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MISCELLANEA AMERICANA

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Andrzej Bryk

MISCELLANEA AMERICANA: INTRODUCTION

The present volume of *Krakowskie Studia Międzynarodowe* [Krakow International Studies] is as diverse as America is. Many of the problems discussed here seem from the European perspective – or at least the Western European one – exotic, even parochial, but this is a misunderstanding of what the United States is. In America they are real since America is a baroque, extremely pluralistic country, with the citizens devoid of an apologizing attitude towards the democratic process and debating fiercely in public.

The first essay, by Marta Dębska, "A Brief History of Americanization", is a general, concise historical-comparative study which explains the meaning of this term, crucial for America. The author touches on heated debates about this problem, explains its exclusive and inclusive understandings, showing the processes shaping the very identity of this essentially immigrant society. She focuses on the tension between traditional approaches to immigration issues, captured by the term "melting pot", and the new, fiercely contested idea of the multicultural approach in building a civil society. Both approaches are essentially commensurate with an inclusive understanding of Americanization. But in the case of the multicultural processes she touches upon their character within a global context, a perspective from which multicultural citizenship can be simply the first step of cultural universalization, which may also be either a part or a mere equivalent of Westernization. This is a fundamental issue touching upon such extremely contested problems, both in America and in the global setting, as the meaning of citizenship, the social or universal sources of rights, and the sovereign state v. the global governance

ideology based on human rights, the latter more and more in crisis as a cohesive doctrine, currently lacking, in the major theories of rights applied internationally, in any clear ontological bases, the neo-Kantian approach essentially in tatters.

Andrzej Bryk takes up an issue which Dębska touches on in the conclusion of her essay. He focuses on the problem of American democracy within the context of the so-called universalization of rights, or rather universalization of justice in the name of human rights, with a subordinating role of constitutionalism and the self-governing procedures of the democratic process. For him America is fiercely defending its constitutionalism, and the self-governing structure of the nation-state, rejecting the unmediated approach to rights and their universalization outside of its democratic procedures.

Marta du Vall analyzes the very interesting phenomenon of American compassionate conservatism as a new version of the welfare state, an issue which has been in the air for a long time. Originally proposed in an overt form in the 1990s by such social thinkers as Marvin Olasky, it became officially adopted by President George W. Bush and developed in a period of a global political, military and ideological conflict by a wide camp of the governing Republican Party, as well as the president's experts and associates. The author shows the philosophical as well as social background of American conservatism in all its various currents, especially pointing out its religiously grounded individualism, rationalism, constitutionalism and the primacy of individual freedom, the latter aspect understood very differently, ranging from Christian conceptions of freedom, through anarchistic ones, to the liberal-left idea of freedom as moral auto-creation.

Maciej Brachowicz discusses the topic of abortion, which in the American context is especially contested. This is so, because the Supreme Court decision of 1973, "Roe v. Wade", has turned out to be one of the most divisive of all decisions, next to the infamous "Dred Scott v. Sandford" of 1857 which justified slavery as constitutional. "Roe v. Wade" cut short all discussions in the state legislatures, which gradually liberalized the law of abortion, taking it into the province of federal law, and constitutional law at that. The decision immediately divided American society, creating the most powerful and active pro-life movement in history, gradually influencing other countries too. The movement is internally divided but there are two most important currents within it, partially overlapping. The first argues that abortion has nothing to do with the Constitution and the Supreme Court declaring abortion a constitutional right usurped its authority and created a non-existent constitutional right. For this reason the issue should be taken back to the states and decided according to the results of a democratic discussion there. The second current is more complicated, but it can be summarized as follows. There is no constitutional right to abortion, and the right to privacy from which it was derived is as ideological as one can imagine. But if there is any constitutional right which touches upon the issue of abortion, that is a negative right, that which protects unborn children, not a right which gives women the right to abort them.

This school has many different shades: it contains a religious argument, but not necessarily so, because it starts from the very deep egalitarian impulse at work in the pro-life movement. The opponents of the pro-life movement want it to be portrayed as preoccupied with abortion, because the movement is allegedly traditionalist, oppressive, religious, or, horror of horrors, Catholic, in other words hopelessly anachronistic. But that is wrong. The pro-life movement has something to do with justice as such, equality, human rights, let alone killings. Because of such a message, for instance, the majority of young women, daughters of the mothers of the "Roe v. Wade" generation which considered it the greatest victory for women's rights, turned against abortion under the regime of "Roe v. Wade" and became pro-life. In other words the conflict is not about abortion, but about the shape of the society in which we want to live and the deeper anthropology which justifies such a society. This discussion in America is extremely heated, public, democratic and alive, giving rise to very interesting theoretical discussions, in contrast to Europe, which is increasingly moving towards considering the right to abortion a fundamental right of privacy for women as autonomous beings, that is in fact a human right. It can be treated as such only on condition of accepting a particular, narrow and in fact dehumanizing conception of the human being and his/her rights as such. This causes diverse consequences, one of which is the treatment of opponents of such a right, considering them to be unconstitutional and opponents of human rights. In other words abortion is part of a distinctive ideology. Brachowicz's article is a contribution to that ongoing discussion which shows exactly that side of the debate which focus on the justice and equality problem, the very foundation of the legitimacy of the religious argument in the public sphere as well.

The subject of Tocqueville and slavery has always fascinated students of America, and Wojciech Kaczor is no exception. He analyzes the problem from the point of view of a French aristocrat who was looking at the issue, subconsciously at least, from an angle which resembled the peasants' serfdom liquidated not so long before in Europe. The author locates Tocqueville's views in the historical context and confronts them with the opinions of his contemporaries. In turn Piotr Musiewicz analyzes the question of the 19th-century movement reforming the doctrine of the Anglican Church and the repercussions of this reform for the American Episcopal Church. This movement, at the center of which stands the person of John Henry Newman, represents a particular version of modern conservatism and can be very useful for an analysis of the contours of American Protestant denominations, especially the Episcopalian Church, and their relation to church tradition. This in turn has diverse consequences not only for the legitimate presence of religion in public life, but also for the modern democratic language of the conservative movement, an issue not only important for America, but also for Europe.

Rafał Marek takes up another topic connected with this religious side of American life, the issue of the Orthodox Church in the United States in the context of American church-state relations. This is an analytical and historical study, firmly

placed within the context of American cultural and religious pluralism. It is also interesting because of another, less widely noticed phenomenon. A large number of the conversions of intellectuals to Christianity in the United States are conversions to the Orthodox Church, mainly because of the beauty of its tradition, its uncompromised, and its spiritual crystal-clear transparency, not contaminated yet by modernist currents which, for instance, have destroyed the mainline Protestant denominations and also ravaged the Catholic Church in America and elsewhere.

Anarchism is a doctrine as well as a movement which is popular in the United States, and historically it has been fairly prominent. The list of Americans who have described themselves as anarchists includes such figures as Henry Adams, Paul Goodman, Norman Mailer, Dwight Macdonald and Edward Abbey. The latter's novels, written in the second half of the 20th century, feature merry anarchist heroes who live by Abbey's anarchist creed: "Be loyal to your family, your clan, your friends, and your community. Let the nation-state go hang itself". Marta Majorek takes up the work of one of the best-known scholars and thinkers of anarchism, Robert Paul Wolff, living proof of the robust presence of the anarchist streak in the American psyche full of mistrust of state power.

Beata Szyjka addresses the topic of the visa lottery in the United States, placing it within the historical, legal and social context of American immigration law. The author treats immigration law and the visa lottery as an integral part of American politics, also a method of enabling illegal immigrants to legalize their stay in the United States. She stresses that the visa lottery is a relatively new phenomenon, introduced at the end of the 1980s and the beginning of the 1990s, kind of a new phase of the American immigration policy.

The last article in the volume is an exception to the entirely Polish group of mainly young students of America publishing in this volume. It is written by one of the most distinguished American scholars of political philosophy, Catherine H. Zuckert of the University of Notre Dame. It is devoted to the work of Ralph Ellison. Zuckert locates him among the giants of American literature, comparable to Herman Melville or Mark Twain, stressing especially his influence – like theirs – as far as the humanization of race relations in the United States is concerned. She focuses on the most distinguished work of Ellison, *Invisible Man*. Ellison, famous at his time, was for a very long time a forgotten writer, and it is only recently that he is being discovered and his ideas considered relevant for contemporary discussions as well. Although the text is slightly different in character from the rest of the volume, it is published here since the work of Ellison is important, less known and worthy of recognition.

As usual the American volume of *Krakowskie Studia Międzynarodowe* contains its Archive section. This time we publish an excerpt from a work by Richard John Neuhaus, who died in 2008. Neuhaus was one of the most important public intellectuals in the United States. A social activist, radical in his youth, a Lutheran pastor and then a convert to Catholicism and a priest, the editor of the influential

monthly *The First Things*, Neuhaus became famous and will remain famous for a long time because of one spectacular book, *The Naked Public Square*. This is a description of the slow process of banning religious language, practice and argument from the public square. Neuhaus considered this phenomenon, supported fiercely by liberal-left elites, treating this process as a way of neutralization of the state, as not only wrong historically in America as far as the real intentions of the Founding Fathers were concerned, but also as a development dangerous to the cause of liberty.

The next volume of the *Krakowskie Studia Międzynarodowe* will be published in his memory and devoted entirely to many aspects of the above problem. Neuhaus was a friend of Poland, and such a tribute is only fitting for a publication devoted to him, a publication which is located in Krakow, the site of a seminar devoted to public ethics and freedom hosted in the Dominican Church. The seminar was set up and led by him and his intellectual friends from Poland and America. It has become until today the home of many students from the United States and Poland who love their own countries, freedom and democracy, having no qualms about combining that attitude with religious convictions, a countercultural sign of a rebellion against modernity and its "naked public square".

Marta Dębska

A BRIEF HISTORY OF AMERICANIZATION

Introduction

The commonly used term "Americanization" is nowadays one of the most misinterpreted and burdened with negative connotations terms there are. It is usually identified by non-Americans with the globalization process, which is, in fact, much broader and older than Americanization. Significant here is the fact that both the expression "America" and the concept of Americanization consist of an inaccuracy themselves. They should be used to refer to two continents and all the countries situated there. In fact, though, they refer just to the United States of America. What is more, the original concept of Americanization, which is still essential for the internal affairs of the US, is commonly forgotten outside the country. This phenomenon therefore needs some explanation and attention.

The aim of this paper is to point out the duality of the concept of Americanization and briefly present its evolution and transformation into contemporary forms. Another issue which the paper examines is the essence and reasons for the huge popularity of this phenomenon all around the world.

Concept and duality of Americanization

One of the tasks of language dictionaries is the reflection of reality. When we trace the clarification of the term "Americanization" in a few of them, of course, we find

linguistic links mostly with America. For instance, according to the *Small Polish Language Dictionary* (Skorupka et al. 1989: 10) the term "Americanization" means to copy America, to follow Americans and the absorption of American culture. A connected word – Americanism – is explained here as a set of characteristics of North American civilization. Similarly, in a later edition of another dictionary, the contemporary general concept of Americanization means the introduction of American patterns, traditions, and lifestyle, and also the exertion of influence on individuals to adopt specifically American behaviours and standards (Sobol 1995: 41). However, "American" is not understood only as a person born in or living on the American continent. It is considered as a citizen of the United States of America as well[1] (Skorupka et al. 1989: 10). In practice, most non-Americans usually treat the phrases "America" and "the United States of America" on equal terms. A result of this simplification is clearly visible in the up-to-date online Cambridge Diction-ary[2], explaining the term "Americanize" as "become or make something typical of the U.S. or U.S. culture". The confusion results from the convergence of meaning of the dominant country and the continent on which it is located, as the status of the U.S. has risen gradually, especially after the Second World War. Even linguistic resistance seemed to collapse when NAFTA included Mexico in North America (Slater et al. 1999: 318). There is still one more ambiguity about the definition of Americanization which is usually not addressed sufficiently in the contemporary world. The point is that we focus mainly on the process of Americanization outside the U.S., whereas we forget about its prior form inside its country of origin. The naturalization process, which is under consideration here, consists in instruction of new immigrants in English and in United States history, government and culture[3]. This is so that they can fulfil the duties of an U.S. citizen and feel unity with a new nation in the close future. This process was an initial one, and is still lively and crucial in the existence of the United States of America.

Original Americanization

According to the Blackwell Encyclopedia of Sociology[4], the word *Americanization* has been in use since U.S. colonial times, but its ideological meaning has changed repeatedly. Shortly after the Revolutionary War, it was used to describe two aspects of the new nation. On the one hand, the united colonies needed to create a common culture and their own standards in law, weights and measurement or currencies. On the other hand, there was also an internal ideological dynamic of new citizens car-

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[1] *Grolier New Webster's Dictionary*, Connecticut 1992, p. 12.

[2] www.dictionary.cambridge.org/dictionary/british/americanize?q=americanization (05.2011).

[3] www.merriam-webster.com/dictionary/americanization?show=0&t=1306505358 (05.2011).

[4] www.sociologyencyclopedia.com/public/tocnode?id=g9781405124331_chunk_g97814051243317_ss1-50 (05.2011).

ried forward by discussion, debate, and simple expediency. Americans needed systems of governance, roads, trade, schools, and social conventions. This huge need for separation from Europe and self-awareness came not only from the contrast with the Old Continent, but also that with newer immigrants. The latter quickly became the essential role in the case of Americanization. From 1790 dictionaries explains the phrase *Americanize* as to acculturate foreigners[5]. Actually, this was the point which started the present form of the interior process of Americanization.

Originally, the concept of Americanization was associated only with adaptation to White Anglo-Saxon Protestant (*WASP*)[6] values and patterns by new immigrants arriving in the United States. Thus Americanization was understood as assimilation at that time. This continued to function until the beginning of the 20th century. The Anglo-conformity ideology was the oldest one which this course of policy was based on. It was created at the beginning of the 19th century to explain the attitude of the primarily English inhabitants of the original 13 colonies towards Native Americans and black people, and then to protect the WASPs' Christian-conservative system of values and interests. This took place under the banner "One flag – one language – one school" and was made possible by the public school system that put stress on immigrants' education in the right spirit. The dominant role of WASPs in American society and authority allowed them to announce the predominance of their culture and the necessity of its introduction for all citizens' own good, even by force.

Therefore, Anglo-conformity also became the national ideology, and the governmental immigration policy was made in accordance with it as well[7]. In fact, the loss of newcomers' ethnicity and the exclusion of blacks from society which were promoted within it denied the fundamental rules of democracy of which the New Nation was so proud. Anglo-conformity was an underlying premise of the Immigration Act of 1924, which reinforced the primacy of immigration from Northwestern Europe by an appropriate quota policy. This strict policy even let the authorities exclude some groups of U.S.-Chinese (1882) and Japanese (1924) people. The restrictions on newcomers were chiefly a reaction to the millions of Southern and Eastern European immigrants who arrived in the United States from about 1880 to 1914. In view of this great immigration flow, the naturalization process also escalated into a feverish crusade at the turn of the 20th century. The new dwellers were perceived as much more "foreign," and therefore threatening, than had been earlier immigrants. At that time another option of assimilation model appeared – the so-called "melting pot".

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[5] *Ibidem*.

[6] *White Anglo-Saxon Protestant (WASP)* – the immigrants of the Colonial Era in America, who came mainly from England, Wales, Scotland, Ireland, and in smaller numbers Denmark, Sweden, and Germany.

[7] A. Kapiszewski, *Ideologia i teorie procesów asymilacji w USA. Szkic problemu*, "Przegląd Polonijny" 1981, Vol. 1, p. 6.

This was the social minorities' answer to the WASP ideology. Contrary to the prior subordination of immigrant culture, values and customs to American ones, this model propagated the emergence of a new, specifically American culture. This could be made possible by "melting" the best components of ethnic cultures into a new alloy, based on equal rights. The ideology of the melting pot was enriched with the idea of *Homo Americus* – a new American born by the biological amalgamation of races and blood of all U.S. inhabitants. Both of the above assimilation ideologies, asserting a loss of native ethnicity, were very utopian and did not survive. The alternative to them, pluralistic models, emerged at the beginning of the 20th century. The most classical of them presented America as nation of nations. This federal pluralism assured each ethnic group of the preservation of its origin culture within the state[8]. There were many mix models of American society consisting of either pluralistic or assimilation elements from the middle of the 20th century, for instance: religious triple melting pot, racial double melting pot, transmuting pot, and so-called New Ethnicity. To some extent all of them led to fast-track assimilation as well as Americanization. Regardless of immigrants' method of adaptation, the fact is that they felt some duality just after coming. On the one hand they were pressed to learn English, wear American clothes and know American reality. On the other hand, they spoke their native languages and found familiar food or their fellowmen in the neighbourhood (Davidson et al. 1994: 705).

The Anglo-Saxon core of American society felt threatened every time when new waves of unfamiliar immigrants arrived. The German and Irish were those European groups which had met with the greatest prejudices during colonial times, but the real danger came in America at the turn of the 20th century with the huge immigration flow from South-eastern Europe. About 30 million people arrived in the New World by 1920. They made up almost 15 percent of the American population. They were young people, mostly men, between 15 and 40 years old. Not many of them knew English and had skills or much education and, more importantly, they were mainly Catholics or Greek or Russian Orthodox and Jewish (Davidson et al. 1994: 693).

Moreover, industrialization brought the rapid development of cities and interior migration from the countryside to urban areas in the 19th century. Also, newcomers mostly settled in the large towns, especially in the industrial ones of the Northeast and Midwest. As a result the cities started to be even more overcrowded. Thus, it was no wonder that distrust of the strangers turned into a frenzy of xenophobia at that time. The ancestors of former settlers and colonists were afraid that the traditional American – that is to say Protestant – values would melt and their cities transform into slums, which could cause the broad stratification of society. Owing to these anxieties, many nationalist groups, such as the Daughters of the American Revolution or the American Legion, organized educational programs to indoctrinate foreigners with loyalty to America. This was done through

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[8] *Ibidem*, p. 10.

lectures on American history and government or classes in English (Tamura 1994: 52–55). Although teaching was quite a popular form of fostering proper American values among immigrants, it did not bring the expected results. For hard-working workers it was not easy to attend evening classes. Thus, the progressives focused on the immigrants' children to teach them English, the value of good citizenship, respect for authority and care for their health. By the 1890s a system of compulsory public education was a fact for children aged 8–14 in most states with an increasing immigrant population[9]. Apart from educational programs, there also existed employer and patriotic programs and the so-called settlement house movement[10]. This, transplanted from Great Britain, helped to assimilate and ease the transition of immigrants into the labour force not only by teaching history or art but also by some social services like a daycare center, homeless shelter, public kitchen or public bath[11]. The varied ethnic institutions and foreign-language press were also especially helpful in this process (Luedtke 1992: 77). Equally important was the church, where the sermons affected not only the religious aspect of life but also obedience to American law and awareness of the dangers of European radicalism. Besides the above organizations, there were some social workers who tried to alleviate the living conditions of immigrants and help them adjust to their new environment. Similar activities were conducted after 1910 by state and federal agencies as well (Tamura 1994: 52–55).

The apprehension of immigrants and unusual care of high level of patriotism and loyalty towards the United States of America intensified between 1915 and 1921, in the background to World War I. At that time, the European roots of all U.S. inhabitants, especially new ones, were a highly problematic and awkward matter. Jacob Needleman emphasized (2002: 39):

> that America is the only nation formed by philosophical ideas that have been thought through by human beings. So, to be American was an idea and American identity is not a tribal, ethnic or racial one. But is a philosophical identity composed of ideas of freedom, liberty, independent thoughts and conscience, self-reliance, hard work, justice. This is both the weakness and the strength of America.

All of these ideas together create the State ideology – Americanism, which describes a genuinely original kind of patriotism. Its singularity was emphasized in *The Forum Magazine* in 1894 by President Theodore Roosevelt, who described Americanism as "a question of spirit, conviction, and purpose, not of creed or bir-

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[9] www.immigration-online.org/341-americanization-programs.html (05.2011).

[10] This is also called the *social settlement movement*. It contained the community centers run by middle-class Americans to help poor and foreign-born people. The first settlement house was opened in 1884 in an East London slum. The first one in America was founded in 1886 in the worst New York slums. The most famous one was Hull House in Chicago. At the turn of the century there were more than 100 of them in America (J. Davidson et al., *Nations of Nations…*, p. 703–704; www.encyclopedia.chicagohistory.org/pages/1135.html) (05/2011).

[11] www.immigration-online.org/341-americanization-programs.html (05.2011).

thplace[12]. Taking this unique nature of American identity and the fundamentals of the United States into account it is much easier to comprehend all the efforts for Americanization that are made are at times of international conflict or war. A shared fever of all Americans, who had to be dedicated to Americanism and the U.S., was plainly visible just at the beginning of the 20th century.

The stability and coherence of American society depended on strong national identity and the undoubted loyalty of all Americans, either citizens or newcomers. There was no place for naturalized citizens who advocated the countries where they had arrived from. This was clearly stated in *The Forum Magazine* in 1894 by President Roosevelt, and then in President Woodrow Wilson's address to four thousand newly naturalized citizens in Philadelphia in 1915. What is more, also presented was the federal authorities' attitude to new immigrants and the strong tendency not only for naturalization but also for Americanization of them in many fields of life.

> We must Americanize them [newcomers – author's note] in every way, in speech, in political ideas and principles, and in their way of looking at the relations between Church and State. We welcome the German or the Irishman who becomes an American. We have no use for the German or Irishman who remains such. We do not wish German-Americans and Irish-Americans who figure as such in our social and political life; we want only Americans, and, provided they are such, we do not care whether they are of native or of Irish or of German ancestry. […] We have no room for any people who do not act and vote simply as Americans, and as nothing else. Moreover, we have as little use for people who carry religious prejudices into our politics as for those who carry prejudices of caste or nationality. (President T. Roosevelt, *True Americanism, The Forum Magazine*, April 1894)[13]

> You cannot dedicate yourself to America unless you become in every respect and with every purpose of your will thorough Americans. You cannot become thorough Americans if you think of yourselves in groups. America does not consist of groups. A man who thinks of himself as belonging to a particular national group in America has not yet become an American, and the man who goes among you to trade upon your nationality is no worthy son to live under the Stars and Stripes. (President W. Wilson's address to newly naturalized citizens, Philadelphia, May 10, 1915)[14]

The new arrivals were persuaded to naturalize by many U.S. organizations. The Nativism movement in the United States, which flourished between 1830 and 1925[15], was among the most hostile anti-immigrant movements in American history. Its activities, first anti-Catholic, anti-German or anti-Chinese, was focused mainly on naturalization of immigrants after World War I.

This was the aim of, for example, the *American Association of Foreign-Language Newspapers*, the *American National Americanization Committee*, the *Civil League of America in Boston* and the *League of Foreign Born Citizens*.

As Adam Walaszek writes (1983: 50–51), there were two possibilities for Americanization: compulsory and voluntary. The former happened when naturali-

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[12] www.theodore-roosevelt.com/images/research/speeches/trta.pdf (05.2011).

[13] *Ibidem*.

[14] www.presidency.ucsb.edu/ws/index.php?pid=65388#axzz1O7EnuczB (05.2011).

[15] www.publiceye.org/ark/immigrants/Nativism.html (05.2011).

zation was a condition for getting a job. The latter was an attempt of conviction of the superiority of U.S. civilization, the better standard of life there or all advantages possible by citizenship and knowledge of English. The latter was characteristic of the *Bureau of Naturalization,* the federal organization which tried to establish itself as the leading body in citizenship education and Americanization from 1914. It was the first federal institution to try incessantly to standardize citizenship education in the whole country.

Americanization, together with issues of loyalty and patriotism, was particularly important from 1917, when the United States abandoned a neutral policy and joined in World War I. In order to improve the patriotic and moral attitude among American society at that time, a nationwide contest for writing a National Creed was announced, to be a brief summary of the American political faith founded upon things fundamental to American history and tradition. The winning entry, declared in April 1918, expressed the special kind of spiritual patriotism mentioned above – Americanism – in the best way. Keeping this ideology vital constantly was made possible by the daily flag salutation, celebrating national holidays and promotion of patriotic symbols, for instance: Uncle Sam, the national flag and monuments, and the eagle. In April 1917, President Wilson even created the *Committee on Public Information* to promote and reinforce public support for the war[16].

Availing itself of advertising methods and new psychological knowledge, this government agenda disseminated three basic ideas of Americanism: democracy, unity and freedom.

Therefore, immigrants became more aware of American ideology, the gap between them and citizens was diminished, wartime patriotism was fostered and all Americans were instructed how to help win the war. The Committee used all possible media at that time: the press, telegraph, films, radio, posters, photographs and cable. Among its many divisions, particularly visible and useful for the sometimes illiterate audience were the *Films Division* and the *Division of Pictorial Publicity.*

The alliance between the advertising industry, artists and government was unusual effective within them (Sivulka 1997: 134–136). Despite the fact that the *Committee on Public Information* was abolished in August 1919[17], similar propaganda activities were also conducted during World War II by the *War Advertising Council* created in 1942.

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[16] www.firstworldwar.com/features/propaganda.htm (05.2011).

[17] www.archives.gov/research/guide-fed-records/groups/063.html.

The patriotic posters issued during World War I:

Source: www.archives.gov/publications/posters/ww1.html (05/2011); www.images.google.com (11/2003); www.immigration-online.org/341-americanization–programs.html (05/2011).

According to Juliann Sivulka (1998: 232), the council "produced the largest, most extensive advertising campaign in history, promoting war bond sales, internal security, rationing". The advertising industry provided a real lift for American patriotism at that time. Nevertheless, there were also profits on the other side. The huge number of immigrants who arrived at the end of the 19th century were perceived as worthwhile market targets, and the process of Americanization as an opportunity for expansive consumerism (Kammen 1999: 66).

The patriotic posters distributed during World War II:

Source: http://www.archives.gov/publications/posters/ww2.html

Consequently, the advertising industry and mass media were among the most important tools of the widespread phenomenon of Americanization, not only inside but also outside the United States of America. It is hard to say that internal Americanization of non-citizens achieved great success when the internment camps existed and race segregation was still a fact in the U.S. However, the war experience of fascism halted the Nativism movement there. Moreover, Americanization took place on battlefields where all draftees fought together, especially during World War II. There were also some facilities in the naturalization way for eager immigrants who enlisted in the U.S. army. What is more, the G.I. Bill of Rights (1944) allowed all veterans to learn in colleges and universities which had not been accessible to many of them before. The wartime effort of the U.S. army, similarly to patriotic ads, apart from its main goals also had some side effects. The presence of American soldiers abroad was a sort of promotion of America outside the continent, which eased the emergence and fast development of the other Americanization so popular nowadays, that taking place outside the United States.

Americanization after 1945

The stimulation of the naturalization process remained a lively issue in the United States of America throughout the 20th century. Many American politicians underlined the desire for assimilation and the inclusion of immigrants in political life there still. For instance, Jimmy Carter had stated even before he won the presidential election that the Democratic Party, of which he was a member,

[…] welcomed generations of immigrants – the Jews, the Irish, the Italians, the Poles, and all the others, enlisted them in its ranks and fought the political battles that helped bring them into the American mainstream.[18]

In view of the renewed increase in immigration after World War II this liberal attitude to newcomers was quite comprehensible. There were still many problems and the character of immigration had changed. The new arrivals came from Latin America and Asia for the most part. Nonetheless, the phenomenon of immigration had been inscribed in the U.S. democratic fundamentals forever, and to some extent American economic power and development have depended on immigrants.

The immigration policy has only fluctuated between the liberal and restrictive one in view of historic events. The real landmark in internal Americanization was the U.S. Supreme Court decision *Brown v. Board of Education of Topeka* in 1954, which declared segregation of races illegal. This opened the way to legal equality for other minority groups in almost each area of life – education, work or

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[18] Jimmy Carter's acceptance speech *Our nation's past and future…*, presented during the Democratic National Convention meeting at Madison Square Garden in New York City on July 15, 1976 (www.4president. org/speeches/carter1976acceptance.htm) (06.2011).

housing. So the assimilation and integration of all Americans was finally possible in the eyes of the law[19].

The 20th century took place rather under the other banner of Americanization – convincing the rest of the world of American values, ideas or features and trying to make others similar to Americans. This is visible in many aspect of our life. Briefly: in the economy, with the domination of the U.S. in world markets and the introduction of the American way of production and organization of companies, or the expansion of the business activities of American-based multinational companies; in politics, Americanization appears as the promotion of the democratic system, especially the American model, and support for human rights; in culture: this process consists in imposing American patterns of culture and lifestyle on other nations.

The history of enlarging the sense of Americanization started no earlier than the 19th century. The national messianic idea of inculcation of democracy evolved from the settlers' profound belief that America was this place where they were able to bring to life God's Kingdom on Earth, which would serve as a model for the rest of the world. At the age of Enlightenment that ideal kingdom evolved into democracy as the only social system that was natural for people and applied to the moral individual's conscience, which is the guarantee of justice and democratic and moral order in the society. The resounding success of the American Revolution, the proclamation of the State and cultivation of the unique Catholic-Judeo-Christian tradition led to Americans believing in the uniqueness of their society and the right to Americanize others all over the world. This messianic idea as moral duty had already been announced towards Asia at the beginning of 19th century by a small group of Williams College students in Massachusetts (Handlin 1963: 181). Then, for the sake of American destiny the imperial expansion was started at the end of the 19th century. Of course, it assumed not only the shape of military conflict but also humanitarian help or democratic education, as could be seen many times throughout the next century. Without a doubt, this conviction of mission is a genuine source of national pride. As President Carter emphasized in 1976:

America's birth opened a new chapter in mankind's history. Ours was the first nation to dedicate itself clearly to basic moral and philosophical principles: that all people are created equal and endowed with inalienable rights to life, liberty, and the pursuit of happiness, and that the power of government is derived from the consent of the governed. […] Today, two hundred years later, we must address ourselves to that role, both in what we do at home and how we act abroad—among people everywhere who have become politically more alert, socially more congested, and increasingly impatient with global inequities, and who are now organized, as you know, into some one hundred and fifty different nations. This calls for nothing less than a sustained architectural effort to shape an international framework of peace within which our own ideals gradually can become a global reality[20].

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[19] www.american-education.org/102-americanization.html (05.2011).

[20] Jimmy Carter's acceptance speech *Our nation's past and future*… (www.4president.org/speeches/carter1976acceptance.htm) (06.2011).

American determination to be a political world leader was caused also by the political and economic situation after World War II. The United States of America was the only one real winner of that war. It doubled its industrial production during the war and possessed three quarters of the world's gold reserves (Lubbe 1994: 152–153). This predestined the United States to become the global banker and to take over leadership from the British. The political and economic domination of the U.S. in the post-war world lent itself to the rebuilding of Europe, which also led to a surplus in exports of American production and increased popularity and familiarity with the "Made in the USA" tag around the world. The Marshall Plan (1948--1951) and the Truman Doctrine (1947), declaring the U.S. to be the guardian of the world's democracies, initiated *Pax Americana*, a global conception of American hegemony. As Henry Kissinger points out (2002: 495), the documents confirmed American willingness to heal what inheres in its national nature.

The brilliant Marshall Plan, besides U.S. economic benefits, led not only to the rebuilding of Western European economies, but also instituted liberal economic practices, such as lower tariffs and instruments to coordinate economic policies (Sibley 2002: 95). Considering the territorial extent of influence (17 European countries), generous financial assistance (about $13 billion for Europe in grants and loans), and its wide variety of activities, the Marshall Plan simply cannot be downplayed in terms of the Americanization of the Old Continent. Furthermore, there were many additional benefits, such as the European sense of hope, economic and political security, and the subliminal positive image of America.

The plan's concept was extended to less developed countries under President Truman's *Point Four Program* in 1949. But this time the aim was mostly creation of a new lifestyle there. Apart from financial aid, American technologies, scientific achievements or natural resources were shared with the poorest countries (Boorstin 1995: 552). American aid programs were really a popular way of broadening democracy, and thus the American lifestyle as well, all over the world in the 20th century. This was especially the case after World War II, when American foreign policy was more and more a mix of humanitarian, economical, political, ideological and military reasons (Boorstin 1995: 549).

The departure from isolationist to global foreign policy was visible also in such unforgettable American aid programs as *UNRRA*[21], the *Peace Corps* or *Fulbright*. The last two continue to this day. The Peace Corps, established in 1961 by President John F. Kennedy to promote world peace and friendship, has been active in 139 countries to date. Its main goals consist in helping people in developing countries to better understand: their needs, other people and Americans[22].

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[21] *UNRRA* (*United Nations Relief and Rehabilitation Administration*) organization created in 1943 to rehabilitate the liberated area of Europe and Asia during World War II. The aid, in the shape of food, medicine, clothes, fuel and restoration of industry or agriculture, was financed mainly by the U.S. and reached China, Czechoslovakia, Greece, Italy, Poland, the Ukrainian SSR and Yugoslavia. The operation lasted until 1949.

[22] www.peacecorps.gov/index.cfm?shell=about (05.2011).

A drawing presenting *The Point Four Program* from a Department of State publication released in December 1949
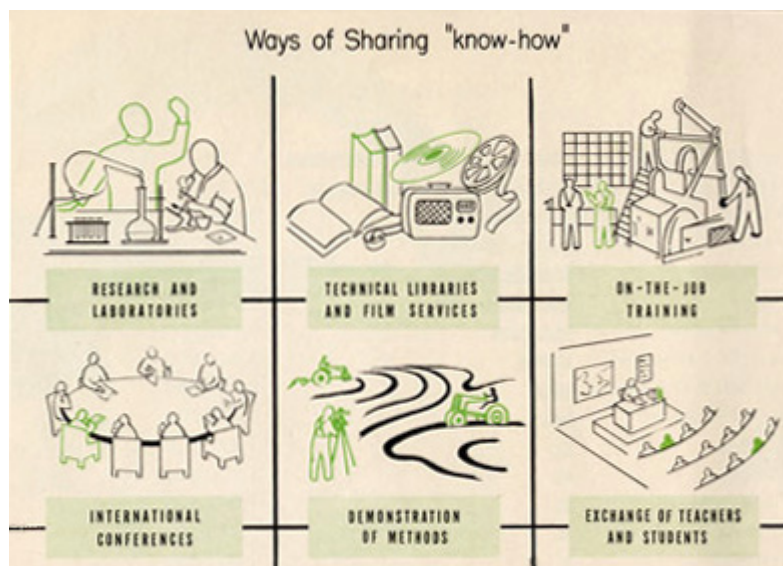
Source: www.trumanlibrary.org/hstpaper/point4.htm (06/2011).

Volunteers have therefore worked in the area of information technology, business, health and education. Equally extensive, but different in character, is the Fulbright Program, initiated in 1946 in order to promote international partnership and mutual understanding[23]. Focusing chiefly on educational exchange has brought long-lasting effects not only in the minds not only of present generations, but also future generations. Another type of institution which has been able to propagate American values abroad is philanthropic foundations, based on private grants, whose existence and quick development was closely connected with America's industrial growth. The number of these bodies rose in the U.S. from five in the 19th century to nearly two hundred in 1930, and even more since World War II. The Ford, Rockefeller, W. K. Kellogg Foundation and the Carnegie Corporation of New York were the oldest ones (Bell 1999: 284). There have been almost countless numbers of this kind of undertakings, but it has to be pointed out that capability to create a positive self-image is definitely one of the strongest and the most effective tools of America, which supports so-called *soft power*.

In contrast to traditional *hard power*, as Joseph Nye explains (2007: 34–36), this is the ability to obtain what one wants through cooperation and attraction. Which is possible thanks to common values and sense of justice and duty. So the source of *soft power* comes from a seductive country's culture. There were two

[23] www.fulbright.state.gov/history.html (05.2011).

essential propelling mechanisms: the political and moral duality of the post-war world and mass culture.

The rivalry between the United States and the Soviet Union during the Cold War was perfectly visible in space research or the arms race. That competitive policy was running in every area of life on both sides, but there was also some additional psychological aspect expressed in many myths and beliefs arising from people's fear and desires. America as forbidden fruit or mythical West was perceived as a symbol of democracy and personal and political freedom, as well as a synonym for prosperity and wealth, by most citizens of communist countries at that time. The most meaningful example of that belief was the election poster of the *Solidarity* movement in 1989 in Poland, referring to the famous western *High Noon*. The ideal image of America was also shared by its habitants, who believed in their homeland as a bastion against communism. The vehicle of the *American Dream* was the entertainment industry, especially the movies, in the service of mass culture which emerged back in history. Rapid industrialization and urbanization brought new technological facilities and a system of production that shortened work time and enforced the changing form of spending leisure time. Thus, a solution appeared in the form of mass culture, which found the best condition to develop in multinational America, where the strong requirement for universal, neutral and mass available culture weakening the original Anglo-Saxon one was visible at the turn of the 19th century (Chałasiński 1962: 542).

An election poster for *Solidarity*, 1989

Source: www.pilsudczyk.wrzuta.pl/obraz/7IBIpYN3LY/solidarnosc_w_samo_poludnie_4_czerwca_1989.

In the course of time, the need for one common culture has become stronger and stronger as the idea of globalization has spread all around the world. Due to unlimited availability or low cost of access, this type of culture has characterized itself with some really democratic traits and quickly became the other medium of

Americanization in and outside the U.S. The popularity of American normative popular culture, which grew out of mass culture, lies in its democratic character and receptiveness to new trends and other cultures, which is a necessity in multi-ethnic and multi-cultural country like the U.S. As a result, it is also familiar to some extent to other societies and easily adaptable outside of its home. What is characteristic here is the fact that Americans themselves describe their culture as mass production of mass entertainment (Portes 2003: 60). The fast industrial development in America at the turn of the 19th century, some accumulation capital and the huge number of mostly illiterate and isolated immigrants made possible the quickest evolution of mass culture here. Therefore, by 1929 the image industries had already become an American specialty (Harris 1992: 155). Hollywood existed as an icon of success and prosperity. Similarly, its film stars embodied excellent taste and high life in people's minds, which was also visible in Poland. For instance, *Penny Gilot* perfume was the secret of some Hollywood actresses' success, according to advertisements published in Polish *Tygodnik Ilustrowany* in 1938[24]. American cinematography, which was involved in the war propaganda industry, as with other media, which had already been mass, became much more popular all over the world. The broadcast information agency *Voice of America,* operating from 1942 until now, is one of the most recognizable examples of the cooperation between federal government and mass media. Transforming over time according to the relevant goals, political situation or new technology, *Voice of America* became the global trademark of democracy and freedom with reliable news, cultural programs and many other ones about the world and America overseas. The American presence that began in the 1940s with war and occupation in the Old Continent caused the growth of familiarity with American cultural codes, meanings or lifestyle. The European unconscious learned to dress and eat like an American, to listen to American music and watch American films, to consume in the proper way American material and immaterial products, so that not surprisingly they soon learned to understand and adapt American meanings. Moreover, the American standards often started to prove better than their own ones and Europeans treated them as the reference system without taking into account historical or cultural aspects in ordinary life and policy, industry or the education system as well.

The turning point in the history of Americanization occurred in the second half of the 20th century, when the U.S. as the primary source of the communication and technological revolution assumed for itself a privileged place in the global superpower race. The rapid popularization of TV and the incredible development of the mass aviation industry allowed time and space to be compressed. As David Harvey argues, "the world of the 1960s is about one-fiftieth the size of the world of the sixteenth century precisely because jet aircraft can travel at about fifty times the speed of a sailing ship" (cited in Waters 1995: 55). The objectification and

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[24] References were made to Deanna Durbin and Loretta Young in 1938 in *Tygodnik Ilustrowany*, Vol. 4, January 23, Vol. 5, January 30, Vol. 6, February 6, 1938.

universalization of concepts of space and time, which is encompassed in Harvey's concept of *time-space compression*, allowed time to annihilate space mostly thanks to inventions mostly coming from American military research centers. New means of communication and transport made the relations between America and the other continents, such as the migration of ideas, cultures and people, much easier, faster and more common than they had been before. For economic reasons America, where television achieved resounding success first, became a monopolistic purveyor of TV productions for the Western European market, which was profitable for both sides. The Western European television industry, which appeared in the 1950s when the first government-controlled television channels were established, suffered from a shortage of funds, productions skills and artistic talents. American productions were therefore necessary for them. Even if they later produced their own films and programs the American ones for a long time remained much cheaper, and covered 75 percent of the airtime in Western Europe and Britain by the 1990s. For the American television industry, which cooperated closely with the Hollywood studios, the Western European market was the most important due to film and TV overproduction in the U.S. (Pells 1997: 230–231). The liberalization of trade policy that took place starting with the creation of GATT (1947) eased the circulation of American media productions and other goods as well. The transfer of them, together with American democratic ideas, lifestyle and myths of the self-made man or shoeshine boy, was made to a great extent by American corporations. The economic situation and lack of rivals after World War II, control of technology and capital as well as management and marketing skills gave American corporations so strong a position that even if other countries' corporations started to compete with them after 1970, things did not change much. As Henry C. Dethloff shows (1997: 128), American business investment abroad rose from $32 billion in 1960 to $1.7 trillion by 1987. What is more, the power of all corporations, not only American ones, is that they "are creatures of political economy rather than merely economic actors" (Dicken 1999: 35), a fact that is highly visible in post-communist countries. A symbolic mark of their transformation was the international success of the McDonald's franchise business in the 1980s.

American leadership was confirmed in the 1980s and the 1990s when the computer and then the internet and cyber revolution occurred[25]. The initiator of this technological watershed came again from the U.S., and was widespread all over the globe. Thus, entirely new tools of self-promotion were gained too. Apart from the technological explosion, a new impact in economy could be observed at this time. It was a time of synergy, joint ventures and cross-selling. Generally, U.S. media companies continued to dominate in the 1990s, when the multilevel media pyra-

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[25] The first personal computer was introduced in 1977 by the American companies *Tandy Corporation (Radio Shack)* and *Apple* Computer Company; the Internet evolved from *ARPANET* – a communication network founded in 1969 by *the Defense Department's Advanced Research Project Agency* in the Pentagon and then, at the end of the 1970s, propagated first in academic and next in public life.

mid emerged on the global market. According to Herman and McChesney (2000: 220–221), there were ten giant vertically integrated conglomerates: *News Corporation*, *Time Warner*, *Disney*, *Bertelsmann*, *Viacom*, *TCI*, and the slightly smaller *PolyGram*, *NBC*, *Universal* and *Sony* in the first tier. The second tier belonged to thirty large media firms which filled regional or niche markets and cooperated with the first ones. The last level consisted of thousands of relatively small national and local companies which to some extent were dependent on the large companies. Visible was a really close connection between the entertainment, telecommunications and IT industries within this pyramid. What is essential here is that the biggest media corporations at the top, even if they have become transnational, are mostly American in character, so their headquarters have been situated in the U.S. (except Bertelsmann).

As a result, America as a media empire became some kind of mediator and propagator of a new global order in world economy, policy and culture. The audience is always the last link of the media chain. The message, even if strange, is placed in the local context by them. A recipient thus understands another cultural code as his own, and is ready to consume American goods appropriately. Which, of course, should not happen. As a consequence, European or Asian streets are full of American signs, trademarks or services. The American background of advertisements which a viewer watches is comprehended perfectly. Companies cultivate spending leisure time within the community of employees. Tourists in the United States of America just see in reality something that they already knew from TV or movies and which is for them almost routine.

It is also worth noting that nowadays it is becoming harder and harder to recognize what is truly American due to an emerging global culture and lifestyle whose roots are starting to blur. But the fact is that these new universal cultural elements mostly came from America originally. So, each of us is American to some extent, because American ideas are the components of global citizenship.

In the background of the globalization processes the origin of Americanization is still continuing in the interior of the U.S. Due to the 7.9 million immigrants who are eligible to file an application for naturalization but do not do so, a national advertising campaign is being conducted in print, on the radio and in digital media to encourage them to do this[26]. *The Citizen's Almanac* is one of the most recognizable USCIS publications, where the most cherished symbols of freedom, liberty and American history are presented.

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[26] *Seattle Times*, 25.05.2011, www.article.wn.com/view/2011/05/25/US_govt_to_promote_citizenship_in_ad_campaign_7, (05.2011).

A café in the Polish sea resort Darłówko, 2008; RTV EURO AGD advertisement, Krakow, 2006

Source: author's photograph

The federal *U.S. Citizenship and Immigration Services (USCIS)* awarded $8 million in federal grants to promote citizenship and immigrant integration by education on citizenship, English classes and naturalization-preparation services in 2010.

Seventy-five organizations from twenty-seven states were recognized as part of this agency's *Citizenship and Integration Grant Program*, which is operated mainly in the ten largest citizenship-eligible permanent resident populations – California, New York, Texas, Florida, New Jersey, Illinois, Massachusetts, Washington, Virginia, and Arizona[27]. In the view of bilingual lobbies in some states or the rapid progression of global society the importance of the naturalization issue is entirely necessary for the unity of the country.

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[27]   www.wilsoncenter.org/index.cfm?topic_id=5949&fuseaction=topics.event_summary&event_id=63 2146 (05.2011).

The cover of The Citizens' Almanac
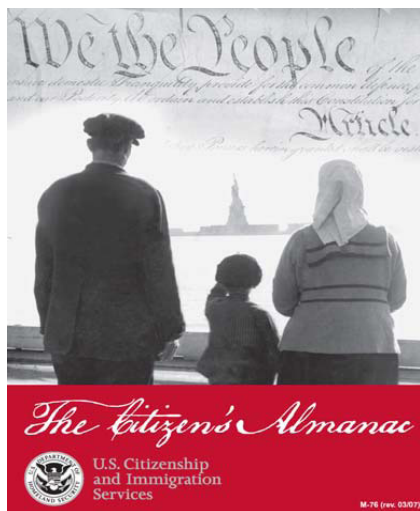
Source: USCIS Monthly, May 2007, p. 3, www.uscis.gov/files/nativedocuments/USCIS_Monthly_ May_07.pdf (05/2011).

Conclusions

To sum up, Americanization has for many years been among the most emotionally charged concepts. It is often blamed for the destructive influence on national culture. It is also equally often misinterpreted and conflated with the globalization process, which is in fact much older and broader than Americanization. Nevertheless, the latter leaves an unmistakable inscription on the former. In fact, no one can understand the globalization process and participate totally in it without adopting a distinctly American code of cultural meanings. It happens unintentionally and subconsciously frequently. Sometimes even contrary to the announced intention of the individual, who is not aware of the origin of consuming material and immaterial goods. On the other hand, American ideas, patterns or icons are accepted quite consciously when they are treated as the aim and ideal model of existence.

It must be remembered that there are two types of Americanization process, which nowadays are running parallel to each other. The older one in fact means assimilation of immigrants in order to adapt them to American middle-class norms and finally to naturalize newcomers. This assumed a less or more organized effort in the United States of America dependent on historic events. Thus, it is a deep process on the political and ideological base inside the country. The other type of

Americanization emerged in the 20th century and takes place outside the U.S. It developed especially after World War II and then accelerated after the end of the Cold War, which was itself a sign of victory of democratic ideas, so a win for America as well. Especially at the turn of the 20th century, this kind of Americanization transformed its character from mostly political to rather economic reasons, becoming a tool of liberal capitalism and its consumer culture.

This paper does not exhaust the subject. Its aim was rather to bring readers' attention to the ambiguity of describing this phenomenon and to draw clearly the winning route of Americanization in the world than to analyze it deeply. It was also focused mainly on the relations between America and Europe. There is, then, still much more to say about this process. Moreover, Americanization is difficult to analyze because it is constantly in progress in the contemporary world. But it seems obvious that nowadays, like never before, people all around the world are perfectly able to understand and consume America.

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Andrzej Bryk

THE UNITED STATES, HUMAN RIGHTS,
AND A REJECTION OF UNMEDIATED DEMOCRACY

The present volume is as baroque and diverse as the United States. It is a mere motley of articles dealing with the country's past and a present which has moved the imagination mainly of young authors, approaching the phenomenon of America mainly from the European perspective.

What is the meaning of American civilization, what is its distinctiveness? How does American civilization distinguish itself in comparison with other civilizations? How has it developed, changed, what has been a distinctive American answer to the torturous challenge of modernity? In America everything began at once, and what modernity held dramatically in store for humanity has been experienced in the United States in a condensed form from the beginning. But at the same time America has also been best equipped to meet that challenge, not only for the simple reason that, from the earliest times of its existence, it has been able to develop the most elastic and lasting form of "ordered liberty", but also because of reasons pertaining to its pragmatic, anarchistic, down-to-the-roots way of being and acting, to wit, its traditional mundane practices and ways of being.

For many reasons America is a messy, quarrelsome, never resting place, constantly battling over the meaning of its founding myths, their contemporary embodiments, their accuracy concerning answers to the challenges of the modern predicament, and last but not least, battling over the limits of human freedom which are at the very core of American civilization. Modernity is a totally unpredictable business, so well captured, even if subconsciously, by this immemorial and inde-

structible dream written into the Declaration of Independence of 1776 and embodied in the words "pursuit of happiness". This phrase is a magical expression, because it is the modern equivalent of a belief in magic. As a protagonist of the quintessentially American novel by F. Scott Fitzgerald *The Great Gatsby* says, magic is the essence of modernity. It is this combination of modernity and magic which gives the American credo embodied in the phrase "pursuit of happiness" an inescapable hope of endless transformation, a dream of a better life. As the sociologist and theologian Peter Berger succinctly points out, speaking about the message contained in *The Great Gatsby*, the essence of America has always been the fiercely personal dream, "a recurring experience, that anything can happen here – and it could happen right now".[1]

The United States is a fiercely individualistic country but at the same time yearning for a solid ground of freedom. Modern individualism, at its very core, rejects passive acceptance of fate, a quietistic acquiescence in one's given life station. For this reason, by its very logic it fosters pluralism, and at the same time, if carried to its extremes, it can destroy not only the ethical basis on which such a plural society rests. And with that it can destroy the "ordered liberty" which allows America to accept pluralism and freedom understood as the "pursuit of happiness" and somehow not to disintegrate, but to prosper. This is so because there exists at the very core of this civilization, of the American people as the quintessential people of modernity, a powerful, neurotic, metaphysical yearning to combine freedom as a rejection of fate, of the ultimate inescapable nature of one's station in life, with a metaphysical yearning for a moral order upon which this freedom should rest, an old, never dying echo of the once conceived of and never revoked Covenant with the Almighty, another pillar of that "sacred" text of the United States, the Declaration of Independence.

America was never a Christian state, an essential fact expressed in the federal constitution of 1787 and the Bill of Rights of 1791, the document which made sure that the European historical model would never repeat itself there. But it was once a Christian *society*; its cultural code was once anthropologically entirely Christian, or Judeo-Christian, even if in its practical operation this code was of a Protestant, fiercely individualistic, often suffocating nature, which nevertheless built a great civilization. But this Protestantism was distinctively American. It was haunted by a fear of failure and slide towards sin at the individual as well as at the community level, the fear of failure to make this new civilization worthy of its promise. This Protestantism, also influencing other faiths, was on the one hand full of unprecedented individualism, but on the other hand it was infused with austerity and dogmatism.

Altogether, this Protestantism made an individual life, in an environment of unbound challenges of the vast empty spaces beyond the social orderliness accruing for millennia in Europe and spiritual orderliness provided by Rome or the

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[1] P. Berger, *Facing up to Modernity*, New York 1997, p. 218.

Crown, bearable. This was a situation akin to the Jewish Covenant carried through history in an essentially alien world.

