territories – that were hereditary property of the Habsburgs. Between 1629 and 1740 Silesia was divided into 13 duchies and 6 free states. Most of them were divided into individual *weichbilds* (districts). It had a joint general estate assembly and a common General Governor, “ruling” on behalf of the Bohemian king. The duchies had, with some exceptions, a similar administrative structure. In terms of vassal subordination, they were divided into two types. On the one hand, there were the *fief* duchies, whose superiors were dukes who recognised the emperor’s sovereignty. On the other hand, most of the territory consisted of duchies under direct ownership of the emperor, for which he held the title of duke¹⁷.

All of them had their own unique official structure, separate from the rest of the state, as well as their own general estate assembly, sitting sometimes even permanently in Wrocław. Even King Vladislaus II, by his national privilege of 1498, upheld the office of the General Governor, who was initially elected from among the Silesian dukes and ruled this part of the Kingdom of Bohemia¹⁸. The supra governor was to be accountable to the estates of the Silesian duchies and subject to the ducal law. They had authority over the entire administration of the Silesian province and the hereditary duchies¹⁹. The state treasury and the Silesian national defence were also put under their supervision, which changed when the governor was a clergyman. The governor’s office was initially a deputy authority, but with

¹⁶ *Ibidem*, pp. 11–12; H.L. Gude, *Staat von Schlesien*, Frankfurt-Leipzig 1708; F.W. Pachaly, *Sammlung verschiedener Schriften über Schlesiens Geschichte und Verfassung*, Breslau 1790.

¹⁷ Duchies of Świdnica-Jawor, Opole-Racibórz, Głogów, Wrocław, Cieszyn, Opawa, Karniów, Ziębice, Nysa-Grodzów (Nysa), Brzeg, Legnica, Wołów, Żagań, Oleśnica; contemporaries, enumerating each of them separately, presented it as a division into 17 duchies: *Kurtze Fragen und Antworten Vom Herzogthum Schlesien, Vermöge Welcher die geographische, historische und politische Merckwürdigkeiten von Schlesien*, Breslau und Leipzig 1733, p. 1.

¹⁸ The political affiliation of subsequent governors was clearly defined: “Erstlichen, daß wir noch unserer rechte nachkommende Könige zu Böhaimb dem jetztgemelten Lande, keinen andern Obristen Hauptmann nicht setzen noch geben wollen, denn allein einen aus unsern Schlesischen Fürsten...”, as cited in: J. Schiskfuss, *Ner Věbrmerte schlesische Chronika und Landes Beschreibung*, vol. 3, p. 97 (cited), 272; H. Wutke, *op. cit.*, vol. 2, p. 109; H. Aubin, *Geschichte Schlesiens*, vol. 1, Breslau 1938, p. 295; K. Orzechowski, *Ogólnośląskie zgromadzenia stanowe*, Warszawa-Wrocław 1979, p. 345; C. Grünhagen, *Schlesien unter Rudolf II und der Majestätsbrief 1574–1609*, Gotha 1896, p. 94; K.A. Menzel, *Geschichte Schlesiens*, vol. 2, Breslau 1808–1810, p. 290.

¹⁹ G. Croon, *Die landständische Verfassung von Schweidnitz-Jauer*, [in:] *Codex Diplomaticus Silesiae*, vol. 27, Breslau 1912, pp. 32 and 63–70; F. Minsberg, *Geschichte der Stadt und Festung Gross-Glogau*, vol. 2, Glogau 1853, p. 39.

time it moved away from its original role and became a representative office of the duchy's estates towards the Prague court. In 1629, the Habsburgs began transforming the office of the supra governor into the Superior Office, which created a kind of emperor's government for Silesian affairs²⁰. Its powers were to mediate between the emperor and the Silesian estates. The estates themselves became the factor that politically constituted Silesia, and participation in the meetings of the assembly of representations was a measure of political and social affiliation to Silesia.

The form of the general Silesian assembly – *Fürstentag* – was referred to as *gemeiner tag*, *gemeines geschpreche*, or *gemeiner landtag*. The term *Fürstentag* did not become established until the second decade of the 16th century. Later, it was often referred to as *Fürsten und Stände*²¹, and as a sign of its position, it received a seal from Emperor Ferdinand in 1544, which it was to use as the institution subordinate to the emperor's authority²². The structure of the general Silesian assembly was – with some exceptions – the pattern for the activity of the assemblies of the hereditary duchies, obviously on a qualitatively and quantitatively reduced scale because it referred to the administrative hierarchy of the given duchy.

The Silesian assembly was a lower instance in relation to the Departmental Assembly established by Ferdinand in Prague²³. It was composed of estate representatives assembled in three curiae²⁴. The first of these was reserved for Silesian dukes and gentlemen of free states, the second was composed of representatives of landowners: gentlemen, prelates and knights of the duchies referred to as hereditary duchies of the Bohemian Crown²⁵. It also included the representatives of the town of Wrocław. In the third sat the deputations of hereditary towns. The fourth casting vote, the so-called *totum conclusivum*, was held by the chairman of the session, the Silesian governor²⁶. When it came to voting, the strongest position was held by the dukes, each of whom could cast a vote individually. State owners, by contrast, had to mutually agree on a position by adopting a joint conclusion on the vote. The decision made during the dukes' curia meeting was also, in effect, binding on the other curiae, and its closed status was evidenced by the fact that the own-

²⁰ Österreichische Staatsarchiv, Haus- Hof- und Staatsarchiv, Staatenabteilungen: Ost- und Südeuropa AB VIII/7/4, Schlesien Ad. I/2, Krt. 4, Faz. 8: Kurzer Vermerk sowohl der ehemaligen Kayserlichen als nunmehrigen Königlichen Preußisch Schlesischen Landesverfassung (Krt. 4, pp. 50-109), p. 69; H. Wutke, *op. cit.*, vol. 2, p. 88; K. Orzechowski, *op. cit.*, p. 350.

²¹ H. Wutke, *op. cit.*, vol. 2, pp. 138-139.

²² H. Luchs, *Schlesische Landes- und Städtewappen*, Breslau 1881, p. 16.

²³ O. Balzer, *op. cit.*, p. 161.

²⁴ K. Orzechowski, *Kurie śląskiego sejmu w XVII i w pierwszej połowie XVIII wieku*, "Sobótka" 1978, no. 33, pp. 313-331.

²⁵ This curia consisted of representatives of the Duchy of Głogów, cf.: H. Simon, *Die Ständische Verfassung von Schlesien*, Breslau 1846, pp. 4 and 6.

²⁶ K. Orzechowski, *Akta do dziejów śląskiego sejmu (wiek XV-XVIII)*, "Sobótka" 1971, no. 26, p. 453.

er of the free state of Bytom-Siedlisko (since 1697) did not gain access to it otherwise than by way of alternation with the owner of the state of Bytom in Upper Silesia. The second curia was dominated by the nobility. Naturally, it would have been impossible to create forms of direct representation for the nobility because of the number of possessors in the entire province. Therefore, only representatives of this estate came to the assembly meetings, and traditionally it was established that each duchy could delegate two such persons. Appointment as a deputy to the general assembly took place at the duchy assemblies. The image of this curia was variable, as the number of its members increased as the duchies came under royal sovereignty. In practice, the duchy of Głogów occupied the second place in the curia, after the duchy of Świdnica-Jawor. Another major innovation was the inclusion, probably as early as 1547, of Wrocław as a centre with a prominent economic role in the Silesian world. The third curia, the town curia, was constantly degraded politically. Seats in it were held by delegations of *weichbild* towns. Only major centres had independent votes. Głogów, for example, had an independent vote, unlike the other six *weichbild* towns, which had a joint vote. This was also the case for the *weichbild* towns of the duchies of Świdnica-Jawor and Wrocław. Of the other later established hereditary duchies, only the more significant centres were admitted, or, as the example of the duchies of Żagań and Ziębice proves, they were not admitted at all. Participation in the Silesian general assembly was obligatory, as this assembly had the power to issue legislative acts, binding on the whole of Silesia²⁷. The resolutions passed during the assembly meeting were also varied. Namely, they could be responses to royal recommendations, the so-called *Gravamina*, *i.e.*, complaints and demands, as well as Silesia-wide executive and legislative norms²⁸. The interests of the estate representations of the individual duchies were often contradictory, and thus the assembly was not a political monolith. It may have been that it was placing government in the hands of the estates that made them weak. However, the assembly meetings were more or less regular depending on the political situation in the country²⁹. P. Jurek even points out to their particular viability. The average number of meetings was to be 4 per year, and if they could not be convened, they were supported by substitute meetings³⁰.