America is no longer a Christian society. It is much more anthropologically pluralistic, with a substantial number of its post-1968 elite secularized. This elite is infused with a hubristic thinking, that their hour is the last hour of history and their hallowed task is to complete its end through a total "liberation" from any "oppression", real and imaginary. This "liberation" has as its aim the creation of a new man, where freedom in this world would become tantamount to moral auto-creation. This is an idea as modernist as it is totalitarian in its consequences. But apparently it has to run its course until the generation of the "revolution of 1968" dies out, so the new generation can clear out the debris.[2]

But, although America is no longer fully a Christian society, it is still defini-tely a religious society, where the challenge of the above, post-1968 anthropology, has been questioned. It is religious in two senses. First, because it fiercely professes religious faiths, mainly Christian, including the single most numerous Catholic de-nomination. Second, because at its core America is burned by an essentially meta-physical mentality, both in private and in public. It is a country still totally devoid of any metaphysical boredom, so prevalent in Europe, and with that, of that uto-pian dream of a post- metaphysical, and as a consequence a post-political society, which is the essence of the European Union project today. Although Americans are by disposition, by procedures and by the operations of their institutions the most democratic people in the world today, this is a fairly distinctive model of democra-cy, different than the European one. America has never allowed itself to separate its democratic faith and democratic virtues from the grassroots understanding of freedom as an ability to establish and guard their own autonomous communities and their ability to teach ethical life from the bottom up, that is from a place where real love can only thrive, then offering such educated citizens for the community at large. Americans have never, so far, denounced their fierce love of independence for the security of the welfare state, which decides for them what they should think, eat and behave, the "ordered" revolt against Obama's presidency being the latest example of this predisposition. In other words, they have never understood their democratic ideal as a system which separates their democratic virtues from their roots of tradition, religion and, especially important today, from the political frame-work of the nation-state. They have not succumbed to the post-political temptation, which is at the same time a totalitarian temptation, so visible in Europe today.

That is true – Americans are always willing to identify everything they think they are and they do with democracy – but this is not the same predisposition as visible in an the contemporary fashionable idea of the humanitarian democracy, a kind of universal regime denying democratic ways of acting of self-governing people, and precisely because of this, attached to national sovereignty and reco-

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[2] On that very convoluted, torturous process with many ramifications and unpredictable consequences see: H. Heclo, *Christianity and American Democracy*, Cambridge Mass. 2007, esp. p. 29–64, 95–144.

gnizing and defending the uniqueness of traditional arrangements. Humanitarian democracy is increasingly identified in contemporary international language as tantamount to a world regime of human rights, with judges, NGOs and international organizations becoming their guardians, the *alpha* and *omega* of the politics of our era. Democracy in such a context may increasingly become nothing less and nothing more than an invention, as Nietzsche said, of happiness, the final transcendence of the self, or

> the "gathering of humanity in a unified consciousness, a consciousness of unity that allows us to say and obliges us to say: we, we the human beings. Thus, just when today's humanity seeks and is proud to exclude nothing of what is currently human, it excludes its whole past, all past generations. At the very moment when it embraces itself wholly it ceases to comprehend itself … [This is the world] when everything is predictable – modern humanity is not very enterprising. It is already altogether and wholly human in its own eyes. To be human is a fact to note and even to celebrate, more than a task to accomplish".[3]

In other words, democracy in such a perspective ceases to mean the self-governing people. They simply become celebrants of the end of post-political history administered by judges, administrators, experts who decide what human rights are, or, rather should be. Such a democracy delegitimizes self-government. Such deference to universal humanity, to universal moral and political truths, means that there is a danger that any particular country is legitimate only if it gives its citizens access to the universal totally unmediated by self-governing institutions. But that is simply an impossibility, since this would require that such a country should repudiate the entire culture, tradition, ways of life, autonomous institutions, in other words that they would have to repudiate its entire identity mediated through self-governing institutions. Such a perspective is, of course, a consequence of the post-1968 anthropology, which in turn constitutes a mass incorporation into a contemporary cultural, social, political and legal language, taken for granted, of the much earlier philosophical currents of the so-called modern "disenchantments". The first philosopher of disenchantment was of course Rousseau, who defined the very concept of culture and civilization as problematic, as a great "lie", as a site not of a sense accruing in a process of human experience through different trial-and-error methods of adjustment, but one of "false consciousness". This was captured by his phrase "man was born free but everywhere he is in chains". The idea of "liberation" from oppression of culture, religion, tradition, in fact of everything was its natural corollary. In their place Rousseau erected a new "God" who is not, of course, a Judeo-Christian God, upon which European civilization rested, and who according to Rousseau, by implication, was part of that corrupting framework of civilizational debris limiting human potential, not a transcendental

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[3] See on that P. Manent, *A World beyond Politics? A Defense of the Nation State*, Princeton 2006, esp. p. 129. The phrase "we have invented humanity" is of course from Friedrich Nietzsche's *Thus spoke Zarathustra*, New York 1954, p. 17.

God of moral universal law ordered to humans as a precondition of their sanity and their ability to make sense of the limited, fallen world, but a "God" who was historical, but historical in a particular sense. Historical at the dawn of time, in the state of nature. And that "God" was the "God" of uncontaminated human self in a hypothetical, but nevertheless once existing, state of nature. Thus the escape from a corrupted world is located in the "great absence" which once was, is no longer here, but which can be reclaimed. The road to this reclamation was to be an authentic, uncontaminated "self" to be recovered from the corrupted layers of civilization as such. Civilization, culture and religion in that, are corrupted, but once the authentic "self" has been recovered, all traditions, customs, human institutions, will be cleansed in a process of their liberation from false arrangements. They will finally be freely chosen by an authentic, uncontaminated "self" who can now freely choose the best possible arrangements according to his good innate nature once possessed in the state of nature and lost through historical process.

This dream of leaving an alienated world, of finally liquidating an innate, horrible sense of human limitations and a sense of unhappiness, will finally be realized. This was the first modern embodiment of the old Gnostic dream of human salvation by human means, the intellectual beginning of the modern process which turned from metaphysics to history. But it also meant a drastic turn from a plurality of means to making sense in this world, into a monistic means of imposing a sense in this world, the turn from culture, from religion, myth, anything to raw politics as salvation in history. To politics, which meant to power and ideology. This was a dramatic revolution in looking at the world and the approaches to human meaning in it. But it was also a profoundly elitist, Gnostic impulse, a totalitarian impulse in fact, of a turn from democratic ability of each person, rich and poor, wise and stupid, knowledgeable and ignorant, to understand the essence of human existence which was in fact the very essence of Christian orthodoxy.

Rousseau was the first to want to destroy old gods, but instead he destroyed God – of course in his own imagination – and as modernity progressed in the imagination of the masses they began to believe that a recovery of an authentic self-meant liberation, not an enslavement to the most powerful. This was so because the God of Christianity was transcendental, an ultimate taboo taking care and protecting each individual against anyone who wanted to destroy it. God was untouchable, as a transcendental God, and because of this a person protected by Him was untouchable. With a destruction of this God – imaginary of course – the ordinary people were left with politics and history as the last line of defense of the once existing political monistic brutal life of antiquity. From now on the game was to make a sense of that new situation by creating a safe political environment. But the "liberation" logic destroys here one of the most cherished defenses of that, the self-governing, ordered liberty nation-state, liquidating it as another mediating institution, which prevents us from finding a true self by human rights.

The problem is that such human rights are at the mercy of the strongest since they are self-referential and based on the anthropology of the autonomous self, which makes them subject to incessant manipulation. Rousseau was kind of a quasi-religious thinker bent on destroying old gods, but only putting a void in their place. When he attacked civilization, he in fact attacked culture in which

> all that we value is rooted. Sacred and profane, virtue and vice, good and evil – all these compete in the undergrowth of custom. Clear custom away, and you take away much evil. But you also take away the knowledge of evil. Hence, you make way for evil of another kind, in which people – inoculated against remorse and assuming an absolute right to demolish whatever impedes their rational plan for human happiness – embark on vast social experiments. This happened at the French Revolution… There is a lesson to be drawn from Rousseau that is of great importance today. Social contests and tensions have been conceptualized in a way that favors the liberal cause. Every conflict is seen in terms of power: who enjoys it and who suffers it – 'Who? Whom?', in Lenin's summary. But the deep conflicts concern not power but knowledge. Which institutions, which procedures, and which customs preserve and enhance the store of social knowledge [are] attacked".[4]

This disenchantment of the world then proceeded through Karl Marx, for whom false consciousness and the alienation of man was something to straighten out by revolutionary means.[5] Friedrich Nietzsche and Sigmund Freud completed this gnostic task. Reality was something unreal, the classical definition of truth an illusion; post-modernism was just a logical consequence of that, liberation through a proper consciousness which closes alienation.[6] What was at stake here was a total rejection, a total deconstruction in social sciences, in political science, in culture as such of the so-called substantial entities, or things per se, as Platonic constructs which had to be rejected since they invite fundamentalism and oppression. The revolution of 1968 changed the nature of liberalism through an incorporation of the New Left concept of "liberation" from any oppression, the adulation of the sovereign autonomous self who in a process of moral auto-creation shapes his destiny.

All institutions beginning with family, schools and churches, institutionally and conceptually were oppressive. As a consequence such entities as the nation, national culture, society, civilization, national character, even the nation-state became suspect. The conviction that there exist more or less lasting cultural features, or cultural ties, and in these political ties, was gradually rejected. What counted was the "self", a bearer of the individual rights which were to guard his dignity, that dignity which was defined by rights, essentially a circular argument. Human rights were increasingly justifying the desire of the autonomous self to fulfill his wishes.[7]

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[4] An excellent analysis of this problem was done by R. Scruton, *Rousseau and the Origins of Liberalism*, [in:] *The Betrayal of Liberalism: How the Disciples of Freedom and Equality Helped Foster the Illiberal Politics of Coercion and Control*, ed. H. Kramer, R. Kimball, Chicago 1999, p. 41–42.

[5] The best study of this Gnostic impulse in Marx is still L. Kołakowski, *Main Currents of Marxism*, Oxford 1976.

[6] K. Dorosz, *Maski Prometeusza. Eseje konserwatywne*, London 1989, p. 194–217.

[7] L. Kołakowski, *Kant i zagrożenie cywilizacji*, [in:] his, *Czy diabeł może być zbawiony i 27 innych kazań*, Kraków 2006, p. 185–197.

The last non-deconstructed institution at the global level is the nation-state. What is at stake here is a destruction of all the mediating structures, of which one of the most important is the nation-state. A destruction of this based on self-government, democratic, if messy procedures constitutes the latest stage of that anti-fundamentalization, emancipation, liberation to the unmediated humanity through human rights based on the idea of dignity which is in fact self-referential and directs us more and more today to our autonomous "self" tantamount to our desires.[8]

America has of course always been a universal nation, and the essence of the Declaration of Independence is exactly that. And universal here means ontologically universal, that is congruent with the innermost rules of natural order. Covenant mentality was part of that universality, *novus ordo seclorum* its battle cry. But prudence has always been part of the major American principles, the guiding spirit of Madison and other Founding Fathers like James Wilson or Dickinson, who understood, probably more than Thomas Jefferson, that there was no immediate access to that universality, even through the agency of intellectuals, experts, brilliant politicians, let alone brilliant judges. That access has always been thought to be legitimate only through self-governing institutions or, in other words, mediated by tradition and culture of a particular people. This is why such access to human universality was contentious, quarrelsome, a battle over the meaning of the universal, a constant tension to be aware of where one was going and what dangers might lay ahead. No wonder Dickinson, during the Constitutional Convention in Philadelphia, warned the delegates: "Experience must be our only guide, reason may mislead us". No wonder, again, that this quintessential American, Abraham Lincoln, the most ethical and most driven by universal concerns, was aware that America was only an "almost chosen nation". That meant that the United States is, like the Western world in general, a nation

which "would cease to be true to itself if it repudiated the universality of its principles. But America surely owes much of its greatness to particular national characteristics, to what Orestes Brownson has suggestively called a 'providential constitution'. Otherwise America is in principle 'the world', the prototype of a unified humanity, and is destined to be swallowed up by a global imperium that no more fully embodies the 'democratic' aspirations of the whole of mankind".[9]

The unmediated access to universal humanity defined as the world reign of human rights is a utopia concocted by the post-1968 generation, figuratively speaking, for the simple reason that its main ideology, which may be termed, for want of a better word, liberal-left, is operated by the idea precisely of "liberation" from all constraints, cultural, national, religious or any other, so as to get to the core of the essence of the uncontaminated man who will then be able to form the brother-

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[8] M. Sandel, *Democracy's Discontent*, Cambridge Mass. 1996, p. 3–54.

[9] D. J. Mahoney, *Conservatism, Democracy, and Foreign Policy*, "The Intercollegiate Review", Fall 2006, p. 12.

hood of universal humanity with others.[10] In that sense American democracy, by instinct if not by clear reasoning, is fiercely resisting the modern post-1968 utopian project of the liberal left, for which democracy is the highest value, in the sense that it identifies it with a total project of "liberation", the emancipation of human beings from traditional, cultural, moral, even political limitations, so as to create brotherhood of men, universal humanity based on human rights administered by experts, judges, international bureaucracies and a motley of NGOs which try to elicit the help of the human rights agenda to have their ideas defined as universal. In this way the post-political project of universal humanity based on human rights ceases to be universal; it reveals the sinister face of a particular power grab. It is not post-political, democratic and universal. It is not fulfilling the promise of human rights. It is totally political, and totalitarian at that, absolutely undemocratic, that is beyond democratic control, and particular, not universal.[11]

In that sense America is not post-political but fiercely political, not anti-democratic but democratic, and universal because it is particular. Intellectual discussions in the United States, which in the post-1968 world of "liberation" comprise more and more aspects of human life, are thus today fiercely political, and democratic, getting into the very essence of a problem of the human predicament. America is resisting the temptation of universal humanity that is politically realized, administered by human rights institutions and agendas.[12] It knows that there is no other way to get to the essence of true humanity than through self-governing people, with the realization that morality is the province of every human being, his reasoning and his common sense. This idea was well captured at the beginning of the United States by James Wilson.

And that is why public discussions in America are not post-political, but political to the very core, full of zeal over the meaning of community, decent life and a proper setting for free self-governed people. Such discussions cut across society like lightning in the sky, something which has been captured by the term "culture wars".[13] But Americans battle each other fiercely in the province of ideas, because their democracy is not their faith, but their modus operandi, so they can show that as people, as citizens, they care about something, that something being the shape of civilization for free people creating the world of autonomous institutions that are ethically enriching, which then provide ethical citizens for the polity.

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[10] An interesting early argument along these lines was given by C. Wilson, *Global Democracy and American Tradition*, "The Intercollegiate Review" 1988, Vol. 24, No. 1.

[11] See on this a growing literature, for example J. Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States*, Princeton 2005; C. Delsol, *Unjust Justice: Against the Tyranny of International Law*, Wilmington De 2008; R. Hirsch, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Cambridge Mass. 2004.

[12] A. Bryk, *Stany Zjednoczone a Unia Europejska. Odmienne kultury i podejścia do nowoczesności*", [in:] *Wzrost gospodarczy czy bezpieczeństwo socjalne?*, ed. W. Bienkowski, M. J. Radło, Warszawa 2010, p. 223–260.

[13] The term was first used, as it is generally claimed, by James Davison Hunter. See the entire discussion of that issue in J. Davison Hunter, A. Wolfe, *Is There a Culture War? A Dialogue on Values and American Public Life*, Washington DC 2006, p. 10–40.

The major battle today in America can politically be defined as a battle between American liberalism – that is by the European standards of the post-1968 liberal left – and American conservatism. American conservatism has very little to do with the classical European conservatism. It is essentially about constitutionalism, that is limited government and freedom of people from the ubiquitous intrusion of government, understood as an agent of incessant social engineering according to the preconceived notion of what a perfect society should look like. This battle in Europe is nearly non-existent today, for political as well as cultural reasons of societies exhausted and content with a quietistic welfare state preoccupied with global warming and dreams of a future utopia. But in America it is intense, grassroots and consequential. The battle is essentially over the meaning of democracy and its requirements. In concrete terms it is, internally, about the autonomy of civil society institutions, internationally about resistance against transnational governance.[14]

Contemporary American liberalism, like all the liberal-left movements in the Western world, including the European liberal left currently at the helm of the European Union, is deeply dissatisfied with "mere democracy" and its prosaic institutions. Democracy should, in their judgment, mean something more, something meaningful; it should be understood as a way of life, in other words as a new metaphysics of which the orthodoxy is the church of human rights, and the state as an agent of implementation of a better society. In the American context this new opening in the understanding of American democracy came with, some say – wrongly most likely – Abraham Lincoln, but definitely with the Progressive Movement and its major spokesman Herbert Croly.[15] It was Croly who argued that majority rule is

> merely one means to an extremely difficult, remote, and complicated end [and that the] bestowal and the exercise of political and civil rights are merely a method of organization… [To be legitimate, they must be] used in proper subordination to the ultimate democratic purpose [which is] the gradual creation of a higher type of individual and associated life. [If not so enlisted] the actions or decisions of a majority need not have any binding moral or national authority".[16]

Civil and political rights in such a way are means of organizing democracy, as the very essence of democracy was to pervert the principle of national sovereignty, as Croly stated.

John Dewey, the most influential theoretician of progressive education as a way of creating a perfect democracy as the ultimate "religion", made education one of the most important tools of such a philosophy of life. Not a proper moral education, but moral education towards a democratic society, the shape of which

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[14] That is the gist of the conservative revolt against Barack Obama. See A. Bryk, *Konserwatyzm amerykański od Reagana do Obamy*, forthcoming in OSP, Krakow 2011.

[15] A thesis that it was Abraham Lincoln who began this equality, progressive revolution was put forth by G. Wills, *Lincoln at Gettysburg*, New York 1993.

[16] H. Croly, *The Promise of American Life* in 1909, as quoted in W. Voegeli, *Days of Rage, Years of Lies*, "Claremont Review of Books", Summer 2011, p. 18.

is of course decided by those who know.[17] In other words democracy requires the emergence of new modes of human personality and social life. This means the new ethics, as opposed to traditional morality, that is morality as ontologically grounded in a definite human nature, as opposed also to traditions, virtues, and habits wrought over by experience, that is human culture. The problem was not that the majority rule is not a sufficient democratic freedom, that it should be limited by human and social rights. This is a condition taken for granted for any just society since the times of St. Augustine, through Locke to about every theoretician of liberal democracy today. The problem is that such theoreticians', or rather ideologues' image of such rights shaping the "proper democracy" may subvert the very idea of freedom and constitutional self-government upon which liberal modern society should rest. Or, to put it another way, may subvert the true democracy, which should be nothing less or more than free life of free people, the essence of their lives true by the very fact of them being in charge of their own destinies. Such free life of free people should be led according to the precepts of universal morality not dependent on the dictates of a democratic state, which is constantly being perfected by the new ideologues, according to the new image of a new man.

In America this fundamental conflict is alive, acted out in public, colorful, sometimes neurotic, nearly always messy, because it reflects the lives of free people. Understanding that good life must be defined from the bottom up, not from the top down. In other words the feeling of metaphysical tensions is part of a true political life, and metaphysics can never be given over to a state operated by experts, judges, or political philosophers. In that sense the United States is a baroque, fiercely metaphysical nation. Thus what is happening in America is ultimately about the kind of the liberal world people will be living in and whether they will have any influence on it, meaning their lives, the very essence of equal freedom, and ethical freedom in that.

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[17] See on this H. T. Edmondson, *John Dewey and the Decline of American Democracy: How the Patron Saint of Schools has Corrupted Teaching and Learning*, Wilmington De 2006, p. 21–35, 95–114.

Marta du Vall

COMPASSIONATE CONSERVATISM.
A NEW VERSION OF THE CONSERVATIVE WELFARE STATE?[1]

The main purpose of this article is to present a new trend in political thinking – compassionate conservatism. This can be understood as a system of closely related political and philosophical views. Such views can be used as a link between the great government era – as a way of dealing with social problems – and a new era, where individuals are thought to be able to decide on their lives and welfare.[2] It should be remembered that every attempt to describe American conservatism needs to take into consideration the reality of living in the United States. Despite some general problems, most visible in the content of the doctrine is the genetically and functionally basic connection between the concrete historical reality of American society and the interests of various social groups.

Compassionate conservatism, like any other doctrine (if we presume that it is a separate political philosophy), should be explained as a certain social and political phenomenon. In this case it is important to explain the processes of reception (that is acceptance of a large part) of the doctrine by the supporters of this kind of conventional, classic, American conservative doctrine. One should also bear in mind the elements of the critical analysis as well as the need for a historical and

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[1] Welfare state – a kind of state with the purpose of protection of citizens against the risks connected to the market economy, primarily job loss, health loss, and also the risks associated with old age; it is also a system of state institutions providing public services and social services. From: www.biznes.pwn.pl/haslo/3953947/panstwo-dobrobytu.html.

[2] S. Goldsmith, *What Compassionate Conservatism is – and is not*, **"Hoover Digest"** (adapted from a speech given at the Hoover Institution), 30.04.2000.

contextual approach to the function of the doctrine in a certain place and time. We can also try to account for the genesis of compassionate conservatism by the processes of perception and assessment of the political and legal phenomena made by its creators, which become a motivation for individuals and groups. It is also important to take into consideration analysis of the sociological and political conditions, power structure and political practice (represented in the course of actions and decisions by state authorities, in the tactics and strategy of less or more professionally organized social and political groups).

There is no doubt that, from the 1980s until the first decade of the 21st century, conservatism was the dominant tradition in American political and social life. Despite the popular belief that the 1980s and the period of Ronald Regan's presidency were the "time of conservatives", conservatism is still supported by wide circles of intellectuals and politicians. It is undergoing a certain revolution and, as time goes by, it can be considered as dominant in American politics.

Three basic axioms should be underlined here: firstly, that in the United States liberalism was and still is not only the prevailing, but simply also the only intellectual tradition.[3] Secondly, the result of the first axiom is the idea that American conservatism is not in opposition to liberalism, but is based on liberal ideology.[4] Thirdly, in America and since 1776 in the United States of America there has always been a place for some kind of conservative thinking.[5]

At the same time it is important to remember that conservatism is not a closed ideology, but rather a way of thinking based on a set of prerequisites (tradition, freedom, ownership, strong state), which can suggest certain solutions according to the circumstances.[6] Conservatism can be defined in terms of universal values such as: justice, order, equilibrium, moderation.[7] It is not a homogeneous concept; it is a notion that is as difficult to define as it is multifaceted. It is not a single idea but a whole set of ideas joined with complicated, internal, multi-motivational relations. These relations and dependences show the abundance of conservative thinking.[8]

At this point the ideas of Russell Kirk should be mentioned, as he rightly noticed that the roots of American civilization are conservative in such a way that they created a universal and "proper" moral order, based on the greatest traditions of the West. He linked conservatism to the American heritage, and interpreted the protection of the conservative tradition as protection of the American tradition. Therefore,

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[3] L. Trilling in *The Liberal Imagination*: "In the United States at this time liberalism is not only the dominant but even the sole intellectual tradition"; quoted [in:] R. Kirk, *The Conservative Mind. From Burke to Santayana*, Chicago 1953, p. 423.

[4] G. Carey, *The Popular Roots of Conservatism*, Wilmington 1986.

[5] *A Companion to Contemporary Political Philosophy*, ed. R. E. Goodin, F. Pettit, Warsaw 2002, p. 333.

[6] J. Matusiewicz, *Conservative Liberalism – Essence and Origins*, www.bezuprzedzen.pl/poglady/konserwatywny_liberalizm.html (12.2003).

[7] S. P. Huntington, *Conservatism as Ideology*, "American Political Science Review", July 1956, p. 454–460.

[8] T. Tołoczko, *Dilemmas of American Conservative Capitalism*, [in:] *Doctrine and Conservative Movement in the Modern World. Conference materials*, ed. H. Łakomy, Kraków 1992.

Kirk's ideas, expressed in his book *The Conservative Mind*,[9] were crucial for restoring modern American conservatism.

There is no doubt that, during the last 50 to 60 years, we have been able to observe a constant rise and development of America's right wing. The conservative path to respect and power seemed helpless at the beginning due to the dominant left-wing beliefs of wide swathes of the society. Also other circumstances stood in the way: the deaths of leaders, the hostile attitude of the liberal establishment, and common disagreements inside the conservative movement, which was thought to be united.

As mentioned, since the 1980s we have been witnessing a triumph of the conservative doctrine in the United States. It is also worth mentioning that "contrary to the liberalism and socialism, conservatism does not directly realize the special vision of a good society... The purpose of conservatism is to 'shelter, protect and defend' the existing social, economic and political institutions".[10] It seems that the easiest way to perceive the triumph of conservative thought is by the shift it made from the theoretical world of ideas straight to the world of political activities.

I would like to emphasize that American conservatism had and still has typical characteristics of American culture. In almost all its trends there is a belief that the American experiment is unique and its basis should not be affected. If conservatism criticizes America, it is only America's modern, corrupt version, so different from the ideas of the Founding Fathers. That criticism is a kind of nostalgia for wasted heritage, which can still be restored. In its great majority, American conservatism has become since the mid-20th century an enemy to the increasing federal government interference in economic and social life, which was especially visible after the New Deal[11] of the 1930s. Conservatism also saw political centralization as a threat to personal freedom; the main ideological enemy for conservatism became progressive liberalism, the equivalent of European social democracy. Conservatism protected private ownership and was against excessive taxation, especially the compensatory welfare state, which in the name of social justice arbitrarily and ideologically defines its contents. It was also against communism as a Manichean ideology – a threat to freedom and the American lifestyle. Conservatism considered religion as a fundamental part of the American experience, and attempts to place re-

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[9] First edition titled: *The Conservative Mind. From Burke to Santayana*, published in 1953, by Henry Renery Company.

[10] S. P. Huntington, *Robust Nationalism*, "The National Interest" 1999, No. 58.

[11] The New Deal was a program of economic and social reforms introduced in the United States by President Roosevelt in the years 1933–1939. The aim of these reforms was to counteract the effects of the Great Depression, which left millions of Americans without employment and in poverty and the economy in a state of disintegration. It was believed then that the collapse was caused by constant instability of the market and that government intervention is necessary to stabilize and improve the economy. To a large extent, the New Deal was about state interventionism. The state introduced unemployment benefits, public works, and federal funds subsidizing many projects. Numerous legal solutions to stabilize the industry, agriculture and banking sector were introduced. In addition, mechanisms to stimulate job creation were also brought in. Roosevelt's New Deal politics gave him considerable popularity among poorer citizens.

ligion in the private sphere were treated only as dangerous in terms of freedom and as a barrier protecting citizens from the state idolatry. What is more, conservatism was against counterculture in its various guises, blaming it for causing axiological chaos and destruction of private and public morality.[12]

Conservatism in the United States is marked with American optimism. According to some opinions it lacks what is so characteristic of its European version, the feeling of fatalism and public helplessness. There is no sign of self-excuse or of adherents making constant objections towards their own views. The difference results not only from the distinct provenance of the American Enlightenment, but also from the authentic social pluralism, its anarchic religiosity, self-organization, financial power, willingness to defend one's 'own' world, and traits of character deeply rooted in the democratic culture. It is also because of cultural rejection of the state as the institution organizing the society.[13]

Compassionate conservatism is a young trend, created, it is believed, by Republican President George W. Bush and his associates. In his commencement speech (January 20, 2001) President Bush called upon Americans to stop being passive viewers and become real citizens. In spring 2002 he said:

> The government cannot solve every problem, but it can encourage individuals and communities to help themselves and each other. Most often the real compassion is about helping citizens to build their own lives. My philosophy and my approach I call compassionate conservatism. Compassion meaning active assistance for citizens when they need it, conservatism meaning emphasis on responsibility and effects. With such an optimistic approach we can really change people's lives.[14]

Those words confirmed that the views the president and his associates had were directly rooted in the newly defined version of conservatism.

It is very often the case, however, that questions arise as to whether such conspicuous statements of the new understanding of conservatism are only political slogans, or a new philosophy. What needs to be stated here is that this was a consistent political platform, which explained the Republicans' approach to the domestic politics of the United States. Compassionate conservatism really is a form of political conservatism. It is characterized by the belief that the government should play a restricted role in the lives of citizens as well as towards the market. According to its proponents, compassionate conservatism is the most effective means to build social and economic progress. In consequence, it believes in low taxes, restricted governmental regulations and the great power of the free market. Similarly to traditional conservatism, this trend assumes that the market is the best place for learning and supplying basic values. At the same time conservatives in this current notice that the wealth created in the free market leaves large numbers of American

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[12] A. Bryk, *Intellectual Sources of Ronald Reagan's Conservative Revolution*, [in:] *Ronald Reagan and the Challenges of the Epoch*, ed. A. Bryk, A. Kapiszewski, Kraków 2005, p. 152.

[13] *Ibidem*, p. 153.

[14] J. M. Jones, *Compassionate Bush*, "Gazeta Wyborcza", www.wyborcza.pl/0,0.html (05.2011).

people behind, and that the government is responsible for those staying on the lowest rung of the economic ladder. According to the principles of compassionate conservatism, government is not responsible for redistribution of the wealth among the citizens, but for providing those in worse conditions with capacities and capabilities to enable them to maximize their shares on the market and build their own wealth. According to compassionate conservatism, welfare has to have a moral background, and its economic results should be available to a wide range of people. Conservatives in this trend do not believe in a paternalistic type of government. They do not believe in "great government" programs either, as this simply means giving money away.[15]

There are three main tendencies in compassionate conservatism:

– Optimism and certainty – that individuals are able to take care of themselves;

– Belief – that the best way to help a citizen is through free market mechanisms;

– Conviction – that the welfare has to have a purpose – there is more to the USA being a successful country than just simple functioning of a free market.[16]

Undoubtedly, compassionate conservatism was a slogan of George W. Bush's presidential campaign and became an important vehicle for domestic and international politics during his presidency. To have a closer look at the youngest trend in conservative thinking, one should bear in mind that Bush is only to some extent an author of this idea. The fact is that he used an idea little known at that time and made it his election slogan.

The beginnings of this political philosophy dates back at least to 1992, when Marvin Olasky, a journalist and tutor (University of Texas in Austin, King's College in New York among others) wrote his book entitled *The Tragedy of American Compassion*[17]. In the book he writes about the American struggle against poverty from colonial times to the 1990s. The author argues that individuals as well as organizations and communities, with a particular emphasis on churches and Christian communities, are responsible for taking care of the poor. The conclusion of the book is that individual, personal and spiritual aid and support is at every time more effective and brings far more benefits than any governmental program. Olasky points to the fact that all social engineering programs are inefficient because, being created in politicians' offices, they are simply detached from reality. On the other hand, he shows in opposition that private charity has the power to change the world and influence people's lives because it allows donors to have direct contact with the recipients and those who need their help. From this angle, the problem of poverty (in the USA) is not only connected with the poor lacking material support, but far more with the lack of interpersonal relationships. Such a vision could be interpreted as a coming back to the roots which are fundamental for American society to function and which were so perfectly described by Tocqueville in his work *On*

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[15] S. Goldsmith, *What Compassionate Conservatism is…*

[16] *Ibidem*.

[17] M. Olasky, *The Tragedy of American Compassion*, published by Regenery in 1992.

Democracy in America. Joint action causes people to be closer to each other, somehow even forces them to help one another. It leads to the egoism of individuals being overcome. Intensive interactions and extensive social communication in civil society cause a tightening of interpersonal relations among people and diminish the risk of social isolation and fear. The more individuals contact each other, the more joint actions they undertake and the more they trust themselves.[18]

It is easy to notice that Olasky's book was a sharp criticism against the welfare state as an unfair, or even harmful monopoly of the state to help the poor. It advocated restoring the 19th-century system of private and church charity, within which individuals and communities meet the needs of the poor, expecting them to be responsible in return.[19] Olasky continued the topic in his many articles and following books: *Renewing American Compassion* from 1996 and *Compassionate Conservatism: What It Is, What It Does, and How It Can Transform America*[20] in 2000.

This way of thinking, i.e. emphasizing the situation of the poor, put compassionate conservatives outside the camp of traditional conservatives, who were more interested in matters of business, taxes, military power, etc. Therefore, it should not seem surprising that participants and commentators at the National Republican Convention in the year 2000 often called the then Governor Bush a "different kind of Republican".[21] Obviously, the traditional fields of interest of American conservatism mentioned earlier were not against the principle of compassion as such, but did not allow a clear and precise statement to be announced on the matter of poverty.[22] At the same time, the fact is that the Republicans won the 2000 elections mainly because finally there were some serious engagements concerning social matters (largely social services and education) in their program. On the political platform level, compassionate conservatism deprived Democrats of their most important point – the unjustified conviction of having the monopoly on care for the unprivileged.[23]

Compassionate conservatism was a kind of breach in the Republicans' platform, but many conservative commentators and publicists argue that it was a well-constructed and consistent agenda on domestic politics. The platform was a specific connection between trust in conservative values and seeking new possibilities of implementing those values in modern reality. The basis for new policies became care for the poor, which until that moment had been beyond the scope of interest of Republican politicians, and, at the same time, the belief that the government is responsible for the poor Americans. Republican policies towards the poor since

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[18] See: T. Tokarz, *Freedom, an Ally or a Brake on Development*, www.mises.pl/site/subpage.php?id=27&content_id=124&view=full (07.2006).

[19] J. M. Jones, *Compassionate Bush…*

[20] The introduction to the book *Compassionate Conservatism* was written by George W. Bush.

[21] J. Tapper, *Defining Compassionate Conservatism*, www.salon.com/news/politics/feature/2000/08/03/goldsmith (05.2011).

[22] J. M. Jones, *Compassionate Bush…*

[23] *Ibidem*.

the presidency of Richard Nixon can be described using the words of the late Democratic senator, Patrick Moynihan, who called it benevolent omission. Nixon, along with his successors, Ronald Reagan and George Bush, treated the idea of the welfare state and all social programs as useless, and did not pay much (not to say no) attention to it. In the other half of the 1990s a new approach could however be seen. It was based on the observation of many Republican politicians, governors and mayors that actions concerning the problems of the urban underclass should be a priority[24]. At that time, numerous American cities were facing similar problems: poverty, delinquency, high unemployment rate, lots of people using social services, children brought up in broken families, neglected municipal infrastructure. Compassionate conservatism was thought to be a remedy to those problems.

Raising the issue of government being responsible for poverty and the poor did not mean, as earlier mentioned, agreeing to the liberal vision of the welfare state. American conservatives were convinced that almost every sphere of American daily life was ruthlessly depraved by liberal politics and the liberal ethos. This ethos, according to traditional politicians and authors, on the one hand constantly stimulates striving for political and social collectivism, while on the other hand it is a moral anarchy.[25] Compassionate conservatives feel that liberal politics, instead of helping, only made existing problems more serious. Liberal compassion could best be seen in persuading the poorest social classes that they could not change their faith themselves, because they are just the innocent victims of the system (according to either economic inequality or racial discrimination, etc.). This kind of approach was almost destructive – it legitimized the sense of hopelessness and personal uselessness – it creates people unable to act, to engage themselves, to care about their own lives, waiting only for the state (government) to help. The liberal welfare state creates a society of clients of social services. According to conservatives, excessive regulations, control and interfering in economic and social life were the main reason for economic crises and social dissatisfaction. They demanded a significant decrease in state interventionism and an increase in the role of the market.

Again, for conservatives what the poor need above all is significant moral support from the society. A message needs to reach them that they are personally responsible for their lives, but on the other hand that the society is willing to support them and they are not alone. Compassionate conservatism still believes in equality, understood as an "equality of chances" (it favors freedom and economic development); it believes in classless American society, which joins with the opinion that every citizen has an open path to the top jobs; it is also convinced of the egalitarian character of the society, which is linked to strong competition and individualism[26] (all of this was connected to a deep faith in the possibility of realizing the aims of particular individuals and groups, in the possibility of the greatest values coming

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[24] M. Magnet, *What Is Compassionate Conservatism?*, "The Wall Street Journal", 05.02.1999.

[25] I. Kristol, *My Cold War – Irving Kristol, Political Philosopher, Intellectual*, "National Interest", Spring 1993.

[26] W. Osiatyński, *The United States. Society and Power*, Warszawa 1975, p. 25–30.

true, such as freedom of the individual, individual and common prosperity, deve-
lopment, justice[27]). Compassionate conservatism strives to inspire American socie-
ty with optimism and bring back faith in the American Dream, according to the rule
if you try – as you must – you will make it[28]. Somewhat simplifying the matter – the
idea is simple, just like the one in the popular, but still instructive joke:

> Every week Moshe goes to the synagogue and asks God for the same: "God, let me win
> the lottery ..." After twenty years, Moshe enters the synagogue and goes again, his same old request
> "God,...". Suddenly, there is thunder and a shrill voice: "Moshe, give me a chance – buy a lottery
> ticket!"

Following the ideas of modern conservatism, local and state conservatives
worked through some efficient ways of helping the poor. The most visible change
was implementing *workfare*, that is the system in which a person receiving a social
benefit is committed to fulfill certain obligations. Precursors of this experiment
were Governors Tommy Thompson in Wisconsin and John Engler in Michigan,
Mayor Rudolph Giuliani in New York, Mayor Stephen Goldsmith in Indianapolis
and Governor George W. Bush himself in Texas. *Workfare* was an alternative to the
well-known welfare state. People receiving benefits had to meet different require-
ments, which most often were a combination of a variety of different activities –
improving qualifications and the value of the individual on the job market (training,
apprenticeships) with voluntary work. In a wider sense, it was not only voluntary
work but also a low-paid job performed for the benefit of the local community
(making some impact on the life of the community). This was in concordance with
the conservative view that work is what makes individuals responsible for their
own faith and the faith of their families; work increases respect and allows social
balance to be kept[29]. Among the purposes of this was among others to revive and
revitalize the neglected areas of towns and its dwellers. The main purpose was to
mobilize local authorities to take the challenge and focus not on the problems, but
on the resources and good sides of the thus far neglected communities. In multiple
cities governed by Republicans there were extensive programs undertaken, desi-
gned to inspire and stimulate professional and social engagement (including civil
consultations).

Workfare was legally recognized in 1996 through the *Personal Responsi-
bility and Work Opportunity Reconciliation Act*[30] (PRAWORA). The document is
a real milestone as far as methods and ways of reaching goals in social politics in
the USA are concerned. The Act, presented by Congressman E. Clay Shaw Jr., con-

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[27] *Ibidem*, p. 66.

[28] M. Magnet, *What Is Compassionate Conservatism...*

[29] *Ibidem*.

[30] Content of the document: www.fns.usda.gov/snap/rules/Legislation/pdfs/PL_104-193.pdf (05.2011),
for more information see: www.naswdc.org/advocacy/welfare/legislation/summary.pdf (05.2011).

stituted the basis of the Republican *Contract with America*[31] (1994), chief architect of which was Newt Gingrich.[32] In the Republicans' political program one can read among others about the necessity of reducing special program expenses, but also a commitment to make efforts to promote individual responsibility. PRAWORA constituted *Temporary Assistance for Needy Families*[33] (TANF), a program which entered into legal force on 1st July 1997 and replaced *Aid to Families with Dependent Children* (AFDC), which functioned in the American system of social politics starting in 1935. It also replaced *Job Opportunities and Basic Skills Training* (JOBS), which commenced in 1988.

TANF ended the era of the federal authorities' monopoly in the field of supporting needy families. It was replaced with dividing the federal funds and a subsidy for the state and local authorities, transferred to their budgets every year. These funds were to finance family benefits, administrative costs connected with those social programs and a range of other services for those in need of support. Among TANF's main aims are: support for poor families, which was to ensure the possibility of raising children in their own homes (and families); reducing parents' dependency on social benefits through promotion of training, raising qualifications, taking up employment and promotion of the institution of marriage; counteracting extramarital pregnancies; encouraging the establishment and maintenance of two-parent families. PRAWORA accounted for precursory politics, aiming at strengthening the faith in the ethos (and ethics) of work.

In this campaign in 2000 George W. Bush put emphasis on the basic assumptions emerging from the philosophy of compassionate conservatism. First of all, he pointed to a nation that was a lot more than simply an accumulation of independent individuals; he called for promoting moral values in the States and American values abroad. As far as compassionate foreign politics is concerned, the words of the president from 2001 will be the best illustration:

We have to help developing countries in fighting illiteracy, diseases and debts that are impossible to repay. This is exactly the compassionate conservatism on the international grounds[34].

According to his philosophy, President Bush proposed e.g. that half of the poorest countries' debts incurred in the World Bank and international development banks would be granted in the form of non-refundable loans.

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[31] Content of the document: www.house.gov/house/Contract/CONTRACT.html (05.2011).

[32] Newt Gingrich, born in 1943, a prominent American politician, in the years 1979–1999 was a member of the House of Representatives. From 1989 to 1995 he was a disciplinary spokesman for the minority (the Whip). Regarded as one of the main framers of the Republican victory in congressional elections in 1994. For the next four years he was Speaker of the House. Currently, one of the main candidates to compete for the presidential nomination in the Republican Party.

[33] For more information see: www.acf.hhs.gov/programs/ofa/tanf/about.html (05.2011).

[34] For Bush's Compassionate Conservatism, see: www.wiadomosci.wp.pl/kat,1339,title,Wspolczujacy-konserwatyzm-Busha,wid,186364,wiadomosc.html?ticaid=1c504 (05.2011).

He also called for an increase in grants on education development in the poorest countries in the world by 20 percent.[35]

In domestic politics George W. Bush saw federal government as an executive arm of the nation, which in certain circumstances could be used to support those members of the society who were in need. The primary role in this area, however, was to be fulfilled by private organizations, especially churches, local and state authorities and the market forces along with tax reliefs. Those organizations and authorities should replace Washington bureaucracy.[36] In one of his speeches during the election campaign, Bush said:

> I am convinced that the conservative philosophy is a philosophy of compassion which inspires individuals to realize the maximum of their potential. Conservatism tells us to reduce taxes, and compassion, more money for people to spend. Conservatism gives schools to the local communities, emphasizing high standards and effects, compassion on the other hand emphasizes the concern whether every child can read and nobody would be excluded. Conservatism reorganizes social service, underlining the importance of work, while compassion frees from government dependency.[37]

The presidency of George W. Bush made compassionate conservatism a truly nationwide philosophy. It was rooted in the deep faith that Americans are able to support themselves at an individual level without the assistance of the government. At this point, we may once more recall Tocqueville and his idea that:

> Next to the freedom of individual action, the most natural human need is the freedom to join one's own actions with other people's actions, and act together with them.[38]

Stephen Goldsmith, Bush's advisor on domestic politics at the time he was governor and one of the precursors of compassionate conservatism, argued that in today's conservative thinking federal government has specific roles to play, e.g. providing medication funding for seniors on low income, providing funds for the medical care for the uninsured; in terms of pension policy the government has to enable citizens to transfer part of their social security fund into their individual retirement accounts. However, Goldsmith strongly emphasized that in compassionate conservatism the government's actions respect free market mechanisms and the rule of self-government.[39] Goldsmith wrote that:

> According to the rules of compassionate conservatism, government is not responsible for redistributing citizens' wealth, but for assuring those socially disadvantaged with possibilities and capabilities allowing them to create their own wealth.[40]

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[35] *Ibidem*.

[36] M. Kinsley, *The State of Compassion*, www.slate.com/id/2094248 (05.2011).

[37] J. M. Jones, *Compassionate Bush…*

[38] A. de Tocqueville, *On Democracy in America*, Warszawa 1976, p. 153.

[39] J. Tapper, *Defining Compassionate Conservatism…*

[40] J. M. Jones, *Compassionate Bush…*

The newly elected President Bush without hesitation started to realize his compassionate program. One of his first moves was the announcement of a presidential decree (dated 29.01.2001) appointing the *White House Office of Faith-Based Neighborhood Partnerships*,[41] previously known as the *White House Office Of Faith-Based and Community Initiatives* (OFBCI). Bush's government presented a new way of management, the essence of which was providing federal funds to the religious organizations and treating them fairly, which in the end was to motivate the best private resources for improving the quality of living. The White House Office Of Faith-Based and Community Initiatives was supposed to provide compassionate conservatism with a central position in all of the political strategies proposed by the Bush administration.[42] One should bear in mind that the initiative was widely criticized, mostly by liberal and secular groups.

Many of the programs signed by the president, especially *No Child Left Behind* (NCLB),[43] an act from 2001 which put emphasis on education of handicapped children as well as a responsibility and knowledge test, were significant examples of how Bush wanted to integrate compassion with public policies.[44] The main aim was to align the level of education with the rule – great (providing good education) schools for everybody. It is important to stress that NCLB was in fact a reincarnation of Democratic President Lyndon B. Johnson's politics and his *Elementary and Secondary Education Act* (ESEA) of 1965. The aim of the act was to improve the level of education and eradicate the differences of the teaching process in public education institutions.[45]

Multiple programs also operated in a sphere called by Bush active government, which promoted local government, e.g. the *Medicare Prescription Drug, Improvement, and Modernization Act*[46] (MMA) of 2003, which, among others, was to provide elder people, especially poor ones, with more support and sources to pay for their basic medical care. Some of the tax reductions made by the president were aimed at millions of poor Americans and were to reduce federal taxation, allowing people to better control their expenses.[47] Bush said: "American citizens can use their own money far better than the government"[48].

The philosophy of compassionate conservatism started to be noticeable in hundreds of social programs administrated by the Housing and Urban Develop-

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[41] www.hhs.gov/partnerships/ (05.2011).

[42] J. M. Jones, *Compassionate Bush*…

[43] For more information see: www2.ed.gov/nclb/landing.jhtml (05.2011).

[44] J. M. Jones, *Compassionate Bush*…

[45] See: www.nea.org/home/NoChildLeftBehindAct.html (05.2011).

[46] Full version of the document: www.medicare.gov/medicarereform/108s1013.htm (05.2011), analysis and criticism of the legislation: M. Ganz, *The Medicare Prescription Drug, Improvement and Modernization Act of 2003: Are we Playing the Lottery with Healthcare Reform?*, www.law.duke.edu/journals/dltr/articles/2004dltr0011.html (05.2011).

[47] J. M. Jones, *Compassionate Bush*...

[48] M. Kinsley, *The State of Compassion*...

ment Department (HUD), Department of Health and Social Services (HHS) and other federal agendas – among others, in the reform of the social services with new criteria for employment, a healthy marriage initiative, a 10-year local plan for fighting homelessness and changes in the public housing priorities – encouraging house purchases.[49]

For many publicists and political opponents (even in the Republican environment) the philosophy of compassionate conservatism was treated as a dangerous combination of right-wing ideology and left-wing methods of operation. Republicans from the Reagan camp, while listening to the president arguing that *there is a group of American people who need help*, raised objections and stated that President's Bush office was a terrible mixture of the political ideas created by Democrats like Bill Clinton and Ted Kennedy.[50] Certainly, such a statement was to a great extent true. However, compassionate conservatism was thought to be a way of rescuing the Republican Party from collapsing, and it was to bring a victory like the one from 1994, when after forty years Republicans managed to regain the majority in Congress. It was a positive philosophy with an emphasis on responsible society, local government, the role of the local communities and a much greater role of parents in the process of bringing up their offspring. The philosophy of compassionate conservatism assisted and in fact helped large numbers of American people to understand and accept many aspects of conservative thinking.

On the other hand, the programs mentioned earlier, such as NCLB or MMA, did not entirely satisfy the society.[51] These schemes generated huge costs and enlarged the deficit, which must have caused a reaction. The changes led to the deformation of Bush's office's domestic politics. Conservatism according to George W. Bush also discouraged the lower levels of the party, because these members of the party did not share the delight and optimism of the White House and were tired of wide governmental intervention. What they objected strongly to was abandoning the rule of restricted government and using the administration for conservative purposes.[52] The undisputable fact is that the administration of the 43rd president of the United States disregarded the basic rule of expenditure control.

However, it seems that the failure of the Republican Party in the 2006 Congress elections and 2008 presidential elections was caused mainly by the negative reception of Bush's foreign policy and America's being weary of the prolonged armed conflicts in distant places. Another cause could be the reform of the Democratic Party political platform, which made Democrats more moderate or even conservative. This could be regarded as a kind of success in promoting conservative ideas.[53]

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[49] J. M. Jones, *Compassionate Bush...*

[50] M. Kinsley, *The State of Compassion...*

[51] D. Brookes, *Too Quiet on the Home Front*, "The New York Times", 20.03.2004.

[52] J. M. Jones, *Compassionate Bush...*

[53] *Ibidem*.

The whole situation is somehow connected with an observable tendency of shortening the distance between the platforms of modern political parties. The Republicans, in order to become a party that meets the expectations of modern American society, often adopt Democratic ideas, depriving Democrats of their monopoly on defending excluded and so far undeveloped social groups. Democrats in turn, by making their views more moderate, renounce the mark which came with the sexual revolution of the 1960s and '70s. Actions like this are thought to increase political support and allow the party to win elections, although they cause a kind of chaos and hesitation amongst citizens as the choice between political options is becoming even more difficult.

Nevertheless, as a final conclusion it is important to emphasize that the compassionate conservatism that is the Republicans' motto remains an intellectually reasonable and coherent doctrine, which has a wide spectrum of practical uses for Republican politicians.[54] It is also an excellent, however moderate, alternative to libertarian economy on one hand and religious conservatism on the other. Compassion seen as solidarity with the afflicted, those with low incomes, impaired members of the society, undoubtedly is a value that build bridges over divisions. When trying to answer the question from the title of this article, one should strongly emphasize the fact that the conservative welfare state matches compassionate conservatives' worldview exactly. Such a welfare state is a state which takes responsibility for creating people's behaviors on the free market and for supporting them. Conservatives believe that citizens want the state to assist them (in an adequate range). However, they are against the views and methods of the liberal welfare state, along with its massive government intervention in the free market sphere, lacking manners and moral values. To conclude, nowadays being a conservative in the United States does not only mean that one protects basic values, moral and political views, but also suggests approval for diverse social programs, which are becoming inseparable parts of America's political fundaments.

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[54] *Ibidem*.

Maciej Brachowicz

IS ABORTION A RELIGIOUS ISSUE? AND WHAT IF IT IS?

> Christianity, which has rendered all men equal before God, will not be loath to see all citizens equal before the law. But by a strange concurrence of events, religion finds itself enlisted for the moment among the powers democracy is overturning, and it is often brought to reject the equality it loves and to curse freedom as an adversary, whereas by taking it by hand, it could sanctify its efforts.
>
> Alexis de Tocqueville, *Democracy in America*

The purpose of this article is to examine whether abortion may be regarded as a religious issue, and what legal and political effects it creates under the American constitutional system assuming that it may be regarded that way. By asking if abortion is a religious issue I mean the following problem: are attitudes toward abortion shaped exclusively by religious convictions? That question certainly occurs on the one side of the abortion debate, namely among those who believe abortion should not be a lawful practice. Putting the question in this way still does not make it clear enough, as one may ask about the factor deciding if abortion *really* is a religious issue: is it the proportion of people drawing the conclusion as to the improperness of abortion from religious beliefs among all those who are convinced that abortion should not be a lawful practice, or is it the lack of some final conclusive argument against abortion (or general ignorance about the existence of such an argument among pro-life sympathizers) that is not dependent on religious beliefs?

The popular assumption is that people absolutely excluding abortion as a lawful method are overwhelmingly informed by their religious beliefs. That may

be true. But this conviction often goes further, to the point that there is no way of proving the humanity of an (early) fetus apart from drawing conclusions from religious beliefs. As one such statement explains: "most pro-life activists would concede that the fetus, especially in the early stages of its development, is not *self-evidently* (I repeat: not *self-evidently*) a human person; that there very well may be an element of religious belief that informs their conviction that human life begins at the moment of conception"[1]. That may also be true. But does it necessarily indicate that one *cannot* prove the humanity of the (early) fetus apart from through religious arguments? I intend to show that there is no necessary dependence of the pro-life argument on religious beliefs.

Is abortion a religious issue?

Of course, I am not the first person to attempt to prove this. Vast scientific evidence exists showing that the human embryo is not only a human being but also a human person (or just human[2]), and I will rely on this. The ignorance, prevalent in the times when the constitutionality of abortion was decided on by the Supreme Court and for many years later, about the physical nature of the (early) fetus, is today no longer so widespread. Most people realize that the (early) fetus is something more than "a collection of cells"[3]; however, even today some pro-choice advocates repeat that argument. All the same, most Americans accept abortion under some circumstances[4] . These circumstances are very different and do not allow those Americans to be ascribed to one, unitary category. Nonetheless, the quantity of people convinced that the fetus does not deserve the same legal protection as people already born is enormous. There certainly is a commonly shared conviction that there exists some *essential* difference between already-born and not-yet-born human beings. The possibility of such a difference existing shall be scrutinized here.

In order to understand the pro-life position with regard to the beginning of life one must properly grasp the process that happens during fertilization, when the sperm and ovum cease to be and create a *distinct* organism with its own process of growth and development. That process includes the lining up of the maternal and paternal chromosomes at syngamy. The gametic cells are oriented toward *uniting* with each other, and their life expectancy is very short. In contrast, the new entity they create by combining with each other, an embryo, is a comple-

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[1] J. K. Fitzpatrick, *A Pro-Life Loss of Nerve*, "First Things", December 2000, p. 35 [original emphasis].

[2] I owe to Professor John Ray of Xavier University the observation that "human person" is a pleonasm surprisingly often repeated by Catholics, who usually believe that every human *is* a "person".

[3] For the first time in history most Americans in a Gallup poll identified themselves as "pro-life" on the issue of abortion.

[4] According to the same poll. 23% of Americans questioned in the same poll said that abortion should be legal under any circumstances, 22% were of the exact opposite opinion.

tely new *self-sustaining* organism with a *unique* genetic code and life expectancy in the order of decades[5]. The fertilization process thus marks the creation of a new human life.

The human embryo is certainly a member of the human species, thus it is human being. Three factors are conclusive here. First, the embryo is from the very beginning of its life distinct from any cell of its mother or father. Second, it possesses the characteristic genetic makeup of a human being. Third, it is a complete organism, yet one whose many functions are not yet developed. "Unless severely damaged or denied or deprived of a suitable environment, an embryonic human being will, by directing its own integral organic functioning, develop himself or herself to the next more mature developmental stage, i.e., the fetal stage. The embryonic, fetal, child, and adolescent stages *are just that* – stages in the development of a determinate and enduring entity – a human being – who comes into existence as a single-celled organism (a zygote) and develops, if all goes well, into adulthood many years later"[6].

The above argument may be supported by the metaphysical argument about the nature of the (human) organism. There is an ontological priority of the (human) organism over its constituent parts. "The organs and parts of the organism, and their role in actualizing the intrinsic, basic capacities of the whole, acquire their purpose *because* of their role in maintaining, sustaining, and perfecting the *being as a whole*. This is in contrast to a thing that is not ontologically prior to its parts, like an automobile, cruise ship, or computer". Thus organisms "may lose and gain parts, and yet remain the same thing over time"[7]. This helps us to grasp the distinct ways humans (organisms) and things come to be. If things may change their nature by losing their parts, this means that in order for them to come to be, all (or at least the essential) parts must be combined with each other. That is an *artificial* process. By contrast, humans (organisms) come to be at the very beginning of their existence[8].

Still, many will not be convinced that this is so simple. They look at the embryo (or imagine it) and do not see the *human* in it. However, "the question is not what the organism looks like, but what it *is*"[9]. When deciding about the lawfulness of abortion many people do not really ask themselves the question about the *nature* (*essence*) of the fetus, but rather listen to some prejudices or erroneous judgments that can easily be refuted. One popular position is that an embryo cannot be regarded as a new human being until the point at which it is implanted in the wall of the uterus. Up to that point many embryos die without the action of other people. But the mere fact that people die more often at a particular stage of their development

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[5] See: R. P. George, C. Tollefsen, *Embryo. A Defense of Human Life*, New York 2008, p. 38–42.

[6] *Ibidem*, p. 50–51 [original emphasis]. For further comments see: *ibidem*, p. 119–122.

[7] F. J. Beckwith, *Defending Life. A Moral and Legal Case Against Abortion Choice*, New York 2007, p. 50 [original emphasis].

[8] *Ibidem*, p. 134.

[9] H. Arkes, *First Things. An Inquiry into the First Principles of Moral and Justice*, Princeton 1986, p. 364 [emphasis added].

does not mean that they are less human or deserve less protection. What's more, many of these entities dying during the first week are *not* really embryos (new human beings) because the process of lining up of gametes went wrong (the new entity does not have all three features that are conclusive for human nature) and the mother's organism resolves that "problem" just by preventing them from further development. That and many other inconsistencies[10] in the pro-choice way of thinking create very weak arguments to support the thesis that there is an essential difference between the embryo/fetus and adult humans.

A much more profound reason for rejecting the strong legal protection of every human being is to be found in the conviction that only human beings that possess "consciousness" are "people", therefore deserve full legal protection. That argument is itself feeble and potentially dangerous – if "consciousness" is to be understood as self-awareness of acts performed by every being, many children and even some adults would have to be regarded as lacking that feature and therefore as non-people[11]. But the roots of such a position reach much deeper to the dualist philosophy of Plato, Descartes and Locke, separating the soul or mind from the body. According to that position the bodily unit is only a kind of career for a *true self* that is to be found in a spirituous entity. But there are some serious problems with the dualist position, pointed out excellently by George and Tollefsen. First of all, it is a counter-commonsense experience making us think that we are unitary beings. But much tougher arguments against dualism can be found. First, the subject of mental acts and that of bodily acts are the same entity. Second, "any view that conceives of the person as an entity separate from the biological organism requires deeply problematic metaphysical claims in describing what the relationship is between the two substances, one organic, one personal". Third, dualism is incoherent because a person trying to argue from a dualist position has nothing stable to assert it to be true of. The correct position, according to George and Tollefsen, is animalism, the view that we are both bodily and personal units and it is not logically possible to separate these two realities from each other. There is no space here to develop that argument in more detail, but one may easily find it in the book by the two above-mentioned authors[12].

This short abstract of the dispute between animalists and dualists introduces us to a much more fundamental dispute: between partisans of ethics based on natural law and partisans of utilitarian and consequentialist ethics. These two modern kinds of ethics avoid the question of what the (early) fetus really is and assume that "the principle of equality requires that the suffering be counted equally with the like suffering – insofar as rough comparisons can be made – of any other being"[13]. Since (early) fetuses are not capable of suffering and developed humans are, utilitarian

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[10] *Ibidem*, pp. 406–410.

[11] *Ibidem*, p. 374.

[12] See: R. P. George, C. Tollefsen, *op. cit*., p. 57–82.

[13] P. Singer, *Practical Ethics*, Cambridge 1993, p. 57.

and consequentionalist ethics require that entities that are not capable of suffering be sacrificed for the good of those who are. That includes not only abortion but also embryo experimentation. But this kind of ethics cannot be reconciled with modern political morality based on human rights and dignity of every person, "for it treats the greater good, a mere aggregate of all the interests or pleasures or preferences of individuals, as the good of supreme worth and value, and demands that nothing stand in the way of its pursuit. The utilitarian thus cannot believe, except as a convenient fiction, in human rights, or in action that may never be done to people, regardless of the consequences"[14].

In contrast natural law ethics is founded on the assumption that "human fulfillment – the human good – [is] variegated"[15]. The human nature is too complex to fit in one simple utilitarian model of pursuing happiness or pleasure as summed among all people. Humans are animals, but rational animals. They are individuals, but also social. All of that is not present in utilitarian thought. In the theory of natural law, the question of the nature of entities is the central one. And if the nature (essence) of adults and (early) fetuses is the same then natural equality requires that they have the same *natural* rights. And "if we remove natural rights, we would convert all rights into rights of positive law. With that subtle shift, we would have removed, in effect, the very logic and substance of rights. For what we call rights then are simply the things declared to be right by the opinion that is dominant in any place. In that event, the rights enacted into law are merely rights that a majority is willing to confer. But what the majority may confer, the majority may also remove when it no longer strikes the majority as right or convenient"[16].

Problems with natural law…

Certainly the first problem with natural law ethics is that its main supporter nowadays is the Catholic Church, one of the most hated institutions among academic scholars and the liberal media. That is no proof that natural law is based on religious belief – natural law and (Catholic) religion are *only* mutually compliant. But this fact gives a useful tool for those who either do not understand or pretend not to understand that fact, in attacking both natural law ethics and the Catholic Church.

However, there are more problems with natural law ethics, and the main factor that creates them is the modern liberal political legitimacy model, especially as described by John Rawls and his successors (i.e. Stephen Macedo). The central claim of John Rawls' *Political Liberalism* is that every policy in a liberal state must be guided by "reasoned" arguments that are "widely accepted". This seemingly obvious position is a kind of trap for natural law ethics, and ultimately promotes only

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[14] R. P. George, C. Tollefsen, *op. cit*., p. 93–94.

[15] *Ibidem*, p. 98.

[16] H. Arkes, *Natural Rights and the Right to Choose*, Cambridge 2002, p. 31.

those views that are intrinsically liberal. It is thus, so to speak, a *materially* liberal rule, and not a *formally* liberal one.

Revealing of natural law requires enormous intellectual effort, so most people stops at the level of Church commandments or popular convictions with their roots in natural law. This is the great weakness of natural law theory, and liberals often use it for their own purposes. Rawls, Macedo and others are "apparently trying to establish a 'Catch-22' situation for natural law theorists. If they do not put forward a powerful and intellectually sophisticated argument for their positions regarding political life and moral issues, then they fail the requirement of reason per se. Their positions become nothing more than popular prejudices, the 'unreasoned populism' criticized in *Liberal Virtues*. If, on the other hand, natural law theorists do provide powerful and intellectually sophisticated reasons for their positions, then ipso facto they are going beyond the limit of public justification, because their arguments become too complicated and controversial. 'Public reason' is serving as that ever-convenient cat-o'-nine-tails that can be dragged out as soon as the argumentative going gets tough. In fact, the more sophisticated the natural law argument, the easier it becomes to dismiss it for not being 'publicly accessible'!"[17]

It is worth noting here that proponents of pro-choice arguments often use language rooted in metaphysics and ontology, however they are usually not eager to admit that fact[18] because it is one of the main grounds why they see the language of the pro-life side as illegitimate in liberal public discourse. For this reason we should perhaps ask rather if the real problem is with natural law theory…

…or with modern (Rawlsian) liberalism?

That is for many reasons plausible. First of all it is flawed on its own terms. As George and Wolfe indicate, "is it sufficient that [reasoned and widely accepted] arguments be 'acceptable' to people on the basis of what we [call] 'inarticulate knowledge'? If the answer is 'no' – that is, if more developed and articulate knowledge is required – then the liberal public reason doctrine is utopian, at best. As such, it is simply unfit to govern political affairs in a world inhabited by actual human beings. If, however, the answer is 'yes' – that is, if arguments can be considered publicly accessible even if they can be widely accepted only on the basis of inarticulate knowledge – then, contrary to what Macedo supposes, natural law arguments meet the standard of public accessibility"[19]. By "inarticulate knowledge" George and Wolfe understand a kind of moral knowledge that (almost) everyone possesses but (almost) no one can explain, that is: killing people is wrong (they are thus, so to

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[17] R. P. George, C. Wolfe, *Natural Law and Public Reason*, [in:] *Natural Law and Public Reason*, ed. R. P. George, C. Wolfe, Washington 2000, p. 65–66.

[18] F. J. Beckwith, *op. cit.*, p. 52–54.

[19] R. P. George, C. Wolfe, *op. cit.*, p. 57.

speak, precepts of natural law "written on the heart"). If inarticulate knowledge is *not* to be excluded from public discourse, then natural law seems to be on an equal footing with liberalism, so the doctrine is not *materially* liberal any more. If inarticulate knowledge is to be excluded, then the whole structure seems to justify society ruled by *experts on morality*. That may not necessarily lead to the loss of *formally* liberal features, but certainly it is not *democratic* liberalism any more.

We see, thus, that political liberalism as understood by Rawls or Macedo is not conclusively reasonable. But is it just? That is even more dubious: "the legitimacy principle, as stated and understood by Rawls, is itself illegitimate, unreasonable, and uncivil. It is illegitimate because it censors truthful and reasonable public discourse and – worse – prohibits individual recourse to correct principles and criteria for practical judgment, in relation to fundamental political question, without any coherent, principled reason for the prohibition. It is unreasonable because it restricts public deliberation and individual public action precisely on those matters where it is the most important to be correct, i.e., where people's fundamental human rights are at stake, and above all where the question is *who* it is who has the fundamental rights our constitution and politics is concerned with; *who* are the persons for whose sake we have our law"[20].

Political order that prevents a pursuit of the Truth as guidance for law on the basis that not everybody would agree on the outcome of such a pursuit cannot be regarded as just; after all what is more important: popular agreement or right decision?

Of what importance is this for the abortion question? Rawls or Macedo's positions exclude a natural law position on abortion; what's more, they even seem to exclude any attempt to find an answer to the question about the nature of thing decided, namely the nature of the (early) fetus, because any answer cannot be "widely accepted", at least not in American society. But that is obviously odd. "Precisely because the issue is fundamental – going to the question of who is to count as a member of the human community whose rights must therefore be respected and protected – it would seem important for any nation to settle its law and public policy on the subject of abortion in accordance with the best moral judgment of its policymakers and citizens"[21] and not in accordance with artificial and arbitrary legitimacy rule.

After all, "why should the child a week before birth be subject to the uttermost *coercion* of being destroyed at someone else's 'balancing of values', 'ordering of values', or sheer whim? The public reason of the United States, as manifested in the loquacious judgments of its Supreme Court, has after a quarter of a century uttered not a sentence that even appears intended to offer a rational response to that question.

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[20] J. Finnis, *Abortion, Natural Law, and Public Reason*, [in:] *Natural Law and Public Reason*…, p. 81 [original emphasis].

[21] R.P. George, *In Defense of Natural Law*, New York 1999, p. 318.

The response, rather, is of the form: 'We are in charge; *these* are the human beings we have chosen, or now choose, to protect and *those* are not'"[22].

The modern change in attitude toward abortion marks a great change within the political order itself. As Harvey Mansfield noted, political order used to be founded on the separation of *natural* and *civil* rights. "Natural rights are the rights on which civil society is founded; civil rights are the ones it secures"[23]. Natural rights are those which adhere to the human because of his or her nature (according to the Declaration of Independence these are the right to life, liberty and the pursuit of happiness). It was in order to fulfill those rights that the Constitution was established. However, the Constitution secures civil rights that are more numerous and specific than natural rights. The move from natural to civil rights was accomplished by the consent of citizens and protected by the "right of consent to government". But "today rights are not distinguished as natural and civil because humans are understood fundamentally as changing, historical beings rather than natural beings with a fixed definition. When rights are defined historically, they are in practice impossible to distinguish from wants"[24]. The want to have an abortion becomes the right to have an abortion, and numerous experts on morality work hard in order to justify that. But the "right of consent to government" is being lost.

What if abortion is a religious issue?

As we have seen, "the argument on abortion is grounded finally in principled reasoning, the kind of reasoning that could be understood on its own terms without any appeal to religious faith or personal beliefs. The moral case against abortion is treated frivolously, falsely, if it is treated, at the threshold, as a problem of legislating, for other people, on the basis of 'religious beliefs' or merely 'personal opinions'. That argument is usually employed as a 'stopper', to end arguments by forestalling them"[25]. Of course, this is not a rare case.

One example may be Justice John Paul Stevens' concurring opinion in the highly fractured decision in the *Webster* case. In that case the Supreme Court was supposed to decide if Missouri state law, prohibiting use of public facilities and public employees to perform abortions that were not necessary to preserve the mother's life, was constitutional. The preamble of this act contained a statement controversial for many: "the life of each human being begins at conception". The Supreme Court held that the preamble had not been applied in any concrete manner for the purposes of restricting abortions, and thus did not present a constitutional question. But Justice Stevens was not satisfied with the ruling, so he wrote: "I am

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[22] J. Finnis, *op. cit*., p. 87 [original emphasis].

[23] H.C. Mansfield, *America's Constitutional Soul*, Baltimore–London 1993, p. 182.

[24] *Ibidem*, p. 184.

[25] H. Arkes, *Natural Rights*…, p. 84–85.

persuaded that the *absence of any secular purpose* for the legislative declarations that life begins at conception and that conception occurs at fertilization makes the relevant portion of the preamble invalid under the Establishment Clause of the First Amendment to the Federal Constitution. This conclusion does not, and could not, rest on the fact that the statement happens to coincide with the tenets of certain religions, or on the fact that the legislators who voted to enact it may have been motivated by religious considerations. Rather, it rests on the fact that *the preamble, an unequivocal endorsement of a religious tenet of some, but by no means all, Christian faiths, serves no identifiable secular purpose*. That fact alone compels the conclusion that the statute violates the Establishment Clause"[26]. His opinion contains two claims that are important for us. First, there are no other justifications for the conviction that "the life of each human being begins at conception" apart from religious ones. That is simply not true. Second, morality derived from religious beliefs cannot be a basis for secular law because it violates the Establishment Clause of the First Amendment. Let us have a closer look at that argument.

The dispute about the meaning of the Establishment Clause of the First Amendment is one of the most serious of the disputes about proper interpretation of the American Constitution. One of the sides prefers strict separation of churches and the state, to the extent that excludes every religious opinion from the public square. Religion remains a strictly private affair. One of the main supporters of this claim is Martha Nussbaum, who believes that separation is necessary for preserving equality among religious believers. As she wrote: "Our tradition sought to put religion in a place apart from government, in some ways and with some limits, *not* because we think that it has no importance for the conduct of our lives or the choices we make as citizens, but for a very different reason. Insofar as it is a good, defensible value, the separation of church and state is, fundamentally, about equality, about the idea that no religion will be set up as *the* religion of our nation, an act that immediately makes outsiders unequal. Hence separation is also about protecting religion – minority religion, whose liberties and equalities are always under pressure from the zeal of majorities"[27]. From that point of view statement of any branch of government supporting any claim regarded as religious is strictly prohibited. But calling that "tradition" seems to be an exaggeration, as it started to be a dominant opinion in the second half of the twentieth century.

However, there are also other views. One of the advocates of the view that government may shape its policy taking inspiration from religiously grounded opinions is Michael Perry: "Although the non-establishment norm that is constitutional bedrock for us forbids government to bestow legal favor on a church – for example, by privileging membership in the church – it does not go so far as to for-

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[26] Justice Stevens, concurring in *Webster v. Reproductive Health Services*, 492 U.S. 566–567 (1989) [emphasis added].

[27] M. C. Nussbaum, *Liberty of Conscience. In Defense of America's Tradition of Religious Equality*, New York 2008, p. 11–12 [original emphasis].

bid government to make a political choice, including a political choice disfavoring conduct, on the basis of a moral belief *just in virtue of the fact that the moral belief is, for those making the choice, religiously grounded*"[28]. A little further on, Perry clarifies his position: "deciding whether to disfavor conduct (at least partly) on the basis of the belief that it is immoral, one or more legislators – even a majority of them – may answer the question of whether the conduct is in fact immoral on the ground or grounds in which *they* have the most confidence, in which *they* place the most trust, and then make their choice accordingly. In particular, they may do so whether or not the ground (or grounds) is religious – and, so, even if it *is* religious"[29]. That does not mean that their choice may not be unconstitutional, but not on those grounds.

A similar position is sometimes accepted even by pro-choice advocates, like Lawrence Tribe, who writes: "The values reflected in the constitutional guarantees of freedom of religion and political expression argue strongly for the inclusion of church and religious groups, and of religious beliefs and arguments, in public life". In order to support his claim Tribe quotes another liberal and pro-choice advocate, the late Justice Brennan: "religionists no less than members of any other group enjoy the full measure of protection afforded speech, association and political activity generally"[30]. This short insight in the dispute does not rule which position is the correct one, but at least it shows that treating religious guidance for policy choices is not necessarily unlawful under the American constitutional bedrock.

But we may look at this problem from a different angle. Apart from the constitutional perspective, the cultural-political perspective also matters. We live in a world in which the distinction of the private and public sphere is being blurred and at the same time their harmony is being lost. Let's skip the reasons for that and concentrate on the effects. On the one hand it is (was?) believed that limited government, the central claim of (traditionally) liberal political thought, requires a basic distinction between state and society, being itself an extension of distinction between body and soul (or, as it is today named, "self"). The problem arises when the dominant part of society (the majority) wants to use the state to rule over the whole society, and leads to a blurring of that distinction[31]. This often happens in the cases of very controversial problems, such as abortion. On the other hand, in (post-) industrial societies, as the late Fr. Richard Neuhaus put it, people are "forced to live schizophrenically in several different worlds. Moving between worlds, we take off and put on different selves, until we are no longer sure which is the true 'self'. We do not feel at home anywhere, least of all in unrelieved privacy when we are most

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[28] M. J. Perry, *Under God? Religious Faith and Liberal Democracy*, Cambridge–New York 2003, p. 25 [original emphasis].

[29] *Ibidem*, p. 31 [emphasis added].

[30] L. H. Tribe, *Abortion. The Clash of Absolutes*, London–New York 1992, p. 116. Brennan's statement excerpted from his concurring opinion in *McDaniel v. Paty*, 435 U.S. 618, 641 (1978).

[31] H. C. Mansfield, *op. cit.*, p. 102–104.

completely by ourselves, whoever that may be. Nor are we at home in the public arena where, in order to gain admittance, we are told to check our deepest beliefs at the door"[32].

If the majority (or those who claim they form the majority) act to impose their secular rule claiming that any religious belief is prohibited in the public sphere, the alarm should be raised, not simply because religion is endangered, but because the public (defined secularly) is being shaped in the authoritarian way. In other words, "attention must be paid to the political; not because everything is political but because, if attention is not paid, the political threatens to encompass everything"[33]. Neuhaus took that threat very seriously. In Tocqueville's manner, he believed that wherever citizens withdraw to the private sphere the state comes in to fill an empty space and take control over it. "When the democratically affirmed institutions that generate and transmit values are excluded, the vacuum will be filled by the agent left in control of the public square, the state. In this manner, a perverse notion of the disestablishment of religion leads to the establishment of the state as church"[34]. That new form of authoritarianism (he sometimes even called it "totalitarianism") seemed to him even "worse than the first, and the new mystification worst than the first, because they claim for themselves the virtue of freedom. In Orwell's 'Newspeak', war is peace and slavery is freedom. The slavery that claims to be freedom is the most desperate form of slavery, because it has subsumed into itself the idea of emancipation"[35].

The emancipation process leads to liberation of the individual self from every authority. However, since an individual is too weak to get through that process by him- or herself, he or she needs help that is lavishly offered by the modern secular state. One of the first enemies of the emancipated self is religion. But in the modern secular state traditional religions, with a strong system of obedience toward moral obligations, are excluded simply on the basis of being *religions*[36]. However, "when recognizable religion is excluded, the vacuum will be filled by *ersatz* religion, by religion bootlegged into public space under other names"[37]. That will be the form of official secular religion of the state.

The full circle has been made. The main cause that led to the establishment of a limited government was the fear of officially recognized religion being a recipe for religious intolerance. But the *full* accomplishment of that process leads to the establishment of the new kind of intolerance – secular intolerance. In order to secure limited government, a true balance between society and state, or body and soul,

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[32] R. J. Neuhaus, *The Naked Public Square. Religion and Democracy in America*, Grand Rapids 1986, p. 28.

[33] *Ibidem*, p. 30.

[34] *Ibidem*, p. 86.

[35] *Ibidem*, p. 254–255.

[36] An excellent examination of these views was provided by J. Hitchcock, *The Enemies of Religious Liberty*, "First Things", February 2004.

[37] R. J. Neuhaus, *op. cit.*, p. 80.

should be reestablished. "If government is to remain limited, individuals must be able to rule themselves, at least to some extent, and to do this, religion – which reminds us of the importance of our souls – might seem indispensable"[38]. But this means that individuals must be able to reconcile private and public lives, so religion, being one of the most important factors shaping it, may not be absolutely excluded from public life.

The most important "battlefield" between religion and state is culture, being itself somewhere between state and society. "Religion and politics meet at many points, but most critically they meet at the point of culture-formation. […] Were politics only the quest for personal and institutional power, there would be little contest between church and state. The state would win hands down, for it alone has the distinct advantage of being able to call in the police. As the regime in Poland, to cite one example, should understand, power that is exercised in contradiction to culture is very fragile. It depends overwhelmingly, sometimes exclusively, upon coercion. It is not legitimate power; that is, it is not morally legitimate. It may have sounded realistic at the time, but in truth it was extraordinarily naive of Stalin to ask, 'How many divisions does the pope have?'"[39] Partisans of secular state argue that religion should be excluded from or limited in culture-formation because it is to divisive factor. But an insight into American history shows that religion may hardly be perceived as the main divisive factor among the American people[40].

So, let us once more indicate that "politics is in large part a function of culture. Beyond that it is our assumption that at the heart of the culture is religion"[41]. Politics and religion are thus, so to speak, inseparable. Applying this to the abortion debate it is necessary to underline that it was not "religionists" who wiped the abortion consensus off the face of the earth. This was done by those who repeated that "everything is political" and "private is political". And then they made an attempt to exclude religion absolutely from politics because religion prevented them from reaching *their political* goals. That mere fact should be enough to understand that the religiously minded should be allowed to speak in the political world as the requirement for political *equality*. But one may say even more. This is not only just. This is even necessary for preserving the modern political model of limited government and respect for *every* person. One may say that "the essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God"[42].

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[38] H. C. Mansfield, *op. cit.*, p. 104.

[39] R. J. Neuhaus, *op. cit.*, p. 132–133.

[40] M. J. Perry, *Under God?...*, p. 40–41.

[41] R. J. Neuhaus, *op. cit.*, p. 27.

[42] M. J. Perry, *Toward a Theory of Human Rights. Religion, Law, Courts*, New York 2007, p. 17.

That might be too strongly stated. The natural law gives a powerful argument to that without any recourse to religion. But for upholding popular belief in the infinite importance of every human being this is certainly true.

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Religious freedom in American public life is diminishing. Those who would like to supplant religion from public life gain more and more power, and with the current president, Barack Obama, they have an additional guarantee that their concept will be secured. But the most important institutional player in this field, the Supreme Court, seems to have been on their side for about 50 years. Certainly since the *Abington* ruling (1963, Bible reading in public schools) in which "religious freedom is set over against religious observance". And "when religious freedom *is* set over religious observance it tends to become the same thing as secularism"[43]. For the American nation, a nation that had its formative moment in the Declaration of Independence which explicitly confirmed religious motivations, this is a rather curious development. "How strange that the citizens of a nation whose birth was rooted in belief in a Creator God should now be told that it is, at best, 'bad taste to bring religion into discussions of public policy'"[44].

Abortion is not necessarily a religious issue, although it is often perceived as if it were. And the American experience in treating the issue of abortion is an excellent example of the threats that occur in modern liberal democracies when discussing controversial public policies that strongly divide citizens. The attempt to treat the pro-life position as an essentially religious position, denying an equal footing for those who are willing to protect life from the moment of its conception on the grounds that their position cannot be "widely accepted", is an assault on the democratic principle of political equality. And the attempt to supplant religious arguments from the process of formation of public policies is an assault on the most basic liberal tenet – limited government. That is certainly not a happy prospect for the future.

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[43] R. J. Neuhaus, *op. cit.*, p. 101–102 [emphasis added].

[44] M. J. Perry, *Under God?...*, pp. 124–125. The quotation excerpted from R. Rorty, *Philosophy and Social Hope*, New York 1999, p. 168–169.

Wojciech Kaczor

THE CRIME OF ARISTOCRACY –
COUNT ALEXIS DE TOCQUEVILLE
ON AMERICAN SLAVERY

During his journey to the United States in 1831, the French count Alexis de Tocqueville encountered in Baltimore a slave so terrorized by his master that he had gone out of his mind and spent his days in lunacy, howling like a dog[1]. Near the end of the journey, Tocqueville wrote to his father:

> I have thought a good deal about what might be written about America. To try to present a complete picture of the Union would be an enterprise absolutely impracticable for a man who has passed but a year in this immense country. I believe, moreover, that such a work would be as boring as it would be uninstructive. One might be able, on the other hand by selecting the topics, to present only those subjects having a more or less direct relation to our [France's] social and political state … There's the plan: but will I have time and discover in myself the ability to carry it out?[2]

For a year, Tocqueville was unable to discover this ability. In 1833, he finally sat down to write the first volume of his magnificent *Democracy in America*, published two years later. He addressed his book to the French: with the Great Revolution in mind, he wanted to present them with a true democratic society, warning them of its perils at the same time.

The last chapter of the first volume is devoted to racial problems in the United States. The image of the mad slave from Baltimore must have haunted the French aristocrat, because he wrote quite a lot about slavery. In his opinion keeping

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[1] J. Epstein, *Alexis de Tocqueville – Democracy's Guide*, New York 2006, p. 42.

[2] *Ibidem*, p. 63.

so many people in bondage seemed completely at odds with the political ideology of America. In the first pages of the chapter, he discusses the differences between ancient and modern slavery. Ancient slavery was not based on racism. "Among the ancients", writes Tocqueville, "the slave belonged to the same race as his master"[3]. In those times he was usually a prisoner of war, and according to *ius belli* (the law of war) he became the servant of those who won the conflict. "And often", we read further on, "he was superior to [his master] in education and enlightenment"[4]. This remark seems very appropriate when one thinks of some Roman slaves, especially of Greek origin, who very often were the teachers of their masters. Such people, once emancipated, easily joined the intellectual elite of Roman Empire, sometimes working as the ministers of emperors themselves. For example Cleander, omnipotent advisor to Commodus (180–192), was a former slave[5]. Such a "freedman so strongly resembled men of free origin that it soon became impossible to distinguish him in their midst"[6].

In contrast to those times, racism was a keystone of North American bondage. Negroes were regarded as creatures inferior to whites. Even most enlightened Southerners in history shared the racial prejudices of their society. Thomas Jefferson in his *Notes on Virginia* describes blacks as subhumans:

> They are more ardent about their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation. Their griefs are transient. Those numberless afflictions, which render it doubtful whether has give life to us in mercy or in wrath, are less felt and sooner forgotten with them. In general, their existence appears to participate more on sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions, and unemployed in labor. An animal whose body is at rest, and who does not reflect, must be disposed to sleep of course. Comparing them by their faculties of memory, reason and imagination it appears to me, that in memory they are equal to whites; in reason much inferior […] in imagination they are dull, tasteless, and anomalous…[7]

The Founding Fathers treated Negroes as creatures driven mainly by instincts, almost animals. Such an opinion was common among almost all white Americans in the 18th and 19th centuries. This became very evident in the Supreme Court sentence which ended the Dred Scott case. Dred Scott was a slave who, living for a long time on territory where slavery was banned, wanted the courts to set him free. In 1857, the Chief Justice of the Supreme Court, Roger Taney, denied his claim, stating also that the drafters of the Constitution had viewed all blacks as

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[3] A. de Tocqueville, *Democracy in America*, Chicago 2000, p. 327.

[4] *Ibidem*, p. 327.

[5] M. Cary, H. Scullard, *A History of Rome Down to the Reign of Constantine*, Polish edition: Warsaw 1992, Vol. 2, p. 294.

[6] A. de Tocqueville, *op. cit.*, p. 327.

[7] *Slavery and Emancipation*, ed. R. Halpern, E. Dal Lago, Oxford 2002, p. 93–94.

beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations and so far inferior that they had no rights which the white man was bound to respect.

The main defender of North American slavery, George Fitzhugh, wrote in his *Slaves Without Masters*, published in 1857, that

> There is one strong argument in favor of negro slavery over all other slavery: that he, being unfitted for mechanic arts, for trade, and all skillful pursuits, leaves those pursuits to be carried on by whites; and does not all industry into disrupt, as in Greece and Rome, where the slaves were not only the artist and mechanics, but also the merchants[8].

A liberated slave had no chance of entering the free society as an equal. Surrounded by hostile attitudes, he was subdued to humiliating segregation, deprived of many privileges enjoyed by whites. The fear of racial intermingling was very strong among whites, even in the free states. "You can make the Negro free", claims Tocqueville, "but you cannot do it so that he is not in the position of a stranger *vis à vis* the European"[9]. This is because "we hardly recognize in him the general features of humanity"[10]. But while in the South,

> the master does not fear lifting his slave up to himself, because he will always be able, if he wishes, to throw him back into the dust […]. In the North, the white no longer perceives distinctly the barriers that will separate him from a debased race[11].

The physical power exercised by the Southerner over his slave (whipping, prison) protected his privileged position. In the North, segregation was the only legal way of keeping blacks at a distance.

The concept of black inferiority helped slave owners to justify the institution of slavery. According to them the meek intellectual values of Negroes predestined them to work for whites who civilized them, giving them the English language, European clothes and – last but not least – the Christian religion. What is more, the proud Southern planter believed that Providence had given him a mission to fulfill. "I have a large family on my own", wrote one of them, William Byrd II, in 1726,

> and my Doors are open to Every Body […] Like one of the Patriarchs, I have my flocks, my herds, my bond – men and my bond – women […]. I must take care to keep all my people to their Duty, to set all the springs in motion and to make every one draw his equal share to carry the Machine forward[12].

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[8] *Ibidem*, p. 152.

[9] A. de Tocqueville, *op. cit.*, p. 327.

[10] *Ibidem*.

[11] *Ibidem*, p. 329.

[12] *Slavery and Emancipation…*, p. 58.

People like William Byrd II formed an aristocratic society. According to To-cqueville, this was determined by the fact that the people who settled in the Southern states before the formation of the American Union were usually "great English property owners", who brought with them aristocratic ways and aristocratic estate law. Although in America they "possessed no privileges and since cultivation by slaves gave them no tenant farmers and consequently no patronage", they nevertheless "formed a superior class having ideas and tastes of its own and generally concentrating political action within itself"[13]. The planters were especially proud of the leaders, like Jefferson or Washington, whom they gave to the American Revolution. But being at the head of it, they sustained the institution which would one day threaten the existence of the Union.

Slavery, according to the author of *Democracy in America*, "dishonors work; it introduces idleness into society, and with it, ignorance and haughtiness, poverty and luxury. It enervates the forces of the intellect and puts human activity to sleep. The influence of slavery, combined with the English character, explains the mores and social state of the South"[14]. Tocqueville points out that the character of the Southerner is formed mainly under the influence of slavery. The "peculiar institution", as some called it, made white people not only lazy but also despotic and unable to tolerate any opinion contrary to theirs; meeting resistance they reacted with aggression. This was because:

> The slave is a servant who does not debate and submits to everything without murmuring. Sometimes he assassinates his master, but he never resists him. In the South there are no families so poor as to have no slaves. The American of the South, from his birth, finds himself invested with a sort dictatorship; the first notions that he receives from life make him know that he is born to command, and the first habit that he contracts is that of dominating without difficulty. Education therefore tends powerfully to make the American of the South a man high-minded, prompt irascible, violent, ardent in his desires, impatient of obstacles, but easy to discourage if he cannot triumph with the first stroke[15].

The aristocratic pride of Southerners made them also view even slight attempts to deprive them of their rights as a deadly offence. The best illustration of the Southern character is the so-called Nullification Crisis. Between 1828 and 1832, federal power passed two tariffs protecting the Northern industry. The South regarded them as an assault on its economy.

The Southern politician John C. Calhoun formulated the Nullification Theory, according to which a state had the right to secession when its prerogatives were violated by the federal government. The whole case nearly ended up in civil war, when South Carolina started gathering militia to oppose the tariffs and President Andrew Jackson threatened to send troops to Charleston. Fortunately the parties

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[13] A. de Tocqueville, *op. cit.*, p. 46.

[14] *Ibidem*, p. 31.

[15] *Ibidem*, p. 360.

produced a compromise. In the years to come, foolish pride led the Southern states to rebellion and war[16].

The decision to confront the federal government in 1861 was not especially difficult since, as Tocqueville mentions in his book, "the use of arms is familiar to [the Southerner]. And from his childhood he has learned to stake his life in a single combat"[17]. The aggressive character of Southerners was also an influence of slavery. It was Thomas Jefferson who said in his *Notes on Virginia* that slavery makes white children resort to violent ways. It is true that young men were familiar with the use of arms. Most of them were members of so called *Negro Watches* as well as local militias. Besides, the Southern code of honor included the duel as a way of solving conflicts (incidentally, if it were not for the slavery and the aristocratic lifestyle it sustained, there would perhaps never have been such a code). Negro Watches, the patrols keeping blacks in respect of white power, remind me of Ancient Sparta. Southern whites feared their slaves just like Spartans feared the helots.

In the eyes of the French count, the inhabitants of the North formed a completely different species. They did not see "slaves running their cradle"; they "therefore learn easily to know by themselves the natural limits to their power; they "do not expect to bend the wills that are opposed to their power". Because of that, "they are patient, reflective, tolerant, slow to act, and persevering in their design". Whereas "the American of the South loves greatness, luxury", his Northern counterpart "has been occupied with combating misery" since childhood. He is generally "more active, more reasonable, more enlightened and more skillful"[18].

But it was not in character, but in the economy that the difference between North and South was most visible. Tocqueville presents the opinion that "the provinces that so to speak possessed no slaves grew in population, in wealth, and in well-being more than those that had them"[19].

Tocqueville discusses this difference using his famous comparison between Ohio and Kentucky. In the free states the work of free laborers was more efficient. They worked for themselves, therefore they paid more attention to their job, some hoping that the money they collected would one day let them start their own business. Succeeding in this, they increased the wealth of the whole country, giving others a place to work and improving industry.

In the slave states, on the other hand, the development was slowed by the system of plantation. The slaveholder had to oversee his serfs in order to be sure that they were working effectively. According to James Thomas Flexner, biographer of George Washington, slaves not only worked inefficiently but also committed acts of sabotage: they would spoil every machine. Blacks simulated diseases and stole things from the plantation as well. Supervisors, on the other hand, were

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[16] *Slavery and Emancipation...*, p. 316.

[17] A de Tocqueville, *op. cit.*, p. 333.

[18] *Ibidem*, p. 359–361.

[19] *Ibidem*, p. 330.

usually drunk and lazy. Planters had to provide their serfs with clothes, food, as well as welfare when they were old and weak, wasting money they could invest somewhere else[20].

This last fact led George Fitzhugh, cited earlier, to claim that slavery was in fact a more humanitarian institution than the capitalistic system of the Northern states, because the white workers of factories were left to themselves once they were no longer able to work, whereas an old slave was given food and shelter. Therefore, in his opinion, "Our Southern slavery has become a benign and protective institution, and our negroes are confessedly better off than any free laboring population in the world"[21].

Southern economy left no space for free labor. "It is thus toward the free states" writes Tocqueville, "that European immigration is directed"[22]. The bravest and most industrious elements from Europe came to the Northern states simply because they had no prospects in the South. Many Southerners had seen the inefficiency of slave economy. Why did they not try to abolish slavery themselves?

First of all they still gained large profits, thanks to the cotton gin, a machine separating seeds from cotton. Its invention increased the efficiency of production. They still did not have to work for themselves. Secondly, they feared that liberated blacks would take revenge on them:

> It is not that all inhabitants of the South regard slavery as necessary to the wealth of the master; on this point many of them are in accord with Northerners and willingly admit that servitude is an evil; but they think that one must preserve this evil in order to live.

Besides, slavery was not only an economic and social institution – it was a lifestyle. Tocqueville describes it as an institution completely alien to American democracy. Laziness and keeping so many people in bondage was in his eyes a crime – the crime of Southern aristocrats. But despite its inefficiency, slavery coexisted with Northern capitalism at the time when Tocqueville wrote his book. Why – instead of diminishing slowly – did it end by the 1860s? Unwillingly, the Southerners themselves sealed their doom.

It all started with the competition over the Western territories between the North and the South. The cultivation of cotton and tobacco, yielding relatively large profits, at the same time devastated the soil. Therefore Southern planters needed new land, desired by the free Northern farmers as well.

Southern bondage had a very important political aspect as well, which Tocqueville did not mention. From 1787, three people were counted for every five slaves to determine the number of representatives in Congress[23]. Growth in the

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[20] J. T. Flexner, *Washington. The Indispensible Man*, Polish edition: Warsaw 1990, p. 423–424.

[21] *Slavery and Emancipation...*, p. 58.

[22] A. de Tocqueville, *op. cit.*, p. 337.

[23] H. Brogan, *The Longman History of the United States of America*, Polish translation: Wrocław 2004, p. 223.

population of the free states would give them more representatives than the slave ones. Therefore the expansion of slavery would help the planters to defend their interests in Washington. "The South", observed the French historian, "today knows that federal power is escaping it, that each year sees the number of its representatives in Congress diminish and these of the North and the West grow"[24].

The conflict resulted in a series of compromises. One of these concerned the status of the state of Missouri. Representative Tallmadge wanted it to join the Union as a free state. The Southerners resisted this idea. Finally slavery was accepted there, and another state, Maine, became a free state. The territory of Louisiana, purchased from France in 1803, had been divided: slavery was accepted south of 36, 30' N, and banned north of this line. This so-called Missouri Compromise was signed in 1820. In 1850 another compromise solved the problem of slavery in the lands captured from Mexico. But the tension was still high.

At the same time the incredibly strong abolitionist movement appeared in the North. Accusing the Southern society of cruelty, abolitionists led many to sympathize with Negroes. Regarded as lethal enemies by the inhabitants of the Southern states, they made the latter suspicious towards the North. The suspicion arose after John Brown's revolt (1859). Brown was a fanatical abolitionist who seized an arsenal in Harpers Ferry, Virginia. He planned to arm black fugitives from neighboring plantations and lead them to confrontation with slave owners. Captured and executed, he became a martyr of radical abolitionism. For planters he was evidence of a Northern plot to abolish slavery[25]. The Republican Party was considered an enemy as well.

When its candidate, Abraham Lincoln, was elected president, the South reacted hysterically. Believing that Lincoln would abolish slavery, it chose secession. In this way the words of Tocqueville had been fulfilled: "Once the federal will is broken, Southerners would be wrong to count on lasting support on the part of their brothers in the North"[26].

Southerners broke the federal link themselves and were now seen in the North as enemies of the Union. The secession led to the Civil War (1861–1865), perhaps the most tragic event in American history. The Confederates – as the secessionists were known – had few chances to win this war. The plantation system took revenge. The Confederacy lacked factories, ironworks, shipyards and even a sufficient number of railways. Trying to force the European powers to intervene on their behalf, the Southerners recklessly ceased the export of cotton. It soon turned out that Europe got on very well without it. The war resulted in the defeat of Confederacy, and the emancipation of Negroes guaranteed by the Thirteenth Amendment. Federal forces watched over the social changes in the South, usually referred to as Reconstruction.

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[24] A. de Tocqueville, *op. cit.*, p. 366–367.

[25] G. Swoboda, *Gettysburg 1863*, Warsaw 1990, p. 15–17.

[26] A. de Tocqueville, *op. cit.*, p. 343.

Tocqueville predicted that "the abolition of slavery in the South will increase the repugnance for blacks felt by the white population"[27]. With black people liberated, they became the object of terror. Once workers on a plantation, they now became competitors demanding land and privileges. The Southerners during the years of Reconstruction could not stand seeing blacks becoming step by step rightful citizens of the United States. For them they were still "niggers", savages not worthy of being called humans. But now their former masters lacked legal physical power, so they started to abuse Negroes by other means.

The Southern states very quickly passed so-called *Black Codes*, laws limiting the civil rights and liberties of black people. They mainly concerned the work of former slaves, who were obliged to make annual contracts for their laborers in writing, and if they should run away from their tasks they were to forfeit their wages for the year. They had to present licenses citing places of residence and authorizing them to work. Fugitives from labor were arrested and carried back to their employers. It was made a misdemeanor (punishable by a fine or imprisonment) to persuade a freedman to leave his employer. Negroes were not allowed to carry knives or firearms unless they were licensed to do so. One was not allowed to sell intoxicating liquors to a Negro. The aim of the Black Codes was to create a substitute for the old plantation system with its strict discipline. Between 1876 and 1965 the other system – *the Jim Crow laws* – introduced segregation of public schools, public transportation, restrooms and restaurants.

Ten of the eleven Southern states ratified constitutions or amendments that completed the disfranchisement of most African Americans. Voter registration became more complicated; it required poll taxes, residency requirements, record-keeping and literacy tests. According to these regulations, a great number of blacks and poor whites became deprived of suffrage, representation at any level of government, local elected offices, and the right to serve on juries (usually restricted to voters).

Hatred toward blacks took the form of barbaric violence as well. In 1865, six frustrated veterans of the Confederate Army formed a secret brotherhood known as the Ku Klux Klan. Its name came from the Greek word *kyklos*, meaning *circle*. Two years later the Klan adopted more organized, hierarchical structures. George Gordon wrote the so-called *Prescript*, a sort of elementary "white power". His friend Nathaniel Bedford Forrest, slave trader and confederate general, reacted very enthusiastically when he heard about the organization. "That's a good thing", he said, "We can use that to keep the niggers in their place". Forrest soon became Grand Wizard – national chief of the Klan. The famous historian of Reconstruction, Eric Foner, described this brotherhood as "a military force serving the interest of […] the planter class and all those who desired restoration of white supremacy […]. It aimed to reestablish control of the black labor force, and restore racial subordination in every aspect of Southern life[28].

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[27] *Ibidem*, p. 343.

[28] E. Foner, *A Short History of Reconstruction*, New York 1990, p. 184.

Klansmen, wearing grotesque white robes and hoods, threatened and assassinated black social and political leaders, burned houses belonging to freedmen, and drove them off their land. A good example of the Klan's methods was the case of Essic Harris. This former slave from North Carolina possessed a gun which was confiscated by the "Night Riders". Recklessly, he armed himself again. This time Klansmen attacked his house at night. Harris wounded two of his attackers. Finally, terrorized, he had to leave his house with his whole family[29].

Black voting was strongly resented: in 1868, within a few weeks of the presidential election, about two thousand people were either killed or wounded in Louisiana.

In judicial cases concerning Klan atrocities some juries were terrified, but most secretly supported its methods. Therefore there were hardly any condemning sentences. In 1871, President Ulysses S. Grant signed the *Ku Klux Klan Act*. Section Three of the act treated the activity of the Klan as an anti-state plot[30]:

> […] in all cases of insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of people of such State of any of the rights, privileges, or immunities, or protection, named in the constitution and secured by this act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the constitution of the United States; and in all such cases … it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary for the suppressions of such insurrection, domestic violence, or combinations.

Hundreds of Klansmen were either fined or imprisoned. By 1872, the Klan was broken as an organization.

Nevertheless, the racial violence in the South raged on. In 1873 in Colfax, Louisiana, white militia killed between 105 and 208 black Republicans who contested the election of a sheriff. Aside from the Ku Klux Klan, there were other similar groups such as the White League or the Knights of the White Camelia. The Klan itself was reborn twice, in 1915 and around 1950, a fact which is the best testimony to the lasting racial hatred. This repugnance was also felt in the North, where the liberated Negroes went to seek a new life. Ready to work for low wages, they were viewed there as dangerous rivals by the white workforce.

In any case, slavery was over, and the black population of the United States now had more possibilities of development than ever. Tocqueville had predicted the fall of the "peculiar institution", but was deeply mistaken in assuming the way it would end. He prophesied a great racial war which would result in the emancipation of blacks and extermination of whites, or at least their withdrawal from the

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[29] J. Sobieraj, *Ku Klux Klan*, Warsaw 2004, p. 35–36.

[30] *Ibidem*, p. 44.

South. "Furthermore", we read in his books, "whatever the period of the struggle may be, the whites of the South, should they be abandoned to themselves with an immense superiority of enlightenment and of means; but the blacks will have numbers and the energy of despair working for them. There are great resources when one has arms in hand. Perhaps then what happened to the Moors in Spain will happen to the white race of the South"[31].

Nothing like that happened. It was mainly whites who spilled blood for American blacks. The latter found a powerful ally in federal government and its army. The abolition of slavery was carried out by the federal officials in the post-bellum South. Of course, the former slaves did not get all the privileges at once, but they could still have hope.

Tocqueville's comparison to medieval Spain is surely an exaggeration. Even if the Civil War had not taken place, and the black population had tried to win their freedom by themselves, they would never have obtained power comparable to the Christians of Spain, led by kings, supported by the Church and powerful military organizations like the knight orders of Santiago or Calatrava. And in any case, the struggle with the Moors lasted centuries.

The "numbers and energy of despair" mentioned by Tocqueville are not enough to win or even lead such war. One needs an aggressive leader and political self-consciousness to organize efficient resistance. Blacks in the nineteenth century lacked both. The first true leader of the black community, Booker T. Washington (1856–1915), preached the idea of compromise with Southern whites. In his Atlanta speech of 1895, he claimed that African Americans should sacrifice their political power and social privileges in order to concentrate their energies on education and gaining wealth:

> The wisest among my race understand that the agitation of questions of social equality is the extremist folly, and that progress in the enjoyment of all privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing. No race that has anything to contribute to the markets of the world is long in any degree ostracized. It is important and right that all privileges of the law be ours, but it is vastly more important that we be prepared for the exercise of these privileges. The opportunity to earn a dollar in a factory just now is worth infinitely more than the opportunity to spend a dollar in an opera house.

He assured the Southerners that their former slaves would be very loyal and helpful neighbors:

> You can be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unrestful people that the world has seen. As we have proved our loyalty to you in the past, in nursing your children, watching by the sick-bed of your mothers and fathers, and often following them with tear-dimmed eyes to their graves, so in the future, in our humble way, we shall stand by you with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defense of yours, interlacing our industrial our industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one.

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[31] A. de Tocqueville, *op. cit.*, p. 344.

Under the direction of Booker T. Washington, young Negroes took up not arms to fight for privileges, but tools to build the Tuskegee Normal and Industrial Institute, a technical school founded in 1881. The pacifist line was continued in the twentieth century by Martin Luther King, an admirer of Mahatma Gandhi[32]. Even the most radical Negro organization, the Black Panther Party for Self–Defense, concentrated more on welfare programs like clothing distribution, free medical clinics or drug and alcohol rehabilitation rather than violence. Black Panthers used firearms mainly to oppose police brutality against African Americans. Other than this, they never had a great influence on the black community. Around 1970, they had only one thousand members[33].

The post-bellum South was certainly full of violence, but in the form of riots and clashes easily surpressed by federal forces. The lack of vast intellectual elites among blacks can easily be explained. Tocqueville devotes an excellent passage to this topic:

> The Ancients knew only irons and death to maintain slavery, Americans of the South knew only irons and death to maintain slavery; Americans of the South have found more intellectual guarantees for the longevity of their power. They have, if I can express myself so, spiritualized despotism and violence. In antiquity one sought to prevent the slave from breaking his irons; in our one has undertaken to remove his desires for it.
> The ancients chained the slave's body, but they left his spirit free and permitted him to enlighten himself. In that they were consistent with themselves; there was then a natural way out of servitude; from one day to another a slave could become free and equal to his master.
> Americans of the South, who do not think that Negroes can be intermingling with them in any period, have forbidden under severe penalties teaching them to read and to write. Not wanting to elevate them to their level, they hold them down as close as possible to the brute[34].

Southerners very correctly recognized the education of blacks as a great peril. This danger became very clear during Nat Turner's rebellion in 1831. Turner was a slave who believed himself to be a prophet sent by God to liberate black people. He started an uprising in Virginia and, after committing many atrocities, was caught and hanged. His case resulted in a very strict ban on teaching blacks to read and write[35]. The aversion to the idea of educating blacks was very strong in the South. After the Civil War, people founding schools for former slaves, as well as the people teaching in them, were persecuted by the Ku Klux Klan. On March 1871 a group of KKK members visited Miss Allen, who ran a school in Cotton Gin Port in Monroe County, and ordered her to leave the place, using the threat of violence.