²⁷ Cf. K. Orzechowski, *Podjęmowanie uchwał przez ogólnosląskie zgromadzenia stanowe pod rządami Habsburgów*, "Sobótka" 1975, vol. 30, pp. 127-140; *idem*, *Z praktyki śląskiego sejmowania w połowie XVI w.*, "Sobótka" 1990, vol. 45, pp. 13-37.

²⁸ F. Rachfahl, *Die Organisation der Gesamtstaatsverwaltung Schlesiens vor dem dreissigjährigen Kriege*, Leipzig 1894, pp. 147-149.

²⁹ H. Wutke, *op. cit.*, vol. 1, p. 70.

³⁰ P. Jurek, *Czas obrad ogólnosląskich zgromadzeń stanowych w XVII w.*, "Sobótka" 1976, vol. 31, pp. 556 and 560.

By the outbreak of the Thirty Years' War, the estate forms of representation of the Silesian province had flourished and stabilised³¹.

Over time, deliberations of the Silesian general assembly were deprived of the subject matter character typical of the debates³². This was because they began to deal only with matters submitted by the emperor and already approved at the Vienna chancellery. Thus, the Austrian emperors took away the legislative powers of the estates, which was made evident by the fact that all statutes approved locally had to be countersigned by the emperor³³. From 1662 the general assembly took the name *conventus publicus*. The work in the convention was continued as before, with the difference that the dukes and free state owners did not participate in it in person, but through deputies. With the Superior Office, which now remained outside its structures, the convention was united by the office of a general state plenipotentiary (*General-Landes-Bestellte*)³⁴.

The general assemblies of the duchies were a correspondingly lower instance than the general assembly. Their origin is linked to the fiscal policy of the king, who was obliged to resort to them for tax resolutions. Only at the level of the assemblies did the king accept the right of resistance enjoyed by the nobility of the hereditary duchies. These assemblies served as estate representations. Their composition was similar to that of the Silesian general assembly, as only the nobility, clergy and representatives of the royal towns of the duchy could participate in their debates. Their role was both to decide on current issues related to the functioning of the duchy and to prepare a position for the upcoming Silesian general assembly. Anyway, during the 16th century, the emperor assumed the exclusive right to convene these representations. This could also be done by the duchy governor, who, when proposing the subject of the meeting, did so by the emperor's mandate, usually presiding over the meeting. In addition to these, there were also several *weichbild* assemblies³⁵. The assemblies of the district duchies were represented during the sessions of the Silesian general assembly only by the person of the duke.

³¹ J. Balashke, *Regionalismus und Staatsintegration im Widerstreit. Die Länder der böhmischen Krone im ersten Jahrhundert der Habsburgerherrschaft (1526-1619)*, Munich 1994, p. 44.

³² O. Balzer, *op. cit.*, pp. 239-240.

³³ J. Schichfuss, *op. cit.*, vol. 3, pp. 103-104.

³⁴ Österreichisches Staatsarchiv, Haus- Hof- und Staatsarchiv, Staatenabteilungen: Ost- und Südeuropa AB VIII/7/4, Schlesien Ad. I/2, Krt. 4, Faz. 8: Kurzer Vermerk..., p. 55; H. Wutke, *op. cit.*, vol. 2, p. 101; the genesis and functioning of the Silesian convention were discussed by: K. Orzechowski, *Geneza i istota śląskiego conventus publicus*, "Sobótka" 1972, vol. 27, pp. 561-577; *idem*, *Urząd zwierzchni i konwent. Z badań nad organizacją śląskiego conventus publicus*, "Sobótka" 1973, vol. 28, pp. 345-359; *idem*, *Komisje śląskiego konwentu*, "Sobótka" 1974, vol. 29, pp. 35-54; *idem*, *Porządek obrad śląskiego konwentu*, "Sobótka" 1974, vol. 29, no. 3, pp. 307-324; *idem*, *Konwent-sejm-trybunał. Ze studiów nad zgromadzeniami stanowymi feudalnego Śląska*, "Sobótka" 1973, vol. 28.