In his memoires, the black abolitionist Frederick Douglass writes that his master was infuriated upon discovering that his wife had taught Douglass to read. He said: "If you give a nigger an inch, he will take an ell. He should know nothing

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[32] H. Brogan, *op. cit.*, p. 686.

[33] *Encyclopedia Americana*, Vol. 4, Danbury 1995, p. 36.

[34] A. de Tocqueville, *op. cit.*, p. 346–347.

[35] *Slavery and Emancipation*…, p. 266.

but the will of his master, and learn to obey it. Learning would spoil the best nigger in the world"[36].

Douglass's master was right, because one of the first texts read by the young slave was *Columbian Orator*, a treatise against slavery[37].

There was another circumstance which helped the masters to control their slaves. Black people never had real families, which are the best school of character. Negro children were very often taken away from their parents. They hardly experienced love and the feeling of security necessary for appropriate development. Uprooted, they easily submitted to the will of their owners. Frederick Douglass was one of many black boys who never had a family. He never came to know who his father was; brought up by a grandmother, he saw his mother only once in his lifetime. He did not even suspect that he had brothers and sisters until he left his grandmother's hut to live on a plantation. Summarizing his childhood, Douglass writes:

> There is not, beneath the sky, an enemy to filial affection so destructive as slavery. It had made my brothers and sisters strangers to me; it converted the mother that bore me, into a myth; it shrouded my father in mystery, and left me without an intelligible beginning in the world[38].

The attempt to keep the slaves at the level of domestic animals was another aspect of the crime of the aristocracy. Looking at the American South, one can only agree with Abraham Lincoln, who criticized Stephen Douglas's concept of popular sovereignty by claiming that real democracy cannot exist in the slave society[39]. The peculiar institution led to degeneration of republican virtues, especially freedom of speech. Southerners resisted the distribution of anti-slavery writings. In July 1835, an angry mob broke into the Charleston post office and made a bonfire out of abolitionist newspapers found there[40]. The same year, the local postmaster ordered that such press be taken out of the mail[41]. The state legislatures promised awards for abolitionist journalists: in 1831, four thousand dollars was offered for William Lloyd Garrison, and the so-called Vigilance Committee offered over thousand dollars for any person distributing *Liberator* or *Appeal*[42].

The readers of the abolitionist press, and even people expressing their unease over slavery, often became the victims of lynching. A Georgian subscriber to *Liberator*, for example, was tarred and feathered, set afire, dipped in the river and then whipped[43]. Such violence once took place even in Congress. Preston Brooks,

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[36] F. Douglass, *My Bondage and My Freedom*, New York 2003, p. 108.

[37] *Ibidem*, p. 116–117.

[38] *Ibidem*, p. 47.

[39] H. V. Jaffa, *Crisis of the House Divided*, Chicago 1982, p. 13.

[40] J. Hope Franklin, A. A. Moss, Jr., *From Slavery to Freedom; A History of Negro Americans*, New York 1988, p. 175.

[41] *Ibidem*, p. 176.

[42] *Ibidem*, p. 175.

[43] *Ibidem*, p. 176.

who had severely beaten Charles Sumner when the latter had condemned the cruelty of border ruffians in Kansas, seems to be the incarnation of Thomas Jefferson's warnings. In *Notes on Virginia*, the future president wrote that

> There must be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love, for restraining the intemperance of passions towards his slave, it should always be a sufficient one that his child is present. But usually it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to the worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities[44].

Brooks simply dealt with the old senator just like he would with a rebellious "nigger". Southern congressmen opposed the petition action taken by the abolitionists in 1836 and 1837, for the abolishment of slavery in the District of Columbia. The above-mentioned senator, John C. Calhoun from South Carolina, considered these petitions "the instruments of Northern conspiracy to attack the peculiar institutions of the South" and called for their rejection[45]. His motion failed, but a special committee supported by "Slave Power" recommended that "all petitions relating to the subject of slavery or the abolition of slavery, shall, without being either printed or referred, be laid upon the table and… no further action whatever shall be had thereon"[46]. This was the so-called "gag rule". Former president John Quincy Adams strongly resented this practice, as "a direct violation of the Constitution of the United States […] and the rights of [his] constituents" and engaged his authority in the defense of the right of petition[47].

Defending slavery, Southern officials and writers raised arguments suitable for advocating feudalism, having nothing to do with the democratic spirit. "In all social systems" said Governor Hammond of South Carolina, "there must be a class to do the menial duties, to perform the drudgery of life… Its requisites are vigor, docility, fidelity. Such a class you must have or you would have that other class which leads progress, civilization, and refinement. It constitutes the very mud-sill of society and of political government: and you might as well attempt to build a house in the air, as to build either the one on the exempt on this mud-sill"[48].

In *Southern Institutes*, George S. Sawyer reiterated that Negroes are the lower race predestined to work for whites:

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[44] *Slavery and Emancipation...*, p. 95.

[45] G. Hobbs Barnes, *The Antislavery Impulse 1830–1844*, San Diego 1964, p. 110.

[46] *Ibidem*, p. 110.

[47] *Ibidem*.

[48] J. Hope Franklin, A. A. Moss, Jr., *op. cit.*, p. 174.

The social, moral, and political, as well as the physical history of the Negro race bears strong testimony against them; It furnishes the most undeniable proof of their mental inferiority. In no age or condition has the real Negro shown a capacity to throw off the chains of barbarism and brutality that have long bound down the nation of that race; or to rise above the common cloud of darkness that still broods over them[49].

Such an attitude stood in contrast to the ideas of equality and freedom that created the United States. Yet Southerners remained faithful to one specific value of republican society: the right to ownership. The ownership that lowered human beings to the level of moveable goods.

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[49] *Ibidem*, p. 174–175.

Piotr Musiewicz

THE OXFORD MOVEMENT AND THE DOCTRINES
OF THE EPISCOPAL CHURCH

Introduction: Some aspects of the English reformation

To understand adequately the character of the Oxford Movement (Tractarianism)[1] and its perception of the American Church,[2] we need first to look back to the changes to the Church and State structure advanced by the English Reformation.

Even though it was an enduring political tendency in medieval England to minimize the power of the pope over the rulers, it was Henry VIII (1509–1547) who first announced the full independence of the Crown and the English Church from the bishop of Rome. By this independence a set of aspects was meant, the most important of which was the jurisdictional, doctrinal and financial primacy of

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[1] The Oxford Movement (Tractarianism, Newmanism) was a Conservative movement in the 1830s and 1840s, founded at Oxford University by Anglican clergy – mostly the tutors of Oxford colleges. These tutors tried to oppose the liberal reform both in the Church and in the State. The name for this movement came from the "tracts" its leaders published, or from the city it started in, or from the name of one of its leaders – John Henry Newman (1801–1890). Newman was a fellow of Oriel College and the vicar of St Mary's Oxford University Church. He was greatly appreciated as a scholar (interested especially in Christian antiquity) and preacher. As we shall see in this article, his research on the Church Fathers would bring him into the Catholic Church, which he would join in 1845. This date is usually marked as the end of the Oxford Movement, as it lost its radical impetus. However, the followers of the less radical Oxford Movement who did not convert to the Church of Rome were led by Regius Professor of Hebrew Edward Bouverie Pusey (1800–1882), considered to be their leader. They were called "Puseyites" or Anglo-Catholics. The third (or in fact the first, as we shall see) leader of the movement was the churchman and poet John Keble (1792–1866).

[2] By "American Church" is meant the Church of England in America, which – after the Revolution and Independence – adopted the name "Protestant Episcopal Church", also known as "Episcopal Church." John Henry Newman would use the name "Anglo-American Church."

the Crown. *The Act of Restraint of Appeals* (1533) declared that the supreme power of jurisdiction of the priests belonged not to the pope, but to the king of England. *The Submission of the Clergy Act* forced by the king on the Convocation in 1532 obliged all English clergy to recognize the king as the final authority in doctrinal matters. From then on it was the king who confirmed the canons of the Church of England. The *Act Concerning Ecclesiastical Appointments and Absolute Restraint of Annates* (1534) resolved two important issues: nomination of bishops and the problem of so-called annates. The act confirmed that the cathedrals electing bishops should accept candidates selected by the king and that all the payments made to the bishop of Rome from English bishops were illegal, as it was the king of England alone who had the right to collect them. In addition, the propriety of the Church was confiscated by the Crown, which was only to be the financial administrator of the realm. Therefore Henry VIII and his successors became the head of the English Church.[3]

Since England was thought to be a realm "regal and political", the king was not supposed to make any important decision without the consent of the body of lords and commoners.[4] On the other hand, the authority of the first Tudors was so great (as they managed to end the bloody conflict that was the War of the Roses) that parliament was quite reluctant to oppose their steps.[5] This may have been one of the reasons why parliament accepted the king's policy and agreed to his reforming acts. The consequences of these acts were far-reaching for both English and American religion and politics.

It is impossible to exaggerate the fundamental alteration in the idea and the structure of the Church. According to the thinkers supporting English reformation (starting with Christopher St. Germain), the Church was formed both by priests and laymen. As a result, each of these groups was given the right to participate in Church matters. This was a clear contradiction of Catholic theories, which held the idea of supremacy of the pope or bishops (priests) in that. The Henrician concept of the importance of the whole body of the Church allowed the king and his writers to highlight the role of Henry VIII and his successors in religious matters, despite the fact that the ruler was not a priest. Later development of this idea would be one of the crucial points for the Tractarians to oppose.

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[3] On Henry VIII and the English Reformation see: A. L. Cross, *A Shorter History of England and Great Britain*, pp. 208–212; H. M, Smith, *Henry VIII and the Reformation*, London 1948; R. Rex, *Henry VIII and his Church*, "History Review" 1997, Vol. 29; F. Hackett, *Henry the Eighth*, New York 1929.

[4] On the "regal and political" character of the English realm see: W. Ullmann, *A History of Political Thought: The Middle Ages*, Harmondsworth 1968, pp. 145–159; J. Fortescue, *De laudibus legum Angliæ* (English translation: *Sir John Fortescue's Commendation of the laws of England by* Francis Grigor), London 1917, p. 17 and following.

[5] A. J. Slavin, *The New Monarchies and Representative Assemblies: Medieval Constitutionalism or Modern Absolutism?*, Lexington 1964, p. 3; G. R. Elton, *The Tudor Revolution in Government: Administrative Changes in the Reign of Henry VIII*, Cambridge 1962, p. 1–2. However a significant number of those who opposed the policy of forming the state Church in Tudor times were severely persecuted – see for example N. Fellows, *The Pilgrimage of Grace October – November 1536*, "History Review" 2000, No. 37, p. 23–27.

In support of the thesis of the Church's "national sovereignty", the ideas of Marsilius of Padua (c. 1275–1342) were appealed to. His ascending theory of government gave arguments for the Church of England being ruled by itself, without the "interference" of foreign powers such as the Papacy. Marsilius argued that the power of jurisdiction is given by "the human legislator of the province." This power is granted to the ruler by the whole people and neither a layman nor a priest could be excepted from it. The king's philosophers – St. Germain and Stephen Gardiner – could then say that there was no one universal power in the Church, but there exist many local Churches with their own governments. These local Churches are bound together only by the ideas found in the Scriptures and in the correct doctrine.[6] The early Oxford Movement, as we shall see, would develop this idea into the "branch theory."

Nonetheless, the theories of Marsilius were not fully applied because these would undermine the position of the English king, whose authority was supposed to be growing. Marsilius might have been useful in arguing for a national Church, but not for the justification of the king's power. The English Reformation initiated a completely different, but not entirely new, theory for the king and his relation to the Church: divine rights of kings. Since then the king, vested with supernatural authority, was the one from whom all other authorities are derived. The king dominated not only over parliament, but also over the Church, so that the national Church could have no other justification of its prerogatives (with the exception of the sacraments, whose administration was not subjected to him).[7] Erastianism would be strongly opposed by the Oxford Movement, but even more strongly and vividly in America.

In later Tudor times the Anglican theologian and philosopher Richard Hooker gave extensive justification to the Elizabethan settlement, arguing that the king's supremacy over the Church was both a biblical and a reasonable idea.[8] Moreover, accepting Marsilius' ascending theory of government, Hooker argued that monarchy originated with the people's consent made in some ancient times; in a similar way he advocated episcopacy as the best form of Church government. Hooker stated that the episcopacy is justified not by Christ's commission, but by the people's consent, the reasonableness of this idea and long tradition. Christ himself did not choose any form of government to be legitimate, and apparently left this question open to be solved by people.[9] Hooker's idea differed from both that

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[6] For more on Marsilius' theory see: J. Canning, *A History of Medieval Political Thought, 300–1450*, p. 154–156; H. S Stout, *Marsilius and Henrician Reformation*, "Church History" 1974, Vol. 43, No. 3, p. 308–318. It is worth noting that ascending theory of government in the Church appeared before Marsilius: it was held in the 13th century by the Dominican John of Paris: W. Ullmann, *A History of Political Thought: The Middle Ages,* p. 203.

[7] Cf. M. D. Chapman, *The Politics of Episcopacy*, "Anglican and Episcopal History" 2000, Vol. 69, is. 4, p. 475–477.

[8] Hooker gave examples of the kings of Israel who legislated in ecclesiastical matters – see: R. Hooker, *Of the Lawes of Ecclesiastical Polity*, [in:] *The Works of that Learned and Judicious Divine Mr. Richard Hooker*, ed. J. Keble, Vol. 2, New York–Philadelphia 1844, p. VIII.1.1.

[9] *Ibidem*, p. VII.9.7, VII.13.3.

of the Puritans (fighting against episcopacy on the grounds of the Scriptures) and that of the Catholics (justifying the episcopacy and the pope's power on the grounds of the Scriptures).[10] The third thing Hooker declared was the identity of the English Church and State. English society, being fully Christian, did not need any separation of power – this proved useful only in countries ruled by non-Christian kings. Therefore a member of the English Church was at the same time a member of the English commonwealth and vice versa. Church and State differed only in their functions, not in their essence – they were just two aspects of one English, Christian society. This society had one ruler (the king) and one aim – seeking out the Kingdom of God first. Politics was religion and religion was politics: England was a confessional state.[11]

The logical consequence of the concept of the identity of Church and State was the idea that only the faithful members of the Church could reliably serve the State (the society). This is the origin of various test acts imposed on the English officials. The most remarkable acts appeared in the second half of the 17th century. *The Test Act* (1673) declared that any Englishman has to attend the Lord's Supper sacrament (according to English rites) before taking public office. In other words active attendance at the Church of England was a fundamental condition for holding any public office in English society. Catholics, Protestants and Jews were then excluded from English offices. Their religions were barely tolerated, and they were usually forced to gather in small, private meetings.[12] Unlike England, the United States quickly dispensed with this idea.

The Oxford Movement in the English context

The Oxford Movement remains in close connection to the theme outlined above. The aim of Tractarianism was in fact to overturn many aspects of the English Reformation:[13] especially to limit the state interference in Church matters which be-

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[10] N. Atkinson, *Richard Hooker and the Authority of Scripture, Tradition and Reason*, Carlisle 1997, p. 53–55.

[11] R. Hooker, *Of the Lawes*..., p. VIII.1.2. See also: P. Collinson, *The Politics of Religion and the Religion of Politics in Elizabethan England*, "Historical Research" 2009, Vol. 82, No. 215, p. 76–77.

[12] *The Test Act, A.D 1673*, [in:] *Documents Illustrative of English Church History*, ed. H. Gee, W. J. Hardy, New York 1896, p. 633–637.

[13] This statement might be disputable. There were Tractarian leaders who were very cautious in declaring the "reformation of the reformation" and who warned against condemning the 16th-century reformers. One of them was Edward Bouverie Pusey, called very "moderate" (see: W. Ward, *The Oxford Movement,* London 1912, p. 20–22). However Pusey's "moderate" approach allowed him to state the Catholic doctrine of the True Presence of Christ's Body and Blood (a sermon: *The Holy Eucharist a Comfort to the Penitent*) and to regard it as a natural doctrine for the Church of England, as well as for Fathers of the Church – see H. P. Liddon, *Life of Edward Bouverie Pusey*, Vol. 1, London 1894, p. 308. Pusey and Keble did not follow Newman and the "Romish direction" of the Movement. He stayed in the Church of England and tried to introduce mostly liturgical reforms that would make it more "Catholic." It might then be useful to distinguish two "parties" in the Oxford Movement: first – a "moderate" one led by Keble and, from 1835 especially, by Pusey – that saw the Church of

came troublesome, to abandon the ascending theory of government in the Church, to point out the crucial role of the bishops and their succession (and to emphasize the supernatural character of the Church), and to restate Catholic doctrines and the Catholic character[14] of the Church of England.[15]

John Henry Newman[16] noticed that the movement had commenced in 1833 at St Mary's University Church in Oxford, when Rev. John Keble preached a political sermon entitled "National Apostasy".[17] Keble preached against the existing type of union of Church and State, for he saw the State violating "sacred Church prerogatives." Keble was in favor of Hooker's concept of Christian society (political and religious at the same time); however, he regarded 19th-century English politics as being hostile towards the English Church. For Keble the hostility was an application of the principles of Erastianism[18] by the British parliament: the thing that most angered him was the Irish Church Bill, which set the administrative reforms to the Irish dioceses (reducing their number) "without the Church being consulte-

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England as a proper – but in need of reform – branch of the Catholic Church; second – one led by Richard Hurrel Froude, John Henry Newman and William George Ward – that would assert that the Church of England was too corrupt to be a proper branch of the Catholic Church and that the ideal of the Church was in fact Rome (see for example: W. G. Ward, *The Ideal of a Christian Church*, London 1844, p. 53–54). The Tractarians' "branch theory" fully depicted by William Palmer in his *Treatise on the Church of Christ* (1838), saying that the Church of Christ is basically every Church that has Apostolical Succession, was then no longer valid for Newman, Ward and other Tractarians who converted to the Church of Rome.

[14] It is important to understand what Tractarians and Anglicans meant by "Catholic": this term did not have the same meaning as "Roman Catholic Church" (which was referred to as "Church of Rome" or "Romish Church", and whose followers were "Romanists" or "Papists"). Catholic Church meant, according to the Tractarians, the universal Church, whose doctrines are "held at all times, in all places, and by all believers" – the principle formulated by Vincent of Lérins in the fifth century – cf. U. M. Lang, *Newman and the Fathers of the Church*, "New Blackfriars" 2011, Vol. 92, is. 1038, p. 152.

[15] An aspect the Tractarians did not want to fully overturn was especially the role of the laity in the Church. They held that the Church is made both of clergy and of lay people (Keble defined the Church as "the whole body of Christians" formed of clergy and laity in his sermon – see J. Keble, *National Apostasy*, p. 21). They not only kept this idea within the Church of England, but in fact influenced the Catholic Church with it as John Henry Newman advocated this notion after his conversion to Rome. The role of the laity was marked by the Second Vatican Council, of which Newman is thought to have been a predecessor (see: W. Casper, *The Timeless of Speaking about God* (*The inaugural John Henry Newman Lecture delivered by His Eminence Cardinal Walter Kasper in May 2008*) published on the Oxford Blackfriars website: www.bfriars.ox.ac.uk/resources.php?category=5 (15.04.2011). However, the limitation of parliament's (and consequently the king's) power over the Church was in fact the limitation of the role of the laity: the main functions – such as shaping the doctrine of faith, worship and administering of the dioceses – should be the functions of the clergy, who had a sort of divine commission for it (see: M. D. Chapman, *The Politics of Episcopacy*, "Anglican and Episcopal History" 2000, Vol. 69, is. 4, p. 476).

[16] The ideas of John Henry Newman presented in this essay will mostly come from his "Anglican period" (before 1845) as this was the period of his reflection on the English and American (Anglican) Church. As a Catholic he did not seem to be interested in the American Church and he did not leave any more essays on it.

[17] J. H. Newman, *Fragmentary Diary*, [in:] ed. A. Mozley, *Letters and Correspondence of John Henry Newman During his Life in the English Church*, Vol. 1, London 1891, p. 432.

[18] Keble himself used the strong words "Erastian principles" (Keble, *National Apostasy Considered: in a Sermon Preached in St. Mary's, Oxford, before His Majesty's Judges of Assize, on Sunday, July 14, 1833*, Oxford 1833, p. iv). Most basically, Erastianism meant subjection of the Church to the State, especially no temporal rights of the Church. On the origin and development of the meaning of this term see: J. N. Figgis, *Erastus and Erastianism*, [in:] J. N. Figgis, *The Divine Right of Kings*, Cambridge 1914, p. 316–317 and following.

d".[19] Keble saw that the interests of the State were no longer relevant to the aims of the Church, and that the State pursued its own policy. He thought the alliance of Church and State was distorted, as the Whig Parliament had started to treat the Church instrumentally. It was not obviously Hooker's intention that the "Commonwealth" would pursue natural, economical ends, as it did in the case of Irish Church Bill. According to Keble, England, being a "Christian nation", was "bound in all her legislation and policy, by the fundamental rules of that Church"[20], so it should act relevantly to the aims of the Christianity.

The second thing Keble pointed out was the disaster of the admission of dissenters into the British parliament. He thought that here again the goals of Church and State were contradicted: the English Church (or at least many of its clergy) wanted to keep its privileged position as the only official, national Church, but parliament intended to pursue the policy of religious and political tolerance and abandon confessional ideas. The step made by parliament – passing the Protestant and Catholic relief and admission acts (1828-1829) – was intended to fulfill the demands of these religious groups to participate in British public life and to reassure Irish Catholics who craved independence or at least autonomy.

However, the admission of dissenters implied that the State had withdrawn its support for the English (Anglican) religion and that it would tend to treat religions indifferently. The national Church was about to be "abandoned" by the State – and that was something the Tractarians did not at first wish.[21] Sir Robert Peel, one of the architects of the Liberal-Whig reforms 1828–1833, plainly stated:

> we must abandon Religion if we aspire to be statesmen ... another age has come in, and Faith is effete ... seek we out some young and vigorous principle ... where shall we find such a principle but in Knowledge?[22]

Newman called this deep ideological change to the fundamental principle of English politics "sacrilegious", and dangerous for the integrity of the Church (he refused to call the British legislature "Christian"),[23] while Keble spoke of it as "national apostasy"; the latter compared it to the story of Israelites who, in the First Book of Samuel, demanded a change in their "constitution" so that they would have a king like other nations. Keble suggested that the conduct of both the Isra-

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[19] J. H. Newman, *The Catholic Church*, [in:] Members of the University of Oxford, *Tracts for the Times*, Vol. 1: 1833–1834, London 1834, *Tract II*, p. 1. See also: C. Brad Faught, *The Oxford Movement: A Thematic History of the Tractarians and Their Times,* Pennsylvania 2003, p. ix-x and 5.

[20] J. Keble, *National Apostasy*, p. 12.

[21] However, should the Erastian steps become unbearable, the Tractarians seemed to have been ready to accept the disestablishment as a way to preserve the Church's authority – see: R. H. Froude, *Letter to A. P. Perceval, 14 August, 1833*, [in:] *A Collection of Papers Connected with the Theological Movement of 1833*, ed. A. P. Perceval, London 1842, p. 12.

[22] The letter of Sir Robert Peel is cited in: I. Ker, *John Henry Newman: A Biography*, Oxford 2009, p. 207.

[23] J. H. Newman, *The Catholic Church*, [in:] *Tracts for the Times*, Vol. 1, *Tract II*, p. 1. See also: C. Brad Faught, *The Oxford Movement: A Thematic History of the Tractarians and Their Times*, p. 5.

elites and English statesmen was nothing less than a declaration of will of staying independent from God and His ways and choosing one's own human-like interests.

Abandoning the political support of the Church of England was tantamount to apostasy from Christianity.[24] Newman, similarly, compared the reforms of Sir Robert Peel to the French revolution of 1830, unmasking the same "revolt against the Traditions of Christendom".[25]

Both problems Keble tried to deal with concerned the nature of the English Church and of the English Reformation. It was clear that parliament was no longer interested in keeping the Church of England's privileged authority as the only official Church. Keble's sermon was then a calling for the Church's authority, but on what basis could he and the Tractarians put it? What arguments could the Anglican clergy give to defend their Church from troublesome State interference and to explain its importance in English society?

The answer was already found before 1833: Keble and Newman discovered Catholic arguments about Apostolic Succession[26] and claimed that the Church of England derived its authority from Apostles and their successors – Catholic bishops.[27] It was not the first time this notion appeared in the Church of England, but the Oxford Movement was probably the first group since the pre-reformation era to emphasize it so strongly and to use Catholic (not Hooker's) arguments. The Tractarians had the idea of proving that the 19th-century Church of England was a proper descendant of the Apostles, their power and their teaching. To do so, they needed to show that it did not break with the Catholic tradition of the Fathers of the Church and that the post-Reformation English Church held the same tradition. This is why the Tractarians started to publish their tracts – short, at first, pamphlets concentrating on the contemporary and historical status, authority and doctrine of the Church of England. Starting with Pusey's translation of St Augustine's *Confessions* in 1838, they began to edit the monumental Library of the Fathers (around

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[24] J. Keble, *National Apostasy*, p. 13, 20–21.

[25] W. Ward, *The Oxford Movement*, p. 22.

[26] Newman gave the following definition of Apostolic Succession: "We have been born, not of blood, nor of the will of the flesh, nor of the will of man, but of God. The Lord JESUS CHRIST gave His Spirit to His Apostles; they in turn laid their hands on those who would succeed them; and these again on others and these again on others; and so the sacred gift has been handed down to our present Bishops, who have appointed us as their assistants, and in some sense representatives... We must necessarily consider none to be ordained who have not been thus ordained... Exalt our Holy Fathers the Bishops, as the Representatives of the Apostles, and the Angels of the Churches; and magnify your office, as being ordained by them to take part in their ministry" (J. H. Newman, *Thoughts on the Ministerial Commission Respectfully Addressed to the Clergy*, [in:] *Tracts for the Times*, Vol. 1, *Tract I*, p. 2–4; capitals by Newman).

[27] There is a number of references by Tractarians to the Apostolic succession; amongst them see for example: J. Keble, *National Apostasy*, p. 21; J. H. Newman, *Thoughts on the Ministerial Commission Respectfully Addressed to the Clergy* (*Tract I*); W. Palmer, J. H. Newman, *On the Apostolical Succession in the English Church* (*Tract XV*), J. H. Newman, *On Arguing Concerning the Apostolical Succession. On Reluctance to confess the Apostolical Succession* (*Tract XIX*); B. Harrison, *The Scripture View of the Apostolical Commission* (*Tract XXIV*); B. Harrison, *The Ministerial Commission: A Trust from Christ for the Benefit of His People* (*Tract XVII*) – all these Tracts may be found in: Members of the University of Oxford, *Tracts for the Times*, Vol. 1: 1833–1834, London 1834.

50 volumes) and the Library of Anglo-Catholic Theology (95 volumes). They also published in the conservative journal *British Critic*, which they edited (Newman and Thomas Mozley) from 1838 to 1843. Such extensive interests in the Church of England and its aspects did not leave the problems of the Anglican Church in America unnoticed.

The American Church context

The milieu of the Anglican Church in America was much different than the soil of Oxford or England. The Anglican Church had never been established in the United States; since 1770s it did not treat the English king as the head of the Church, and it did not have a tradition of bishops.[28] Moreover, the influence of Puritanism, however noticeable in England, was much more apparent and stronger in America.

Although the first Anglican "congregations" (it is hard to call the first Anglican settlements in America otherwise) were built in the 17th century (in Virginia), the Anglican Church in America had actually been shaped by the American Revolution. The revolutionists, so-called "patriots," demanding independence from the British Crown, most frequently regarded the British king as their obvious enemy. These patriots consisted not only of Puritans, who had been trying to undermine Anglican establishment ever since the 16th century, but also of some Anglicans. Anglican engagement in the Revolution on the "patriotic" side happened to be problematic for the status of the Anglican Church in America as these "patriotic Anglicans" contradicted the loyalty to the British king. This loyalty was forbidden due to the Congress law passed in 1776: prayers for the British king, which were so far part of the Anglican liturgy, became acts of treason. Although most of the loyalists came from the Anglican Church, their number was not enough to oppose the revolutionists. After the victory of the "patriotic" camp the status and character of the Church of England in America needed to be reconsidered.[29]

The General Convention of 1789 in Philadelphia arranged the basis of the (Anglican?) Church in America according to political and religious conditions. On the one hand the Church of England was regarded as the bulwark of the loyalists and British (hostile) tradition; on the other hand it had already became part of the religious and social life of many Americans and some of its followers supported the patriotic cause. The solution was a sort of reform of that Church. Therefore a new name – Protestant Episcopal Church in the United States of America – was given to it.

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[28] The Anglican Church was established only in some colonies and was disestablished in the 1780s. See D. L. Holmes, *A Brief History of the Episcopal Church*, Harrisburg 1993, p. 24.

[29] C. L. Webber, *Welcome to the Episcopal Church: an Introduction to its History, Faith and Worship*, Harrisburg 1999, p. 13–16; J. B. Bernardin, *Introduction to the Episcopal Church*, New York 1983, p. 7.

This name indicated that the American Church differed from the English one (e.g. members of the Protestant Episcopal Church would not take the oath of allegiance to the British king because they were already citizens of the United States); however, it held an episcopal and Protestant character at the same time. The way to American episcopacy was, however, neither easy nor obvious.[30]

Before the General Convention and the Revolution, the Anglican Church (or "Anglican churches") in America did not have any bishops: the priests were formally subjected to the bishops of London, who never came to visit colonies themselves, but who often sent their commissaries. However, after the Revolution the former jurisdiction of the English bishops over colonies was ceased and, leaving the question of bishops out, the revolutionary-egalitarian spirit was ready to continue its extension in Anglican-American Church. That spirit, much influenced by Puritanism and Congregationalism, would not accept any hierarchical form of government: neither in the Church nor in the State. For these groups (like for the 16th-century Puritans in England) the superiority of a bishop over a presbyter was contrary to the teaching of the Bible.

On the other hand, the calling to have their "own" American bishops for good (or biblical)[31] governance of the Church was raised amongst some members ("High Churchmen") of the same free "Anglican churches." Before the General Convention this group sent the former loyalist Samuel Seabury (1729–1796) to England, where he had to seek consecration from English bishops. When the bishops refused to do so (as Seabury was then an American priest who could not take the oath of allegiance to the British king), Seabury went to Scotland, where he was easily consecrated by local non-juror bishops in 1784 (he then became the bishop of Connecticut and the first Anglican-American bishop).

That step had further implications: two years later, seeing the possible danger of growth of the non-juror schism through Seabury, the British parliament passed the Consecration of Bishops Abroad Act, which allowed foreign priests to be consecrated as bishops.

As a result, the Archbishop of Canterbury, Archbishop of York and Bishop of Bath and Wells consecrated the next American, more "liberal" priests: the ex-chaplain of the Continental Army William White (1748–1836, for Pennsylvania) and Samuel Provoost (1742–1815, for New York). The Anglican Church in America therefore had three bishops who claimed Apostolic Succession, who could thenceforth ordain other priests in America. The Episcopal Church remained in communion with the see of Canterbury, holding an Anglican religious doctrine but

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[30] *Ibidem*; D. L. Holmes, *A Brief History of the Episcopal Church*, p. 48–53.

[31] High Churchmen did not argue for biblical justification of the episcopacy – in advocating this idea they used traditional Anglican (Hooker's and Whitgift's) arguments, declaring that episcopacy was indifferent to Christ; the first time they took up not only the Catholic solution but also Catholic arguments was during the beginnings of the Episcopal Church (in America) and in the 1830s (in England – these were the Tractarians). These High Churchmen were then called Anglo-Catholics. One of the first people to use Catholic arguments in America was Samuel Seabury (1729–1796).

being at the same time independent from the British Crown and having its own bishops to consecrate.[32]

The ideas of William White might be especially worth noting here, as they seemed to be representative for a significant part of the Episcopalian Church clergy accepting the "American revolutionary spirit." White was a follower of John Locke and declared the ascending theory of government: not only in the State, but in the Church too. As we have seen, this theory appeared in the Church of England in the times of reformation; its earlier proponents were John of Paris and Marsilius of Padua. According to this concept (in line with Hooker's idea) the power in the Church originated with the people's consent; in the American milieu it implied that the bishop had to be appointed by the people of the "state church" (diocese) – the diocese then (clergy and laity) elected and possibly deposed the bishop. This theory was quite adequate to the status of the Episcopalian Church, which was in fact formed by many local Anglican churches, which joined together and agreed, not without controversy, to have the episcopacy and its presiding bishop.

To see the influence of White it is sufficient to say that he was made the first Presiding Bishop of the Episcopal Church. The General Convention of 1789 was then the result of "voluntary associations" of these local "state churches".[33] The General Convention and the Constitution of the Episcopal Church much resembled the ideas of the American Constitution: the "state churches" (dioceses) were like states (administratively the same) and the meeting of the General Convention like Congress (the Convention even had two houses: the House of Bishops and House of Deputies); the Presiding Bishop had something of the US President, while bishops were sort of state governors; however the Presiding Bishop did not have jurisdiction over state bishops, and he was rather a chief of the House of Bishops; the final authority rested with the people gathered in the General Convention; local conventions did not much differ from state legislatures: their representatives were elected in parishes. The Lockean idea of the people's power was embodied not only in the American State, but also in the American Church. It seemed hardly possible to convince most post-revolutionary Americans to accept the different concept of the Church's government, which might have been abstractive for their reality. It will come as no surprise, then, that before their consecration both White and Seabury were elected to be "bishops" by local Anglican communities.[34]

However, there was also a contradiction in White's views: these were the ideas of Samuel Seabury, who was appalled by such small authority being given to the bishops. Seabury was supported by the Connecticut clergy; according to their views, it was Christ himself, not the congregation, who appointed the bishop, so

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[32] C. Podmore, *A Tale of Two Churches: The Ecclesiologies of the Episcopal Church and the Church of England Compared*, "International Journal for the Study of the Christian Church" 2008, Vol. 8, No. 2, p. 127; D. L. Holmes, *A Brief History of the Episcopal Church*, p. 48–53.

[33] Cf. C. Podmore, *A Tale of Two Churches...*, p. 126–129; J. B. Bernardin, *Introduction to the Episcopal Church*, p. 8.

[34] On this topic see: J. B. Bernardin, *Introduction to the Episcopal Church*, p. 18.

the people should not have the right to interfere with the bishop's ruling. Seabury wrote in a letter in 1785:

> The rights of the Christian Church arise not from nature or compact, but from the institution of Christ; and we ought not to alter them, but to receive and maintain them, as the holy Apostles left them. [...] If a man be called a Bishop who has not the Episcopal powers of government, he is called by a wrong name, even though he should have the power of Ordination and Confirmation. And if the government of the Church could be remodeled, why not its sacraments, creeds and doctrines too?" he wrote. "But then," he added, "it would not be Christ's Church, but our Church".[35]

The ideas of these two founders of the Episcopal Church differed so much that it was likely that White would not have gone to England to acquire his consecration if Seabury had not done so first. The Philadelphian agreement therefore did not mean that the American Church would have a uniform episcopacy: the views on the bishop's power were far from being homogeneous. In fact local churches were not mandated to have their own bishop, and some of them did not have any for many years. However, the Philadelphian agreement did mean that bishops could not be deposed by the people's consent, and that this may be formally done only by another bishop after the trial. The beginnings of the Episcopal Church were then marked by much controversy; the question of the role of the bishops was not the only one; however, this issue seemed to be important, as it was connected with other doctrinal themes.[36]

John Henry Hobart and John Henry Newman

The 19th century did not bring to the Episcopal Church any fewer controversies than the 18th had. Regarding the conditions in which the Episcopal Church emerged it might be surprising that the first half of the 19th century was strongly marked by the influence of High Church tradition and its "Catholic modification" – the Oxford Movement. No less surprising might be the fact that this tradition did not come to America from the Tractarians, but was only reinforced by their ideas in the 1830s and 1840s. One of the major figures who took up Seabury's "Catholic" legacy was John Henry Hobart, bishop of New York (1816–1830).[37]

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[35] Seabury to William Smith, 15 August 1785, quoted in: C. Podmore, *A Tale of Two Churches*..., p. 136. It is worth adding that "High Church" groups, stressing the authority of the bishops, were of course active in America. One of this group was led by John Wesley, who held "paternalistic view on society as a whole" and therefore supported the hierarchical organization of the Church's governance. Consequently, Wesley, treating the British king as a father of the commonwealth, criticized a revolt against him (cf.: A. Raymon, "*I Fear God and Honour the King": John Wesley and the American Revolution*, "Church History" 1976, Vol. 45, No. 3, p. 316–328 (esp. p. 316–318)).

[36] *Ibidem*, p. 134–138.

[37] High Church tradition in America might be traced back at least to Samuel Johnson of Connecticut (1696–1772), who opposed the Puritan ideas in Connecticut in spite of the Puritans' domination in this state. See: E. C. Chorley, *Men and Movements in the American Episcopal Church*, New York 1946, p. 136, quoted by:

Hobart taught that the Episcopal Church had its origins in Christ and the Apostles. Apostolic faith, order and worship were transmitted to it from the Church of England, of which members of the Episcopal Church should be proud. This inheritance did not include possession and "particular organization of government" but "faith, the order, and the worship which were the characteristics and the glory of the primitive ages of the Church".[38] For Hobart government probably meant the English establishment – an idea that American Episcopalians disliked.[39] Apostolic order and the doctrine of the Church were doubtlessly central ideas in his thinking: Hobart stressed that the English Church had Apostolic Succession because there remained one English archbishop validly consecrated during the Reformation – Matthew Parker, who preserved the Apostolic Descent.[40] The argument about Parker's consecration has been crucial for anyone willing to argue for the Apostolic character of the Church of England, and has been repeated since the 16th century. Hobart then reexamined Hooker's statement about the origins of Episcopacy and found in his writings some traces justifying the power of bishops on scriptural grounds: he found Hooker mentioning the biblical idea of three orders. That was an important statement, as Hooker, Father of Anglicanism, was thought to have stated that the bishops' power came from consent and tradition. Hobart appealed to John Whitgift (the Archbishop of Canterbury 1583–1604) too, and, showing his argument with the Puritans over the Church's government, he pointed out that the archbishop rightfully saw Episcopacy as an "institution apostolical and divine." Finally, Hobart wrote about the architect of the English Reformation, Thomas Cranmer, who, according to Hobart, held Protestant doctrines only privately and often changed his mind; Cranmer was thought to have published a catechism in which "he fully owns the divine institution of Bishops and Priests".[41] Hobart then tried to

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L. Crockett, *The Oxford Movement and the 19th-Century Episcopal Church: Anglo-Catholic Ecclesiology and the American Experience:* www.quodlibet.net/articles/crockett-oxford.shtml (19.04.2011).

[38] J. H. Hobart, *The Origin, the General Character and the Present Situation of the Protestant Episcopal Church in the United States of America*, New York 1814, published on the website: www.anglicanhistory. org/usa/jhhobart/moore_consecration1814.html (18.04.2011).

[39] An attitude towards establishment was one of the major differences between High Churchmen and the Tractarians. High Churchmen generally advocated the union of Church and State, while the Tractarians were more apt to see the advantages of disestablishment. American Episcopalians naturally supported the separation of the Church and State and criticized the English Church for the State's interference.

[40] During the Reformation fourteen of fifteen bishops were dismissed from their sees. The only one who remained was Anthony Kitchin, bishop of Llandaff. However in 1559 (the times of Elizabeth I) Kitchin refused to take part in Matthew Parker's consecration as Archbishop of Canterbury. Therefore Miles Coverdale and three other bishops who were previously exiled by Mary Tudor were called to consecrate Parker. Pope Leo XIII stated in *Apostolicae Curae* (1896) that Parker's succession was invalid because of changes made in the consecration rite under Edward VI. High Church Anglicans generally maintained (and maintain) that these changes, being only verbal corrections, were of not much importance, and therefore the consecration was valid.

[41] J. H. Hobart, *An Apology for Apostolic Order and its Advocates, Occasioned by the Strictures and Denunciations*, New York 1807, p. 131–138. Hobart then tried to show Cranmer as a Catholic; to comprehend the difficulty of this task it suffices to quote Professor MacCulloch writing on the conflicts at the time of Edward VI: "the point at issue... was not whether or not the Church of England should retain a Catholic character, but whether or not remnants of the Catholic past could be redirected to Protestant ends, in order to preserve order, decency and hierarchy" (quoted in: A. Nichols OP, *Anglican Uniatism: A Personal View*, "New Blackfriars" 2006, Vol. 87, is. 1010, p. 341).

show that Episcopacy was not indifferent to Christ (as Hooker and many Anglicans stated), but that it was in fact His commission. The divine origin of bishops' power was obviously Catholic, far from Protestantism.

Hobart's works and preaching caught the attention of the young John Henry Newman. Newman met Hobart when Hobart toured Europe in 1824. Some academics suspect that Hobart "may have influenced this young potential leader [Newman] far more than has hitherto been admitted".[42] However, Newman did not mention Hobart in his autobiography *Apologia Pro Vita Sua*, and Newman's purported essay "The Church Principles of Bishop Hobart" has not been located so far. In fact Newman stated that he was taught the doctrine of Apostolical Succession in 1823 and his tutor was Rev. William James, Fellow of Oriel.[43] The similarity of the ideas of Hobart and Newman should not then necessarily imply such influence; however, the similarity between some American Episcopalians and Tractarians is worth nothing. It is more likely to state that Hobart and his ideas intensified Newman's interest in the American Church in the 1830s.

Nonetheless, Newman greatly appreciated Hobart's ideas about the "supernatural state of the Christian Church" and Apostolic ministry of the priests[44]; he was eager to find these ideas in the writings of American Episcopalians.

The Oxford Movement and Apostolical Succession In America

The Tractarians, just like Hobart, liked to indicate the influential divines of the English Church, who pointed to the doctrine of Apostolical Succession. Keble was a sort of a professional in this: he tried to reconcile divines like Hooker with Tractarian ecclesiology. Keble then stated that

> the first to avow of the church doctrine of the apostolical succession, after the sort of abeyance in which it had been held (however distinctly implied in the Prayer Book) since the beginnings of our intercourse with foreign reformers

was Adrian Saravia, a friend of Richard Hooker.[45] Keble found that Saravia, generally stating God's indifference to the Church government, made an exception to England, in which the power of bishops was to be divine, like the power of the king.[46] Keble then thought that as Saravia was an intimate adviser and confessor

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[42] R. Albright, *A History of the Protestant Episcopal Church,* New York 1964, p. 230, quoted in: L. Crockett, *The Oxford Movement and the 19th-Century Episcopal Church: Anglo-Catholic Ecclesiology and the American Experience.*

[43] J. H. Newman, *Apologia Pro Vita Sua*, London and New York 1888, p. 10.

[44] J. H. Newman, *The Anglo-American Church*, [in:] *Essays Critical and Historical,* Vol. 1, London 1881, p. 340.

[45] J. Keble, *Preface to Selections from the fifth book of Hooker's Ecclesiastical Polity*, Oxford 1839, p. xi.

[46] Keble quoted Saravia: "To no nation did God ever appoint any certain and perpetual form of government, which it should be unlawful to alter according to place and times. But of this government whereof we are

of Hooker, "we may with reason use the recorded opinions of the one for inter-preting what might seem otherwise ambiguous in the other".[47] Having Hooker on the "Apostolic" side would certainly prove the Tractarians or Hobart held the right doctrine.

However the Tractarians, unlike Hooker, linked the doctrine of the Apostolic Succession with the descending theory of government. Newman, like Seabury and the Connecticut clergy, was especially appalled by the concept that the minister in the Church depended on the people. He had seen this example before amongst English Puritans, whose position had neither state support nor apostolical justification – Newman called their position "miserable." "Can a greater evil befall Christians, than for their teachers to be guided by them, instead of guiding?" he asked.[48] Apostolical succession implied the commission of the minister from above, not from the people. Not surprisingly then, Newman criticized the ideas of William White, who declared the commission to come from the people. In fact, he saw White's conception as great danger to the "American-English Church" and appreciated Seabury's conviction about authority and his statements that bishops as successors of the Apostles are the only authorized ministers of Christ.[49] For Newman bishops, who receive their commission through ordination by laying on of hands,[50] were the ones on whom the "American-English Church" should depend.

Newman was then delighted seeing "that truth in her": that Seabury – "the first who was consecrated diocesan bishop" – held the doctrine of Apostolical Succession and opposed Dissenters' theories of government and Church doctrines.[51] Holding this "Apostolic" doctrine by the first American bishop implied that the Episcopal Church was Apostolic in its nature, just like the English Church. Nonetheless, Newman realized that certain American conditions did not support the "Apostolic" character of the Church there, and that its nature was corrupted by dissenting theories. According to Newman, this corruption was made by application to the Church of the theories of the American state and assuming that the Church is a sort of guest on American soil and should therefore accept local ideas or conditions. "The Church is in a country, not of it, and takes her seat in a center"[52] – wrote

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discoursing the case is different; for since it came immediately from God, men cannot alter it at their own free will. Nor is there any occasion to do so. For God's wisdom hath so tempered the polity, that it opposes itself to no form of civil government. Bishops I consider to be necessary to the Church, and that discipline and government of the Church to be the best, and divine, which religious Bishops and Presbyters truly so called, administer by the rule of God's Word and ancient councils" (*The Works of that Learned and Judicious Divine, Mr. Richard Hooker*, ed. J. Keble, Vol. 1, New York–Philadelphia, *Preface*, p. xxxiv).

[47] *Ibidem*.

[48] J. H. Newman, *Thoughts on Ministerial Commission*, [in:] *Tracts for the Times*, *Tract I*, p. 2.

[49] J. H. Newman, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 338.

[50] Idem, *Thoughts on Ministerial Commission*, [in:] *Tracts for the Times, Tract I*, p. 3. Newman stressed that Apostolic Succession is transmitted by the imposition of hands and that "the grace of ordination... is contained not in any form of words". This idea justified, at least in 1830s, the succession of Bishop Parker in the sixteenth century, who received his commission with altered Roman rites.

[51] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 337–338.

[52] *Ibidem*, p. 355.

Newman. The ascending theory of government applied in the American state should not then constitute the Church, because the life of the Church is not the same as the life of the state.[53] "Is a bishop a mere generalization of a diocese, or its foundation? [...] Does a bishop depend on his diocese or his diocese on him?"[54] Newman asked rhetorically. The answer was obvious: a bishop ("living Apostle of Christ"[55]) should arrange his diocese, not vice versa. According to Newman it was a shame for the American Church that half of its members did not live by these Apostolic principles. Remarkably, Newman (still as an Anglican) often mentioned that this principle and practice existed in the Roman Church, which he showed as a good example to follow for the American Church[56].

For Newman the authority of bishops was far more important than the establishment; however, it seemed that disestablishment – in the case of the American Church – started to serve the authority of bishops. Newman did not criticize the American Church for separation from the State, but he saw American disestablishment as a great chance for full application of the Apostle's principles, without troublesome state interference. American separation proved what Newman longed for: that the nature of the Church is different than the State's. For Newman the fact of the development of the American Church was clear confirmation that the Church could grow without the State's support and that it had its own life.[57] Newman wished the American Church could be more Catholic than the English one, as it was able to implement Catholic principles more freely.[58]

These remarks might be significant because Newman at first declared the need for the State's support for the Church: he thought that the Church could not work properly without having "temporal honors" secured by the State.[59] It is likely that the experience of the American Church, the "daughter" of the English Church,

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[53] It seemed that the problem of differentiating of principles in different "bodies" was urgent both in England in America: Newman wrote that: "The life of a plant is not the same as the life of an animated being, and the life of a body is not the same as the life of the intellect; nor is the life of the intellect the same in kind as the life of grace; nor is the life of the Church the same as the life of the State" (Idem, *Certain Difficulties felt by Anglicans in Catholic Teaching Considered*, London 1888, p. 44) and referred it to the situation when the Church lacks supernatural life and is filled with political state-like ideas. Such a situation happened in England, where the established Church lived by the state's principles, and could as well happen in America; despite the fact that the Church was not established there, the lack of Apostolic ideas and "democratic spirit" could cause the life of the Church to be similar to the state's.

[54] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 355.

[55] *Ibidem*.

[56] The passage about the Roman Church in America clearly shows Newman's idea that the Church should not accommodate local political ideas: "meanwhile the Roman Catholics have located their bishops, and though their succession in the country is later than ours, they have thus given themselves the appearance of being the settlers , not strangers on a visit" (p. 355). On another occasion, Keble gave the same example of Roman Catholics holding the right doctrine of Church not based on the State's authority: "What answer can we make henceforth to the partisans of the Bishop of Rome, when they taunt us with being a mere Parliamentarian Church?" (J. Keble, *National Apostasy*, p. iv).

[57] Idem, *Note on Essay VIII*, [in:] *Essays Critical...*, p. 380.

[58] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 374.

[59] Idem, *Thoughts on Ministerial Commission*, [in:] *Tracts for the Times, Tract I*, p. 1.

helped Newman to rethink his approach to the establishment, finally considering disestablishment appropriate.[60]

Nonetheless, Newman stressed that, in spite of disestablishment, the American Church was not free from civil power because that might have had another form in America: democracy and the laity ruling the Church.[61] The true Church, consisting of the laity and clergy, should be ruled by the clergy. As E. A. Knox states:

> The essence of the Oxford Movement was an attempt to assert the existence of a corporate body, wholly clerical, possessing a divine right to prescribe for the Nation its faith and worship.[62]

For Newman the American Church was then a great hope for a free, Apostolic Church but the essence of that Church was at the same in danger of "democratization."

Towards Rome

The Tractarians' and American Churchmen's ideas about the Apostolic nature of the Church increased their interest in the Church of Rome. Old Protestant prejudice, holding that the Church of Rome and its doctrines were totally corrupted, was then questioned. In fact, some followers of the Oxford Movement and American Churchmen, examining the continuity of the Apostles' teaching preserved in the Tradition of the Ancient Church, had to state that the Church of Rome is closer to the Catholic ideal than Protestant Churches.[63] This meant not only that the Church of Rome had Apostolical Succession and that it did not allow Erastian principles in its government, but the Church of Rome also held valuable other Catholic doctrines.

On the other hand, many Tractarians held that doctrines of the Roman Church only resembled "doctrines or customs of the Primitive Church", but were "really of a different character".[64] Therefore the Anglican Newman, seeing Catholic doctrines

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[60] Certainly the other (perhaps even the first) factor that convinced Newman about disestablishment was constant English state interference in administrative and financial policies by which the Church was losing its authority.

[61] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 356–357.

[62] M. D. Chapman, *The Politics of Episcopacy*, "Anglican and Episcopal History" 2000, Vol. 69, is. 4, p. 475.

[63] Perhaps the first Tractarian to state this kind of idea at the very start of the Oxford Movement was Richard Hurrell Froude – see: R. H. Froude, *Remains of the late Reverend Richard Hurrell Froude*, ed. J. H. Newman, J. Keble, J. B. Mozley, Vol. 1, London 1838, p. 336; R. W. Church, *The Oxford Movement; Twelve Years, 1833–1845*, Chicago 1892, p. 50–51, 119. Froude was so keen on the pre-Reformation Catholic Church that one of his contemporaries wrote about him: "With his affection for the theocratic mediaeval Church Froude could be called the founder of Anglican Ultramontanism, a harbinger of the Anglo-Papalism" (A. Nichols OP, *Anglican Uniatism: A Personal View*, "New Blackfriars" 2006, Vol. 87, is. 1010, p. 344).

[64] J. H. Newman, *Archbishop Ussher on Prayers for the Dead (No. II, Against Romanism)*, [in:] *Tracts for the Times*, Vol. 3, London 1836, *Tract LXXII*, p. 1.

in the American Church in the 1830s, thought of them as doctrines of the Primitive Church, not of the Roman Church.

For example Newman, reading Seabury, rejoiced that Seabury had restored the consecration prayer in the liturgy – a prayer that had been removed from the English Church in the 16th century by Protestant reformers during Edward VI's reign.[65] That doctrine apparently did not differ from that used in the Roman Church. However, when Newman wrote about Seabury's idea that the Eucharist was "a true and proper sacrifice" that commemorates the original sacrifice of Christ, and that during the Eucharist, bread and wine are transformed into Christ's body and blood not "only truly and spiritually", but were "made to be, what by nature they were not",[66] he did not think it was the same as the Roman idea of transubstantiation; the Eucharist was supposed to be the doctrine of the Primitive Church, from which the Church of Rome departed by developing its own idea of transubstantiation and other ideas.[67] Seabury then rightly recognized, as Newman reported, that Christ's Last Supper was the ultimate authority of the priesthood and that the "Eucharist is... a true and proper sacrifice, commemorative of the original sacrifice and death of Christ"[68]. Again here, the latter idea was not to be the same as "Romish".[69] Another example: Newman found that Seabury favored prayers for the dead or, more precisely, "prayers for the faithful departed from this life." Newman himself wrote a tract on this practice, and found these prayers justified because he saw that idea emerging from the writings of the Church Fathers. He found similar arguments in Seabury's writing, which stated

It was the belief of primitive Christians, as well as of the old Jews, that at the departure of the soul from the body it went to a secret, invisible place ... on this ground stood ... the prayers for the faithful departed out of this life.[70]

Newman, at the end of the 1830s, stressed this idea differed from the Roman concept of Purgatory.[71] It might be said that the more Newman was trying to defend himself from Anglican accusations that the Oxford Movement held Roman doctrines, the more he drifted towards Rome. In 1841 he wrote Tract XC, in

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[65] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 339.

[66] *Ibidem*.

[67] "Thus because the early Fathers spoke of the Holy Communion in such reverent and glowing terms, as became those who understood its real nature and virtue, they [Roman Catholics] have tried to make it appear that they believed in their own theory of Transubstantiation". Idem, *Archbishop Ussher on Prayers for the Dead (No. II, Against Romanism)*, [in:] *Tracts for the Times*, *Tract LXXII*, p. 1.

[68] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 339.

[69] "Whereas they [Roman Catholics] spoke of it as a *commemorative* sacrifice, they have thence taken occasion to make it a *real* and *proper* sacrifice". Idem, *Archbishop Ussher on Prayers for the Dead (No. II, Against Romanism)*, *Tracts for the Times*, Vol. 3, *Tract LXXII*, p. 1.

[70] Idem, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 339.

[71] One of Newman's objections to Purgatory was that: "none have the privilege of being in Purgatory but such as have died in the communion of the Roman Church". Idem, *On the Controversy with the Romanists (Against Romanism. No. 1), Tracts for the Times*, Vol. 3, Tract LXXI, p. 31.

which he launched a critique of the Protestant idea of private judgment in matters of faith and stated that the Elizabethan XXXIX Articles of Anglican Faith implied the authority of Church and of the Ecumenical Councils.[72] The most controversial idea was that of "Romish doctrines", of which the XXXIX Articles spoken of were the doctrines of some "Roman schools" before the Council of Trent. The XXXIX Articles, announced in the same year as the canons of the Council (1563) but in fact completed mostly in 1552, condemned then not the teaching of the Council of Trent, but ante-Tridentine teaching of some "Roman schools." This entailed there being a necessary contradiction between the canons of the Tridentine Council and the Anglican Confession. Post-Tridentine prayers for the dead, pardons, images, relics and invocation of saints as well as other doctrines might have been reconcilable with the Anglican Articles of Faith.[73] In other words, the Anglican "via media" between Catholicism and Protestantism started to be repudiated. Seeing the possibility of justification of so many Roman doctrines was something High Churchmen did not use to do; it was rather surprising even for this group. After publishing this tract, Pusey wrote to Keble: "I feel the storm will lie heavy on us".[74]

Newman, studying the Christian Antiquity, indeed discovered ideas that he had not expected. He found that Vincent of Lérins' principle of Catholicity needed to be reconsidered as it was impossible to state that all Catholic doctrines were "held at all times, in all places, and by all believers": because there was a difference between Catholic ante-Nicene theology and the Catholic Creed of Nicaea (in the concept of the Trinity), there must have been some sort of doctrinal development and its rules. That implied that so called "errors of Rome" – "unbiblical", traditional ideas attacked by Protestants – might have been just the development of ideas found in the Scriptures. After further examination of the development of the Church's authority, Newman found that the true Christian doctrine was to be found in "extreme party": the Church of Rome was the proper Catholic Church[75]. The Anglican Church, which separated from the Catholic, was then in a schism.

In September 1845 William George Ward, author of "Ideal of a Christian Church", joined the Church of Rome; Newman did the same on October 9, 1845. He was followed by a group of Tractarians (directly and indirectly) later.[76]

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[72] Idem, *Tract XC. On Certain Passages in the XXXIX Articles with a Historical Preface by the rev. E. B. Pusey*, London 1866, p. v.–vi.

[73] *Ibidem*, p. xxvii.-xxviii, 22–43.

[74] H. P. Liddon, *Life of E.B. Pusey*, Vol. 2, London 1893, p. 174.

[75] See: U. M. Lang, *Newman and the Fathers of the Church*, "New Blackfriars" 2011, Vol. 92, is. 1038, p. 151–155.

[76] This group included for example: the theologian Frederick William Faber (1845), the historian Thomas William Allies (1850), future Cardinal Henry Edward Manning (1850), a poet who became a Jesuit named Gerard Manley Hopkins (1866), the son of the Archbishop of Canterbury Robert Hugh Benson (1903), the son of the Bishop of Manchester Ronald Knox (1918).

Some further influences of the Oxford Movement in America

Generally the ideas of the Oxford Movement developed in America quite independently, coming, just as in England, from the High Church Tradition. Bishop Hobart, who might be called an American Tractarian or even pre-Tractarian, started to apply "Apostolical" principles at least twenty years before Keble preached his "National Apostasy." Hobart was co-founder of the first General Theological Seminary in America (New York 1817): its teaching emphasized the doctrines of Apostolical Succession, the role of priesthood, the sacraments, the visible Church (another co-founder of that Seminary was Theodore Dehon, bishop of South Carolina, of whom Newman wrote with great awe too – he especially appreciated his commitment to the Eucharist and priest ministry[77]). It is impossible to exaggerate Hobart's influence on the development of the Episcopal Church: he founded a mission society and Prayer Book society and managed to expand the number of clergy and laity in the Episcopal Church in New York fourfold. His activities and ideas led to his followers being called "Hobartian Churchmen".[78]

Hobart's student and successor, Benjamin Onderdonk, was known for his support of the Oxford Movement's ideas. He was engaged in a controversy in which a candidate for a priest, Arthur Carey, was suspected of supporting Roman Catholicism. Onderdonk was asked to conduct an inquiry after which he said that Carey was suitable for ordination. Opposition against Onderdonk and Carey grew in the Episcopal Church, and Onderdonk was condemned by a resolution from the diocese of Ohio. Nonetheless, Carey was ordained and Onderdonk continued his service as Bishop of New York till 1861, when he was accused of immoral behavior and suspended from his functions.[79] Onderdonk's successor was Horatio Potter, who tried to revive monastic life in the Episcopal Church. Potter founded the Sisterhood of St Mary – the first Anglican convent in America. He might have taken an example from Pusey, who, since 1845, had been creating Anglican convents in England (it was the first time since the 1500s that formal convents reappeared) and is known as the restorer of Anglican monastic life.

New York was a diocese where the influence of Hobart and the Oxford Movement was relatively strong. It was not the same in other dioceses: as we saw, some bishops accused others of betraying the Anglican (or Protestant) roots of the Episcopal Church. However, in the second half of the 19th century the presence of the "Hobartian Church" and the Oxford Movement in the United States was so strong that there appeared a decisive Protestant reaction to it. In 1873 a section of the Anglican clergy led by the Bishop of Kentucky George Cummins decided to le-

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[77] J. H. Newman, *The Anglo-American Church*, [in:] *Essays Critical...*, p. 340–342.

[78] D. L. Holmes, *A Brief History of the Episcopal Church*, p. 62.

[79] *The Ordination of Mr. Arthur Casey*, www.anglicanhistory.org/usa/carey/newenglander.html (29.04.2011). On the trial see: www.anglicanhistory.org/usa/wmeade/statement_reply1845.html (29.04.2011). It is possible that the accusations were intended to suspend Onderdonk as he was thought to be supporting Roman Catholicism or at least Oxford Movement Catholic theology.

ave the Episcopal Church and to establish the Reformed Episcopal Church, which would preserve the Protestant character of Christianity.

The influence of "Apostolic" tradition did not last so vividly in the 20th century: especially the second half of it saw a significant liberalization of the Episcopal Church and abandonment of the traditional doctrines. A similar thing happened in the Anglican Church in Great Britain. Anyway, America had her converts too. In the 19th century there was no such famous admission to the Catholic Church, as in the case of Newman; however, there was the somewhat controversial conversion of the Bishop of North Carolina. Levi Sillman Ives, after his trip to Rome, decided to join the Roman Catholic Church (in 1852). Sillman Ives was married to Rebecca, the daughter of John Henry Hobart, who entered the Catholic Church with her husband. The ex-bishop then became a layman and worked as a professor. In 1854 he published *The Trials of the Mind in its Progress to Roman Catholicism*.[80]

A Catholic revival in America came in the second half of the 20th century; it was marked by numerous conversions of American intellectuals, officials and ecclesiastics from various Church denominations. One of them was Richard John Neuhaus.

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[80] L. Sillman Ives, www.newadvent.org/cathen/08256c.htm (29.04.2011).

Rafał Marek

SOME REMARKS ON THE VIEWS OF THE ORTHODOX CHURCH IN THE UNITED STATES ON AN APPROPRIATE MODEL OF CHURCH–STATE RELATIONS

Orthodoxy believes that Jesus Christ is the true ruler of everyone and everything, King of Kings and Lord of Lords.[1] The Kingdom of Christ – the Orthodox Church – is not considered as a substitute or successor to secular power.[2] The main aspect of Christian relations with the state is strict separation between the Kingdom of God and the kingdom of the temporary world.[3]

The Church[4] is not any kind of self-government or culture-preserving organization, but describes itself as one Orthodox and Catholic Church in all the regions

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[1] 1 Tim. 6.15.

[2] John, 18.36, compare with 1 Tim. 2.2.

[3] Acceptable opposition: Acts 4.19; 5.29; strict separation: Ap. 17.5.

[4] General overview, historical outline, definitions, distinctions and current data: F. von Lilienfeld s.v. Orthodox Kirchen, *Teologische Realenzyklopaedie* (TRE), Vol. 25, 423–464; A. Kallis s.v. Panorthodoxe Konferenzen TRE 25, p. 615–624; H. Butterfield s.v. Christianity in History, V. *The Orthodox Church*, [in:] *Dictionary of the History of Ideas*, Vol. 1, p. 409–411; T. FitzGerald s.v. *Eastern Christianity in Encyclopedia of Religion*, ed. L. Jones, Thomson-Gale 2005, Vol. 4; *The Encyclopedia of Eastern Orthodox Christianity*, Vol. 1–2, Routledge 2011. For the development of the Orthodox Church in the United States, see T. FitzGerald, *The Orthodox Church*, Westport Conn. 1995; J. A. McGuckin, *The Orthodox Church: An Introduction to its History, Doctrine and Spiritual Culture*, Blackwell 2008; Orthodoxy in the United States: p. 80 ff. *The Orthodox Churches in a Pluralistic World*, ed. E. Clapsis, Brookline Mass. 2004; T. Hopko, *The Orthodox Faith: an Elementary Handbook on the Orthodox Church*, 4 Vols., Orthodox Church in America 1972, p. 8; Bp. Anthimos, *Reply of the Orthodox Church to Roman Catholic Overtures on Reunion*, rev. ed. St. Nectarios 1986; V. Lossky, *The Mystical Theology of the Eastern Church*, St. Vladimir's Seminary Press 1976; J. Meyendorff, *The Orthodox Church, Its Past and Its Role in the World Today*, St. Vladimir's Seminary Press 1981; K. Ware, *The Orthodox Way*, St. Vladimir's Seminary Press 1979; C. J. Tarasar (gen. ed.), *Orthodox America: The Orthodox Church in America Syosett*, New York 1975. For an outline of the development of church-state relations see also the articles: Caesaropapismus, Heersherkult, Byzanz, Gallikanismus, ius circa sacra, Liberalismus, Eigenkirche, Kirche und Staat, Plazet für kirchliche Gesetze und Erlasse, Russland, Staat, [in:] *Die Religion in Geschichte und Gegenwart*, ed. H. v. Campenhausen, E. Dinkler, G. Gloege, K. E. Logstrup, K. Galling, Tübingen 1959.

of the *oikumene*.[5] The Orthodox Church perceives itself as a supernatural institution, revealed by God to the world through Jesus Christ for the salvation of all people and of the world itself. However, various social initiatives are encouraged and play an important role, also in preserving national and local customs and culture. Yet the Orthodox Church in the USA does not consider itself as an association of people with a particular religious feeling[6] or sentiments of Eastern Christianity, nor as a self-government of any diaspora in the United States or a subsidiary of any state with a duty to care for the religious needs of its citizens.

The continuous multiplicity of local churches was present even at the beginnings of Christianity. The apostles founded churches in which they instituted a hierarchy to continue their mission. These pastors were invested with the authority to regulate the affairs of their churches in accordance with local needs. It must be stated that the existence of autonomous or autocephalous churches administered independently applies only to the external sphere. The inner communion is expressed in a common confession of faith by the entire body of the Church, participation in the same sacraments, and submission to the same canons and ecclesiastical decrees.

The Orthodox Church considers the teaching of St. Cyprian, that "Christ established one Church, even though it is divided throughout the entire world into many parts. It is the same with the unity of the bishops, who, although many, constitute a unity due to the identity of their conviction",[7] as always current and acting to describe it.

Local Orthodox Churches are obliged to keep the legislation adopted by the entire Church intact, as well as customs and traditions emanating from the apostolic era. That duty refers not only to dogmas of faith and morality, but also to issues of ecclesiastical discipline, order and worship.[8]

The boundaries of the patriarchates are exclusively geographical. They are not ethnophyletic, cultural or liturgical, and were defined by Ecumenical Councils through canons and ecclesiastical regulations. One of the first Orthodox parishes in the continental United States, organized in New Orleans, was multinational in character.[9]

Canons 17 of the 4th and 38 of the 5th and 6th Ecumenical Council ordered correspondence between an ecclesiastical jurisdiction and the political division of the region for the sake of efficient administration: "Let the order of things eccle-

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[5] Comp. Gal. 3, 28.

[6] However, some conflicts have occurred between laity seeing themselves as independent parishioners and priests: J. H. Erickson, *Orthodox Christians in America*, p. 106–107.

[7] Ep. 52 ad Antonium; Ep. 65 *ad Rogatianum;* Similarly: Irenaeus of Lyons, Contra Haereses, 5.20.1.

[8] Apostolic Canon 64; canons 12 and 13 of the First Ecumenical Synod; canon 56 of the Quinisext Ecumenical Synod.

[9] J. H. Erickson, *Orthodox Christians in America*, Oxford 1999, p. 53. Development of multiethnic parishes: p. 106 ff; Standing Conference of Canonical Orthodox Bishops in the Americas and further development: p. 113 ff; new waves of immigration after the 1965 Immigration Act and fall of the Soviet Union: p. 121 ff; new converts to Orthodoxy – people dissatisfied with modernism and other trends in Christian denominations, some similarities with Catholic "Traditionalists" or "Integrists": p. 122–123.

siastical follow the civil and public models". North America and other lands that are outside the boundaries of the local Churches as defined by the canons and decisions of the Ecumenical Councils and by the Patriarchal and Synodical Tomes are included in the "other" "barbarian" lands, according to the general terminology of the 4th Ecumenical Council and other synods. This has no ethnic or cultural affiliation and is geographical matter.[10]

Certainly, in accordance with dogmas, canons and Church teaching, Orthodox clergy had different opinions and proposals concerning the optimal model of relations between secular and ecclesiastical power. A good example is the avid supporter of the power of the tsar Joseph Volotsky (of Volotsk, of Volkolamsk, 1439(40?)–1515), who restated the formula of Agapetus[11] considering the emperor as a man, but with power from God, and therefore God's deputy on Earth. However, Joseph based the autocrator's legitimacy to power only when he adheres to Church dogmas, practice and moral teaching,[12] therefore limitation of government's arbitrariness has a tradition in Orthodox reflection on the state.

Patristic writers, such as Meliton of Sardes, Hippolytus of Rome, and Origenes, stressed the coincidence of Augustus' unification of the Mediterranean and the birth of Christ[13] as a sign of God's providence. Eusebius of Caesarea also considered this coincidence as God's providential act.[14] A parallel was seen as Jesus Christ defeated polytheism and Augustus defeated multi-centrism and the chaos of civil war (although it must be explained that no Roman emperor was ever considered a secular semi-savior or saint on earth by Orthodox theology). Imperial peace and ease of communication fostered the spreading of Apostolic teaching.[15] Similarly the United States, although never an Orthodox country, provided the opportunity for free and peaceful development of the Orthodox Church.

The legislative power of the state since antiquity has been considered as beneficial and given by God.[16] Humans needs state and secular authority to protect them from the visible results of sin, lessen evil and endorse moral good.[17]

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[10] www.ec-patr.org/docdisplay.php?lang=en&id=287&tla=en (10.06.2011); see also: L. J. Patsavos, *Unity and Autocephaly: mutually exclusive?*, www.goarch.org/ourfaith/ourfaith8131 (retrieved 11.05.2011).

[11] Biographical note: J. Albany Christie (1867), *Agapetus* (3), [in:] W. Smith, *Dictionary of Greek and Roman Biography and Mythology*, Vol. 1, Boston 1867, p. 69; writings: *Patrologia Graecae*, LXXXVI, 1153–1186; Konstantinos D. S. Paidas, *He thematike ton byzantinon "katoptron hegemonos" tes proimes kai meses byzantines periodou (398–1085). Symbole sten politike theoria ton Byzantinon*, Athenai 2005, *passim*.

[12] See: D. M. Goldfrank, *Old and New Perspectives on Iosif Volotsky's Monastic Rules*, "Slavic Review" 1975, Vol. 34, No. 2, p. 279–301.

[13] Eusebius, *Hist. eccl.* IV 26. 7; Hip., *In Dan*. IV 1; Orig. Contr. Cels. II 30.

[14] Eusebius, *De laudibus Const*. 16.

[15] A similar view of the Roman Empire to that established by God's will: Gregory Nazianz, *Oratio* 4. 37.

[16] Theodoret, in 2 Thessal. 2. 6; Theoph. Bulg. in 2 Thessal. 2. 6–8.

[17] Biblical examples: 1 Kings 12. 13–15; Romans 13. 4–5; 1 Peter 2. 14–15; King David considered as a type of ideal monarch; however, Pagan rulers also have respect and dignity: Is. 45.1; see V. Tsypin, s.v., *Gossudarstvo*, [in:] *Pravoslavnaya Enciklopedya* (in Russian), Vol. 12, p. 202–211.

The Church, while preserving autonomous law and keeping within church life proper[18], can exist in the framework of diverse legal systems. The canon law principle of "economy" (Oikonomia, the relaxation of a particular rule for a greater good[19]) allows wide room for adjustment. The practice of Oikonomia has similar biblical roots to the Latin dispensation – proper, reasonable governance, rational management, helping to avoid positivistic statolatry and mechanical "rule of law".

Bishop John (Kallos) of Amorion[20] explicitly criticized the practice of various Christian communities in America, as they changed into "social service agencies" and "closed mutual admiration societies" for so-called conscious and aware Christian elites. According to Bishop John these communities hold that the future and restoration of America lies in secular, purely social and economic issues. However the future of America lies not in ideologies and secularism but in the conversion of every citizen and allowing Jesus Christ to enter into one's life. Here the universal and unchanging mission of the Orthodox Church is declared: to deliver truth and salvation in Christ; secular activities are just supportive and subsidiary elements of Church life.

Orthodoxy does not accept the supremacy of civil authority over the Church either by Protestant-type unified ruler and *Landesbishof* function, or by the Anglican system established by the Act of Supremacy.[21]

However, it is also fundamentally different from the congregationalism of the Reformed Churches and Anabaptists.

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[18] L. J. Patsavos, *The Canonical Tradition of the Orthodox Church*, www.goarch.org/ourfaith/ourfaith7071 (retr. 13.05.2011).

[19] H. Erickson, *Oikonomia in Byzantine Canon Law*, [in:] *Law, Church and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington, R. Somerville, Philadelphia 1977, p. 225–236.

[20] www.orthodoxresearchinstitute.org/articles/misc/john_thermon_usa.htm; a critique of secularism as rejection of ecclesiastic ethos and admiration of worldly spirit, secularism – distortion by the spirit of flesh and the passions and injustice as a constant problem in Christian life, especially when there is no persecution; secularism in theology and pastoral care, the differentiation between the good creation of God (contrary to Gnostic fallen demiurge and his evil creation) and the "world" meaning sin, passions, spirit of flesh deprived of the Holy Spirit's life and energy, Palamas teaching about the world not to be adored but also not to be hated, liberation from a "world" understood as love of material objects and passions means becoming akin to Jesus Christ (Theoleptos of Philadelphia); the Orthodox Church as true healer of spiritual sickness of each and every man; the secularized Church defined as a religious organization professing deism and only satisfying religious feelings of men simultaneously neglecting the neptic and therapeutic potential of the Church, the Church is not a preacher of an ideological system or abstract ideas and arguments, the Orthodox Church cannot be contrasted and compared with ideologies and socio-political systems, the Church is neither an emulator nor an imitator of secular society; Church pastoral care consists of purifying the heart and illumining one's mind (*nous*), not providing beautiful rituals to observe, psychological counseling and relaxation techniques: Metropolitan Hierotheos of Nafpaktos, Secularism in Church, Theology and Pastoral Care, www.pelagia.org/htm/ar01.en.secularism_in_church.htm#s1 (retrieved 10.07.2011).

[21] Opposition to secular power was demonstrated in the 19th century, as larger numbers of Orthodox Christians arrived in the USA from the mid-1860s, with waves of immigration from Europe and Mediterranean, and local public policies of patronizing the Protestant religion, despite constitutional clauses, started causing difficulties. In the early 19th century local officials began to routinely deny, among others, Orthodox Churches of their canonical freedoms (J. Witte, s.v., *Politics*, [in:] *The Encyclopaedia of Protestantism*, Vol. 3, p. 1517). There is a possibility that it was similar with anti-Catholicism. Although Orthodoxy has no office similar to the Roman See, there is a strong hierarchical order without allegiance to any nation or state.

The same is true of Gallicanism, Febronianism or other systems that accept the omnipotent absolute state (not necessarily monarchy).[22]

The concept of Caesaropapism is not of Orthodox or Byzantine origin. This widespread and misleading term was invented by 19th-century scholars to create a simple instrument to describe how the Byzantine emperor allegedly acted as both "caesar" (i.e., emperor, autocrator) and pope.[23] The term implies that, in effect, the Orthodox Church was subjected to the control of the state, and that emperors could decide on matters of church doctrine. Orthodox opinion is that emperors who defied the church at large[24] faced opposition from both laity and clergy. If used at all, the term Caesaropapism should be carefully defined and applied, depending on the particular ruler and on the particular sphere of church-state relations.

Liturgical norms order every celebrant to commemorate the bishop of the local church during Divine Liturgy at prescribed places. When the bishop himself is serving, he commemorates the primate of the eparchy, the metropolitan, while the metropolitan commemorates the primate of the Diocese, the patriarch. After the consecration of the Divine Gifts, similar commemorations are made as a sign of ecclesiastical communion of faith and hierarchical order. Therefore there is no commemoration of the secular ruler as a Church supervisor ("Caesar-pope") with whom communion is kept.[25] Only in the Litany of Peace and the Litany of Fervent Supplication does the Church pray for sovereigns and for the authorities in general. They are the continuation of ancient prayers for rulers, soldiers etc., which are well preserved in patristic testimonies: "super illam propitiationis hostiam obsecramus Deum pro communi ecclesiarum pace, pro recta mundi compostione, pro impera-

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[22] Historical overviews on the development of church-state relations: ed. N. H. Baynes, H. S. L. B. Moss, *Byzantium. An Introduction to East Roman Civilization*, Oxford 1961, esp. H. Gregoire on the Byzantine Church, p. 86–136; K. Guggenberger, *Geschichte des Staatskirchentums*, 1926; E. Sehling, *Geschichte der protestantische Kirchenverfassung*, Berlin 1930; E. Caspar, *Papstum unter byzantinischer Heerschaft*, Tübingen 1933; K. Voigt, *Staat und Kirche von Konstantin den Grossen bis zum Ende der Karolingerzeit*, Stuttgart 1936; H. Lietzmann, *Das Problem Staat und Kirche im westromischen Reich*, Berlin 1940; A. Michael, *Die Kaisermacht in der Ostkirche*, Darmstadt 1959; n. Addamiano, *Chiesa e stato. Dalle origini del cristianesimo ai patti lateranensi*, Roma 1969; A. W. Ziegler, *Religion, Kirche und Staat in Geschichte und Gegenwart*, München 1969; B. D. Hill, *Church and State in the Middle Ages*, New York, 1970; *Outlines of Byzantine Law: L. Siciliano Villanueva, Diritto Byzantino*, Milano 1908; M. Frehero, *Iuris graeco-romani tam canonici quam civilis*, Vol. 1–2, Francofurti, 1596; Z. von Lingenthal, *Historiae iuris graeco-romani delineation*, Heidelberg 1839.

[23] The essential essay on the subject of Caesaropapism and the reality of the Byzantine epoch: D. J. Geanakoplos, *Church and State in the Byzantine Empire: A Reconsideration of the Problem of Caesaropapism*, [in:] *Byzantine East and Latin West: Two Worlds of Christendom in Middle Ages and Renaissance. Studies in Ecclesiastical and Cultural History*, New York 1966, p. 55–83; Lack of "Caesaropapism" or state control over the Church in Kievian Rus': G. P. Fedotov, *The Russian Religious Mind*, Cambridge Mass. 1946; esp. 23 ff. and 395 ff.; G. V. Vernadsky, *Vizantiiskiia ucheniia o vlasti tsaria i patriarkha*, Recueil N. P. Kondakov, Prague 1926.

[24] Arianism, Henotikon of Emperor Zeno, support of iconoclasm, Council of Lyons in 1274, Council of Ferrara-Florence in 1438–1439.

[25] Ecclesiastical communion in connection with Eucharist and Holy Trinity: Metropolitan John Zizioulas, *The Mystery of the Church in the Orthodox Tradition*, "One in Christ" 1988, No. 24, p. 295; Metropolitan John Zizioulas, *The Pneumatological Dimension of the Church*, "Communio" (Eng.) 1974, No. 1, p. 142–158. Cf. John Zizioulas, *The Doctrine of God the Trinity Today: Suggestions for an Ecumenical Study*, [in:] *The Forgotten Trinity*, ed. A. Heron, Vol. 3, A Selection of Papers Presented to the BCC Study Commission on Trinitarian Doctrine Today, London BCC 1991, p. 19–32.

toribus, pro militibus et sociis".[26] The complaints of Arnobius over Diocletian's and Maximian's persecution also mention such prayers: "cur immaniter conventicula [meruerunt] dirui? in quibus summus oratur Deus, pax cunctis et venia postulator, magistratibus, exercitibus, regibus, familiaribus, inimicis"[27].

Another ancient example is given by Tertulian (Apol. 30): "precantes sumus omnes semper pro omnibus imperatoribus, vitam illis prolixam, imperium securum, domum tutam, exercitus fortes, senatum fidelem, populum probum, orbem quietum"; a less detailed description is given by Justin Martyr in Ap. 1.17.[28]

All these ancient prayers were not introduced because of the post-Constantinian establishment of Christianity, and they are not based on the presumption that government is Orthodox, or even Christian.

The legislation issued by the Kingdom of Greece in the early 19th century gives a good example of authentic Caesaropapal solutions, which had no ecclesiastical sanction and were entirely condemned by the Ecumenical Patriarchate. On 23rd July 1833 a Royal Decree entitled "Proclamation of Independence of the Greek Church" was drawn up and signed. It constituted the first Statutory Law of the inappropriately decreed Autocephalous Church of the Kingdom of Greece. This "Decree" was a verbatim translation of an organic law of the year 1818 of the Bavarian Consistorium. It was profoundly influenced by the Protestant doctrine of the omnipotent secular sovereign. The administrative head of the Church was a layman – the king (article 1). The Church ought to be governed by a 5-member permanent Synod, recognized as "Holy Synod of the Kingdom of Greece", whose members are chosen by the Government (articles 2–3) and who swear "fealty to the king", upon undertaking their duties (article 8). This Synod is "presided" over by a Royal Commissioner, appointed by the king; any Synodic acts taking place in the Commissioner's absence were invalid (articles 6–7). Prior approval by the Government was necessary to announce or execute any Synodic decision (article 9). Hierarchs were to be proposed by the Synod, with decisive approval by the government; similar procedure should have been applied in the matters of transferring, ceasing or demoting from ecclesiastical functions (article 16). All relations of the Holy Synod and whole Greek clergy with "external secular or Church authorities" were prohibited, except "through the acknowledged Secretariat of State" (article 19). The Ecumenical Patriarchate refused to recognize the aforementioned provisions.

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[26] I Epistle of Clement, 59–61; Cyril Jeros. Myst. 5.8, Patrologia Graeca 33.1115.

[27] Adv. Nat. 4.36, Patrologia Latina 5.1076.

[28] Issues of commemorating as a sign of sacramental communion and unity of Orthodoxy with the church hierarch, not unity with secular power: Metropolitan Panteleimon Rodopoulos, Commemoration of the Primate in the Provinces Known as Neae Chorae in Greece. An Ecclesiological and Canonical Issue, www.ec-patr.org/doc-display.php?lang=en&id=290&tla=en (20.04.2011); see evidence of early Western liturgical practice: G. Burian Ladner, *The 'Portraits' of Emperors in Southern Italian Exultet Rolls and the Liturgical Commemoration of the Emperor*, "Speculum" 1942, Vol. 17, No. 2, p. 181–200; Pious emperor guided and protected by Christ and Saints: K. Corrigan, "Speculum" 1942, Vol. 17, No. 2, p. 181–200; "The Art Bulletin" 1978, Vol. 60, No. 3, p. 407–416.

An example of Church-supported secular legislation is Greek law 590/1977, which was issued (Govt. Journal 146/31-6-77, vol. A) "regarding the Statutory Charter of the Church of Greece". The Charter secures the legal and canonical functions of the Church's administrative customs, in compliance with the Greek Constitution (art. 3, par. 1), and "clearly defines the place of the Greek Church in the Greek State", on the basis of its traditional principle of "mutual acceptance".[29]

Harold J. Berman has noted[30] that although it is common opinion that the First Amendment provides "separation of church and state",[31] it does not contain the word "church" but "religion", and not "state" but "congress". Therefore it is always good to read the legal text carefully to avoid drawing the wrong presumptions and conclusions. The opinion was expressed that the United States Supreme Court uses its own analysis of ecclesiastical polity and administration, idiosyncratic and considered by some authors as inconsistent, in a significant number of cases involving, among others, churches. Appellate courts have also imposed their own concepts of ecclesiastical affairs interacting with secular issues.[32]

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[29] Characteristics of Decree and current Greek law according to: www.orthodoxresearchinstitute.org/articles/church_history/constantinidis_stages_greek_church.htm; the mutual independence of Church and State is additionally demonstrated in the Patriarchal and Synodical Act of 1928 – an international agreement between the Ecumenical Patriarch and the Government of Greece, with the consent of the autocephalous Church of Greece. The contents of the Patriarchal and Synodical Act of 1928 are ratified by the Constitution of Greece (art. 3, § 1), in Greek state law (Law 3615/1928, Codified Law 5438/1932 and the Constitutional Charter of the Church of Greece, Law 590/1977). Such independence is universal and is not considered as state concession or the result of customary international law.

[30] Faith and Order, p. 221; see also J. T. Noonan, *The Believer and the Powers that Are*, New York 1987, p. 16.

[31] Term derived from the French Enlightenment, appropriate in discussion about 18th-c. Catholic France changed into a secular state.

[32] J. Witte, F. Alexander, *Christianity…*, p. 293–294; bibliography is extensive and still growing, e.g.: McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1990, No. 1409, 1437; L. Pfeffer, *Church, State, and Freedom*, Boston 1967; M. W. McConnell, J. H. Garvey, T. C. Berg, *Religion and the Constitution*, 2006; W. H. Marnell, *The First Amendment: Religious Freedom in America from Colonial Days to The School Prayer Controversy*, 1964; P. Hamburger, *Separation of Church and State*, Harvard 2002; M. A. Hamilton, *God vs. the Gavel: Religion and the Rule of Law*, Cambridge 2005; M. DeWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History*, Chicago 1965; D. L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State*, New York 2003; D. L. Dreisbach, M. D. Hall, *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding*, Indianapolis 2009; I. Kramnick, R. L. Moore, *The Godless Constitution: The Case Against Religious Correctness*, Norton 1996; *Church and State: The Supreme Court and the First Amendment*, ed. P. B. Kurland, Chicago 1975; A. M. Samaha, *Separation of Church and State. Constitutional Commentary*, www.questia.com/PM.qst?a=o&d=5002059531; J. H. Choper, *Securing Religious Liberty: Principles for Judicial Interpretation of the Religion Clauses*, Chicago 1996; reviewed: "First Things" 1996, No. 4; H. J. Berman, *The Weightier Matters of the Law: A Response to Solzhenitsyn*, [in:] *Faith and Order: The Reconciliation of Law and Religion*, Atlanta 1993, p. 381–392; H. J. Berman, *The Interaction of Law and Religion*, Norfolk 1974; *Law And Revolution*, Vol. 2: *The Impact of the Protestant Reformations on the Western Legal Tradition*, Harvard 2006; P. W. Carey, *American Catholic Religious Thought: The Shaping of a Theological and Social Tradition*; *A Matter of Interpretation: Federal Courts and the Law*, ed. A. Scalia, A. Gutmann, Princeton 1997; R. C. van Caenegem, *Legal History: a European Perspective*, London 1991; J. R. Vile, *Companion to the United States Constitution and its Amendments*, 2010; D. Laycock, *Collected Works on Religious Liberty*, Vol. 1–2; "Grand Rapids", Mich. 2010; F. J. Sorauf, *The Wall of Separation: The Constitutional Politics of Church and State*, Princeton 1976; S. E. Mead, *Neither Church nor State: Reflections on James Madison's 'Line of Separation*, "Journal of Church and State" 1968, No. 10, p. 352; A. P. Stokes, *Church and State in the United States*, 3 vols., New York 1950;

As Berman demonstrates, reciprocal freedom of religion and government was not understood as a prohibition of mutual influences,[33] and officials were not expected to declare public atheism or abandon their religious beliefs when taking office.[34] Orthodox proposals of symphony are similar to concepts of auxiliary government and religion as a director and motivator of social life. This kind of vision of relations between state and religion was prevailing in the United States of the 18th and 19th centuries.[35]

The non-establishment and free exercise clauses should be interpreted in the context of their original purpose – to create a society with free interaction and debate of legal and political values on the one hand and religious teachings and values on the other hand.[36]

It is well known that Jefferson's letter to the Danbury Baptists Association from 1802 is generally viewed as an authoritative declaration on the scope and effect of the constitutional religious clauses.[37] The First Amendment requires that the state be neutral (not hostile or neglecting) in its relations with groups of religious believers or non-believers; however it does not require the state to be their adversary.[38] Appropriate separation in fact protects from religion instrumentaliza-

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J. Witte, *Religion and the American Constitutional Experiment*, New York 2000; *The Encyclopaedia of Politics and Religion*, ed. R. Wuthnow, Washington 1998.

[33] Like in the French artificial "laïcité".

[34] Cf. H. J. Berman, *Faith and Order*, p. 223.

[35] *Ibidem*, p. 229; sermons at public events: H.S. Stout, *The New England Soul Preaching and Religious Culture in Colonial New England*, New York 1986; public donations for religious institutions: H. J. Berman, *Faith and Order*, p. 229–230; see also Worcester v. Georgia U.S. (6 Pet) 515 (1832); H. J. Berman, *Toward an "Integrative Jurisprudence": Politics, Morality History*, "California Law Review" 1988, No. 76, p. 779.

[36] Cf. H. J. Berman, *Faith and Order*, p. 209–219.

[37] S. Barringer-Gordon v s.v., *Religion: United States Law*, [in:] *Oxford Intl. Enc. Leg. History*, Vol. 5; view that Constitution was written on the assumption that government is a threat to human liberty and not the other way around, the First Amendment constrains Congress, not churches: D. Laycock, *Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century*, 80. Minn. L. Rev. 1996, No. 1047; idem, *Religious Liberty as Liberty*, 7 J. Contem. Legal Issues 1996, No. 313.

[38] See: Everson v. Board of Educ. 1947 and The American Constitution, West 2001 p. 912–913. While historical longevity, the number of devotees, and the existence of leaders, religious literature, ceremonies and holidays are not essential elements of a religion, they are factors that should not be ignored and can be significant, especially as Orthodoxy has 2000 years of history, an apostolic succession of hierarchs, enormous literature and large number of devotees. See Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); W.W. Van Alstyne, *Constitutional Separation of Church and State: The Quest for a Coherent Position*, 57 Ann. Pol. Sci. Rev. 1963, No. 865, 881; A. Schwarz, *The Nonestablishment Principle: A Reply to Professor Gianella*, 81 Harv. L. Rev. 1968, No. 1465, 1469-70; Texas Monthly Inc. v. Bullock (1989); D. Laycock, *Towards a General Theory of The Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, Colum. L. Rev. 1981, No. 1373, 1381, 1384; Mitchel v. Helms (2000); Stone v. Graham (1980), Rehnquist J. dissent; Edwards v. Aguillard (1987) Scalia J. Dissent.; J. H. Choper, *The Religion Clauses of the First Amendment: Reconciling the Conflict*, 41 U. Pitt. L. Rev. 1980, No. 673, 686–687; *Church, State and the Supreme Court: Current Controversy*, 29 Ariz. L. Rev. 1987, No. 551, 557; Board of Educ. v. Mergens (1990). Justices Scalia and Thomas argued that all or parts of the Lemon test should be abandoned. See also Mitchell v. Helms 530 U.S. 793 (2000); Zelman v. Simmons-Harris, 536 U.S. 639 (2002), cf. however: Locke v. Darvey, 540 U.S. 712 (2004). A broad interpretation of the free exercise clause was adopted in Wisconsin v. Yoder 406 U.S. 205 (1972). Parental autonomy expressed when deciding on children's education can be beneficial to Orthodoxy in circumstances of public schools with aggressive anti-religious ideologies in the curriculum.

tion through state intrusions into religious doctrine, preaching etc. Father Agap-ios Honcharenko, the first priest of New Orleans's Orthodox parish (est. 1864), suffered persecution from Russian state officials and found asylum in the United States.[39] Lack of established religion was also helpful for Orthodox communities in San Francisco and the missionary activity of Bishop John Mitropolsky of Alaska.[40] Similarly Nicholas Bjerring was free to convert to Orthodoxy after the 1st Vatican Council's dogmatic declaration of papal infallibility.[41]

In contemporary mainstream jurisprudence opinions apologetic towards various genres and derivates of legal positivism have prevailed. Statutory law is seen as an autonomous invention of the sovereign, self-defining human being, a construct or instrument that is developed by society to benefit itself and to fulfill tasks subjectively defined. Hence, any changes to the law, if approved by society in a prescribed procedure, are considered valid. The written law has no absolute, unchanging legal basis whatsoever. This view gives validity to the revolution that rejects the laws of "the old world" and to the full rejection of the moral norm if this rejection is approved by the legislative power.

However, the Orthodox Church agrees with the representatives of jurispru-dence who believe that natural law and divine law are given by a transcendent Creator of Universe – they exist as an object outside of any productive intervention of human reason. This objective natural order demands civil authorities to establish the rule of freedom of worship and to safeguard it against attacks of private entities or official bodies.[42]

Despite the prohibition on establishing particular religion, protection of free exercise, freedom of speech and other principles may allow or even compel secular power to accommodate some kinds of religious practice or behavior.

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[39] J. H. Erickson, *Orthodox Christians*, p. 54.

[40] *Ibidem*.

[41] J. H. Erickson, *Orthodox Christians*, p. 55. On p. 58ff. the author gives an outline of the harsh conditions of new parishes established spontaneously by emigrants, often finding the Orthodox faith to be an inseparable part of their national or ethnic identity; uncanonical attempts to imitate Protestant parish organiza-tion: p. 61; free development of parishes, schools, financial and social institutions for Orthodox emigrants: p. 65 ff.; financial problems after the Bolshevik Revolution in Russia caused subsidies to cease: p. 79; Living Church "metropolitan" Kedrovsky appeals to US courts to gain control over Archidiocese parishes and assets, defense of parishes against this intrusion: p. 80, Fourth All-American Council in Detroit (1924) and proclamation of "temporarily self-governing church" p. 80 ff.

[42] See K. Wilk, transl. *Legal Philosophies of Lask*, Cambridge Mass. 1950, issues of conscientious objec-tion: Justice Douglass dissent in Gillette v. United States, 401 U.S. 437, 463, 91, S.Ct. 828, 843, 28 L.Ed. 2d 168, 188 (1971) some general remarks on interpretation of the Constitution: M. Tushnet s.v., *Constitution of the United States: Interpretation of the Constitution*, [in:] *Oxford Intl. Enc. of Legal Hist.*, Vol. 2; cf. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819); Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798). Religious liberty according to D. Lay-cock (*Religious Liberty as Liberty*, p. 313) does not presuppose that religion is a good thing (contrary: J. H. Garvey, *An Anti-Liberal Argument For Religious Freedom*, 7 J. Cont. Legal Issues 1996, No. 275, 291) or that religion is subordinate to reason (different opinion: S. Sherry, *Enlightening the Religion Clauses*, 7 J. Contemp. Legal Issues 1996, No. 473). Religious liberty as a constituent factor of America as a Christian nation: Church of the Holy Trinity v. United States 143 U.S. 457, 471 (1892), it does not establish secular or materialistic public moral order (contr.: K. M. Sullivan, *Religion and Liberal Democracy*, 59 U.Chi.L.Rev. 1992, 195, 198.

It can be quite difficult, if not impossible, to in some hard cases identify when accommodation becomes or starts to resemble establishment or burdensome measures.[43]

Despite any possible changes and emerging concepts expressed in statutory law and jurisprudence, artificial separation of religion and civil order, doctrine of public atheism or censorship of false neutrality is not seen as a "historical necessity" or "progress" by Orthodoxy, and no hierarch or council is allowed to adjust doctrine and canons to current policies and interests of any state or international organization. According to Orthodox opinion secular power has no right to extend itself to independence from the order of natural law established by God.[44]

Orthodoxy holds that the New Testament demands that a secular ruler use the power of state for restricting evil (objective category of natural law) and supporting good (also objective category), in which it sees the moral meaning of the existence of a state.[45]

A secular sovereign is in Orthodox opinion limited, but anarchy, understood as the absence of proper order in a state and society, is also contrary to the Orthodox teaching.[46] The Orthodox Church obligates the faithful to obey state power regardless of the convictions and faith of its bearers, but also prays "that we may lead a quiet and peaceable life in all godliness and honesty".[47] Moreover, secular legal provisions are only minimal standards; Christians should imitate the perfect humanity of Jesus Christ, put greater responsibilities towards others, especially in official and professional activities. In this context these activities include Archbishop Michael Konstantinides partaking in the presidential inauguration of 1957 or his successor Archbishop Iakovos Koukouzis's walk with Martin Luther King Jr. in the march on Selma, Alabama in 1967.

The different nature and origin of Church and State is stressed as the Orthodox Church characterizes itself as a visible, universal, catholic and apostolic Church founded directly by Jesus Christ, The God-instituted idea and nature of

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[43] See: Crump, Greesman, *Day, Cases and Materials on Constitutional Law*, New York–San Francisco 1998, p. 975; M. W. McConnell, *Accommodation of Religion*, 1985; S. G. Gey, *Why is Religion Special? Reconsidering the Accommodation of Religion under the Religion Clauses of the First Amendment*, "University of Pittsburgh Law Review" 1990, No. 75; I. C. Lupu, *Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation of Religion*, 140 U.Pa. L. Rev. 1991, No. 555; Rosenberger v. Rector, University of Virginia, 1995, esp. Thomas J. concurrence and historical analysis of clause; contrary to Orthodox vision of religion-science relations: Mozert v. Hawkins County Board of Education (6th Cir. 1987) and Smith v. Board of School Commissioners (11th Circ. 1987); Davidov, *Secular humanism: as an "Established Religion": a response to Whitehead and Conlan*, 11 Texas Tech. L. Rev 1979, No. 51ł Mitchel, *Secularism and Public Education: The Constitutional Issues*, 67 B.U.L. Rev. 1987, No. 603, Note, *"Secular Humanism:" A Blight on the Establishment Clause*, 18 Loy. U. Chi. L.J. 1987, No. 1245.

[44] Overview: J. Witte, F. S. Alexander, *The Teachings of Modern Orthodox Christianity on Law, Politics and Human Nature* 2007.

[45] Rom. 13: 3–4; Declaration of clear and substantial opposition against transgressions of natural law: Contemporary Moral Issues. Statement on Issues Concerning the Sanctity and Dignity of Human Life, www.orthodoxresearchinstitute.org/articles/ethics/contemporary_moral_issues.htm (13.07.2011).

[46] Rom. 13: 2.

[47] 1 Tim. 2: 2.

state power is revealed in history only indirectly, and there is no state with the same ontological status as the Orthodox Church considers itself to have.

The Orthodox Church as "the body of Christ"[48] and "the pillar and ground of the truth"[49] in essence has nothing evil or imperfect in itself. These characteristics are not shared by the state. In Orthodox opinion the state should be aware that secular well-being cannot be established without respect for moral order. In the Orthodox view a political entity cannot be seen as harmonious as long as it gives the monopoly to secular ideologies in legislation and administration. However, Orthodox opposition should not be interpreted as any kind of propaganda against a particular person, group, class or nation, for "we wrestle not against flesh and blood, but our struggle is spiritual, aimed to deliver people from the pernicious impact made on their souls by dark forces, spiritual wickedness in high places".[50]

Orthodox hierarchs believe that the establishment clause cannot imply or promote practical atheism, especially forced on believers. Religious bodies and their legitimate representatives should be effectively included in relevant decision-making proceedings. Such principles presuppose certain division of domains between church and state and their non-interference into each other's affairs.[51]

The two-thousand-year-old Church's experiences and tradition have developed a peculiar model of cooperation between church and state. Since church-state relations are reciprocal, a completely appropriate model could emerge in history only in a truly Orthodox state by sincere conversion of the sovereign. However, some ideas and experiences can be *mutatis mutandis* applied in the United States.

Symphony is essentially friendly and honest cooperation, reciprocal support and responsibility without intrusions into the exclusive domain of each other. Coherent with symphony is the Byzantine idea of taxis (order), understood not as subordination of the Church to secular despotism but as proper, just and beneficial order of the state, society and world. This hierarchical order is necessary to keep the world in peace and cohesion.[52]

Justinian attempted in Novella 6 to apply the idea of symphony: in the Novellae's provisions priesthood is supposed to take care of divine affairs, while government guides and takes care of earthly matters.

Further Byzantine legislation gives us more material useful in describing the normative model of symphony. In the foreword to the Ecloga by Leo III (r. 717–741) and Constantine V (co-ruler, r. 741–775) it is stated that law is a device

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[48] 1 Cor. 12: 27.

[49] 1 Tim. 3: 15.

[50] Eph. 6: 12.

[51] Analogy to Western canon law distinction between *causae spirituales* and *causae saeculares*.

[52] Cf. *Taxis in Oxford Dictionary of Byzantium*, 1991, Vol. 3: it is the harmonious hierarchy of the institution of the state and Church, human taxis mirrors the taxis of the created world (kosmos), taxis is considered as a motive for just and beneficial legislation, the danger of rigidness is avoided by Oikonomia; imperial universalism, secular power and theological problems, symphony in practice, religious role of the Emperor: J. Meyendorff, *Justinian, the Empire and the Church*, "Dumbarton Oaks Papers" 1968, Vol. 22, p. 43–60.

given by God himself to enable men to live by His word and commandments. The law is given by God to the ruler with the purpose of establishing a Christian state.[53]

Patriarch Photios,[54] in the foreword to Eisagoge, characterized law as a connecting factor between the human mind and the matter of the body. The law becomes a third institution between patriarch and emperor and is a linking factor placed above the emperor and given by God Himself.[55]

Another directive of relationships between state and church power is contained in the Epanagoge (later 9th century) where temporal power and the priesthood are compared to the human body and soul; as both are necessary just for civil order.[56]

The Orthodox Church holds that preaching the truth is obligatory whatever the attitude of state bodies may be. In this area, the Church always considered itself as absolutely independent from any state. In case of persecution the Church is called to endure hardships and continue its mission without unrest or refusing to be loyal to the hostile state. Legal sovereignty in the territory of a state is not abrogated by intolerance towards Christianity. Orthodoxy teaches that the condition of a fallen man is far from being the ideal of perfection aspired to by Christians and revealed in Christ.[57] Therefore there are limits to which the Orthodox faithful should obey imperfect human law. If exclusively earthly order matters had been regulated, the Orthodox Christian is obliged to obey legislative measures, even if they are imperfect, ineffective etc.

The legalistic approach is not absolute. If secular authority forces believers to apostatize from the Orthodox Church and poses a threat to salvation or involves an apostasy or commitment of another doubtless sin, refusal to obey the state is obligatory.[58] If the Church authority has found obeying particular legal provisions impossible, after due consideration, hierarchs may enter into discussion with au-

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[53] J. H. A. Lokin s.v., *Byzantium: Byzaninte Legislation*, [in:] *Oxford International Encyclopedia of Legal History*, Vol. 1.

[54] Orthodox Church saint, lived c. 820–891.

[55] W. J. Arests, T. E. van Bochove, *The Prooimion of the Eisagoge: Translation and Commentary*, "Subsectiva Groningana" 2001, No. 7; P. E. Pieler, *Anakatharsis ton palaioon nomoon" und makedonische Renaissance*, "Subsectiva Groningana" 1989, No. 3, p. 61–77; B. H. Stolte s.v., *Basil I and The Macedonian Renaissance*, [in:] *Oxford International Encyclopedia of Legal History*, Vol. 1.

[56] The office of bishop is considered as superior to that of a secular ruler, the soul superior to the body: Const. Ap. 2.34.2 (s.v. episkopos Lampe, Greek Patristic Lexicon, Oxford). Catholicity and equality of local Orthodox Churches: G. I. Konidaris, *The Oecumenical Patriarchate in the Orthodox Church*, "Balkan Studies" 1973, No. 14, p. 331.

[57] Orthodox teaching about original sin and human nature: J. Pelikan, *The Christian Tradition. A History of the Development of Doctrine*, Vol. 1: *The Emergence of the Catholic Tradition (100–600)*, Chicago–London 1971, esp. Christian anthropology, inevitability of sin, human corruption and damaged nature differentiated from the perfection of the Church and Christ, Pelagian heresy, Greek and Roman concepts of tyche, techne, kairos, moira, fortuna, Christian doctrine of free will and self-determination: to autexousion; Gnostic heimarmene-universal fate: p. 279–331.