³⁵ M. Ptak, *Zgromadzenia i urzędy stanowe księstwa głogowskiego od początku XIV w. do 1742 r.*, Wrocław 1991, pp. 64-79; G. Croon, *op. cit.*, p. 90.

The various hereditary duchies differed in terms of how the estates shaped the forms of division of the curiae. In the duchy of Świdnica-Jawor, the estates gathered in two curiae. The first included the clergy and nobility, the second – representatives of the towns. The duchies of Opole-Racibórz, Opawa and Wrocław had 4 collegiate bodies (although their comparative composition varied), whereas, for example, the assembly of Głogów had three curiae. Their votes were considered separately. These were the curia of the chapter of Głogów and the common curia of gentlemen, protonotaries apostolic and knights. The third was composed of the plenipotentiaries of the royal towns: Głogów, Góra, Koźuchów, Polkowice, Szprotawa, Świebodzin and Zielona Góra³⁶. The competence of such bodies included the election of officials, court and tax ordinances, matters of trade, police order and mint law. It also included general issues concerning the functioning of the community of a given duchy.

The importance of Silesia took on another dimension due to the strength represented by the local national defence (*Defensionsordnung*)³⁷. It was enacted for the first time in 1529 in connection with the approaching Turkish war, although the idea of taking a census and structuring Silesia according to the districts that were to defend it was not new³⁸. Divided into four districts, Silesia became one of the strong links in the structure of the Bohemian provinces administered by Vienna. The Lower Silesia district (as the third one), with the duchies of Głogów, Żagań, Legnica and Jawor, was placed under the command of Frederick II, Duke of Legnica. Further on, the district of Central Silesia under the governor of Wrocław Achatius Haunold, the district of Nysa, Ziębice, Świdnica and a small part of Brzeg under the command of Bishop Jakob von Salza, and the district of Upper Silesia under the command of John II of Opole were established³⁹. Each was estimated in terms of population and property, which provided the basis for determining the number of recruits the districts fielded. In 1529, 1,600 infantry and 2,000 cavalry were placed at the disposal of the Crown. The Silesian nobility was obliged to field – if required by the emperor – a *levée en masse*. However, for internal security reasons, self-convening of these formations was prohibited⁴⁰.

³⁶ *Ibidem*, p. 89.

³⁷ The principles of military service were derived from the order of medieval codes: “Es soll kein Mensch oder Landsaß dieser Fürstenthümer auß dem Landes wider Ihre König. May. rücken und sich durchaus in keine Kriegsbestallung wider dieselbe einlassen”: J. Schickfuss, *New Vermehrte schlesische Chronika und Landes Beschreibung*, Jena-Breslau 1625, vol. 3, p. 494.

³⁸ C. Grünhagen, *Geschichte Schlesiens*, vol. 2, Gotha 1884, p. 45; H. Palm, *Schlesiens Landesdefension im XV., XVI. und XVII. Jh.*, “Abhandlungen der Schlesischen Gesellschaft für vaterländische Kultur” 1868, no. 2, pp. 73–75.

³⁹ J.S. Schickfuss, *op. cit.*, vol. 3, p. 174; H. Wutke, *op. cit.*, vol. 1, p. 75; C. Grünhagen, *Schlesien unter der Herrschaft König Ferdinands 1527–1564*, “Zeitschrift des Vereins für Geschichte und Altertum Schlesiens” 1885, no. 19, p. 77.

⁴⁰ F. Rachfahl, *op. cit.*, pp. 177–179.