[58] A heroic example has been given by the Orthodox priest Father George Calciu: www.firstthings.com/onthesquare/2011/04/fr-george-calciu-first-century-christian-in-the-twentieth-century. I would only like to add that the 1st-c. Roman authorities were not as cruel as the Securitate. Administrative problems and selective religious freedom issues: www.firstthings.com/article/2010/09/holy-war-over-ground-zero.

thorities, call upon their flock to use the available remedies and other procedures to change the legislation or review the authority's decision, and subsequently appeal to legitimate international entities. If all this brings no proper result hierarchs can appeal to the faithful for peaceful civil disobedience.[59]

Neither establishment nor reform of any constitutional system is considered by the hierarchs as a primary vocation of the Orthodox Church. The Church is obliged by its supernatural origin and character to keep a reasonable distance from various powers of the secular world. The state should not interfere in the life of the Church or its government, doctrine, liturgical life, counseling, etc., or the work of the canonical church institutions in general, except for those aspects where the Church is supposed to operate as a legal identity obliged to enter into certain relations with the state (administrative law, taxes, contracts etc.).

Isolationism, or the view that the state and politics are essentially evil, is alien to Orthodox teaching. Not to declare secular society condemned or evil, but to avoid any confusion of church and state affairs and to prevent the church authority from acquiring a temporal nature, canon law prohibits the clergy from joining or participating in the affairs of state government. Apostolic Canon 81 reads: "It does not befit a bishop or a presbyter to go into the affairs of the people's government, but to be always engaged in the affairs of the Church".[60]

When discussing nationalism and the instrumental use of the Orthodox faith as quasi-national identification it is good to note that Ecumenical Patriarchate at the Great (Μείζων) Local Synod in Constantinople (1872) condemned ethnophyletism and published a "Resolution" condemning that phenomenon in the Church. This document was based on general principles formulated by a special committee of the Synod.[61] "Nation" in the sacred canons means the metropolitan province as geographical boundaries, for example the United States.[62]

The canons dealing with the election and consecration of hierarchs and other Church functionaries never define the racial or national characteristic as a qualification of eligibility. The Holy and Great Local Synod in August, 1872 condemned phyletism and published a "Resolution" (Ὅρος) censuring and condemning phyletism, defined as "racial discrimination and nationalistic contention, enmities and discord in the Church of Christ".

A good example of the Orthodox vision of interaction with society is provided by documents normatively defining the mission and constitution of the Greek Archdiocese of America.[63] The most important duty is to proclaim the Gospel of

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[59] Official overview: www.mospat.ru/en/documents/social-concepts.

[60] Similarly: Apostolic Canon 6 and Canon 10 of the Seventh Ecumenical Council; parallel imperial legislation: Universis clericis praeter ecclesiasticos actus nihil omnino cum aliis causis debet esse commune, Novellae Valentinianae III, tit. XXXIV,7 (452 AD).

[61] S. Runciman, *The Orthodox Churches and the Secular State*, Oxford 1971, p. 26 ff.

[62] See also Apostolic Canon 34 and Canon 9 of the Synod in Antioch and the interpretation of Zonaras to that canon.

[63] The Charter of the Greek Orthodox Archdiocese of America: www.goarch.org/archdiocese/documents/charterpage/index_html; Cf. G. Pappaioannou, *The Historical Development of the Greek Orthodox Arch-*

Christ, to teach and spread the Orthodox Christian Faith, and moreover the Archdiocese is obliged to energize, cultivate, and guide the life of the Church in the United States according to the Orthodox Christian Faith and Tradition. The Church should sanctify the faithful and serve as a witness of the message of Christ to all inhabitants of the United States of America. Orthodox Christians are obliged to speak the truth, never compromising the integrity of Orthodox teachings. In Article 9 of the Charter the structure of Spiritual Courts is established: a Spiritual Court of First Instance within the Archdiocesan District and within each Metropolis. Appeals from the rulings of the Spiritual Court of the Second Instance may be submitted to the Ecumenical Patriarchate for review. The decisions of the Ecumenical Patriarchate regarding these appeals are final and irrevocable, thus any appeal to secular (internal and international) authority is excluded. Regulation reflects precedents of appeal to secular power.[64] Archdiocesan Clergy-Laity Congresses ("Congress"), convened at least triennially and presided over by the archbishop, are, except for dogmatic or canonical matters, concerned with all issues which affect the life, mission, growth and unity of the archdiocese. The election of the archbishop is the exclusive canonical right of the Holy Synod (art. 13 a). A nominee for the office of Metropolitan, Auxiliary Bishop or Archbishop shall be a person of deep Orthodox faith and ethos (complete acceptance of dogmas and moral teaching is *conditio sine qua non*) (see art. 13 b; 14 d and 15 a). Except for dogmatic and canonical matters within the competence of the Ecumenical Patriarchate, the Archdiocesan Council is concerned with problems affecting the Holy Archdiocese of America, and makes such decisions thereon as it deems necessary and acts as the consultative body to the archbishop and to the Eparchial Synod (Art. 17 c; cf. art. 18 a; which is a declaration of the monarchical principle of the bishop's jurisdiction in all ecclesiastical cases). The monasteries that operate in the United States of America are obliged to continue the long-established monastic life and witness and to function according to the canonical tradition and practice of the Church. They function according to the prevailing Monastic Law and the letter and the spirit of the regulations that define their operation (art. 21 a, c). All regulations pertaining to the implementation of this Greek Orthodox Archdiocese have to agree with the Holy Canons, Sacred Tradition and long-existing life and practice of the Orthodox Church (art. 22 a).

Independent church legislative competence and immunity from state intrusion was declared in the Court's opinion in Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94 (1952):

> Legislation which in a hierarchical church determines ecclesiastical administration or the appointment of the clergy, or transfers control of churches from one group to another, interferes

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diocese of North and South America, [in:] F. K. Litsas, *A Companion to the Greek Orthodox Church*, New York 1984, p. 178–206.

[64] See the earliest evidence: Euseb., *Historia Ecclesiastica* VII. 27-30; various Christian interactions and cooperation with secular rulers before 313 AD: M. H. Shepherd Jr., *Liturgical Expression of Constantinian Triumph*, "Dumbarton Oaks Papers" 1967, Vol. 21, p. 64 ff.

with the free exercise of religion contrary to the Constitution (p. 344 U.S. 106–116, 344 U.S. 119). Freedom to select the clergy, where no improper methods of choice are proven, must now be said to have federal constitutional protection against state interference, as part of the free exercise of religion (p. 344 U.S. 115–116). Even in those cases where property rights follow as incidents from the decisions of church custom or law on ecclesiastical issues, the church rule controls and must be accepted by the civil courts (Ad 80 U.S. 115–16, 120–121).

The concept of separate and independent ecclesiastical jurisdiction, meeting Orthodox opinion, was endorsed by the Supreme Court in Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). In this case the Supreme Court of Illinois affirmed in part and reversed in part holding that legitimate canonical judgments had to be set aside as "arbitrary" because proceedings were not conducted "according to the Illinois Supreme Court's interpretation" of the Church's internal law (60 Ill.2d 477, 328 N.E.2d 268 (1975)).

The Illinois Supreme Court rejected the decisions of the highest ecclesiastical tribunals upon the disputed issues. The Supreme Court declared the secular court's inquiry into church polity and resolutions as impermissible. Such Caesaropapal interpretational fallacy was fatal to the judgment.

To cite this judgment:

Consistently with the First and Fourteenth Amendments, "civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide on such disputes]. ... Such a determination ... frequently necessitates the interpretation of ambiguous religious law and usage. (p. 426 U.S. 709) To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ... religious law [governing church polity] ... would violate the First Amendment in much the same manner as civil determination of religious doctrine". [See also: *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 396 U.S. 369 (1970) (J. Brennan, concurring).] […] The principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights were initially fashioned in Watson v. Jones, 13 Wall. 679 (1872), […] With respect to hierarchical churches, *Watson* held: "[T]he rule of action which should govern the civil courts ... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.* at 80 U.S. 727. […] All who unite themselves to such a body [hierarchical church – R.M.] do so with an implied consent to this government, and are bound to submit to it. 13 Wall. at 80 U.S. 728–729 (emphasis supplied). (page 426 U.S. 715).

Despite the independence of the church's internal constitution and jurisdiction, as has been acknowledged by the United States judiciary, a name such as canon law given to the Church's legal order suggests a parallel or imitation of secular law. A more correct term is "the tradition of the holy canons". This law of the Church is an outgrowth of the holy canons; and it appears on the surface to have much in common with secular law, involving persons invested with authority (bishops), as well as the means of creating, formulating, interpreting, executing, validating, amending and revoking laws (through synods or conciliar actions). The

First Ecumenical Council of Nicaea (325) referred for the first time to canons as the disciplinary measures of the Church. The distinction, therefore, between the disciplinary measures and rules adopted by the Church and the state legislative actions occurred early.

The Ecumenical Patriarch[65] reminds us that within Orthodoxy there is basically a single law (fundamental regulations), whose most important sources are common to all local Churches. The Orthodox Church is not a sum of a number of independent Churches, or a federation of Churches with an external, inter-church law (quasi-public international law), but one Church of the Nicene Symbol, St. Paul's Body of Christ, within which the local Churches are expressions of the one universal Church in various places.[66]

The first Orthodox Divine Liturgy in the New World was celebrated on July 20th 1741. In 1794 the first Russian Orthodox missionaries arrived on Kodiak Island, Alaska. After over 200 years the Orthodox Church still preaches the same faith in the rapidly changing American nation, which faith it professed in the similarly influential Roman Empire. And still Orthodox teaching remains influential, inspiring and converting people – because of its immense answer-giving potential.

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[65] B. Archondonis, *A Common Code for the Orthodox Churches* (Kanon I), 1973, p. 45–53.

[66] *Ibidem*, p. 48.

Marta Majorek

THE PHILOSOPHICAL ASPECT OF ANARCHISM
IN ROBERT PAUL WOLFF'S THOUGHT

In order to better understand the subjects under consideration here, it is worth beginning with a brief overview of the various forms of anarchism, in conjunction with the essential characteristics of those which are deemed as most relevant to the issues at hand. It is necessary to locate the so-called philosophical anarchism mainstream in a broader framework, to show its sources and to select the fundamental differences that exist between this approach and other forms of anarchism. Already, at the outset, some divisions are visible which will help to define a kind of framework for future analysis.

Based on various studies, sources, and the definitions given by different encyclopedias, some contractual lines of the primary classifications can be marked. According to these, the first dividing line runs between political and philosophical anarchism, and the second will be marked out between individualist, collectivist (communal, or sometimes even known as communist anarchism[1]), and anarcho-syndicalism. The third dividing line will be recognized as the distinction between *a priori* and *a posteriori* philosophical anarchism[2]. At the outset we should also note that Robert Paul Wolff's approach will be taken into special consideration in this paper. This American philosopher of law and politics is today regarded (particularly in the United States, but also in other English-speaking countries), as an authority in these areas. Therefore, as a main aim of this paper we should consider (in addition to the separation of philosophical anarchism from other current anarchist appro-

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[1] We may encounter various classifications of political anarchism. Sometimes the communal anarchism of Bakunin is classified as anarcho-communism. See: D. Miller, *Anarchism*, London 1984, p. 45.

[2] It is supposed that this classification was first presented by A. J. Simmons.

aches mentioned previously) an attempt to reconstruct the idea of philosophical anarchism and a critical overview of its basic assumptions.

It will probably come as no revelation if we draw the conclusion that political anarchism considers as its main premise the overthrow of the state. Equally obvious is the lack of acceptance and final rejection of any political government. The state itself is seen as an extremely inappropriate, even sometimes evil form of social organization. This also leads to the statement that the existence of the state and, moreover, of any power within it, will never remain legitimized. Certainly, looking at these clearly outlined features, the vision of social life is not based on well-known political institutions, but on completely different alternatives.

The individualistic version of anarchism was developed mainly in the United States of America, and this fact is hardly surprising, especially given the well-known tradition of the region and certain, also very specific, economic determinants. It is worth mentioning, though, that the most individualistic approach ever was presented by Max Stirner, a philosopher born in Bavaria. He believed that beyond individuals there is no reality. His main goal was to free the individual from what he always called tyranny. This tyranny could have a variety of sources, e.g. religious, philosophical or political[3].

In general, belief in the sovereignty of the human being was taken from liberal ideas. It was then easily extended to political issues, and in the end it was concluded that it is impossible to merge the sovereignty of the individual conceived in this way and existence of the state. The most important thing is to prevent a situation in which the sphere of the individual's activities (which are the supreme values) would have been disrupted, in particular, bodily integrity, and lawful acquired property[4]. In principle, the individual could do what he or she wanted, with sovereign status within his or her territory. Any incursion of the individual into the private sphere of another was not allowed, unless the individual acquiesced to this, or such a situation was caused by an exchange, contract, or a free gift.

However, if the interference was of a different nature than the options mentioned above, then this action was considered as a kind of invasion. Consequently, this invasion could be legitimately resisted by force, if the situation so required. The damages and injury caused (any harm treated as a result of the invasion) needed to be compensated. Thus, the limit of discriminating power used by the aggressor and that which was used for defense was laid out quite clearly.

Significant weight was also attached to acts of charity, which were considered extremely valuable. However, such acts had some limitations which had to meet certain conditions, for example they had to be made voluntarily, so they were not mandatory, and could thus in no way be forced on anyone.[5]

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[3] S. Shatz, *The Essential Works of Anarchism*, New York 1972, p. 42.

[4] D. Miller, *Anarchism*, London 1984, p. 30.

[5] *Ibidem*.

Sometimes it is emphasized that while 19th-century individualist anarchism is embedded in the socialist movement, its followers, from the early 20th century, who called themselves anarcho-capitalists, preferred an emphasis on the free, unrestricted market, with all kinds of goods, so the state as institution ceases to be necessary. Benjamin Tucker speaks similarly, commenting on the assumptions of, inter alia, Proudhon and Warren, also considered to be representatives of the mainstream of individualist mechanism.

Even the simple police function of protecting person and property they deny to governments supported by compulsory taxation. Protection they look upon as a thing to be secured, as long as it is necessary, by voluntary association and cooperation for self-defense, or as a commodity to be purchased, like any other commodity, of those who offer the best article at the lowest price. In their view it is in itself an invasion of the individual to compel him to pay for or suffer a protection against invasion that he has not asked for and does not desire. And they further claim that protection will become a drug in the market, after poverty and consequently crime have disappeared through the realization of their economic program. Compulsory taxation is to them the life-principle of all the monopolies, and passive, but organized, resistance to the tax-collector they contemplate, when the proper time comes, as one of the most effective methods of accomplishing their purposes[6].

It is quite clearly evident that the so-called early individualists, to whom Tucker undoubtedly belongs, see the benefits reaped by the capitalist class as a result of the monopolistic practices created based on the extension of the state's competences. Therefore they turned towards the working classes, in particular towards individuals running small businesses. They stressed the importance of self-employed entities, operating in the market as a single enterprise.

Nor does the Anarchistic scheme furnish any code of morals to be imposed upon the individual. "Mind your own business" is its only moral law. Interference with another's business is a crime and the only crime, and as such may properly be resisted. In accordance with this view the Anarchists look upon attempts to arbitrarily suppress vice as in themselves crimes. They believe liberty and the resultant social well-being to be a sure cure for all the vices[7].

In turn, Rothbard saw the opportunity to build a broad coalition of co-workers, business representatives, students, and even national minorities, opposing the ideas of the revolutionary movements, both collectivist and anarcho-communist. He also denied the social democratic approach, maintaining that "libertarianism – a private-ownership anarchism – is morally empowered and competent, and all [...] the socialists are in manifest error."[8]

The remarks cited above allow us to highlight some major characteristics which can be distinguished in this branch of anarchism. In the first instance let us recall the principle of sovereignty of the individual, which can also be linked with

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[6] B. R. Tucker, *Instead of a Book, by A Man Too Busy to Write One; A Fragmentary Exposition of Philosophical Anarchism Culled from the Writings of Benj. R. Tucker*, New York 1969, p. 14.

[7] *Ibidem*, p. 16.

[8] M. N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, London 1978, p. 309–312.

the statement that it is better not to deliver public goods than to require that, in order to generate them, individuals must bear certain financial outlays. Secondly, when the state is entrusted with the task, which is collection of funds from individuals in the form of compulsory taxation, individuals who are in power do not have any incentive to ensure whether the goods are actually favorable at the moment. Perhaps these goods are "false", totally unnecessary goods, and their distribution causes only growth of the bureaucratic apparatus. And thirdly, we can find the opinion, shared by most anarchists, that the mere establishment of the state may raise the risk that the benefits provided are not commensurate with the potential effects of state interference on individual liberty.

Political, individualistic anarchism obviously particularly emphasizes individual autonomy and freedom as a basic priority. As pointed out by Wolff, "the autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not *because* he has been told to do it. He is therefore, in the political sense of the word, *free*...."[9] This type of approach promotes the idea of the undisturbed sphere of the individual, in conjunction with its absolute sovereignty. What's more, in this context, social relationships are seen in the category of contractual interactions that occur between independent parties, with the ability to lead a life beyond the social environment and its influences[10]. This statement seems to be far from the truth, becoming the grounds for criticism. Leaving aside the elements of criticism mentioned above, let us just note that it is very difficult to imagine the possibility of man able to live outside the network of social relations, institutions and practices. Institutions and practices undoubtedly have a significant role in shaping individuals, and therefore cannot be regarded as external to the self-reliant person[11].

Two of the issues raised so far seem to be extremely important for the subject at hand. The first should be considered as relating to public goods, in particular criticism of the state's role in its delivery. This stands, as we can see, in particular opposition to the assumptions of fair play theory, and is especially at odds with the position presented by another American philosopher, George Klosko[12].

However, the second of these issues applies to the idea of voluntariness and its perception by anarchists.

On the other hand, emphasis is placed with equal power on the thesis that no state institution is proactive, and therefore is not based on voluntary agreement.

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[9] R. P. Wolff, *In Defense of Anarchism*, New York 1970, p. 14.

[10] J. Horton, *Political Obligation*, London 1992, p. 117.

[11] As a side note, due to the problems that had arisen around this approach, in the 20th century a need to modify it appeared, and the concept of anarcho-capitalism (or market anarchism) was born on the basis of this approach. Narveson stresses that if anarchism is possible at all, it must be in its market version, where production is controlled by individuals or groups acting unconstrained and distribution of goods is based solely on voluntary exchange. J. Narveson, *The Anarchist's Case*, [in:] *For and Against the State*, ed. J. T. Sanders, J. Narveson, Lanham 1996, p. 197.

[12] See: G. Klosko, *The Principle of Fairness and Political Obligation*, "Ethics" 1987, Vol. 97, No. 2; G. Klosko, *Multiple Principles of Political Obligation*, "Political Theory" 2004, Vol. 32, No. 6.

The state, on the contrary, is seen as a creature using coercion, being exploitative of individuals and fundamentally wrong.

Having outlined the basic elements that can be described as characteristic of individualist anarchism, it remains to discuss in just a few sentences what is called collectivist anarchism. It should be stressed that this characteristic will not bring any specific distinction or nuance. The only task is to approximate the fundamental determinants of the concept as a whole. Current collectivist anarchism, primarily, is clearly associated with the classical representatives of this direction, mainly with Bakunin, Proudhon, and also Kropotkin[13]. Indeed, it is hard not to agree with the assumption that this direction of anarchism has much in common with the socialist tradition. However, on the other hand, we cannot expect that no differences between the two may be observed. On the contrary, a number of elements make collectivist anarchism (in many ways) quite different from ideas classified as socialist. This distinction is particularly evident in the focus of the latter, centralized forms of organization and state control[14] – even if they are not treated in terms of the ultimate goal, but at least as a means to build an ideal society. Collectivistic anarchists, in spite of their socialist tendencies, have been treated by socialists as utopians, and this was one of the main reasons for the rejection of the anarchistic, collectivistic vision by socialists. Socialists have argued that such ideas are impossible to initiate[15].

As can be seen from the very beginning, these two ideas – collectivist and individualist anarchism – came about from quite different foundations, which do not share a similar relation to the issue of coercion. Each time, all kinds of anarchist manifestations are condemned, and in addition the main objective of the collectivist approach is a desire to settle social organization on the principle of free community. Therefore, one can notice a greater tendency among collectivists to share the thesis on the cooperative concept of human nature. People naturally combine to form a group whose main task is to coordinate economic activities and to provide mutual assistance by all the members of the community[16].

[…] the idea of mutualité, which was to be one of the twin pillars of Proudhon's anarchism; he conceived the plan of a great mutual aid association among all the workers that would save them from the perils of those economic crises during which they were normally forced to sell their labor at starvation prices. The other Proudhonian pillar, federalism, was the subject of much discussion and even experiment during the Revolution.[17]

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[13] More can be found in: P. McLaughlin's, *Mikhail Bakunin: The Philosophical Basis of His Theory of Anarchism*, New York 2002.

[14] Joll draws attention to the fact that there was a clear gap growing between these two ideologies in these years, observed particularly in France. However, the separation started much earlier – in 1870. See J. Joll, *The Anarchists*, London 1964, chapter IV.

[15] Idem, *The Second International 1889–1914*, p. 56–62.

[16] J. P. Clark, *What Is Anarchism?*, [in:] *Anarchism*, ed. J. R. Pennock, J. W. Chapman, New York 1978, p. 22.

[17] G. Woodcock, *Anarchism: A History of Libertarian Ideas and Movements*, Cleveland 1962, p. 52.

It can be concluded that in this perspective, people are not perceived in terms of holders of certain natural rights, as was previously discussed with representatives of individualist anarchism, but altogether they are considered as, on the one hand, independent and, on the other, related in their network of interactions between each other. Equally important and distinctive in addition is the strong withdrawal from cherishing of private property to the degree it was done by the individualists. The same applies to the formation of the human individual within the community. For communal anarchists such a process is one of the most important sources of stability that can be determined within a social group. The members of society share a common practice, often based on cooperation, established voluntarily, and relationships in such large groups are usually perceived as harmonious. This does not mean the absence of differences, or exclude the existence of conflicts and misunderstandings. According to the statement above, by removing a state considered in this case as a principal oppressive element, it will be possible to expose and make better use of the natural human tendency to build cooperative and voluntary structures. At the same time such a structure would be composed of free individuals, with a regard to achieving greater prosperity[18].

Undoubtedly, collectivistic anarchists were aware of the possible disturbance of social order, due to spreading of various forms of behavior commonly regarded as anti-social. They believed, however, that the solution to these problems is possible through the power of universal education, current habits and new, completely voluntary communities. It is worth mentioning the important meaning of habits, especially in conjunction with legislation. Besides understanding the clear distinction between law and custom[19], we can identify a desire for searching for new possibilities, finding new ways to organize society. Kropotkin pointed out that humanity is looking for new solutions, and even now finding them. He gives the examples of international railway lines and international mail as institutions operating on the principle of voluntary and multilateral arrangements that can successfully replace state law[20].

The positive law established by state institutions is sometimes seen as, on the one hand, arbitrary, and on the other hand as a tool of coercion, usually imposed by the will of the minority. The only thing that can be accepted is the existence of certain social forms of obligations arising from the vision of a cooperative and blossoming society, existing without state power. Secondly we can claim that the social existence of individuals and groups can successfully operate without any element of coercion.

The collectivist varieties of anarchism and its representatives, in particular, focus on highlighting unique and irreplaceable values. Mainly we can find em-

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[18] W. M. Phillips, *Nightmares of Anarchy: Language and Cultural Change, 1870–1914*, Lewisburg 2003, p. 50.

19 J. Horton, *Political…*, p. 121.

[20] P. Kropotkin, *Zdobycie chleba*, Kraków–Warszawa 1925, p. 29.

phasis on the importance of reciprocity as well as free and limitless cooperation. Proponents of this trend imagine that the existence of a society organized in the form of free initiatives is possible. Such a society affecting every aspect of social life (education, economics, culture) and realization of such a vision could be forced by the rejection of all sorts of systems, accompanied by an unshakable, optimistic belief in the positive qualities of human nature[21].

With a solid foundation in the forms and general characteristics of the main anarchist tendencies, it is possible to attempt to present and analyze the philosophical anarchist approach. A broad spectrum of the different forms of anarchism could still be successfully analyzed; the characteristics outlined above cannot in this respect be considered as complete. This does not provide sufficient comments on many varieties of anarchism, such as the political one, and especially on those generally known by the term "collectivist anarchism". All varieties, without any exception, focused on one common element – negation of the state and other institutions, considered as compulsory. "Of course anarchists do not deny that states are thought to possess legitimate authority by many of their subjects; that is a fact about the world which nobody in their senses would try to conceal. The anarchist view is simply that the belief is false, that no state has the right which it claims which its subjects generally concede. It is an argument about principles, not about facts"[22]. Something that is also relevant to philosophical anarchism is undermining the essence of political power as such. This type of lack of acceptance, or even denial of political power is a guiding feature of philosophical anarchism, but at the same time it is not considered to be a distinctive one because its presence is visible in the whole of anarchist thought. For a clearer separation of philosophical anarchism from other anarchist forms, it would be necessary to provide a more detailed analysis which can reveal a number of issues that would more precisely characterize this particular idea.

We shall begin this discussion with a statement by David Miller, who notes that "philosophical anarchism, it should be stressed, is not a variety of anarchism in the sense in which individualist and communist anarchism are varieties: it does not encapsulate any model of anarchist society, nor any recipe for destroying the state and other coercive institutions. It is rather a philosophical attitude, a way of responding to authority. It can contribute to an anarchist outlook only when combined with a substantive ideology."[23]

Important, from this point of view, can be anarchists' attitude to power. We should draw attention to the distinction between authority and power: namely, in the moment of a dangerous situation, more adequate will be the recognition of strength, not the power (authority). Anarchists are obviously aware of the state

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[21] P. Marshall, *Human Nature and Anarchism*, [in:] *For Anarchism: History, Theory, and Practice*, ed. D. Goodway, London–New York 1989, p. 127–149.

[22] D. Miller, *Anarchism…*, p. 15.

[23] *Ibidem*, p. 16.

power, and pay attention to the potential mechanisms used to enforce obedience to its dictates. However, acceptance of such a relationship should not be mistaken with acceptance of the authority.

The question raised by Miller, which concerns distinguishing acceptance of the authority from the state's strength, corresponds with a statement often invoked as the typical assumption of philosophical anarchism. Namely the question here is about the lack of legitimacy of the state's power. The main thesis of philosophical anarchists is close to the statement that all states are currently illegitimate. Support for this view arises from many sources, in other words, we can distinguish various substrates. The first of these sources can be considered to be a strong belief in the subject of individual autonomy, which constituted the core of the individualist position briefly characterized above. The idea of free choice, coupled with the state, understood as an involuntary institution, causes the existence of a conflict between authority and autonomy[24]. In addition, one should mention the problem of social values, especially their failure (e.g. increasingly deepening lack of solidarity between people), leading to alienation or even social atrophy, which affects individuals and maintains divisions between existing groups. Another source may also be the ideal of equality, especially equal rights and equal opportunities, which in currently existing systems is difficult, if not impossible to accomplish[25]. We may assume that the sources mentioned above are sometimes identified as a comprehensive foundation for contemporary criticism of philosophical anarchism.

Lack of legitimacy is the most notable, essential element in the philosophical anarchist position, which expressly provides a separation of this stream from the other types of anarchism. It is worth stressing that philosophical anarchists do not treat the lack of legitimacy of the state in terms of a moral order to eliminate the state. This can be viewed as a quite unusual feature, but the expected lack of legitimacy is treated more in terms of the basis for the removal of any moral foundation supporting the conviction of the need for obedience. In this case the obedience is understood as conforming with the standards created by the state, or as support and cooperation with its institutions[26]. Adoption of such a position does not mean lack of differentiation within this approach. As already mentioned, philosophical anarchism is not uniform; we can easily indicate some significant differences, which will be presented briefly with special emphasis on the ideas of Robert Paul Wolff.

On the basis of philosophical anarchism the leading representatives of this idea can be distinguished, as well as a series of its interpretations and classifications. Sometimes it is suggested that the whole of modern philosophical anarchism consists of three main approaches: namely, the first represented by William God-

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[24] R. P. Wolff, *In Defense…*, p. 12–19.

[25] See: K. Nielsen, *State Authority and Legitimacy*, [in:] *On Political Obligation*, ed. P. Harris, London–New York 1990.

[26] A. J. Simmons, *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge 2001, p. 102.

win, centered around the principle of utility[27], the second, highly individualistic and self-oriented, personified by Max Stirner[28] (briefly discussed earlier), and the third, the most modern, and still being developed by Wolff. Analysis of these historical assumptions would go far beyond the scope of this article, and we therefore focus on the characterization of Wolff's contemporary approach.

The principle of own, independent judgment is undoubtedly one of the central points of philosophical anarchism, and now Wolff is considered as the main follower of this approach[29]. In particular, he draws attention to the issue of individuals' moral autonomy and responsibility for their actions.

> Since man's responsibility for his actions is a consequence of his capacity for choice, he cannot give it up or put it aside. He can refuse to acknowledge it, however, either deliberately or by simply failing to recognize his moral condition. All men refuse to take responsibility for their actions at some time or other during their lives, and some men so consistently shirk their duty that they present more the appearance of overgrown children than of adults. Inasmuch as moral autonomy is simply the condition of taking full responsibility for one's actions, it follows that men can forfeit their autonomy at will. That is to say, a man can decide to obey the commands of another without making any attempt to determine for himself whether what is commanded is good or wise[30].

A further important point is the impossibility of giving up on one's independence[31], which will be discussed later. The possibility of making free judgments, however, is not only relevant to Godwin or Wolff; it is treated as a priority by most authors who consider themselves to be Kantians. This conviction is accompanied by the philosophers associated with the empirical tradition, as well as other theorists, not necessarily viewed as philosophers[32]. This does not mean, however, that Wolff fully adopted Kant's assumptions without making any modifications. The important thing is that he began to see the autonomy of the human being in terms of a specific moral duty or a rudimental, human obligation. On the other hand, from Kant's standpoint, autonomy is necessary, but more as a hypothesis, which helps to explain the possible existence of universal moral concepts we use. "Robert

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[27] T. Honderich, *The Oxford Companion to Philosophy*, Oxford 1995, p. 321.

[28] *Ibidem*, p. 852.

[29] Wolff is generally recognized as the most important representative of philosophical anarchism; there are, nonetheless, those who question this opinion, e.g. H. Frankfurt. In his article he analyzes thoroughly the assumptions of Wolff and eventually comes to the conclusion that Wolff, when talking about unanimous democratic consent for the necessary arbitration in solving economic conflicts (R. P. Wolff, *In Defense*…, p. 24–25), assumes that individuals give their consent to follow a certain decision-making procedure, which means that those making a decision according to this procedure have the right to expect that the procedure will be complied with, which subsequently entails an obligation on behalf of those who gave their consent. H. G. Frankfurt, *The Anarchism of Robert Paul Wolff*, "Political Theory" 1973, Vol. 1, No. 4, p. 413–414. It seems, however, more justified to treat this issue as a fragmentary lack of cohesion in Wolff's concept rather than deny unequivocally that his theory is anarchistic in character.

[30] R. P. Wolff, *In Defense*…, p. 15.

[31] *Ibidem*, p. 12–14, 71–72.

[32] G. Wall, *Philosophical Anarchism Revisited*, [in:] *Anarchism*, ed. J. R. Pennock, J. W. Chapman, New York 1978, p. 274.

Paul Wolff's treatment of autonomy as the 'Kantian' primary obligation of man has the following consequences: it leads to treating 'autonomy' as a substantive duty, contrary both to Kant and good sense; this error leads to neglect of Kant's notion that the primary substantive moral duty of men is to treat other men as end-in-themselves whose dignity ought to be respected."[33]

The crucial point for the analytical proposals of Wolff's philosophical anarchism seems to be set by the fundamental problem, namely the question of how the moral autonomy which the individual has may interact with the legitimized state power. In the first instance it finds, therefore, that a major determinant of the state is its power. State power is achieved by, on the one hand, the right to issue orders, and on the other, the principle of correlation, the right to expect obedience to the dictates. This point shows a commitment to comply with the orders of power expected from those to whom the authority is exercised. However, the question is how such an obligation corresponds with moral autonomy of individuals, especially when we consider that the primary duty of every human being is to have autonomy? "It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Insofar as a man fulfills his obligation to make himself the author of his decisions, he will resist the state's claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state simply because they are the laws. In that sense, it would seem that anarchism is the only political doctrine consistent with the virtue of autonomy"[34]. Elsewhere, Wolff also clarifies how independence of the individual should be understood.

[…] moral autonomy is a combination of freedom and responsibility; it is a submission to laws which one has made for oneself. The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not because he has been told to do it. He is therefore, in the political sense of the word, *free*.[35]

Therefore, it can be noted that Wolff highlights two basic issues. At the forefront is the categorical rejection of the possibility of reconciling individual moral autonomy and political power, sometimes reinforced with logical counter-argument (which appears when we try to combine moral autonomy and political power). Wolff's arguments constructed in this way have been widely criticized, and the remarks in this point will be further considered. The second of the important emerging issues is the emphasis which falls on the legitimacy understood in a *de iure* sense. It requires a brief consideration by the fact that the issue is not only discussed by Wolff, but is also the crucial point of the whole of philosophical anarchism.

As mentioned previously, the philosophical notion of anarchism stresses the fact that the existence of a legally valid authority run by a government (state) or

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[33] P. Riley, *On the "Kantian" Foundations of Robert Paul Wolff's Anarchism*, [in:] *Anarchism…*, p. 296.

[34] R. P. Wolff, *In Defense…*, p. 18–19.

[35] *Ibidem*, p. 14.

executed on its behalf is impossible. The point which is stressed here does not concern *de facto* authority (control), but legitimized *de jure* authority. It seems crucial for philosophical anarchists to make this distinction for the overall sense of their argumentation. Therefore, it is essential to differentiate between the situation where the subjects of the authority in a given state believe that it is legitimate, and the situation where its legitimacy is factual. *De jure* and *de facto* state authorities are thus different from each other in one point: namely, in the first case the belief that the authority is legitimate is true while in the latter the authority cannot be considered legally valid or it is not known whether it is legally valid[36]. This distinction is also pointed out by Joseph Raz on the occasion of considering the definition of authority. He claims that there is a popular theory treating authority as capacity to exercise a certain type of actions and identifying *de facto* authority with power over people. Legitimate (*de jure*) authority may then be defined as justified efficient authority. It is sometimes defined as efficient authority accepted by its subjects, or as authority based on their consent. However, if it is to matter, then this will only be by showing to what degree the authority is justified[37]. Clearly, the above reasoning is slightly different from the previous type because it refers to efficacy while avoiding the notion of belief. Efficient authority means factual power over people, not a belief concerning this power. If perceived in this way, efficient (*de facto*) authority in the domain of political authority is indispensable from *de jure* authority (which, for example, is essential in order to distinguish legitimate and illegitimate use of power)[38].

Let us now leave these definitional disputes, which might go considerably beyond the subject in hand, and return to the issue mentioned beforehand, namely, the problematic relation between authority and autonomy. Knowing Wolff's theses on this subject, let us try to undermine them. The starting point would be considering the question of why the preservation of moral autonomy of an individual should have a prevailing status of duty. Wolff's only explanation is that one cannot deny that "the primary obligation of man is autonomy, the refusal to be ruled"[39]. He also adds elsewhere that moral conditions require from us to acknowledge our responsibility and to achieve autonomy wherever and whenever it is possible[40].

However, according to Horton, moral autonomy is for the majority of us merely a positive ideal. It is just one of the elements of a good life, not its sole component, and only sometimes its dominant element. Autonomy has its own position among other moral ideals, which relate to other individuals and determine rules of behavior in particular contexts. Although autonomy of an individual may at times be in conflict with such virtues as not harming others or supporting the ones we

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[36] R. Martin, *Anarchism and Scepticism*, [in:] *Anarchism…*, p. 120–121.

[37] J. Raz, *Autorytet prawa*, Warszawa 2000, p. 9.

[38] *Ibidem*, p. 10–11.

[39] R. P. Wolff, *In Defense…*, p. 18.

[40] *Ibidem*, p. 17.

care about, one should not assume that autonomy will always prevail over those virtues[41].

Wolff's claim about the superiority of individual autonomy seems significantly impaired. His thesis that authority and autonomy are logically contradictory and that there is no link between the two can also be undermined. In this case, the issue of authorization (examined earlier when discussing contractual theories) should be taken into account. Does this kind of action also violate someone's autonomy? It seems rather doubtful. Not surprisingly, Wolff (and Godwin) denies the possibility of satisfactorily securing the authority with any sort of agreement. But the argument that authority and autonomy are logically contradictory is also impaired. Moreover, it appears unfounded to claim that the moral power of individual autonomy is supreme. This ideal is impossible to achieve for one reason – the existence of political authority. Further reasoning would be that acknowledging the supreme value of autonomy does not completely refute the possibility of coexistence of autonomy and political power – because they are not necessarily logically contradictory.

However, Wolff's concept presented above did not remain solitary – it promptly found its followers. One of the viewpoints worth mentioning, based largely on Wolff's idea, but modifying it slightly, is that of Chaim Gans, Wolff's commentator and follower. He indicates that the entire trend of philosophical anarchism focuses on denying that an obligation to obey the law of a given state actually exists. It can be seen from the very beginning that this definition is only partial and insufficient. According to Gans's classification, there are two fundamental distinctive types. The first is entirely based on Wolff's argumentation, i.e., the assertion that authority and individual autonomy are incompatible. On the basis of this statement Gans concludes that moral obligation to obey the law contains the need to eschew individual moral autonomy – although it has been excluded due to being contradictory[42]. Complying with this reasoning, Gans states that this form of philosophical anarchism should be called autonomy-based anarchism. The other type is hit by criticism, which does spare any approach trying to explain the existence of political obligation . According to Gans, the denial that an obligation to obey laws exists is based on rejection of its grounds and is defined as critical anarchism[43]. The notion of critical philosophical anarchism described in this way is, nonetheless, insufficiently defined and general enough to refer to almost any kind of anarchism. This is the main reason why it is considered impractical and yields to more concise competitive classifications.

There is one more aspect of Wolff's concepts worth considering. It triggered subsequent classifications around his ideas and inspired various types of approaches to philosophical anarchism. One of these classifications was created by A. J.

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[41] J. Horton, *Political…*, p. 129.

[42] C. Gans, *Philosophical Anarchism and Political Disobedience*, Cambridge 1992, p. 2.

[43] *Ibidem.*

Simmons, an American philosopher, who looked at philosophical anarchism from a different point of view, initiating *a priori* and *a posteriori* approaches. It is worth mentioning that the classification suggested by Simmons is suitable not only for philosophical anarchism but also for some other anarchistic theories in general.

The *a priori* approach to philosophical anarchism is based on the idea that the existence of a state or a state authority considered to be morally legitimate is impossible. A typical example of this approach would be Wolff's concept. However, as Rex Martin points out, Wolff contradicts himself by assuming that *one* type of legitimate state may actually occur – the one based on the idea that indirect democracy exists and that it is possible to achieve unanimity under this system[44].

The thesis that it is impossible for a legitimate state to occur is explained by the existence of certain essential features characteristic of state and statehood in its functioning based on hierarchical structure and having a clearly obligatory character. These features, as well as the remarks on the insoluble conflict between autonomy and authority, are the major arguments to support the assumption that it is impossible for a legitimate state to occur[45]. We may even conclude that a phrase containing the term *legitimate state* would be a sort of oxymoron.

Nevertheless, taking into account the critical remarks mentioned earlier on Wolff's main assumptions on which he based his theory, we have to agree both with Simmons, who negates the *a priori* approach by considering it seriously defective[46], and with Reiman, who claims that the occurrence of obligation to obey a law is not logically impossible and does not impair the individual responsibility of man to determine what to do in particular circumstances. To cut things short, authority and autonomy are not logically contradictory; thus, it is not possible to deduct *a priori* anarchism from individual moral autonomy[47].

If the above conclusions are taken into account, Wolff's concept does not look nearly as destructive for legitimate authority (directly) and for the idea of political obligation (indirectly) as may initially seem to be the case. Therefore, we cannot agree that the argumentation he used supports anarchistic approaches in a convincing and positive way. To sum up, the fact that he based his overall argumentation on the idea of authority and autonomy being contradictory turned out to be the weakest – although intended as the strongest – point in his thesis.

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[44] R. Martin, *Wolff's Defense of Philosophical Anarchism*, "The Philosophical Quarterly" 1974, Vol. 24, No. 95, p. 141.

[45] A. J. Simmons, *Justification and Legitimacy*…, p. 105.

[46] Idem, *The Anarchist Position: A Reply to Klosko and Senor*, "Philosophy and Public Affairs" 1987, Vol. 16, No. 3, p. 269.

[47] J. H. Reiman, *Anarchism and Nominalism: Wolff's Latest Obituary for Political Philosophy*, "Ethics" 1978, Vol. 89, No. 1, p. 8; see also: J. H. Reiman, *In Defense of Political Philosophy. A Reply to R. P. Wolff's "In Defense of Anarchism"*, New York 1972, p. 10–12.

Beata Szyjka

THE AMERICAN DIVERSITY IMMIGRANT VISA PROGRAM AS A NEW PHENOMENON IN IMMIGRATION

Immigration law is an integral part of American politics – not only internal but also external – and its issues have been and still are the subject of presidential campaigns and within the sphere of influence of lobbies. Society's attitude towards the subject is "variable dependent on the economic, social, political and ideological situation"[1].

Since its creation, the United States of America has been a destination for immigrants from all over the world, and the Green Card the most desired document in the world. For several years the US government has run a visa lottery – the *Diversity visa program* – which allows immigration visas – so-called green cards – to be obtained. Obtaining such a visa was out of reach for many years for immigrants who were not subject to the preference system until the first edition of the lottery. Until the 1980s and '90s, there was no program in American history performed on such a grand scale and causing such emotions.

The diversity visa program is meant for people who are not subject to a preference system, and who with a bit of luck will be allowed to settle in the United States, work legally and become a citizen in the future. The program is very popular, even though knowledge about it is rather lacking – not only about its history and the reasons for its establishment, but also about fundamental issues such as the conditions allowing participation in it.

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[1] J. Rokicki, *Polityka prezydenta Ronalda Reagana w zakresie imigracji*, [in:] A. Bryk, A. Kapiszewski, *Ronald Reagan a wyzwania epoki*, Kraków 2005, p. 379.

It is crucial to provide a brief presentation of the history of immigration to the USA as well as key immigration bills to show the history of the program, the reasons for its establishment and the aims of its creators.

There is no doubt that immigration policy and society's attitude towards immigration depend on many factors, but mostly they depend on the economic situation. The USA has conducted an open-door policy for most of its existence. The uninhabited territories of the USA gave opportunities to the first settlers from Europe, who created national growth through their hard work. The New World as a land of opportunity – the Promised Land – gave newcomers the opportunity for social advancement according to the slogan "from rags to riches". This was also about "refuge for all oppressed people without regard to their nationality"[2].

During the colonial period immigration to the New World was not restricted by law. Basically everyone who had enough money could migrate to the colony. More than once "actions encouraging immigration" took place – such as in 1619, when the London Company sold 19 women to planters for the price of their transportation. Deportation of convicts from England and so-called street round-ups, which kidnapped men, women and children, "deceitfully abducted the vessel by the ghosts and deported by the sea" were on the agenda.[3]

Despite the lack of a coherent colonial policy in the field of immigration law since 1639, many colonies tried to restrict the immigration of undesirable persons. After the announcement of the Declaration of Independence in 1776 and recognition of the United States in the international arena, immigration to the former colonies began to increase. The federal government, taking into account the needs of the country on hand to work, stimulated immigration because "it was necessary to establish farms in the West, displace the Indians, build a state strong enough not to have fallen into dependence on another power".[4] The period of liberal immigration law lasted as long as there was a need for immigrants in the economy and the state was in the construction and development period.

In the middle of the 19th century immigration from Eastern and Southern Europe was allowed. This was mainly about immigrants seeking a livelihood. The influx of immigrants worsened the already poor economic situation of the country, caused by the Civil War in the years 1861–1865, and led to rising unemployment. This situation increased the antagonism between the old (old stock) and new immigration, and at the beginning of the 20th century the American state faced the problem of quantitative and qualitative immigration restrictions. The period of the 1890s is considered a turning point in the social anti-immigration policy: "It was connected with the end of the period of conquest of the continent and the lack

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[2] The resolution was submitted to the third session of Congress 61 of 1864 – according to H. Kubiak, *Rodowód narodu amerykańskiego*, Kraków 1975, p. 102.

[3] C. A. Beard, M. R. Beard, *Rozwój cywilizacji amerykańskiej. Era rolnicza*, Warszawa 1961, Vol. 1, p. 63–64.

[4] W. Pasko-Porys, *Prawo imigracyjne Stanów Zjednoczonych*, Warszawa 1997, p. 20.

of free land and the common belief that too many newcomers will reduce living standards".[5] The turning point for introducing legal regulations can be deemed to be the year 1875,[6] when immigration of undesirable persons, i.e. "sick, lame and infirm and those with immoral reputation", was banned. The *Chinese Exclusion Act* (1882) was another act that restricted immigration to the USA. This act was "the first to introduce the race criteria into immigration policy"[7]. In addition to provisions to ban Chinese people from entering the territory of the United States, the law included provisions on the prohibition of deportation and naturalization. It should be mentioned that banning the Chinese from immigration was not caused by racism, but by economic factors. They were the largest group of immigrants employed in the 19th century in California in railway construction and gold mines. They often worked for the lowest salary, depriving Americans of jobs. The exclusion of the Chinese was abolished in 1943, and they were granted a national quota of 105 (*Chinese Exclusion Repeal Act*).[8]

The subsequent years brought restrictions for entry into the United States due to a lack of skills by workers (*Foran Act 1885*) or due to illiteracy (*Literacy Test Act, 1917*). In the early 1920s, another law was introduced, which determined the right of entry by national origin (*Japanese Exclusion Act, 1924*).

The period of restrictions was started by the Act of 1921 (*Quota Act*). The reasons for passing this law should be found in the economic crisis and strikes of laborers who lost their jobs as a consequence of the influx of cheap labor from Europe. According to the census of 1910 the quota system restricted immigration to the amount of 3% of national groups residing in the United States. Subsequent years brought a reduction in the amount of immigration to 2% of the immigrant population residing in the United States according to the census of 1890, and established an annual limit at a level of 165,000 (*Immigration Act of 1924*). The next act of the quota law was adopted in 1929 (*National Origin Act*). This act lowered the annual limit to the amount of 150,000, and replaced the 2% limit, "the proportion of number of persons of nationalities living in the United States in 1920". The overall annual limit for Western Europe (i.e. for the old immigration) accounted for 85% of visas, but that for Eastern and Southern Europe covered only 15%.[9]

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[5] A. Kapiszewski, *Asymilacja i konflikt. Z problematyki stosunków etnicznych w Stanach Zjednoczonych Ameryki*, Kraków 1984, p. 16.

[6] Although the end of the 19th century is considered as the beginning of the restrictive era, it is worth noting that the 1875 Act is not the first act introducing a reduction in immigration; much earlier, in 1798, the Alien and Sedition Act was introduced which allowed "deportation from the country people dangerous to his peace and security". See H. Kubiak, *op. cit.*, p. 109; J. Rokicki, *op. cit.*, p. 380.

[7] H. Kubiak, *op. cit.*, p. 110; W. Pasko-Porys, *op. cit.*, p. 23.

[8] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 10 (01.08.2007).

[9] C. K. Kubik, *Amerykański system opieki zdrowotnej. Podręcznik dla wszystkich*, Chicago 1999, vol. 2, p. 1239; J. Rokicki, *op. cit.*, p. 380; W. Pasko-Porys, *op. cit.*, p. 26.

The period of restriction in immigration law was maintained up until 1952, when the *McCarran-Walter Act* was adopted. It maintained the quota system, established an annual limit on the number of immigrants from the Eastern Hemisphere, but abolished the "racial barriers to naturalization" and introduced a preference system for relatives of citizens and certain qualifications, which in later years would be modified. The assumptions of the restrictive immigration policy had been achieved. In the years of national quotas, immigration fell significantly, in some years reaching a negative balance (predominant emigration over immigration). The economic crisis of the late 1920s and '30s was also significant for the decline in immigration.[10]

Until 1965, immigration to the United States was hampered by the system of national quotas which was in force from the 1920s onwards – as "a rational and logical way to restrict immigration numbers."[11] (*Johnson Act, 1921, Johnson-Reid Act 1924, National Origins Act of 1929, McCarran-Walter Act, 1952*). It should be noted that the purpose of the quota system was to restrict immigration, but with specific regions of Europe, i.e. from the South and East. In the mid-1960s, in the shadow of the struggle for civil rights, the amendment *The Immigration and Nationality Act Amendments of 1965* (*Hart-Cellar Act*) was adopted, which started the liberalization of immigration law and ended the era of discrimination based on race, national origin and ethnicity. A detailed record on this subject was in section 202 (a) of the Act of 1965, which said that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence". This provision meant the end of discrimination in immigration law – at least theoretically, since many laws were introduced that did not comply with section 202 (a). This concerned among others the Act of 1990 introducing the visa lottery.[12]

The System of Preferences of 1965 divided the pool of immigrant visas as follows: „84 percent of available visas for aliens with relatives residing in the United States, 10 percent for aliens with occupational skills or training needed in the United States, and six percent for refugees".[13]

Amendments to the provisions of the immigration law of 1976 introduced ta system of preferential groups also "in relation to immigrants from the Western Hemisphere"[14]. In practice, in the period from 1965 to 1990 immigration law was based only on a system of preferences for families of U.S. citizens and permanent residents, as well as on the needs of the labor market – treating employees of speci-

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[10] *Ibidem*, p. 27–28; C. K. Kubik, *op. cit.*, p. 1240; H. Kubiak, *op. cit.*, p. 114. "In the hardest year of crisis – 1932 – 35,000 immigrants arrived, and more than 100,000 left the country".

[11] R. Jenks, *Before the Immigration, Border Security, and Claims Subcommittee of the Committee on the Judiciary of the House of Representatives*, www.mygreencard.com/downloads.php?file=Jenks_Jun2005.pdf, p. 2 (21.05.2007).

[12] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 13–14 (01.08.2007).

[13] R. Jenks, *op. cit.*, p. 3.

[14] W. Pasko-Porys, *op. cit.*, p. 29.

fic professional qualifications in a preferential way.[15] This meant that people without specific qualifications or close family have had little chance of legal immigration to the United States. It was not until the *Immigration Act of November 29, 1990*, which introduced a new type of independent immigrants – known as "immigrants of different nationalities"[16] – that there were *diversity immigrants* who could not covered by the preferential system, and complying with the minimum requirements and a little luck could get a green card for permanent residence and take almost any job in the United States.[17]

Reasons for the introduction of the visa lottery

Not without significance for the shape of today's immigration laws is the fact that, for more than half of the century, a system of national quotas was in force, which were associated with limitation or exclusion of the sources of immigration of strictly defined category of persons from certain regions of the world.

Attempts to change the image of the United States in the international arena as a country where human rights are respected ended with the introduction of the Act of 1965, intended to launch a new era – an era of liberalization in immigration law. However, few see that this law, which abolished the national quota system as a factor for admission into the United States, modified the existing system, introducing a system of preferences which turned out to be unfair for many groups. The attempts to redress ended in the 1980s with the introduction of two lottery programs, allowing even the participation of illegal immigrants. It may even be assumed that the Act of 1965 provides a starting point for reflections on the causes of the introduction of the visa lottery.

The years following the adoption of the Act of 1965 led to a discussion on the shape of immigration law. To this end, in 1978 Congress established the Select Commission on Immigration and Refugee Policy, which aimed at examining the existing laws and immigration policy. In the final report of the commission (August 1981) objectives that should be pursued by U.S. immigration policy were determined. Those aims included:[18]
1. social – family reunification,
2. economic – balanced economic growth through protection of the labor market,
3. cultural diversity "consistent with national unity".

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[15] *Ibidem*.