The Silesian treasury had a separate hierarchy and was represented to the Silesian estates by the Silesian Exchequer (*Landeszahlmeister*) and from 1552 by two general state treasurers. Lower in the hierarchy stood the accountants. Together, they constituted the General Tax Office (*Generalsteueramt*), which functioned from 1552 until 1740. Since 1570 it was headed by the General Tax Collector (*Generalsteuereinnehmer*)⁴¹. Royal affairs, in turn, were handled by the *vicedominus* appointed in 1552-1554. From 1558 it became a collegial office formed by two general collectors, headed by the Royal Chamber of Silesia, subordinated to the Vienna Court Chamber⁴². Such an arrangement indicated the high independence of the Silesian treasury. Also, noteworthy is the functioning in Silesia of the old principle (*Steuerbewilligungsrecht*), according to which the estates agreed to lay down tax sums rather than have them imposed by the monarch. It was sanctioned by the deed of Matthias Corvinus of 1474 and Vladislaus of 1491⁴³. With time, it became only a decorative element of the Silesian general assembly resolutions. Besides, the monarch's realm was also weakened by the incoherent fiscal system in royal domains, which in turn affected the whole payment relations of Silesia⁴⁴. First, the estates were obliged to pay a tax to the royal treasury, which over time became fixed. Second, the king as a grand duke in hereditary duchies had his own revenue. It was based on mint, mining, salt and customs regalian rights⁴⁵. Active tax subjects included dukes, noblemen, clergy, burghers, burgher subjects and peasants⁴⁶. As in the Polish Republic, royal domains were sold, and castles or royal offices were pledged. Taxes were enacted regularly since 1527. The most important of these was the so-called *Schätzungsteuer*, which was a 1 $\frac{1}{3}$ % tax on property. It was paid by dukes, clergy, nobles, towns, and free peasants. After 1543 the picture changed to the detriment of peasant duties⁴⁷. In 1527, an assessment of the amount and quality of the taxpayers' property was also made in order to collect tax. The cadastre outlined at that time, with minor changes, remained in force until the 18th century, when it was decided to make it more precise, due to the numerous *avulsa* and *non entia* that arose during the 16th and 17th centuries⁴⁸. In addition to these levies, there were also *Anticipationen*, i.e., amounts levied by the monarch towards

⁴¹ J.R. Wolf, *Steuerpolitik im Schlesischen Ständestaat. Untersuchungen zur Sozial- und Wirtschaftsstruktur Schlesiens im 17. und 18. Jh.*, Heidelberg 1978, p. 11.

⁴² K. Orzechowski, *Rachunki śląskich stanów (1527-1741)*, Wrocław 1994, p. 10.

⁴³ J.S. Schickfuss, *op. cit.*, vol. 3, p. 169; H. Simon, *op. cit.*, p. 6; Lehns- und Besitzurkunden Schlesiens und seiner einzelnen Fürstenthümer im Mittelalter, ed. C. Grünhagen, H. Markgraf, vol. 1, Leipzig 1881, p. 32; F. Rachfahl, *Die Organisation der Gesamtstaatsverwaltung Schlesiens vor dem dreißigjährigen Kriege*, pp. 110-111; J.R. Wolf, *op. cit.*, p. 13.

⁴⁴ *Ibidem*, p. 89.

⁴⁵ F. Rachfahl, *op. cit.*, pp. 263-277.

⁴⁶ *Ibidem*, pp. 110-111.

⁴⁷ F. Zimmermann, *Über die Steuerverfassung in Schlesien ein Versuch*, vol. 1, Breslau 1799, p. 14.

⁴⁸ C. Grünhagen, *Geschichte Schlesiens*, vol. 2, p. 92.

future taxes, and various forms of indirect taxes, such as beer excise tax. As part of an assessment tax called indiction, starting from 1570 estates were required to pay 70,000 tal.⁴⁹ To collect it, in the hereditary duchies two persons from the noble estate and two others, usually educated for each *weichbild*, were elected. The organisation of the estate administration itself never developed similar functional efficiency to the royal one⁵⁰, and tax revenue decreased significantly after the end of the Thirty Years' War, as a result of the decline in the population of Silesia to about 1,114,720⁵¹.