[16] www.polish.poland.usembassy.gov/poland-pl/img/assets/5816/dv_pl1.pdf (23.05.2007).

[17] Some professions are restricted to US citizens only. See: W. Pasko-Porys, *op. cit.*, p. 55–58.

[18] *The Diversity Visa Program of the Immigration Act of 1990 Excerpted from research prepared by the Numbers USA Education and Research Foundation*, www.numbersusa.com/PDFs/TheDiversityVisaProgram.pdf, p. 1 (20.03.2007).

However, the goals developed by the committee on immigration policy are not complete and should be supplemented by another two[19]: moral – supporting human rights, national and economic security – controlling illegal immigration. It is believed that the third goal – cultural diversity – is one of many factors influencing the introduction of the green card lottery program in 1990. The introduction of the visa lottery would not have been possible, and in fact would not have occurred if not for the previously mentioned changes in the immigration law of 1965 and the activities of lobbies, mostly Irish and Italian, which had representatives in the ranks of influential members of Congress. The main goal of the creators (or rather the modifiers) of the preferential system from 1965 was to establish chain immigration – sponsored by the family (*family-sponsored immigration*) – in which the sponsoring person (citizen or resident) must have adequate revenue – "125% of income deemed poverty documented settlement of tax for the last three years".[20]

The system that was created was supposed to honor the relatives of immigrants who had already arrived, from the old and proven dominant and already assimilated wave. Theoretically, the main beneficiaries of the system were to be Europeans, but the effect was different from that intended, because the new provisions of the Act of 1965 benefited from immigrant Asian and Latin families who had come to the United States shortly after World War II[21].

As shown in Figure 1 there was a reduction in the level of immigration from Europe (mainly Western) after 1965, and an increase in immigration from Asia and Latin American countries (in the framework of family reunification). This resulted in a change in the racial and ethnic structure of the United States.[22]

The Act of 1965 contributed significantly to the reduction in the level of immigration from Ireland. In the years preceding the enactment of a seven-level system of preferences, i.e. the years 1951 to 1960, immigration from Ireland reached an average limit of 4,836 immigrants per year, between 1961 to 1970 – 8,597, while in the years 1971 to 1980 immigration from Ireland fell to 1,149 immigrants per year.[23] The situation of Irish people (but not only that of this group) was due to the introduction of a seven-level system of preferences, which, as mentioned earlier, entitled people who have close relatives in the United States or specific professional qualifications to apply for an immigrant visa. In addition, to the detriment of the Irish, in the 1970s non-preferential visas were eliminated because of too many applications, exceeding the number of available visas. Non-preferential visas were

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[19] www.urban.org/publications/305184.html (22.02.2011); M. E. Fix, J. S. Passel, M. E. Enchautegui, W. Zimmermann, *Immigration and Immigrants. Setting the Record Straight*, Washington D.C. 1994, p. 3.

[20] W. Pasko-Porys, *op. cit.*, p. 167.

[21] www.answers.com/topic/immigration-act-of-1965 (18.07.2007).

[22] The immigration trends in this form are maintained to the current year. In 2003-2005, many people came to the United States in the guise of family reunification with Mexico, India, China and the Philippines, while the target state was settlement first in California, then following New York, Florida and Texas. See: *U.S. Legal Permanent Residents: 2005*, p. 3–4, www.dhs.gov/xlibrary/assets/statistics/publications/USLegalPermEst_5.pdf (21.05.2007).

[23] A. O. Law, *The Diversity Visa Lottery – A Cycle of Unintended Consequences in United States Immigration Policy*, www.condor.depaul.edu/~psc/faculty/law/diversity.pdf, p. 6 (29.05.2007).

granted to persons who met certain conditions, "and were not subject to any of the [...] categories, provided that the limit [...] of the preferential visas in a given year has not been used".[24]

Figure 1. Legal immigration, 1941–2000
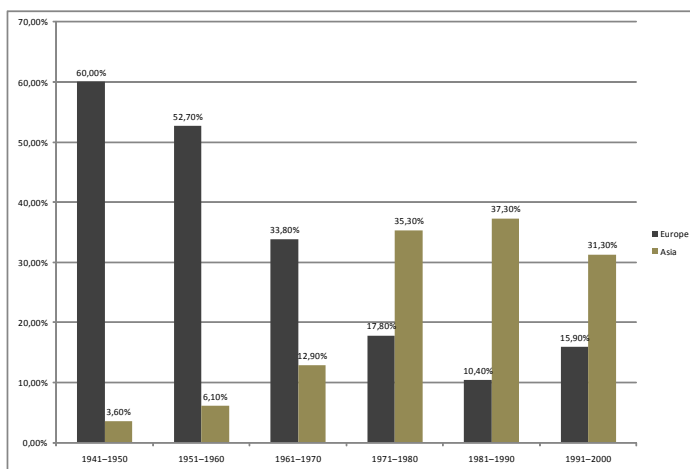
Source: www.answers.com/topic/immigration-act-of-1965, Diagram 1 (18.07.2007).

The abolition of non-preferential visas closed the possibility of legal immigration for Irish people who did not have the requisite qualifications or close relatives. The lack of possibility to legally cross the border of the United States was the reason for the rise in illegal immigration from Ireland. This situation did not remain without a reaction for long. The influential group of Irish representatives in Congress came to their countrymen's aid. The pilot program lottery NP-5 was the result of their actions, by which Irish immigrants who had resided illegally in the United States legalized their status and in the temporary lottery AA-1 program in 1992 received the largest number of immigrant visas, i.e. 14,617. Another group that were disadvantaged (according to subjective assessment by the victims themselves) by the law of 1965 were Italians. Before 1965 they immigrated mainly via the preferential structure introduced in 1952 as immediate relatives (the Act of 1952 defined as the next of kinsiblings; only the law of 1965 included parents in the category of next of kin). Family visas attracted great interest among Italian immigrants, but with the binding force of the principle of first come first served, waiting periods for visas increased to several years.[25]

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[24] K. Piotrowska-Breger, *Ameryka, to nie tak miało być*, Kraków 2004, p. 52.

[25] C. K. Kubik, *op. cit.*, p. 1240; A. O. Law, *op. cit.*, p. 9.

Unlike the Irish, Italians had little chance of a preferential visa for the reason that every year they used the granted limit of preferential visas, i.e. 5,600. The introduction of the Act of 1965 additionally made the situation even more difficult, because people on the waiting list for an immigrant visa were moved to a new waiting list according to a seven-level system of preferences. Representatives of the Italian community went to work in the early 1970s under the slogan "*Do something for the Italians*". The Italian and Irish communities decided to join forces in their battle for reform of immigration law. They attempted to revise immigration law in the 1960s and '70s. The first draft was presented at the end of the '60s, but did not receive approval in Congress. William Ryan, a Democrat from New York and a representative of the Irish minority, was its creator. The bill assumed a lower limit being set for each country from the Eastern Hemisphere, "of which Ireland was a part". The lower limit was to be calculated as follows: 75% of annual limits on immigration visas for each country, awarded during the ten-year period preceding the reform law in 1965. In the event that any of the countries did not use their annual allocation granted after 1965, the difference between the lower limit and the number of visas granted would be additional immigrant visas, even more than the maximum limit of 20,000 visas for the country, and "over limit" immigrants would be exempt from the requirement for professional qualifications. This was to solve the main problem, which was labor certification.[26]

Another bill was proposed, this time by a representative of the Italian minority – Peter Rodino, a Democrat from New York. This bill assumed that the visas which were not granted should be distributed. Similarly to Ryan's bill, those persons who were granted such visas would be exempt from the requirement for professional qualifications. Rodino included in his bill the statement that countries defined as "disadvantaged countries – those which had not used their limit in 1968 – would be allowed to take part in the program", to put on a show of neutrality.

In another bill proposed by Rodino in collaboration with Emmanuel Celler, the draft reform of immigration law, the beneficiaries as in the previous two bills were to be Irish and Italian people. In order to get approval for the bill from Congress Celler and Rodino introduced the concept of "new seed immigrants", according to which a chance should be given to young, independent immigrants based on the requirement of professional competence even without any close relatives in the United States. According to Emmanuel Celler, the pool of visas for immigrants referred to as "new seed" should be determined every year, since immigrants of this category are more valuable, have "pioneering spirit and an immigrant work ethic".[27]

In fact, the concept of new seed immigrants was only a pretext to push through reforms for the benefit of the Irish and Italians. Having experienced failure, Rodino realized that he would not find support for the reform bill, which allows

[26] *Ibidem*, p. 10–12.

[27] *Ibidem*, p. 13.

for the arrival of uneducated and poorly skilled immigrants, in addition not having relatives in the United States.

The reform bills mentioned above did not find recognition in Congress. It was often the case that their life ended in the House of Representatives. Representatives of minorities were so determined in their efforts to reform immigration law that they did not fail to use the at the time very popular slogans about discrimination against the Irish and Italians, or discrimination based on national origin, which in turn was associated with violations of the Act 1965, namely the provisions of section 202 (a). There were also comparisons of the current immigration law and immigration difficulties for the rights of certain groups from the late nineteenth century, namely the *Chinese Exclusion Act* (California's Irish President of the *Irish Immigration Reform Movement* Philip O'Rourke).[28]

At the end of the 1970s the discussion on changes in immigration law was pushed into the background in favour of searching for a solution to the problem of illegal immigration. However, the activities of the lobbies, in particular the Irish representatives, did not stop. Their long-term efforts to reform immigration law brought results – the Act of 1986 (IRCA) provided lottery programs promoting immigration from Ireland.

The history of the legislation process: Work on the lottery program (*Diversity Visa*)

The act introducing the current lottery program was adopted in 1990, but work on the bill had begun much earlier. The first clauses of the lottery schemes were already present in the Act of 1986. They aimed at promoting immigration from certain countries, implementing (at least officially) the guidelines of the Select Commission on Immigration and Refugee Policy report from 1981 concerning the diversification of society.

NP-5 was the first lottery program, sponsored by Brian Donnelly. Having approved the program in the Act of 1986, another draft of the program was prepared to implement the principle of diversity by Sen. Edward Kennedy (Democrat, Massachusetts). The bill assumed the creation of a category of independent immigrants – and in turn dispensing from this pool of immigrants the subcategory of non-preferential (*nonpreferences aliens*) who would be selected from countries with low rates of immigration according to the points system.

The points would be awarded for education, English language skills and professional qualifications.[29]

The bill assumed the award of extra points for immigrants from countries known as being adversely affected. Kennedy's bill included the Commission's gu-

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[28] *Ibidem*.

[29] R. Jenks, *op. cit*., p. 7.

idelines, but did not get the approval of Congress and was not adopted. Instead, an amendment to IRCA, which introduced the second lottery program OP-1, was passed in 1988.

In 1988, Senators Edward Kennedy and Alan Simpson (Republican, Wyoming) introduced a draft bill on immigration, the Immigration Act of 1988, which included clauses for the category of independent immigrant who, due to a lack of close relatives in the United States, had no chance of immigration. The draft bill assumed the creation of a subcategory of selected immigrants in the framework of independent immigration. The expected pool of visas was 55,000. Potential immigrants would be emerging based on a points system similar to that which was presented by Kennedy in 1986 (education, English language skills and professional qualifications); the drafters did not foresee additional points for those who came from countries from which immigration was difficult after 1965. The bill was approved by the Senate in 1989 (excluding the provision on the granting of credit for English ability).[30]

At the same time another bill was submitted by Charles Schumer (Democrat, New York). This differed substantially from the bills submitted earlier. Schumer planned the pool of visas to be allocated in the number of 75,000 per year for immigrants of different nationalities (*diversity immigrants*) from countries with low immigration (*low-admission state*). Countries with low rates of immigration were defined by Schumer as those from which fewer than 25,000 immigrants came over the past five years. In the current editions of the DV program, countries eligible to participate in the lottery are those from which fewer than 50,000 immigrants came over the past five years.[31]

Moreover, Schumer's bill anticipated that the number of visas granted in the program may not exceed 7% of the visas for one country from a pool of 75,000 – with the exception of immigrants from Ireland, for whom Schumer reserved 14% of the available pool of visas. A total of 14% of the visas was made up of 7% of the visas allocated to the Republic of Ireland and 7% of visas granted to Northern Ireland, which was treated by Schumer as a separate country, although it is part of the UK, and received its own pool of visas in a quantity of 7% as an independent state.[32]

This preferential treatment of Irish people was associated with Schumer's close cooperation with the Irish Immigration Reform Movement. This cooperation ended, however, when Schumer did not consent to include in the draft a provision on the legalization of Irish immigrants, which was one of the two main objectives of the organization (the second goal was to "increase the possibility of immigration for citizens of Ireland and other countries of Europe").[33]

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[30] *Ibidem*, p. 8; www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 30 (01.08.2007).

[31] *Ibidem*; W. Pasko-Porys, *op. cit*., p. 134.

[32] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 31 (01.08.2007).

[33] W. Pasko-Porys, *op. cit*., p. 118.

After their short cooperation with Schumer, the representatives of the Irish Immigration Reform Movement decided to find another ally in Congress, who would be able to prepare a satisfactory proposal for reform of immigration law. To this end, they reported to Bruce Morrison. In March 1990 Morrison submitted for consideration to the Committee of the Judiciary a bill which was a modified version of the Schumer proposal. This bill, similarly to the Schumer proposal, provided a pool of 75,000 visas annually for immigrants of different nationalities; however, a third of this pool was reserved for illegal immigrants. Surprisingly, despite Morrison's close cooperation with the Irish Immigration Reform Movement, he refused to grant visas to a separate pool for Northern Ireland, and thus prevented the accumulation of a pool of visas for the Irish.

Meanwhile, despite criticism of the proposed bill, after taking into account the reported changes the Committee of the Judiciary adopted a resolution concerning the visa program for immigrants of different nationalities (as defined by Schumer, that is, countries with low immigration).[34]

The adopted draft program was a compromise between the Morrison and Schumer proposals. It assumed creation of a transitional three-year program (*Diversity Transition Program*), in which 25,000 immigrant visas were to be gained per year, including those for illegal immigrants. From 1994, the bill assumed transformation of the transitional program into a permanent one with a pool of visas in the number of 55,000 per year, and it is worth mentioning that they were granted permanently. Also the limit of visas granted in the past five years was increased from 25,000 to 50,000, under which countries were defined as low or high rate of immigration.[35] More specifically, the increase of the limit allowed more countries to take part in the program. The bill also included provision for a separate pool of visas for Northern Ireland.[36] The opponents of the reform of immigration law by Morrison believed that the program was a result of the activities of lobbies and did not implement the objectives of American immigration policy; moreover, it ignored the issues of asylum and refugees.

In spite of the negative voices, Morrison pushed the bill through the House of Representatives, and after its passage by the Senate and signature by the President it became law. The act, commonly known as the *Morrison Act 1990*, granted the right to apply for immigrant visas to immigrants of different nationalities from countries with low immigration, a total of 40,000 visas in the years 1992–1994 in the transitional program (*Diversity Transition Program*), and from 1995 it assumed a permanent visa program and the increase of the pool of available immigrant visas to 55,000 per year. In addition, the points system scheme proposed earlier was eliminated from the lottery and replaced by a secondary education requirement, as the equivalent of two years of professional experience of a candidate immigrant.[37]

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[34] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 31 (01.08.2007).

[35] *Ibidem*, p. 33.

[36] *Ibidem*; W. Pasko-Porys, *op. cit.*, p. 132.

[37] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 35 (01.08.2007).

NP-5 Program (1987–1990)

The lottery program was implemented in accordance with Section 314 of *The Immigration Reform and Control Act 1986*. The program, also called "Donnelly visa," was the result of the activity of lobbies – mostly Irish and Italian – as well as representatives of those groups in Congress, among others the Democrat representative Brian Donnelly (Massachusetts). Donnelly prepared a draft program for citizens from those countries from which immigration was difficult (*adversely affected*), or even impossible due to the reform of the immigration law of 1965.[38]

Donnelly argued for the introduction of NP-5:

1. reintroduce into the immigrant stream those countries that have been determined to be adversely affected by the reform act of 1965,
2. possibility of legal immigration for those who would normally come illegally (or who were presently illegally residing in the United States),
3. NP-5 would allow for natives of the adversely affected thirty-six countries to compete in a more 'equitable' manner with other nationalities.[39]

In the 1970s, as a result of the Act of 1965, immigration from Europe fell by about 26%, while immigration from Latin America and Asia increased, which is why the list of countries eligible to participate in NP-5 were mainly European countries. The United States Department of State chose 36 countries.[40] These were: Albania, Algeria, Austria, Belgium, Bermuda, Canada, Czechoslovakia, Denmark, Estonia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Guadeloupe, Hungary, Iceland, Ireland, Indonesia, Japan, Lithuania, Latvia, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Caledonia, Norway, Poland, San Marino, Sweden, Switzerland, Tunisia, Italy, and the United Kingdom of Great Britain and Northern Ireland. The level of immigration, which could not exceed a 25% limit of visas for each country, was adopted as a criterion for eligibility to participate in the program. In the 1980s, this limit was 20,000.[41]

The program allocated 5,000 non-preferential visas to be obtained in one fiscal year. In the wake of numerous requests the number of available visas was increased to 15,000 and the program was extended for subsequent years (1989––1990).[42]

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[38] *Visa Bulletin*, No. 47, Vol. 7, www.dosfan.lib.uic.edu/ERC/visa_bulletin/9503bulletin.html (01.08.2007); M. M. Hethmon, *Diversity, Mass Immigration, and National Security after 9/11 – An Immigration Reform Movement Perspective*, www.albanylawreview.org/archives/66/2/DiversityMassImmigrationandNationalSecurityAfter9-11-AnImmigrationReformMovementPerspective.pdf, p. 388 (25.05.2007).

[39] A. O. Law, *op. cit.*, p. 15–16.

[40] J. Rokicki, *op. cit.*, p. 184. There is no agreement as to the number of countries entitled to participate in the NP-5 lottery. Pasko-Porys and Piotrowska-Breger say that 36 countries qualified, but M. M Hethmon gives the figure of 37 countries in: *Diversity…*, p. 388.

[41] A. O. Law, *op. cit.*, p. 13, 15.

[42] M. M. Hethmon, *op. cit.*, p. 388.

During the NP-5 program, i.e. in 1987–1988 and 1989–1990, a total of 60,000 immigrant visas were granted, that is twelve times more than initially expected.[43]

The NP-5 program, although considered a precursor of the visa lottery, had nothing to do with the lottery – the requirement for getting an immigrant visa was sending the notification within a specified time to the United States Department of State, but the order of applications was decisive. In the first week of admission (January 1987), the United States Department of State received 1.4 million applications. The recipients of most visas in the first edition of the NP-5 were: Irish (3,112), Canadian (2,078), and British (1,181).[44]

Table 1. Number of visas granted in the NP-5 program

Continent	Country	Number of visas granted in NP-5 program
North America	Canada	2,078
Asia	Indonesia	810
	Japan	518
Europe	Ireland	3,112
	Poland	592
	Federal Republic of Germany	311
	Italy	315
	Great Britain	1,181

Source: A. O. Law, *op. cit.*; M. M. Hethmon, *op. cit.*, p. 388.

Despite the efforts of their representatives in Congress, Italians received only 315 visas. Including on the United States Department of State list countries from Eastern Europe and South America seems obvious – for many years they were excluded from the wave of immigration, while it is difficult to justify the admission to NP-5 of countries of Western and Northern Europe, from which regions immigration was "privileged" when the national quota system was in force, and restriction of immigration from Western and Northern Europe came in 1976 by the act amending the immigration law, which introduced an annual limit of 20,000 for one country and a system of preferential groups. Only Algeria and Tunisia out of the African countries were admitted to the program, although immigration from other African countries, both before and after 1965, was at a low level.[45]

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[43] W. Pasko-Porys, *op. cit.*, p. 39.

[44] M. M. Hethmon, *op. cit.,* p. 391.

[45] W. Pasko-Porys, *op. cit.*, p. 25, 29; R. Jenks, *op. cit.*, p. 3, 7.

The NP-5 program, as already mentioned, bore signs of amnesty, as illegal immigrants were allowed to participate in the lottery. The group of immigrants who sent and received a visa application thereby legalized their status.

OP-1 Program (1990–1991)

The OP-1 program was the second lottery scheme introduced under the amendments to the act in 1988 (*Immigration Amendments of 1988 § 3 (a)*).

The OP-1 program was known as the "Berman Visa Program" after the Democrat representative in the House of Representatives, Howard Berman. Thanks to Berman, the OP-1 program was introduced for 162 countries referred to as "underrepresented."

"Underrepresented countries" were identified as those countries which in 1988 used less than 25% of the annual limit on immigration visas for the country[46] – assuming that the limit of immigration visas for one country was 20,000, the citizens of the country could not receive more than 5,000 visas, so the state could be qualified for OP-1. The following countries were excluded from the OP-1 program: China (including Taiwan), Colombia, Dominican Republic, El Salvador, Guyana, Haiti, India, Jamaica, Korea. and the United Kingdom (including dependent territories).[47]

In contrast to the NP-5 program in the OP-1 Program, the order of submission of applications did not matter; petitions (in accordance with the principle of one candidate – one application) with the return address were to be sent within a specified period from 1 to 31 March 1989 to the United States Department of State – applications were drawn by means of a computer program. Petitions received sooner or later did not participate in the lottery.[48] The program allocated 10,000 visas in one fiscal year (a total of 20,000 visas), while nearly 3 million applications for visas were received. Similarly to the NP-5 program, illegal immigrants were allowed to participate in the lottery.[49] However, participation in the OP-1 lottery by illegal immigrants was associated with risk, as being drawn for a visa was not

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[46] According to M. M. Hethmon, *op. cit.*, p. 389; www.groups.google.pl/group/soc.culture.china/browse_thread/thread/49a6b8f2eb890857/694f4f7b61f58f20?lnk=st&q=lottery+OP1&rnum=3&hl=pl#694f4f7b61f58f20 (04.06.2007); W. Pasko-Porys, *op. cit.*, p. 39.

[47] The source did not report which Korea is referred to. It was presumed that both South and North Korea were excluded. South Korea on the list of countries excluded from the lottery in present visa lottery (DV-2011). See: www.travel.state.gov/pdf/DV-2011instructions.pdf (22.02.2011); www.groups.google.pl/group/soc.culture.china/browse_thread/thread/49a6b8f2eb890857/694f4f7b61f58f20?lnk=st&q=lottery+OP-1&rnum=3&hl=pl#694f4f7b61f58f20 (04.06.2007).

[48] OP-1 P.O. Box 20199, Washington D.C. 20199-9998, *ibidem*; *The Irish Emigrant*, February 19, 1989, No. 107, www.emigrant.ie/article.asp?iCategoryID=200&iArticleID=25630, (01.07.2007).

[49] K. Piotrowska-Breger, *op. cit.*, p. 52; www.groups.google.pl/group/soc.culture.china/browse_thread/thread/49a6b8f2eb890857/694f4f7b61f58f20?lnk=st&q=lottery+OP-1&rnum=3&hl=pl#694f4f7b61f58f20 (04.06.2007).

tantamount to receiving one. To fulfill the formal requirements one had to appear at the consulate or embassy indicated in the application form (usually close to home in the country of origin) and fill in the application for an immigrant visa. In the case of persons illegally residing in the United States there was a real risk that, after leaving the United States and not obtaining a visa in the course of verification, they would be unable to return to the US. The OP-1 program corresponds to the current diversity visa program in its form and terms, particularly with the rule one candidate – one application and strict adherence to the deadline for submitting applications.

Table 2 shows the number of visas granted within OP-1. Despite the fact that there were 162 countries entitled to participate in the OP-1 lottery, the list of beneficiaries contained only a few. Applicants from Bangladesh, Pakistan and Poland received most visas, in the absence of beneficiaries from Ireland and Italy, for whom the program was pushed through.

Table 2. Number of visas granted within the OP-1 program

Country	Number of visas granted within OP-1 program
Bangladesh	4,974
Pakistan	1,837
Poland	953
Turkey	819
Egypt	790
Trinidad and Tobago	597
Peru	585
Iran	525

Source: M. M. Hethmon, *op. cit.*, p. 391.

Diversity Transition or AA-1

The lottery program implemented in 1992–1994 was a transition program before the current visa lottery DV. Some 40,000 visas were to be acquire per year in the program; the largest pool was provided for the Irish, as many as 16,000 in each edition of the lottery. However, in order to avoid allegations of discrimination against other nationalities, there were clauses about reserving a certain number of visas for immigrants from countries where most visas were granted in the previous program, NP-5, that is the Irish.

Immigrants from the following countries had the right to participate in the transitional lottery, in addition to immigrants from Ireland, (according to W. Pasko--Porys): Albania, Algeria, Argentina, Belgium, Czechoslovakia, Denmark, Esto-

nia, Finland, France, Gibraltar, Guadeloupe, the Netherlands, Indonesia, Iceland, Japan, Liechtenstein, Luxembourg, Latvia, Monaco, Germany, Norway, New Caledonia, Poland, San Marino, Switzerland, Sweden, Tunisia, Hungary, Great Britain, Italy and Canada. To participate in the program it sufficed to send a request with one's details to the United States Department of State during a limited period (14.10.1991–20.10.1991 in the first edition).[50] The order of lottery entries was binding in the early editions. Due to the lack of regulation on the number of applications sent, it should come as no surprise that in 1992 the United States Department of State received almost 19 million applications. Moreover, sending several dozen or hundreds of applications to increase one's chances of obtaining a visa was quite frequent.[51]

Half of the applications were rejected due to not meeting the deadline (7.5 million arrived too early and 2.5 million too late[52]). In addition, in as many as three-quarters of applications the return addresses were U.S. addresses, which indicated that a large number of illegal immigrants benefited from the lottery and legalized their status.[53] The program included, as well as the ongoing present program, a family clause, which meant acquisition of a visa by the closest family members, i.e. the children and spouse of the person sending the request.

In later years, the principles of selection of applications changed so that a computer draw was made, so the order of submission was no longer relevant, and candidates were obliged to submit only one application under penalty of disqualification. In the next edition of the program in 1993, once the change to submission of only one application had been introduced, the United States Department of State received 1.1 million applications, of which 115,000 were rejected due to irregularities (usually wrongly completed applications), and 2,000 applications were disqualified due to failure to comply with the provisions of the rule: one candidate – one application.[54]

Tables 3 and 4 above contain data on the number of visas granted in 1992 and the number of visas to randomly selected people in the next edition of the transition program in 1993. It should be emphasized that the number of visas randomly selected was much larger than the number of visas granted. A similar practice is also used in the current editions of the program, where for 50,000 green cards available, notices about being drawn for a visa are received by about 100,000 immigration applicants.

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[50] W. Pasko-Porys, *op. cit.*, p. 132.

[51] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 35 (01.08.2007).

[52] W. Pasko-Porys, *op. cit.*, p. 132.

[53] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 36 (01.08.2007).

[54] W. Pasko-Porys, *op. cit.*, p. 132–133.

Table 3. Number of visas granted within the *Diversity Transition* program in 1992

Country	Number of visas granted
Ireland	14,617
Poland	10,391
Japan	5,164
Great Britain	2,484
Indonesia	1,978
Argentina	1,149
France	530
Germany	514
Italy	341
Sweden	206
Czechoslovakia	202
Hungary	196

Source: W. Pasko-Porys, *op. cit.,* p. 132–133.

Table 4. Number of selected visas within the *Diversity Transition* program in 1993

Country	Number of selected visas
Ireland	25,000
Poland	19,856
Canada	2,108
Great Britain	1,052
Japan	970
Indonesia	825
Argentina	446
Germany	270
Algeria	234
Czechoslovakia	205
Finland	169
France	132

Source: *ibidem.*

Irish people received the largest number of visas (14,617), according to the statutory limit on granting most visas to citizens of those countries which won the most visas in the NP-5 lottery. Although Poles were in second place in terms of the number of visas granted, Polish representatives in Congress tried to intervene to

ensure that, as in the case of the Irish, a number of visas from the available pool of 40,000 would be booked – namely 11%, which would give a total 4,400 guaranteed visas every year.[55] The proposal made in the House of Representatives was not accepted.

The last year of the transitional program was 1994. Polish people drew 21,000 visas in 1994. In total, from the general pool of 120,050 visas Poles gained 44,856 green cards, while Irish citizens gained 37,946, British people 8,977, Japanese 6,416, and Indonesians 2,557 in the transition period.[56]

Despite the great interest in the lottery in 1992-1994 (proven by the number of applications) the entire pool of visas available in the program was not used. Therefore, the number of unused visas (1,404) in the lotteries in the fiscal years 1992–1994 was earmarked for use in the 1995 fiscal year. People from countries that could participate in the lottery NP-5 under the provisions of Section 314 of *The Immigration Reform and Control Act 1986*, namely the so-called *adversely affected,* were eligible for the unused visas. People who had received the unused visas in the transition program were selected from applicants who had sent the declaration within the time designated for the *Diversity Visa* program. People from Ireland and Northern Ireland received additional time for submitting applications (except the one which was for all applicants to the DV program).[57]

To sum up, despite the fact that 32 countries, including Ireland, were admitted to participation in the program, there were only 12 countries, including 9 from Europe, on the list of beneficiaries in 1992, and in 1993 seven of 12 countries. Moreover, in 1992–1994 Europeans drew most immigrant visas – as many as 93,421, Asians were in second place – 9,643, followed by North America (excluding Mexico) – 2,461, Central America and the Caribbean (including Mexico) – 1.958, Africa – 725, and Oceania – 227.[58]

It should not be forgotten that the main objective of the visa lottery was to diversify American society, while there was a duplication of immigration and maintaining standards in the transitional period of immigration visa program, mostly from Europe at a significant level. The reasons for sustaining immigration from Europe on such a significant level in the visa program should be traced back to the 1960s and the system of preferences introduced, of which, as already mentioned, contrary to expectations Asians and Latinos took advantage.

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[55] W. Pasko-Porys, *op. cit.*, p. 132. Unfortunately the information about the limit on visas for one country in Diversity Transition was out of reach. In the current editions of the program, no country may receive more than 7% of the pool of available visas to 50,000.

[56] K. Piotrowska-Breger, *op. cit.*, p. 52; www.numbersusa.com/PDFs/Post1965USImmigrationPolicy. pdf, p. 36 (01.08.2007).

[57] Data has been found indicating that in later years, i.e. 1995-1997, green cards under the interim program were granted. In 1995, 6,944 visas were awarded; in 1996, 545 visas; in 1997, only 14 visas. See United States, Department of Homeland Security, *Yearbook of Immigration Statistics: 2004*, Washington D.C. 2006, Table 4, p. 20, www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/Yearbook2004.pdf (01.08.2007); *Visa Bulletin*, No. 47, Vol. 7, www.dosfan.lib.uic.edu/ERC/visa_bulletin/9503bulletin.html (01.08.2007).

[58] www.numbersusa.com/PDFs/Post1965USImmigrationPolicy.pdf, p. 36 (01.08.2007).

In light of the presented data, the provision of the act concerning the prohibition of discrimination based on race and national origin in lottery programs previously discussed is controversial, as since the beginning they were directed to specific groups of immigrants, and in many cases they were a chance to legalize the stay in the United States.

Moreover, the lottery programs were a kind of affirmative action, a form of compensation for the years of the law that had prevented certain groups of immigrants from settling in the United States; under the guise of social diversification and the prohibition of discrimination based on race and national origin pre-election promises made by representatives of specific groups in Congress were pursued effectively. The immigration policy conducted by Congress was unjust from the standpoint of potential immigrants, causing controversy and political disputes, particularly pre-election. However, it should be remembered that the United States, as a sovereign state under international law, can decide "who and under what conditions may enter [...] and how long [...] stay, how and when to obtain local nationality to become a fully equal member of the national community" even if this is done through sheer luck, rather than the rational needs of the state.[59]

The Diversity Visa Program, and the question concerning the redistribution of visas

The visa lottery was introduced under Section 203 (c) of *The Immigration and Naturalization Act* (INA). Article 131 contained in the act of 1990 amended Article 203 of the INA, thereby establishing a new category of immigrants – *diversity immigrants*. Under this amendment every year the United States Department of State runs the program "Visas for immigrants of different nationalities" who are chosen by lottery, commonly known as the visa lottery.[60]

Some 50,000 immigrant visas entitling recipients to live in the United States with close family and work legally are to be obtained every year – but the immediate family is defined, in the context of the lottery, as a husband/wife "and unmarried children under 21 years old until notification has been sent".[61]

During the transition period of the lottery (*transition* or AA-1) in 1992–1994 the limit of visas amounted to 40,000. From 1995 – that is, the year in which the lottery was converted into a permanent program – the visa pool increased to 55,000. However, the pool was then reduced to 50,000 due to an Act of Congress in November 1997, which reserved 5,000 visas for NACARA (*Nicaraguan Adjustment and the Central American Relief Act*) from the DV-2000.[62]

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[59] A. Kiedrzyn, M. Madej, H. Nieć, *Wybrane aspekty prawne obywatelstwa i problematyki imigracyjnej*, „Zeszyty Naukowe UJ" (Prace Polonijne), MLXXI, z. 17, Kraków 1993, p. 10.

[60] www.travel.state.gov/pdf/DV_2008_Final.pdf (04.06.2007).

[61] www.wizy.pl/wizy/index.php?target=1&level=2&ids=11&id=11&lang=pl (19.03.2007).

[62] www.travel.state.gov/visa/immigrants/types/types_1317.html (26.08.2007); The NACARA program entitles immigrants from Central America to the legalization of an illegal stay.

Countries with low levels of immigration (*low admission states*) are eligible to participate in the lottery. Countries which received a pool of immigrant visas, green cards, i.e. in the last 5 fiscal years did not exceed 50,000, are considered as countries with low immigration to the United States. On the basis of information provided by the United States Department of State and the Bureau of Citizenship and Immigration Services, which specifies the number of immigrants who arrived during the last 5 years to the United States, the General Attorney should each year state countries with a low level of immigration, whose citizens are eligible to participate in the lottery. The data on the number of refugees and visa lottery winners is not taken into account in the calculations.[63]

The countries selected as countries with high immigration (*high admission states*) are not eligible to participate in the lottery. The Department of Homeland Security publishes annually a list of countries that were excluded from the lottery. Additionally visas are distributed among the six geographic regions, while more visas are allocated to regions with low rates of immigration.[64] However, the limit of 7% per country cannot be exceeded (from a pool of 50,000), which gives a maximum number of visas 3,500 for one country (before the reduction in visas for the NACARA program the limit of visas for one country was 3,850[65]).

Figure 2. Redistribution of visas in regions in fiscal years 1995 and 1996
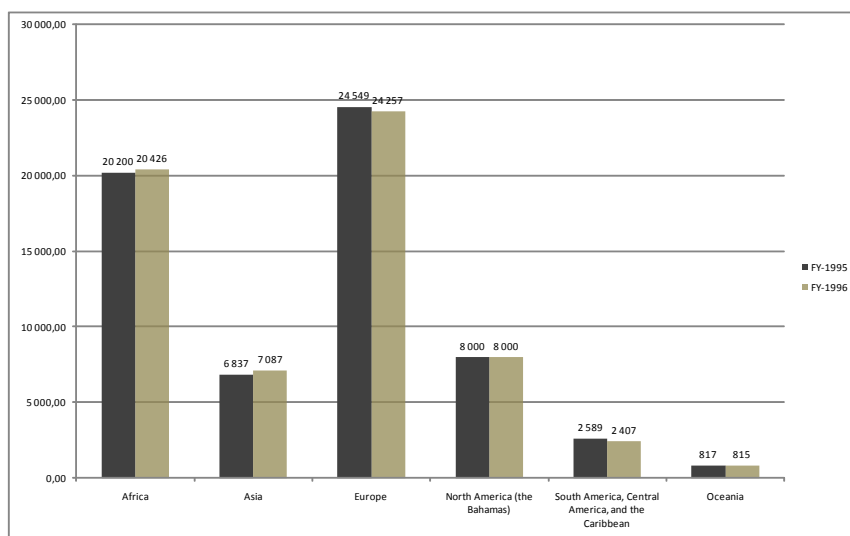
Source: *Visa Bulletin...*, No. 46, Vol. 7; No. 58, Vol. 7.

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[63] M. M. Hethmon, *op. cit.*, p. 390; www.szukaj.gazeta.pl/archiwum/1,0,244862.html?wyr=loteria%2Bwizowa%2B (23.10.2006).

[64] U.S. Department of State Foreign Affairs Manual, Vol. IX: Visas, www.foia.state.gov/masterdocs/09FAM/0942033N.PDF (11.06.2007); www.polish.poland.usembassy.gov/poland-pl/img/assets/5816/dv_pl1.pdf (04.06.2007).

[65] W. Pasko-Porys, *op. cit.*, p. 133.

Figure 2 shows an example of redistribution of visas between the six geographical regions in the 1995 and 1996 fiscal years. Immigrants from Europe and Africa could receive the most immigrant visas by lottery in the following years. The lowest limit of visas was established for North America, because of high levels of immigration primarily from Mexico (family reunification), which therefore is not entitled to participate in the visa lottery. It should be stressed that in order to ensure the use of the entire pool of visas in the DV program usually twice as many visas are drawn, while in the 1992–1994 edition of the transient lottery typically 20% more visas were drawn than there were expected in the pool. During the first edition of the permanent DV program in 1995 it was intended to draw 110,000 people to use the whole pool, but the computer drew 195,000 people, and they all were sent winning notifications.

Despite the established limits for the various regions, including Europe, at 24,549 visas, 93,000 people in Europe received notifications of winning a visa.[66] This mistake was noticed after a long time and, at the end of 1994, the processing of applications for immigrant visas was blocked without the people who had been notified of winning and were waiting for a meeting with the consul being informed. Poles living in the United States who drew green cards and whose status was not regulated – that is they were there illegally – were required to pay a special charge of $650 in addition to the fees for the visa procedure, which was not refundable.

The Polish American Congress stood in defense of all Polish victims, and its then National Executive Director Les Kuczynski promised to intervene in the White House, the United States Department of State and Congress. At a meeting at the United States Department of State Kuczynski proposed three solutions for the situation:
1. granting all persons who received the notice of winning a visa from the pool of unused visas in previous years,
2. granting so-called "laissez" to victims, legalizing their stay,
3. granting visas to all persons who received the notice of winning from the pool of visas for the subsequent years.[67]

The proposed solutions did not gain recognition; however, after numerous perturbations the federal government recognized the mistake and granted visas from the pool for subsequent years to all persons who had received a winning notice. For this reason, the limit of visas was over, and in subsequent years Poles were excluded from the visa lottery program.[68]

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[66] *Ibidem*, p. 180.

[67] *Ibidem*, p. 181.

[68] K. Darewicz, K. Groblewicz, *Loteria, czyli można wygrać i można zarobić*, "Rzeczpospolita", 07.10.2000.

Final remarks

A profile of the visa lottery could be made in a few words. At first glance the rules are simple and transparent. The difficulties begin when the question about the reasons for establishing and about the sense of conducting an annual visa lottery is raised. There were many factors that contributed to the establishment of the program, including two interrelated major ones. Immigration policy is one of the factors which undoubtedly had a big impact on immigration law and establishing the lottery, because trends in American immigration policy changed depending on the economic situation or the balance of power in Congress.

The liberal immigration policy of the formation of the United States period was replaced by a selective policy at the beginning of the 20th century, in order to minimize or completely eliminate certain groups from the wave of immigration. The United States, as a host country, has decided whom and under what conditions to grant permission to enter its premises, even if those rules are controversial. Without a doubt, the second factor that contributed to the introduction of lottery was the activities of lobbies, whose representatives fought for their entry rights, pointing to the discriminatory nature of immigration policy. Their actions, which lasted for several years, eventually led to the establishment of programs and the current lottery – Diversity Visa. However, it is surprising that countries like Italy or Ireland, for which the programs were established, lost interest in them at some point. The Diversity Visa Program is a scheme directed to persons from countries with low immigration (*low admissions states*) – hence the high proportion of immigrants from Africa, Asia and Eastern Europe.[69] The reasons for establishing the lottery are a result of pressure from the representatives of the nationalities who were victims of the preferential and quota system. The rules of selecting candidates for immigration are based on novel rules not found anywhere else, primarily drawing, in which the factor of luck or chance is of great importance, and so called "lottery" immigrants, who are excluded from the allocated annual quotas for each country, form a new network links and are the first link in a chain of new immigration.[70]

The visa lottery is a program in which no country has guaranteed participation in the next edition, and admission to the program is not determined by political alliances, but by strict rules governing the level of immigration from a country.

Finally, several questions should be raised as to the future of the visa lottery. Which will be the last edition and what will be the cause of the abolition of the visa program? Will the decision about its elimination wbe rational, or will the lottery perhaps be withdrawn as it was introduced, through the action of lobbies? Unfortunately, no one can give an unequivocal answer to these questions, since U.S. immigration policy is unpredictable, and Americans may yet surprise us with yet another lottery.

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[69] www.travel.state.gov/pdf/FY06AnnualReportTableVII.pdf (17.03.2007).

[70] W. Pasko-Porys, *op. cit.*, p. 127.

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Catherine H. Zuckert

UP FROM THE UNDERGROUND: ELLISON ON EQUALITY

> We began as a nation not through the accidents of race or religion or geography ..., but when a group of men, *some* of them political philosophers put down, upon what we now recognize as sacred papers, their conception of the nation they intended to establish on these shores. They ... committed themselves to certain ideas of justice, just as they committed us to a system which would guarantee all of its citizens equality of opportunity.
>
> I need not describe the problems which have arisen from these beginnings. I need only remind you that the contradiction between these noble ideals and the actualities of our conduct generated a guilt ... from the very beginning, and that the American novel at its best has always been concerned with this basic moral predicament. During Melville's time and Twain's, it was an implicit aspect of their major themes; by the twentieth century and after the discouraging and traumatic effect of the Civil War and the Reconstruction it had gone underground. ... Nevertheless it did not disappear completely, and it is to be found ... in the work of Henry James as well as that of Hemingway and Fitzgerald. And as one who believes in the impelling moral function of the novel and who believes in the moral seriousness of the form, it pleases me no end that it then comes into explicit statement again in the works of Richard Wright and William Faulkner, writers who lived close to moral and political problems which would not stay put underground.
>
> Ralph Ellison, *Hidden Name and Complex Fate: The Writer's Experience in the United States*

In *Invisible Man* Ralph Ellison depicts the many ways in which white Americans in the North as well as the South have failed to realize the post-Civil War promise to treat their black fellow citizens as equals. Ellison reminds his readers, in other words, that the history was not promising. On the other hand, by means of his "invisible" narrator, Ellison shows not merely how, but that African-Americans are or

at least can be the equals not merely of whites in general, but of our greatest literary geniuses. Through his own work the novelist thus hopes to change the perceptions not only that whites have of blacks, but also that blacks have of themselves. Fiction does not need simply to reflect its factual context or provide readers with a means of escape. It can have an effect on its readers and so on the "facts."

The Sad History of Racial Inequality in Modern America

"Like almost everyone else in our country," the narrator reports, "I started out with my share of optimism. I believed in hard work and progress and action" (p. 576).[1] He began life, therefore, by trying to improve not merely his own lot, but that of his people by doing what was expected. He didn't quite understand what his dying grandfather meant when he urged him to "keep up the good fight. I never told you, but our life is a war and I have been a traitor all my born days, a spy in the enemy's country ever since I give up my gun back in the Reconstruction. Live with your head in the lion's mouth. I want you to overcome 'em with yeses, undermine 'em with grins, agree 'em to death and destruction, let 'em swoller you till they vomit or bust wide open" (p. 16). The youth did obey the authorities around him, both white and black, out of fear as much as out of conviction. He was not treated with dignity or respect, but he did gain some compensation for his docility and hard work.

We first see the narrator humiliated along with nine other "black boys" when they are forced to box blind-folded and then scramble for money on an electrified carpet as entertainment for a gathering of drunk white businessmen. Only after he has been bloodied and beaten is the youth allowed to deliver the high school graduation speech in which he argues that humility is the key to progress.[2] When he stumbles and substitutes "social equality" for "social respon-sibility," the room becomes silent and the audience menacing. Having convinced them it was a mistake, however, he is rewarded with applause and a scholarship to the state college for Negroes.

For the young black–as for most Americans dating back at least to Thomas Jefferson–the chance to acquire a college education appears to be the equivalent of promising him an opportunity to become a future leader of his people. However, when the boy is expelled for inadvertently having exposed a white trustee named Norton to a tale of black incest and the persecution of a black physician by the Ku Klux Klan, readers are also reminded of the way in which ambitious blacks contributed to the oppression of their own race not only by playing "Uncle Tom" themselves but also by insisting that others play the same role or game in order to

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[1] Citations to R. Ellison, *Invisible Man*, 2nd ed., New York 1980.

[2] "I visualized myself as a potential Booker T. Washington" (p. 18), the narrator says. In his speech he thus quoted his idol's famous advice, "Cast down your bucket where you are" (p. 29). Cf. R. Kostelanetz, *Politics in the African-American Novel*, New York 1991, p. 109–14.

acquire wealth, status and education. Even though the white trustee tells the black president of the college that the boy didn't do anything wrong, Dr. Bledsoe insists that the young man be disciplined severely. He has endangered future support for the school.[3]

Purportedly to help him find a job to pay next year's tuition, Bledsoe gives the young man letters of introduction to "friends of the college" in New York. Those letters inform their recipients that the bearer will under no circumstances be returning to the college, but that he must not be allowed to know it. When the son of the last "friend" named Emerson lets the young man read the letter, one set of illusions are destroyed. He will never return home and become a future leader of the college.

Taking a suggestion from the young Emerson, who wants to play Huckleberry Finn, and demonstrating some of the "self-reliance" about which the first white trustee had urged him to read, the black youth does get a job for a day at a paint factory (ironically called "Liberty").[4] There he incurs the animosity not only of the white workers who view him as a "scab" brought in to break the union but also of the older black engineer who suspects the whites of trying to replace him. As in the south, so in the north the young black is humiliated and physically threatened by both whites and blacks, who see him (correctly, although not yet intentionally on his part) as a threat to the gains they have made by bowing and scraping to their white superiors. Neither the white nor the black workers willingly accept him as a trusted associate or equal.

Instead, the narrator has his old ideas or illusions about the effectiveness of hard work, progress and action literally blown and then burned out of him when he loses his memory as a result of an explosion engineered by the old black and undergoes electro-shock treatments in the factory hospital. (They seem, indeed, to be experimenting on him as if he were an animal.) Unable to remember his name as a result, he begins to question his own identity. That question produces the quest

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[3] **Protesting the injustice, the youth threatens to tell others the truth; and Bledsoe laughs: "You're no**body, son. You don't exist–can't you see that? The white folk tell everybody what to think–except men like me. I tell *them* ... It's a nasty deal and I don't always like it myself. I didn't make it, and I know that I can't change it. But I've made my place in it and I'll have every Negro in the country hanging on tree limbs by morning if it means staying where I am." He added, "Yes, I had to act the nigger! ... I don't even insist that it was worth it, but now I'm here and I mean to stay" (p. 143). Dignity is for whites. "Negroes" should seek power. Even the persecuted physician urges the young black to "play the game."

[4] The literary allusions are complex, but important. While they are driving, Norton asks (p. 41) the young man whether he has studied Ralph Waldo Emerson. The young man was embarrassed that he had not. We realize, however, from his later conversation with Bledsoe that he would not have his students exposed to such potentially unsettling ideas. (Ralph Ellison himself was named for Ralph Waldo Emerson by his father, who, his mother later claimed, wanted his son to be a poet. "Hidden Name and Complex Fate," *Collected Essays*, New York 1995, p. 195–196). In the later conversation with the young "Emerson," we also see Ellison comment on the relevance or truth of Twain's masterpiece. Not merely does the young black fail to see the relevance of that "kid's story" (p. 188). He also does not want as job as the young white's valet. That is, he will not accept the personal intimacy of the relation between Huck and Jim on the old terms of superior and inferior on the outskirts of respectable society. (The young Emerson is rebelling, if somewhat weakly and ineffectively, against his father by associating with blacks, e.g., jazz musicians.)

that occupies the remainder of his story. Although the doctor tells him his name as he dismisses and so "frees" him from the hospital, the young man recognizes that a name, given him by others, is not his own. Who is he? Where has he come from and why? "In the South," he later reflects, "everyone knew you, but coming North was a jump into the unknown. How many days could you walk the streets of the big city without encountering anyone who knew you ... You could actually make yourself anew" (p. 499). But into what?

Almost fainting as he gets off the subway on his return to Harlem, he is taken in by a woman named Mary Rambo, who continues to lodge and feed him after his "compensation" from the factory runs out. Grateful for her charity, but ashamed of needing or taking it, the narrator vacillates between a desire for "revengeful action and Mary's silent pressure" for him to become a credit to the race. (p. 259)[5] He is sure that he can do something; but he has no friends or contacts, and believes in nothing. Leaving the boardinghouse in an attempt to escape his own mental and emotional agitation, he chances upon an old couple being evicted from the apartment they had occupied for more than twenty years, and his contradictory emotions erupt in a speech. First he urges the crowd assembled on the side-walk not to resist the law and then, feeling their anger, to do so. He is, as a result, recruited as a speaker for the "Brotherhood," and after some training in their scientific historical ideology, put in charge of operations in Harlem where he proves to be an amazing success. He believes that he has now begun to realize his earlier dreams to become a leader of his people. He hopes to become not merely a new Booker T. Washington, Marcus Garvey or Frederick Douglass, but an entirely new kind of leader, who not only speaks for his people but also works to benefit humanity as a whole.

The narrator does so well making alliances with other civic leaders and recruiting new members that he arouses the jealousy of another black on the committee. Although the committee decides that he was not attempting to make himself a dictator, as charged, he is nevertheless reassigned "downtown" to speak on women's issues. The Brotherhood–which is obviously a version of the Communist Party–doesn't want any individual to get too big or too powerful with any specific group. Everyone is equally part of the people. The narrator chooses to interpret the reassignment as a sign of their confidence in his general abilities. He has not yet learned that those who seek color-blind fraternity or friendship are themselves blind.[6]

After he leaves without saying goodbye or explaining his actions to his fellows in Harlem, they conclude that he has defected to serve the whites. (Like the

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[5] "It's you young folks what's going to make the changes," she said. "Y'll's the ones. You got to lead and you got to fight and move us all on up a little higher. And ... it's the ones from the South that's got to do it, them what knows the fire and ain't forgot how it burns. Up here too many forgits. They finds a place for theyselves and forgits the ones on the bottom" (p. 255).

[6] The first literally blind character is the Reverend Homer Barbee who gives the speech praising the work of the founder of the college and his successor Bledsoe. Living in Chicago he can't see what is actually going on in the South. Brother Jack proves to have a glass eye; having lost one in serving the Brotherhood, he is half-blind. He understands the evils of poverty but not race.

narrator himself, they have had too much experience with leaders who do.) When he is later ordered to return, he thus finds the membership has declined drastically. People for whom they had found employment are now back on the streets. The committee had decided that the interests of the blacks must wait or be sacrificed for the moment. When one of his disillusioned former co-workers is killed by a police-man and the narrator organizes a huge public funeral in his honor, the "committee" rebukes the narrator for doing things on his own "personal responsibility" instead of letting them do the thinking for him. He is confronted by the fact that they have never recognized him as their intellectual equal, much less as a leader. The people of Harlem riot.

Glorying initially in the people's taking action on their own behalf by bur-ning down a rat-infested tenement, the narrator comes to see that the violence is suicidal when the police begin shooting at unarmed men. It was not an equal fight. There were not even guns for sale (or available to the looters) in pawnshops. "It was not suicide," he corrected himself, "but murder. The committee had planned it." They had taken him out of Harlem in order to let the black nationalists take over. "And [he] had helped, had been a tool. A tool just at the very moment I had thought myself free" (p. 553).