The Silesian judiciary in the first half of the 16th century remained subordinated to the estates, and in its entirety to the so-called right of evocation of the King of Bohemia, which provided for the highest judicial powers in the principality. By the deed of King Vladislaus II in 1488, *Ober-und Fürstenrecht*, or the Supreme Ducal Tribunal, was established. It consisted of the dukes of Silesia, representatives of the crown princes, and the governor of Silesia who presided over it. The cases heard there involved questions between the king and dukes or free state gentlemen. Over time, the authority of this body has been limited. Appealing the tribunal's rulings – with some exceptions – was not provided for by law. The tribunal's role declined gradually under Habsburg rule, and the scope of its activities was gradually taken over by the Prague Appeals Chamber, established in 1547, which represented the centralisation characteristic of the establishment of a modern state. It must be added that in Silesia, during the Austrian period, there was practically no codification of civil law. The judicial procedures of the individual duchies also remained different. Only criminal law was codified. This is because the *Constitutio Criminalis Carolina*, succeeded since 1707 by the *Josephina* (the code deeply rooted in the former), were in force in Silesia. In matters of procedural law, the appellate ordinances were the basis, while other procedural rules, such as substantive law, were carried by the land ordinances of each duchy separately. The highest authorities in the hereditary duchies became the regencies, or “duchy governments”⁵².

Another aspect marking Silesia's distinctiveness was the participation of society, mainly the nobility, in public life. The entire noble estate of Silesia was automatically held accountable by the rulers for their actions, passivity, or political resistance. In the era of Austrian rule, state loyalty became the only option, and any deviation or action not in line with the interests of the Habsburg dynasty was highly risky. This does not mean, however, that the nobility remained completely

⁴⁹ J. Krebs, *Zur Geschichte der inneren Verhältnisse Schlesiens von der Schlacht am weißen Berge bis zum Einmarsche Waldsteins*, “ZVGAS” 1882, vol. 16, p. 35; F. Zimmermann, *op. cit.*, p. 15.

⁵⁰ F. Rachfahl, *op. cit.*, p. 316.

⁵¹ J.C. Sinapius, *Schlesien in merkantilischer, geographischer und statistischer Hinsicht*, Sorau-Leipzig 1803, p. 25.

⁵² *Historia Śląska*, ed. K. Maleczyński, vol. 1, part 3, Wrocław 1963, pp. 469–470.

restrained in their actions, and the royal offices dominated over others in terms of competence. The political involvement of the nobility was also visible in the field of appointments to positions of strategic importance for the functioning of the duchy. The noblemen monopolised both land and ducal (royal) offices, which gave them the opportunity to pursue a wide-ranging political career. Opportunities for public service were also opened by the courts of fiefdom duchies. Each of the dukes had such a centre, with burgraves and judges at its head.

Throughout the Habsburg period, the nobility of the hereditary duchies took an active part in the dualistic system of government. In this respect, its representatives can be divided into two categories. The first were the participants of the Silesian general assembly, representatives of estate bodies and strictly Silesian bodies in the duchies. The second type – the so-called *Beamtenadel*, or clerical nobility – remained in a different relation to central power. It was a group of people affiliated to the emperor's apparatus of power, operating within its bureaucratic structures, and remaining firmly bound to the crown in terms of wealth and politics. The nobility was attracted by the lucrative positions, which were dependent on accepting the direction of internal state policy. Generally, the competition for offices involved families that had not only succeeded in strengthening themselves economically in a short period of time, but also hereditary nobility, which had formed the political and administrative core of Bohemia and Silesia for years.

As early as the 16th century, the emperors aimed to make the nobility of the hereditary duchies dependent on them, and the noblemen, in turn, sought to gain as much influence as possible over matters affecting them – which often could not be achieved without an alliance with the crown and without involvement in the province's public life. Moreover, the duchies, remaining in fief relations, were not able to govern themselves like the duchies under independent dynasties, and the Głogów estates were not strong enough to demand it. By no means did they wish to be politically isolated, but only to ensure that the duchy remained one of the strongest in Silesia, both administratively and economically. This was reflected in the work of the Silesian-Lusatian Chancellery established in Prague in the second decade of the 17th century and transferred to Vienna in 1620. Its initiator was Emperor Matthias. This institution remained completely independent of Bohemian influence and was to independently handle Silesian-Lusatian affairs as the province's highest appellate authority. It was also referred to as the "German Chancellery." The Chancellery was designed as a ministry for Silesian and Lusatian affairs, and was dominated by Silesians and Lusatians, who had a voice in both the legislative and executive branches, mainly through the positions of vice-chancellor and secretary. Other positions were also held by representatives of these provinces. Thus, two Silesians took the offices of councillors, and the other two were

occupied by a Lower and an Upper Lusatian. The highest office earmarked for the countrymen, the vice-chancellorship, was awarded to the Silesian nobleman Georg von Schönaich, Baron of Bytom and Siedlisko, who was now subordinate to the Bohemian chancellor. He was assigned a secretary, A. Rössler, and advisors Otto von Nostitz, Dr. Melander, Friedrich von Minkwitz and Heinrich Stange von Stonsdorf⁵³.