Reflecting on his experience with the Brotherhood, he concluded: "It was all a swindle, an obscene swindle!" They claimed to know the necessary direction of history and to have an objective science. "What did they know of us, except that we numbered so many, worked on certain jobs, offered so many votes, and provided so many marchers for some protest parade of theirs? ... They were blind." They had no idea what he or people like him felt or thought.[7] He had imagined that they accepted him "because they felt that color made no difference, when in reality it made no difference because they didn't see either color or men" (p. 507–508).

Attempting to escape the goons sent by the black nationalist leader to hang the white toady, the narrator learns yet another lesson about his identity. Donning a pair of sunglasses and a hat as a make-shift disguise, he discovers a plethora of potential identities when he is repeatedly mistaken for a fellow named "Rinehart" who is, apparently, a pimp, a numbers runner, a drug dealer, a violent hoodlum, a lover, and a reverend–all at once. The narrator had gradually come to see him-self as part of his people, sharing their sufferings, humiliation, dispossession and hope. Now he has to recognize that even his own people--blacks as well as whites– see only the externals, and they understand these externals in terms of their own expectations or stereotypes. If we have an identity, he comes to see, that identity consists of our own experiences. Since those experiences, especially the feelings and thoughts they provoke, are internal, one's identity is necessarily and essentially invisible.

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[7] Ellison extended his narrator's critique of the Brotherhood to social scientific studies of the "Ameri-can Negro" in his critique of G. Myrdal, *An American Dilemma*: *A Review*, *The Collected Essays of Ralph Ellison*, p. 328–340.

Standing in a fire-lit street of riot torn Harlem, the narrator "recognized the absurdity of the whole night and of the simple yet confoundingly complex arrangement of hope and desire, fear and hate, that ... had brought [him] here." Understanding that complexity of emotion, he now knew, however, who he is and where he is. He knew, too, that he no longer had "to run for or from the Jacks [leader of the Brotherhood] and the Emersons and the Bledsoes and Nortons, but only from their confusion, impatience, and refusal to recognize the beautiful absurdity of their American identity and [his]." He had learned that he is invisible. And in invisibility, it seems, there is a certain kind of freedom. No one–black or white–can see him as who he is. They see only what they want to see in terms of a pre-existing stereotype or role. Rather than letting the nationalists hang him, "which would not bring [him] to visibility, even in their eyes, since they wanted [his] death not for [him] self alone but for the chase [he'd] been on all [his] life" (p. 559), he thus flees down a manhole.[8] When he awakes, he crawls into the basement apartment in which he is "hibernating" at the beginning of his tale.[9]

With regard to the possibilities of political action or reform as a means of blacks achieving equality in America, the story the narrator relates is bleak. He seems to have tried most, if not all the promised ways of improving his own and his people's condition–education, labor, protest, organization, rainbow coalitions, strict party discipline, nationalist violence–and found that all merely became means of maintaining, if not increasing white dominance and black subservience.[10] The narrator has learned and would have his readers learn, however, that humanity and worth are not measured by votes or protests. The novel thus ends on a somewhat positive, perhaps even optimistic note. The narrator claims to have discovered who he is. In an epilogue he even presents his hibernation as a prelude to action. What is Ellison's narrator affirming, we are led to ask? What sort of action does he contemplate? How can blacks in America achieve the equality so long denied them?

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[8] Apparently seeing that their desire to return to Africa is unrealistic, if not inappropriate for African-Americans, the narrator never sympathizes with the black nationalists. Their fictional leader, Ras the Extorter, appears to be a prototype. Like Marcus Garvey, Kostelanetz points out, p. 132, Ras has a West Indian accent, but favors resettlement in Abyssinia ("Ras" is the Abyssinian word for prince). Among the belongings of the old couple cast on the street is an old newspaper clipping of the report of Garvey's deportation.

[9] He dreams (p. 569–570) that he has been castrated by Brother Jack, Emerson, Bledsoe, Norton and Ras, but he awakens from his nightmare and reaffirms his newly discovered invisible identity.

[10] Writing in the late 1940's Ellison did not predict *Brown v. Board* or the pacifist civil rights movement the Reverend Martin Luther King led successfully out of the south. In 1964 he wrote of "the events set in motion by the Supreme Court decision of 1954 and accelerated by the Civil Rights Act of 1964" as "transforming not only the South but the entire nation" by "creating a revolution not only in our race relations but in our political morality." Nevertheless, he also insisted that "for Negroes the Supreme Court Decision of 1954 and the Civil Rights Act of 1964 induced no sudden transformation of character; it provided the stage upon which they could reveal themselves for what their experiences have made them, and for what they have made of their experiences." "If the Twain Shall Meet," *Collected Essays*, p. 565–566, 575.

On the Need to Write One's Own Story

A. The Invisibility of the Narrator

The first step toward truly achieving equality, Ellison suggests in both the organization and the content of his novel, consists in the recognition that no one else can give a person or a people its identity or definition. That power belongs solely to oneself, although it has to be articulated to others. This is fundamentally what the narrator has learned when he concludes that he is "invisible." He cannot be seen, but he can be heard. In telling his story, he not only shows who he is. He also allows others to see the extent to which they share in his story. That is, he helps his people understand who they are at the same time he learns about his own identity, both in contrast to and in conjunction with them.

Introducing himself as "an invisible man" in the prologue, the narrator explains that does not mean he is a "spook," a ghost or a spirit; he is "a man of substance, of flesh and bone, fiber and liquids–[who] might even be said to possess a mind." He is invisible "simply because people refuse to see [him]" (p. 3). So defined, invisibility initially appears to be a negative definition or value.

Invisibility initially seems, indeed, to consist in lack of social recognition. When he accidentally bumped into a blond man, who responded with an insulting name and then refused to apologize, even when pummeled and threatened with a knife, the narrator realized, the man couldn't see his assailant. According to Hegel, masters recognize as their equals and thus as truly human, only those who are willing to risk their lives rather than be made slaves. But, Ellison suggests, former black slaves who act like masters, risk their own lives and threaten those of others, are still not recognized or "seen" as human beings by their former white masters. What, then, does it take to be seen as human? To be recognized as equal? Or, is recognition perhaps a false definition of equality? Ellison suggests that it is.

At the beginning of his tale the narrator connects his invisibility with his blackness. He has filled the black "hole" of the basement apartment into which he has retreated with a flood of light from exactly 1,369 bulbs–to highlight both his blackness and the invisibility that follows from it. Not having a socially recognized identity or "place," he has learned that he does not have to pay Monopolated Light & Power for the energy he uses. If the company, its board, managers, stock-holders or the citizens who regulate it recognized his existence as a human being, things might be different. So long as they do not, he engages in a kind of sabotage–seizing power and diverting it to a place and use of which they have no knowledge. He plans to add music from five phonographs rather than mere one he now has. He wants not just to hear but to feel the vibrations of Louis Armstrong playing and singing "What Did I Do to be so Black and Blue"? Hearing and feeling give us better access to who we really are than seeing or, even more, being seen by others.

The narrator's answer to the question posed by the song is to be found in his story. What he "did," we have seen, is to allow both whites and blacks "to keep that

nigger boy running" (p. 33) with promises of future recognition and gain, for himself and for his people. Having become disillusioned about the credibility of such promises, he has learned in the meantime who he is and where he is. Rather than try to overcome the heritage or shame of slavery and pull himself, if not others up by the proverbial bootstraps, he says in the end that "all past humiliations became precious parts of my experience." After his disillusionment with the Brotherhood, he "began to accept [his] past. ... [I]mages of past humiliations flickered through my head, ... and I saw that they were more than separate experiences. They were me; they defined me. I was my experiences and my experiences were me, and no blind men, no matter how powerful they became ... could take that, or change one single itch, taunt, laugh, cry, scar, ache, rage or pain of it" (p. 507–508). Because our identity consists in the combination of these experiences, it is internal and invisible. It is not subject to the control, expropriation, or definition of others–unless we ourselves allow it to be so controlled, expropriated, and defined.

At the same time he discovered his own identity, the narrator says, he also discovered "where he was." He was, of course, literally in Harlem. That is, he was in the midst of a group of people who had shared the same kinds of humiliation and sought to rise above it in many of the same ways he had. He had recognized his relation to the old couple being evicted, for example, but it wasn't merely a matter of "race" or color, as Brother Jack thought. The narrator understood, if initially in a somewhat confused manner, that he himself shared in their sorrow and their anger. That was the reason he proved to be such an effective speaker; he could arouse others to action, because he himself felt and thus could express their pain and rage. He felt a similar shock of recognition when he heard old songs or ditties from his youth. It was possible–he and his people have proved it was possible–to grab pleasure out of pain. The problem was that they did not recognize or understand their own achievement. Overcome by the odor of baking yams and the thrill of walking down the street, eating one in public, the narrator had reflected: "What a group of people we were. ... Why, you could cause us the greatest humiliation simply by confronting us with something we liked. Not *all* of us, but so many" (p. 264). Those like Bledsoe who sought to overcome the stigma of being black refused to recognize their own or what was good as well as bad in the black experience. Instead of looking to whites, the narrator gradually learned, he and his people needed to listen to themselves, to think about what they had actually experienced, and to give that experience expression or voice. In learning "where he was," the narrator thus recognized not only that he was in Harlem, but also that he was in the United States. He and his people were part of a larger whole. They shared in what he calls "the beautiful absurdity" of the "American identity." But he was then led to ask, what is that American identity? That is as much as to say, what is the American experience? Is it "the principle on which the country was built and not the men," at least not the men who used violence to corrupt that principle? Americans may not always or even often have acted as if they "hold these truths to be self-evident,

that all men are created equal," but one can still affirm the principle and the hope it contains. Does that mean blacks should take responsibility for all of American history, because they are the heirs who most need to believe in the principle, to affirm it, and to see it put into action? Precisely because of their suffering, William Faulkner suggested, blacks are better than whites; they are "older" in the sense of having learned what it takes to live in the world with others and having been freed by exhaustion from the human greed and superstition that keeps others running.[11] Ellison's narrator is not willing to privilege or burden his people and their experience in this way. Blacks have unfortunately contributed to their own oppression. They are not and should not seek to be recognized as better than whites any more than they should accept a social and political definition as inferior to whites. So he finally asks, should we "affirm the principle because we, through no fault of our own, were linked to all the others? Weren't we *part of them* as well as apart from them and subject to die when they died?" (p. 574–575). If so, the task is to show what blacks and whites share not simply as Americans, but as human beings, and yet at the same time to retain a sense of their different experiences.[12] "America is woven of many strands," he affirms. "Our fate is to become one, and yet many–this is not prophecy, but description" (p. 577).[13]

Ellison's narrator does not blame all his sufferings or humiliations on others, black or white. Nor does he simply blame himself. "I'm not blaming anyone for this state of affairs, nor merely crying *mea culpa*. The fact is that you carry part of your sickness within you, at least I do as an invisible man. Though for a long time I tried to place it in the outside world, the attempt to write it down shows me that at least half of it lay within me" (p. 575). He had accepted and internalized the "roles" or definitions others had given him.

If an individual can free himself from the definitions imposed upon him by others only by writing down his own experience and so confronting it himself at the same time he communicates his inner thoughts and feelings to others, so a people can shake off the subordinate status others would place upon it and give itself its own definition only by writing its own story or history. At the end of the epilogue

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[11] Cf. *Go Down, Moses*, New York 1973, p. 294.

[12] In "Going to the Territory," Ellison wrote: "No matter how we choose to view ourselves in the abstract, in the world of work and politics Americans live in a constant state of debate and contention. We do so no matter what kinds of narrative, oral or written, are made in the reconstruction of our common experience. American democracy is a most dramatic form of social organization, and in that drama each of us enacts his role by asserting his own and his group's values and traditions against those of his fellow citizens. Indeed, a battle-royal conflict of interests appears to be basic to our conception of freedom, and the drama of democracy proceeds through a warfare of words and symbolic actions by which we seek to advance our private interests while resolving our political differences. Since the Civil War this form of symbolic action has served as a moral substitute for armed warfare, and we have managed to restrain ourselves to a debate which we carry on in the not always justified faith that the outcome will serve the larger interests of democracy" (*Collected Essays*, p. 595).

[13] Homogenization is not the answer. Ironically predicting the era of the spread of drug-use and "rap" music into the suburbs, the narrator observes: "One of the greatest jokes in the world is the spectacle of the whites busy escaping blackness and becoming blacker every day, and the blacks striving toward whiteness, becoming quite dull and gray. None of us seems to know who he is or where he is going" (p. 577).

to the novel the narrator thus tells his readers that he had decided that it is time for him to come out of hibernation, "since there's a possibility that even an invisible man has a socially responsible role to play." An invisible man can make not merely his own experience or identity but that of his people known to others by making himself, like both the narrator and the author of this novel, into a "disembodied voice" (p. 581).

B. The Intention of the Author

Human beings have been distinguished from beasts, from the time of Aristotle at least, by their distinctive faculty of *logos* (which can be translated as either speech or reason). To show that blacks and whites are equally human, Ellison saw that he not merely had to make his black narrator "invisible," so that he would no longer defined simply visibly by the color of his skin, but audibly by the sound of his voice. That voice would also have to be intellectual. In other words, he had "to create a narrator who could think as well as act" (p. xxi).

Afro-Americans were not the political equals of whites, Ellison observed. No black could realistically hope to be elected President. There was a not very transparent ceiling on the ambition of any young black to become a leader of his people. But it was still possible to dream, and dreams were the substance of fiction. "Mark Twain had demonstrated that the novel *could* serve as a comic antidote to the ailments of politics, and since in 1945, as well as now, Afro-Americans were usually defeated in their bouts with circumstance, there was no reason why they, like Brer Rabbit and his more literary cousins, the great heroes of tragedy and comedy, shouldn't be allowed to snatch the victory of conscious perception from the forces that overwhelmed them" (p. xxi). By writing a self-reflective first-person narrative that encompassed the entire history of his people from Reconstruction to the present, Ellison himself could demonstrate not only that they understood their situation–that they had been unjustly oppressed and that they themselves had contributed to this oppression by accepting the inferior status to which the whites had relegated them–but also that they could equal the greatest intellectual and artistic achievements of the whites.

Ellison's task, as he understood it, "was one of revealing the human universals hidden within the plight of one who was both black and American, and not only as a means of conveying my personal vision of possibility, but as a way of dealing with the sheer rhetorical challenge involved in communicating across our barriers of race and religion, class, color and region–barriers which consists of the many strategies of division that were designed, and still function, to prevent what would otherwise have been a more or less natural recognition of the reality of black and white fraternity." To defeat his nation's tendency to deny the common humanity of blacks and whites, he provided his narrator with "a worldview" or "consciousness in which serious philosophical questions could be raised." Just as the first-person narrator of Herman Melville's masterpiece, *Moby-Dick,* presents Father Mapple's

sermon on the significance of Jonah and his own meditations on the fearful "whiteness of the whale," so Ellison's first person narrator relates his marijuana induced dream about the blackness of blackness (p. 9–14), which also takes the form of a sermon on the complex intertwining of love and hate between whites and blacks.[14] Like Twain in his *Adventures of Huckleberry Finn*, Ellison thought that he had to provide his first-person narrator "with a range of diction that could play upon the richness of our readily shared vernacular speech and construct a plot that would bring him in contact with a variety of American types as they operated on various levels of society." The narrative had to be not only intimate and intellectual, but also sweeping in its social and historical scope. Like Twain, Ellison also saw that he "would have to approach racial stereotypes as a given fact of the social process and proceed, while gambling with the reader's capacity for fictional truth, to reveal the human complexity which stereotypes are intended to conceal" (p. xxii).

Like Melville and Twain, in his literary masterpiece Ellison affirms the common humanity of people of color and whites. In contrast to both these authors, however, Ellison shows that human community does not and cannot take the form of a trans-racial or trans-cultural friendship like that of Huck and Jim or Ishmael and Queequeg. On the contrary, he insists that there is a distinctively Afro-American story that needs to be told, and that story is one of separation and alienation among as well as from the people(s) who should be and perhaps will be fellows in the future. Jim always remained subject to the laws, if not lawless force of the whites; and Ishmael returned alone to tell his tale. In order to be treated equally in the future, Ellison suggests, blacks must insist that they have been treated unequally in the past. They know the truth. They know what inequality is and means–and they can tell others!

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[14] Like the whiteness of the whale, blackness can be fearful, but it is not simply fearful. By prefacing his novel with a quotation from Melville's *Benito Cereno*, Ellison reminds his readers that he has provided blacks the voice Babo was denied.

ARCHIVE

Richard John Neuhaus

THE VULNERABILITY OF THE NAKED SQUARE

If any phrase coined in the last several decades deserves to permanently enter the language of everyday understanding, it is "the naked public square." Then Pastor, now Father Neuhaus was not mounting an argument in favor of crèches in the town square at Christmastime. No, his sights are set on the much larger target of the "secular city" and its implications: a place destined to become like Narnia under the reign of the White Queen, a place where it is always winter but never Christmas.

Take religion out of public life, and you have a naked public square. But not for long. The state will quickly fill the void, which is a frightening prospect indeed. Imagine the feds in charge of moral truth; imagine us believing in them. Impossible? Ask the survivors of fascism and communism.

We need, as Father Neuhaus concludes, "the critical tutelage of traditions that refuse to leave 'man on his own.'" Or, as Edmund Burke put it, "People will not look forward to posterity, who never look backward to their ancestors."

Martin Luther King, Jr. and Jerry Falwell. Friends of both would likely be offended by the suggestion that they are in any way similar. And yet they are, I believe. Of course they are also strikingly different figures, with quite different analyses of what is wrong with America and what ought to be done about it. They were on opposite sides of the civil rights struggle in the fifties and sixties. (With-out going so far as to say that King was right, the Falwells regularly acknowledge that they were wrong on race.)

There is the sharpest contrast between King's enprincipled nonviolence and Falwell's advocacy of bellicose toughness in dealing with the Communists. Numerous other differences, political and theological, could be itemized. But in this

they are similar: both Martin Luther King and Jerry Falwell disrupt the business of secular America by an appeal to religiously based public values.

Although in quite different ways, both are profoundly patriotic figures. Dr. King's dream was of America as an exemplar of racial and social justice, an anticipation of that "beloved community" promised by God. The patriotic fervor with which Dr. King invoked an American promise is often forgotten. But the March on Washington, for instance, can never be forgotten by those who were there, nor, one hopes, by the millions who have watched its replay on television documentaries. On that oppressively hot Wednesday afternoon of August 28, 1963, before the Lincoln Memorial, a baritone trumpet sought to recall America to its better self. "Five score years ago, a great American, in whose symbolic shadow we stand, signed the Emancipation Proclamation," Dr. King began. He then described the ways in which the promise had not been kept and rhetorically etched the shape of its fulfillment. "This will be the day when all God's children will be able to sing with new meaning 'My country 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the pilgrim's pride, from every mountain side, let freedom ring.'" Lest we succumb to the prejudice that patriotic rhetoric is by definition ignoble, the peroration deserves to be committed to memory.

When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of that old Negro spiritual, "Free at last! Free at last! Thank God almighty, we are free at last!"

A biographer of King, who had learned in the school of economic determinism that moral appeals are but the instrumental disguise of class conflict, says of the March on Washington speech: "This was rhetoric almost without content, but this was, after all, a day of heroic fantasy." Such a comment suggests that the impingement of religious vision upon the public square can be permitted from time to time—if it is employed in the right causes, and if it is not taken too seriously. Thus also today's discharge of religious language in public space is assumed to hide narrow partisan interests. Although immeasurably less eloquent or persuasive than Dr. King's, contemporary religious rhetoric of populist patriotism deserves to be treated as seriously. To treat it seriously does not, of course, mean that one agrees. But when today's political preachers lift up a vision of a morally rejuvenated America serving as the base for global evangelism and as the defense against atheistic totalitarianism, there is no good reason to doubt that they are—to use that much overworked word— sincere. That is, it is not necessarily suspect language, language employed to advance some purpose other than the purpose indicated by the language itself.

To be sure, activists in whatever cause employ—and even, in the negative sense of the term, exploit—language in order to conceal loyalties and heighten emotional commitment. Activism is inescapably concerned not for disinterested

truth but for *effective* truth, truth that is effective in advancing the purpose at hand. From this reality derives the pervasive mendacity that distorts all political engagement, to a greater or lesser degree. That being said, it remains important to note which rhetoric is chosen to advance the cause. Few leaders are so false to the core as to choose a rhetoric for its manipulative effect alone. As skeptical as we may rightly be about appeals to moral ideals, it is reasonable to believe that the ideals by which leaders would call others to judgment are the ideals by which, at least in their more reflective moments, they believe they are themselves judged. This observation is not invalidated by La Rochefoucauld's famous maxim, "Hypocrisy is the homage that vice pays to virtue." The truth of the maxim does not allow even the greatest cynic to be dismissive about moral ideals in public discourse. On the contrary, the hypocrisies by which we know ourselves to fail are of decisive importance. Be they hypocrisies or be they truths nobly adhered to, they are the moral points of reference by which communities are called to accountability. My point is not to suggest that either Dr. King or current political preachers are hypocritical. It is to emphasize that they are alike in proposing a vision of public virtue and that that vision is religiously based.

The assertion that binds together otherwise different causes is the claim that only a transcendent, a religious, vision can turn this society from certain disaster and toward the fulfillment of its destiny. In this connection "destiny" is but another word for purpose. From what-ever point on the political spectrum such an assertion is made, it challenges the conventional wisdom that America is a secular society. In recent decades we have become accustomed to believe that *of course* America is a secular society. That, in the minds of many, is what is meant by the separation of church and state. But this way of thinking is of relatively recent vintage. As late as 1931 the Supreme Court could assert without fear of contradiction, "We are a Christian people, according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God." The 1931 case had to do with whether a conscientious objector to war could become a citizen. After the above statement about obedience to God, the court concluded, "But, also, we are a nation with the duty to survive." Citizenship was denied (*US v. Macintosh*).

In 1952, in a dispute over students getting off from public schools in released time for religious instruction, Justice Douglas, hardly a religiously observant man, wrote, "We are a religious people whose institutions presuppose a Supreme Being" (*Zorach v. Clauson*). As time went on, however, the court's references to religion had less and less to do with what is usually meant by religion. That is, religion no longer referred to those communal traditions of ultimate beliefs and practices ordinarily called religion. Religion, in the court's meaning, became radically individualized and privatized. Religion became a synonym for conscience. For instance, in cases again related to conscientious objection, exemption from the military draft was to be al-lowed on the "registrant's moral, ethical, or religious beliefs

about what is right and wrong [provided] those beliefs be held with the strength of traditional religious convictions" (*Welsh v. U.S.,* 1970). Thus religion is no longer a matter of content but of sincerity. It is no longer a matter of communal values but of individual conviction. In short, it is no longer a public reality and therefore cannot interfere with public business.

Such a religious evacuation of the public square cannot be sustained, either in concept or in practice. When religion in any traditional or recognizable form is excluded from the public square, it does not mean that the public square is in fact naked. This is the other side of the "naked public square" metaphor. When recognizable religion is excluded, the vacuum will be filled by *ersatz* religion, by religion bootlegged into public space under other names. Again, to paraphrase Spinoza: transcendence abhors a vacuum. The reason why the naked public square cannot, in fact, remain naked is in the very nature of law and laws. If law and laws are not seen to be coherently related to basic presuppositions about right and wrong, good and evil, they will be condemned as illegitimate. After having excluded traditional religion, then, the legal and political trick is to address questions of right and wrong in a way that is not "contaminated" by the label "religious." This relatively new sleight-of-hand results in what many have called "civil religion." It places a burden upon the law to act religiously without being suspected of committing religion. While social theorists might talk about "civil religion," the courts dare not do so, for that too would be an unconstitutional "establishment" of religion.

Admittedly, it is all very confusing. The late Alexander Bickel of Yale recognized more clearly than most that law inevitably engages ultimate beliefs about right and wrong. If law is to be viewed as legitimate, it must be backed by moral judgment. But, it is argued, in a society where moral judgments differ in source and conclusion, the final grounding of moral judgment must be disguised so as not to give democratic offense. It must be grounded so *generally* so as to obscure the particularities of religious disagreement in a pluralistic society. Bickel proposes a way in which this might be done:

The function of the Justices ... is to immerse themselves in the tradition of our society and of kindred societies that have gone before, in history and in the sediment of history which is law, and in the thought and the vision of the philosophers and the poets. The Justices will then be fit to extract "fundamental presuppositions" from their deepest selves, but in fact from the evolving morality of our tradition. ... The search for the deepest controlling sources, for the precise "how" and the final "whence" of the judgment may, after all, end in the attempt to express the inexpressible. This is not to say that the duty to judge the judgment might as well be abandoned. The inexpressible can be recognized, even though one is unable to parse it.

This is an elegantly convoluted way of thinking about right and wrong in a democratic society that in fact understands its morality to be derived from the Judeo-Christian tradition. Bickel's proposal is for a semi-sanitized public square, for a legal process that is religious in function but dare not speak the name of religion.

("Philosophers and poets" are admitted, be it noted, but not prophets or religious ethicists and teachers.) The tortured reasoning required by the exclusion of identifiable religion is surely a puzzle to many, perhaps most, Americans. It may be that they are puzzled because they do not understand the requirements of a pluralistic society. Or they may be puzzled because they are more impressed by the claim that this is a democratic society. In a democratic society, presumably, the public business is carried on in conversation with the actual values of people who *are* the society. In a survey of North Carolinians in the 1970s, seventy-four percent agree with the statement: "Human rights come from God and not merely from laws." Seventy-eight percent claim the U.S. flag is "sacred." And, despite Vietnam and all that, a third assent to the proposition, "America is God's chosen nation today." North Carolinians may be more "traditional" than other Americans on these scores although there is no reason to assume that. One suspects, rather, that there is among Americans a deep and widespread uneasiness about the denial of the obvious. The obvious is that, in some significant sense, this is, as the Supreme Court said in 1931, a Christian people. The popular intuition is that this fact ought, somehow, to make a difference. It is not an embarrassment to be denied or disguised. It is an inescapable part of what Bickel calls the "tradition of our society and of kindred societies that have gone before." Not only is it tradition in the sense of historie past; it is demonstrably the present source of moral vitalities by which we measure our virtues and hypocrisies.

The notion that this is a secular society is relatively new. It might be proposed that, while the society is incorrigibly religious, the state is secular. But such a disjunction between society and state is a formula for governmental delegitimation. In a democratic society, state and society must draw from the same moral well. In addition, because transcendence abhors a vacuum, the state that styles itself as secular will almost certainly succumb to secular*ism*. Because government cannot help but make moral judgments of an ultimate nature, it must, if it has in principle excluded identifiable religion, make those judgments by "secular" reasoning that is given the force of religion. Because this process is already advanced in the spheres of law and public education, there is a measure of justice in the complaints about "secular humanism." Secular humanism, in this case, is simply the term unhappily chosen for *ersatz* religion.

More than that, the notion of the secular state can become the prelude to totalitarianism. That is, once religion is reduced to nothing more than privatized conscience, the public square has only two actors in it—the state and the individual. Religion as a mediating structure—a community that generates and transmits moral values—is no longer available as a countervailing force to the ambitions of the state. Whether in Hitler's Third Reich or in today's sundry states professing Marxist-Leninism, the chief attack is not upon individual religious belief. Individual religious belief can be dismissed scornfully as superstition, for it finally poses little threat to the power of the state. No, the chief attack is upon the *institutions* that bear

and promulgate belief in a transcendent reality by which the state can be called to judgment. Such institutions threaten the totalitarian proposition that everything is to be within the state, nothing is to be outside the state.

It is to be expected that the move in this discussion from the naked public square to the dangers of totalitarianism will be resisted by some readers. It may seem too abrupt and even extreme. We will be coming back to the subject in order to fill in some of the intermediate steps. At the moment, suffice it to register a degree of sympathy with those who resist talk about the dangers of totalitarianism. They object, quite rightly, that many discussions of the threat of totalitarianism are only thinly veiled attacks upon Communism. A one-sided attack upon Communism, they protest, tends to overlook the many forms of authoritarian government that also violate our understandings of democratic freedom. Authoritarian, sometimes brutally authoritarian, regimes with which the United States is allied end up being tolerated or even lauded in order to maintain a common front against the Communist adversary. There is considerable merit to this critique, unfortunately. Anti-Communism is a necessary but hardly a sufficient basis for understanding the perils of our day. In this light, then, one can sympathize with those who resist much contemporary talk about the threat of totalitarianism.

A less admirable component in that resistance, however, is the naive notion that "it can't happen here." Those who subscribe to this notion are too often oblivious of the novelty and fragility of liberal democracy as a political system. They are inadequately sensitive to the distinctly minority status of such an order in our world. It is thought that liberal democracy and the freedoms associated with it are somehow "normal," part of the "establishment." The new and ex-citing thing, in this view, is the proposal of alternatives to liberal democracy. In the longer reaches of history, however, liberal democracy appears as a curious exception to the various tyrannies under which human beings have suffered. Of the 160 member nations of the United Nations, probably less than thirty qualify as democracies in the sense that we tend to take for granted. This historical and con-temporary perspective is essential. Without such a perspective, it is impossible to understand what Americans from Jefferson to Lincoln to John F. Kennedy intended when they spoke of America as an "experiment" launched and sustained in defiance of the "normal" course of history.

Those who think all talk about a totalitarian threat to be exaggerated also evidence an insouciance, sometimes a willful ignorance, with respect to the fact that liberal democracy does have declared adversaries. There are adversaries such as the authoritarian regimes of South America, South Africa, and the Philippines. In a significant way, however, these authoritarian regimes are not adversaries. That is, they do not *claim* to be adversaries, they do not oppose liberal democracy in principle; rather, they often claim to aspire to liberal democracy, asserting that their denial of democratic freedoms is only a temporary expedient on the way to that goal. And in fact we are not without recent examples of authoritarian societies that have

been moved toward democracy; Spain, Portugal, and Nigeria are cases in point. In both the long and short term, the more ominous adversaries of liberal democracy are those forces that are totalitarian *in principle.* The only global, systematic movement of this kind today is Marxist-Leninism. In the 1930s, Mussolini's Fascism and Hitler's National Socialism represented another such movement. After World War II and despite loose talk that equates any repressive regime with "fascism," only Marxist-Leninism is left as a theoretically comprehensive and, to many, morally compelling global adversary of liberal democracy.

In such a world it is not extreme but elementary common sense to be concerned about the threat of totalitarianism. "It can't happen here" is but a form of whistling in the dark. It is strange that among the foremost whistlers are some civil libertarians who are otherwise always reminding us of how precarious are the constitutional freedoms that we are too inclined to take for granted. The threat of totalitarianism is not posed chiefly by the prospect of defeat as a result of nuclear war. Nor is the main anxiety that the Soviet Union will launch a victorious march across Alaska and down through Canada. The chief threat comes from a collapse of the idea of freedom and of the social arrangements necessary to sustaining liberal democracy. Crucial to such a democratic order is a public square in which there are many actors. The state is one actor among others. Indispensable to this arrangement are the institutional actors, such as the institutions of religion, that make claims of ultimate or transcendent meaning. The several actors in the public square—government, corporations, education, Communications, religion—are there to challenge, check, and compete with one another. They also cooperate with one an-other, or sometimes one will cooperate with an other in competition with the others. In a democracy the role of cooperation is not to be deemed morally superior to the roles of checking and competing. Giving unqualified priority to the virtue of cooperation, as some Christians do, is the formula for the death of democracy.

There is an inherent and necessary relationship between democracy and pluralism. Pluralism, in this connection, does not mean simply that there are many different kinds of people and institutions in societal play. More radically than that, it means that there are con-tenders striving with one another to define what the play is about— what are the rules and what the goal. The democratic soul is steeled to resist the allure of a "cooperation" that would bring that contention to a premature closure. Indeed, within the bond of civility, the democratic soul exults in that contention. He exults not because contention is a good in itself, although there is a legitimate joy in contending, but because it is a necessary provisional good short of the coming of the kingdom of God. He strives to sustain the contention within the bond of civility, also, because he recognizes the totalitarianism that is the presently available alternative to such democratic contention.

John Courtney Murray, the great Jesuit analyst of American democracy, understood the nature of the contest in which we are engaged. For many years his work was viewed as suspect by church authorities but he was soundly vindicated

by Vatican Council II. Christian thinkers such as Murray and Reinhold Niebuhr are frequently discounted today as old hat. Such mindless dismissal results in part from a desire to espouse the latest thing. It is a bias of the superficially educated that books written thirty years ago, not to say three hundred years ago, are passé. In Christian circles this dismissal takes the curious twist of being conducted in the name of the most current version of "true Christianity," based upon biblical books written two thousand and more years ago. Murray, a deeply educated man, understood that epochs are not demarcated by publishers' seasons. The test of our epoch, he understood, is to sustain the democratic "proposition" in the face of the human yearning for monism. Monism is another word for totalitarianism, and Murray described it this way:

> [The] cardinal assertion is a thorough-going monism, political, social, juridical, religious: there is only one Sovereign, one society, one law, one faith. And the cardinal denial is of the Christian dualism of powers, societies, and laws—spiritual and temporal, divine and human. Upon this denial follows the absorption of the Church in the community, the absorption of the community in the state, the absorption of the state in the party, and the assertion that the party-state is the supreme spiritual and moral, as well as political authority and reality. It has its own absolutely autonomous ideological substance and its own absolutely independent purpose: it is the ultimate bearer of human destiny. Outside of this One Sovereign there is nothing. Or rather, what presumes to stand outside is "the enemy."

The prelude to this totalitarian monism is the notion that society can be ordered according to secular technological reason without reference to religious grounded meaning. Murray again:

> And if this country is to be overthrown from within or from without, I would suggest that it will not be overthrown by Communism. It will be overthrown because it will have made an impossible experiment. It will have undertaken to establish a technological order of most marvelous intricacy, which will have been constructed and will operate without relations to true political ends: and this technological order will hang, as it were, suspended over a moral confusion; and this moral confusion will itself be suspended over a spiritual vacuum. This would be the real danger resulting from a type of fallacious, fictitious, fragile unity that could be created among us.

This "vacuum" with respect to political and spiritual truth is the naked public square. If we are "overthrown," the root cause of the de-feat would lie in the "impossible" effort to sustain that vacuum. Murray is right: not Communism, but the effort to establish and maintain the naked public square would be the source of the collapse. Totalitarian monism would be the consequence of such a collapse. Because it is the only totalitarian ideology in play today, the consequence would likely be Marxist-Leninist; which is to say it would be, in one form or another, Communism. The probability that it would be a distinctively American form of Communism will not vindicate those who now say "It can't happen here." Americans may, with a little help from their adversaries, find their own distinctive way to terminate the democratic experiment to which they gave birth. The fact that democracy's demise

bears the marking "Made in America" will console only national chauvinists. It will be little comfort to those whose devotion to America was derived from their devotion to the democratic idea.

The naked public square is, as Murray suggests, an "impossible" project. That, however, does not deter people from attempting it. In the minds of some secularists the naked public square is a desirable goal. They subscribe to the dogma of the secular Enlightenment that, as people become more enlightened (educated), religion will wither away; or, if it does not wither away, it can be safely sealed off from public consideration, reduced to a private eccentricity. Our argument is that the naked public square is not desirable, even if it were possible. It is not desirable in the view of believers because they are inescapably entangled in the belief that the moral truths of religion have a universal and public validity. The Ten Commandments, to take an obvious example, have a normative status. They are not, as it has been said. Ten Suggestions or Ten Significant Moral Insights to be more or less appreciated according to one's subjective disposition. Even if one is not a believer, the divorce of public business from the moral vitalities of the society is not desirable if one is committed to the democratic idea. In addition to not being desirable, however, we have argued that the naked public square is not possible. It is an illusion, for the public square cannot and does not remain naked. When particularist religious values and the institutions that bear them are excluded, the inescapable need to make public moral judgments will result in an elite construction of a normative morality from sources and principles not democratically recognized by the society.

The truly naked public square is at best a transitional phenomenon. It is a vacuum begging to be filled. When the democratically affirmed institutions that generate and transmit values are excluded, the vacuum will be filled by the agent left in control of the public square, the state. In this manner, a perverse notion of the disestablishment of religion leads to the establishment of the state as church. Not without reason, religion is viewed by some as a repressive imposition upon the public square. They would cast out the devil of particularist religion and thus put the public square in proper secular order. Having cast out the one devil, they unavoidably invite the entrance of seven devils worse than the first.

The totalitarian alternative edges in from the wings, waiting impatiently for the stage to be cleared of competing actors. Most important is that the stage be cleared of those religious actors that presume to assert absolute values and thus pose such a troublesome check upon the pretensions of the state. The state is not waiting with a set of absolute values of its own or with a ready-made religion. Far from waiting with a package of absolutes, in a society where the remnants of procedural democracy survive the state may be absolutely committed only to the relativization of all values. In that instance, however, the relativity of all things becomes the absolute. Without the counter-claims of "meaning-bestowing" institutions of religion, there is not an absence of religion but, rather, the triumph of the religion of relativity. It is a religion that must in principle deny that it is religious. It is the religion

that dare not speak its name. In its triumph there is no contender that can, in Peter Berger's phrase, "relativize the relativizers."

The entrance of the seven devils that take over the cleansed public square is not an alarmist scenario. Conceptually there is no alternative to it, unless of course one believes that a society can get along without a normative ethic. Admittedly, there are those who do believe this. They are, as Alisdair MacIntyre contends, the barbarians. "This time," writes MacIntyre, "the barbarians are not waiting beyond the frontiers; they have already been governing us for quite some time." That the barbarians are composed of the most sophisticated and educated elites of our society makes them no less barbarian. The barbarians are those who in principle refuse to recognize a normative ethic or the reality of public virtue.

The barbarians are the party of emancipation from the truths civilized people consider self-evident. The founding fathers of the American experiment declared certain truths to be self-evident and moved on from that premise. It is a measure of our decline into what may be the new dark ages that today we are compelled to produce evidence for the self-evident. Not that it does much good to produce such evidence, however, for such evidences are ruled to be inadmissible since, again in principle, it is asserted that every moral judgment is simply an instance of emotivism, a statement of subjectiye preference that cannot be "imposed" upon others. MacIntyre's dismal reading of our times is no doubt an accurate description of the *logic* of contemporary philosophical, moral, and legal reasoning. Fortunately, the real world is not terribly logical. The vitalities of democracy protest that dour logic. Populist resentment against the logic of the naked public square is a source of hope. That resentment is premised upon an alternative vision that calls for a new articulation. When it finds its voice, it will likely sound very much like the voice of Christian America. That voice will not be heard and thus will not prevail in the public square, however, unless it is a voice that aims to reassure those who dissent from the vision.

We have said that conceptually there is no alternative to a *de facto* state religion once traditional religion is driven from the public square. Even if some were to argue that an alternative could be hypothetically conceived, we must attend to actual historical experience. We have witnessed again and again the entrance of the seven devils worse than the first. In every instance except that of Italian Fascism and the Third Reich, in this century they have entered under the banner of Communism. We who embrace the liberal tradition have suffered from a debilitating obtuseness on this score. It has too often been left to conservatives and reactionaries to point out that the emperor carries a very nasty club. Afraid to be thought anti-Communist, a species of liberalism has degenerated to fevered anti-anti-Communism.

This is the unpopular truth underscored by Susan Sontag in the dramatic 1982 confrontation at Town Hall in New York City. The meeting, the reader may recall, was for the purpose of expressing solidarity with Solidarity, the Polish labor movement that had been brutally repressed under martial law. The meeting was

sponsored in part by the *Nation,* a magazine of self-consciously liberal orthodoxy. An impressive lineup of literary and entertainment celebrities were expected to say nice things about the revolutionary proletariat in Poland and the dangers of fascist repression in the United States. Ms. Sontag went beyond expectations. She pointed out that the repression in Poland was not an aberration but inherent in the theory and practice of Marxist-Leninism. She noted that the left routinely railed against the threat of fascism.

We had identified the enemy as fascism. We heard the demonic language of fascism. We believed in, or at least applied a double standard to, the angelic language of communism... The emigres from communist countries we didn't listen to, who found it far easier to get published in the *Reader's Digest* than in *The Nation* or the *New Statesman,* were telling the truth. Now we hear them. Why didn't we hear them before?... The result was that many of us, and I include myself, did not understand the nature of the communist tyranny.... What the recent Polish events illustrate is a truth that we should have understood a very long time ago: that communism *is* fascism. ... Not only is fascism the probable destiny of all communist societies, but communism is in itself a variant of fascism. Fascism with a human face.

The conclusion to be drawn is not that the *Reader's Digest* is the oracle of truth. Anti-Communism combined with American boosterism is not a sufficient political philosophy. But, as Ms. Sontag would argue, neither is anti-anti-Communism sufficient. Alexander Solzhenitsyn comes closer to being an oracle on these questions. Commenting on the Polish developments following the emergence of Solidarity in 1981, he notes the ways in which sundry socialists of a Marxist bent attempt to dissociate themselves from what is happening in that tortured land, or even try to claim Solidarity as a representative of "true socialism" in protest against socialism's Communist distortion. "It is the Communist ideology that, with its heavy steps, is crushing Poland," writes Solzhenitsyn, "and let us admit it is not entirely alien to the socialists, though they are protesting vehemently: The ideology of any communism is based on the coercive power of the state. Let's not be mistaken: Solidarity inspired itself not by socialism but by Christianity." Beyond reasonable doubt, it is the presence of the Catholic Church in the Polish public square that prevents the regime from realizing its ambition for total control.

A literal example of the consistently denuded public square is, of course, Red Square in Moscow. Because it is in the nature of public squares not to remain naked, there is the sacred shrine of Lenin's tomb where thousands are transported each day to stand in line, waiting their turn to pay homage. Within this circumscribed space the maxim, "All within the state, nothing outside the state," is fulfilled. On several occasions in the early eighties a few bold Soviet citizens attempted to unfold banners appealing for peace and disarmament. They were promptly arrested and hustled off to psychiatric clinics. As Murray tried to help us understand, in such a society opposition to the will of the party is by definition a sign of insanity, or worse. *Tass,* the official newspaper (there being, of course, no other kind),

described the dissident "Committee to Establish Trust Between the U.S.S.R. and the U.S.A." as an "act of provocation of Western secret services." According to *The New York Times* report, the protesters were condemned as "anti-Sovieteers, renegades and criminals ... a handful of swindlers who do not represent anyone in the Soviet Union."

In our society the proponents of the naked public square do not describe themselves as proponents of the naked public square. Some are technocratic liberals, some are secular pragmatists, some are libertarians of either the leftist or rightist sort. Some are socialists who insist that we need to establish "rational control" of political, economic, and cultural forces in order to forge something like a national purpose and plan. Whatever the rationale or intention, however, the presupposition is the naked public square, the exclusion of particularist religious and moral belief from public discourse. And whatever the intention, because the naked square cannot remain naked, the direction is toward the state-as-church, toward totalitarianism. And again, the available form of totalitarianism—an aggressively available form, so to speak—is Marxist-Leninism.

In one of his less felicitous statements, President Carter in a major foreign policy address cautioned against our "inordinate fear of Communism." He did not make clear what measure of fear might be ordinate. Similarly, those who now underscore the dangers of Communism caution us against an inordinate fear of McCarthyism. Presumably, in this respect too there is a measure of fear that is ordinate. The present argument suggests that both fears are legitimate and necessary. Of the two, McCarthyism as a form of what Richard Hofstadter called "the paranoid style" in American politics is the more immediate possibility. We have been through that and the scars are still touchable. In the longer term—say, the next thirty to one hundred years—totalitarianism is the more ominous prospect. This does not mean we should risk "just a little" McCarthyism in order to ward off that prospect. It does mean that we should stop calling a sensible anxiety about that prospect "McCarthyism." It does mean we should stop telling ourselves and others that the choice is between McCarthyism, which truncates liberal democracy, and totalitarianism, which terminates liberal democracy. An open-eyed awareness of the fragility of liberal democracy, and of the alternatives to it, is the best insurance against being reduced to such a dismal choice. As that awareness is heightened, we will as a society be more resistant both to the totalitarian temptation and to the illusion that democracy can be saved by becoming less democratic.

In 1981 the Institute on Religion and Democracy was established in Washington, D.C. Its declared purpose was to lift up the public significance of religion in the democratic process, to promote democratic ideals within the religious communities, and, as a necessary correlate of that, to oppose those dynamics in the churches that seem inclined toward the totalitarian temptation. "Christianity and Democracy" is the Institute's manifesto-like assertion of what it means by democracy:

Democratic government is limited government. It is limited in the claims it makes and in the power it seeks to exercise. Democratic government understands itself to be accountable to values and to truth which transcend any regime or party. Thus in the United States of America we declare ours to be a nation "under God," which means, first of all, a nation under judgment. In addition, limited government means that a clear distinction is made between the state and the society. The state is not the whole of the society, but is one important actor in the society. Other institutions—notably the family, the Church, educational, economic and cultural enterprises—are at least equally important actors in the society. They do not exist or act by sufferance of the state. Rather, these spheres have their own peculiar sovereignty which must be respected by the state.

The statement goes on to affirm the importance of participation, equality, and fairness in a democratic society. Without dwelling on the point, it notes that "as a matter of historical fact democratic governance exists only where the free market plays a large part in a society's economy." The statement and the Institute received widespread (some would say inordinate) attention in the general media and in the churches. They were the object of a formal debate sponsored by the National Council of Churches and of numerous critiques by theologians and social philosophers on all points of the political spectrum.

The debate produced around groups such as the Institute on Religion and Democracy gives some reason to believe that this decade could be remembered as a time of reinvigorated appreciation of the democratic idea among Christians in America. The intuition of the connection between democracy and religion was until recently part of the foundational consensus supporting what Murray called "the American proposition." It was a constitutive element of the vital center in American thought. The vital center, it will be recalled, was the title Arthur M. Schlesinger, Jr., chose for his 1949 manifesto in favor of democratic freedom. *The Vital Center* is in the tradition of Walter Lippmann's "public philosophy" and John Dewey's "common faith." If one did not know that *The Vital Center* was written thirty-five years ago, she would suspect it was written by one of those who today are called neo-conservative.

It is a curiosity of our time that the main-stream liberalism of a few decades ago—and nobody has more assiduously attended to his credentials as a mainstream liberal than Arthur M. Schlesinger, Jr.—is the neo-conservatism of today. The mainstream liberal argument then was, quite rightly, viewed as a radical proposition on the screen of world-historical change. Schlesinger wrote:

Our problem is not resources or leadership. It is primarily one of faith and time: faith in the value of our own freedoms, and time to do the necessary things to save them. To achieve the fullness of faith, we must renew the traditional sources of American radicalism and seek out ways to maintain our belief at a high pitch of vibration. To achieve a sufficiency of time, we must ward off the totalitarian threat to free society—and do so without permitting ourselves to become the slaves of Stalinism, as any man may become the slave of the things he hates.

Schlesinger and those like him then viewed with approval, indeed the highest hope, the role of the "affirmative" or "positive" state. They knew there were dangers in the self-aggrandizement of the state, but the acknowledgment of the importance of other public actors is almost an aside:

In the short run, the failure of voluntary initiative invites the spread of state power. In the long run, the disappearance of voluntary association paves the way for the pulverization of the social structure essential to totalitarianism. By the revitalization of voluntary associations, we can siphon off emotions which might otherwise be driven to the solutions of despair. We can create strong bulwarks against the totalitarianization of society.

But this nod to what we have called the mediating structures of society is almost cancelled out by the emphasis upon state power. To be sure, Schlesinger observed then, "We have strayed too far from the in-sights of Burke and de Maistre; we have forgotten that constitutions work only as they reflect an actual sense of community." He also warned against "arrogant forms of individualism." "It is only so far as ... individualism derives freely from community, that democracy will be immune to the virus of totalitarianism." The reiterated "we" in Schlesinger's writing however, is finally the "we" of the total society, the "we" of the state. This is because, in his view, the great domestic threat is the anti-democratic influence of the Corporation, of "the business plutocracy." "The Corporation began to impersonalize the economic order," wrote Schlesinger.

Impersonality produced an irresponsibility which was chilling the lifeblood of society. The state consequently had to expand its authority in order to preserve the ties which hold society together. The history of governmental intervention has been the history of the growing ineffectiveness of the private conscience as a means of social control. The only alternative is the growth of the public conscience, whose natural expression is the democratic government.

There, in succinct form, is the nub of the dispute. The choice, we would contend, is not between the private conscience and the public conscience expressed by the state. The private conscience, as Schlesinger also wanted to say in part, is not private in the sense of being deracinated, torn from its roots. It is not "arrogantly" individualistic. Private conscience too is communal; it is shaped by the myriad communities from which we learn to "put the world together" in an order that is responsive to our understanding of right and wrong. As for "the public conscience," it is a categorical fallacy. It harks back to Rousseau's mythology of a "general will" of which the state is the expression. "The Public" does not have a conscience. "The People" does not have a conscience. Only persons and persons-in-community have consciences.

Schlesinger's enthusiasm for the triumph of "the affirmative state" is not widely shared today, neither on the right nor on the left. It is not merely that there is a groundswell of opposition to "big government" or an anti-modernist passion for decentralization in obedience to the axiom that "small is beautiful." It is all that,

but it is not merely that. It is rather that there is a growing awareness of the limits of the political, a recognition that most of the things that matter most are attended to in communities that are not government and should not be governmentalized. This awareness is what some critics describe as a "retribalization" or "reprivatization" of American life. But "tribe" used in this way is simply a pejorative for community. And, far from this being a process of reprivatization, it is an expansion of our understanding of what is public. We are no longer content to let "public" be synonymous with "government." Thus, for example, in education the distinction is not between public schools and private schools. It is rather between government schools and voluntary schools, or "schools of choice." All schools that advance a public interest and meet the needs of their relevant publics are public schools.

Jefferson, Jackson, Lippmann, Dewey, Schlesinger, and a host of others strove to articulate democracy as a credal cause. The last chap-ter of *The Vital Center* is titled "Freedom: A Fighting Faith." But finally it is a faith in which freedom is the end as well as the means. It is a faith devoid of transcendent purpose that can speak to the question of what freedom is *for*. This is, of necessity, a religious question. The truly "positive" state that presumes to address this question becomes the state-as-church. The Marxists are right: the political freedom of liberal democracy is essentially a "negative" freedom (freedom *from*). If we are not to succumb to totalitarianism, the positive meaning of freedom must be addressed in a manner, and through institutions, beyond the competence of what is ordinarily meant by politics or the government. The public square is the stage of many actors, not all of whom are following the same script. It is very confusing. It is democratic.

Historically, the churches in America have been leading actors in voicing the positive side of freedom's question. The purpose of Christianity in America, it is said somewhat scornfully, was to establish "The Righteous Empire." In the nineteenth century there was the hope to construct "a complete Christian commonwealth." The mainline churches, as they are called, have retired such rhetoric in recent decades. Many of their members, joined by today's moral majoritarians, want to pick it up again. Those who retired the idea tended to share the liberal assumption that the tasks of moral definition could and should be taken over by "the public conscience" expressed through the state. In the frequently uncritical affirmation of "the secular city," it was thought a triumph that the churches could step back from what had been a transitional role in the public square. Now it is recognized, however, that man has not "come of age" in the way that many thought. We still need, we more urgently need, the critical tutelage of traditions that refuse to leave "man on his own."

Negative freedom is dangerous to ourselves and others if it is negative freedom alone. As Murray argued, it is not only dangerous but it is "impossible." It is most dangerous *because* it is impossible. That is, its very attempt invites the termination of the democratic freedom in the name of which the attempt is made. The question is not *whether* the questions of positive freedom will be addressed.

The question is by *whom*—by what reasonings, what traditions, what institutions, what authorities—they will be addressed. If they are to be addressed democratically in a way that gives reasonable assurance of a democratic future, we must work toward an understanding of the public square that is both more comprehensive and more complex. Along the way to such an understanding, we must listen with critical sympathy to those who are speaking the very new-old language of Christian America.

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