The highest office in the duchies remained that of duchy governors (*Fürstenthumshauptmann*), also called land governors (*Landeshauptmann*). The duchy governors were deputy officials, and from 1508 their decisions had the force of royal decisions and did not require the confirmation of the monarch. In 1511, the principle was established that the governor headed all the *weichbilds* collectively⁵⁴. By the deed of 24 January 1544, King Ferdinand introduced the rule that only a gentleman by birth, or other nobleman settled in the duchy and owning property there could be appointed to the office of the duchy governor⁵⁵. However, despite their efforts, the nobility did not gain full influence over how the office was filled. The noble estate only managed to get approval to present its candidates. It also had the right to raise grievances against the governor's rule. The king himself appointed the governor, who in the presence of the estates took an oath to uphold the rule of law and another to the estates that he would respect their privileges and liberties⁵⁶. In practice, the office of governor was usually held by a nobleman. The governor appointed his deputy, from among the nobility, for the period of his absence from the duchy. The estates tried to deprive the governor of the opportunity to participate in the duchy assembly and to simplify the role played by him to a liaison between estates and the emperor. Following its example, *weichbild* governors (*Weichbildshauptmann*) were appointed at the head of the local *weichbild* administration. The governor was assisted by other officials, gathered in the Royal Governor's Office (*Königliches Amt der Landeshauptmannschaft*), and their emergence followed the process of transforming the governor's office into a collegiate one. In the first half of the 17th century, it took the name of the regency of the Duchy of Głogów (*Amtregierung der Hauptmannschaft*). It consisted of the land

⁵³ C. Grünhagen, *op. cit.*, vol. 2, p. 151; J. Blaschke, *Geschichte der Stadt Glogau und des Glogauer Landes*, Glogau 1913, p. 219; W. Barth, *Die Familie von Schönaich und die Reformation*, Beuthen 1891, p. 38.

⁵⁴ A. Gryphius, *Glogauisches Fürstentums Landes Privilegia aus dem Originalen an tag gegeben*, Lissa 1653, p. 44.

⁵⁵ *The analogy was kept in this respect with the election of a local duke to the position of the Silesian governor*: N. Henelius, *Silesiographia renovata necessariis Scholiis observationibus et indice aucta*, Wratislaviae-Lipsiae 1704, Cap. X, p. 901.

⁵⁶ A. Gryphius, *op. cit.*, pp. 67-68.

governor of the duchy as chairman, the deputy land governor (*Amtsverweser*) and the secretary (*Amtssecretarius*)⁵⁷.

The outbreak of the Thirty Years' War made it possible to reinforce the policies already initiated by the first Habsburgs in public, social and religious terms. Silesia ceased to be, as it was described by German historiography, a "paradise of estates" (*Paradies der Stände*)⁵⁸. Silesia was one of the many areas of the Holy Roman Empire where, from the late 15th century onwards, the influence of the ruler and the estate was balanced. However, the Silesian example did not, of course, yet prove that the empire could be counted among the modern states of the old type. This was evidenced by the existence of more than 300 such state formations on its territory and in the German Empire. With Silesia, we can compare Franche-Comté, the Duchies of Bavaria, Hesse, Württemberg, Bohemia proper, Brunswick, Brandenburg, or Saxony – all of them separate in their fief type form. They were all subordinated to a single central authority and remained in essence a kind of state similar to Gude's *Staat von Schlesien*. There, regional rule was intertwined with the centralisation of the emperor's power, local societies and their aspirations balanced the ruler's pursuits, problems of defence, economy, judiciary were combined with final arbitration of the crown.

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⁵⁷ M. Ptak, *op. cit.*, pp. 48–50 and 113.

⁵⁸ G. Croon, *Zur Geschichte der österreichischen Grundsteuerreform in Schlesien 1721–1740*, "ZVGAS" 1911, vol. 45, p. 344.

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