

**HOW TO BUILD A STATE?  
CHOSEN PROBLEMS  
OF POLITICAL PHILOSOPHY**



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# HOW TO BUILD A STATE? CHOSEN PROBLEMS OF POLITICAL PHILOSOPHY

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## INTRODUCTION

The present volume of “Studies in Logic, Grammar and Rhetoric”, entitled *How to build a state? Chosen problems of political philosophy* refers to the subject matter taken up in the previous issues of the series – 15 (28) and 20 (33) which concentrated on main ideas of socio-political thought of the seventeenth century.

Articles included in this volume concentrate on the problem of construction of a state organism – *polis* in broad social, political and cultural sense; they also deal with the problem of weakness of states and underline the need to build the statehood. Conscious construction of a state always demands an intention, a deliberate plan, the basis of which is constituted of ideology and convictions. Adoption of strong ideological assumptions is particularly visible in contemporary discussions concerning the form and the role of a state, controversies related to its appropriate power and size, in disputes in which are engaged those who are in favour of reducing the activity of the state and propagators of the idea of construction of a modern statehood.

The concept of a state embedded in ideology was present also in earlier projects. Seventeenth century visions of a state were not an exception in this measure; they appeared on the grounds of philosophical ideas and became part of great philosophical systems. In this volume are included texts devoted to the concepts of a state of G. W. Leibniz, F. Bacon and T. Hobbes. The fact that the majority of formulas for a perfect state was of ideal character is symptomatic, they were formulas which have never lived to see accomplishment.

This characteristic difference between theory and practice is depicted in two articles dedicated to Leibnizian views on the state: the text by H. Świączkowska entitled *Linguistic foundation of Leibnizian project of modernisation of the country* and *The world of culture and the world of nature. Confronting chosen aspects of G. W. Leibniz's political thought with his philosophical system* by J. Sitniewska. The first of the two mentioned texts presents Leibnizian concept of reforming a state through regeneration of the language and as a consequence intellectual transformation of the

## Introduction

German society. The project of the reform of the state is related, according to Leibniz, to a vision of an ideal society based on knowledge. The second article dedicated to political thought of the German philosopher presents him as a realist aware of all limitations of his times.

The text by R. Botwina *English politics contra language: the Babel of 1621* describes the times of ‘the confusion of languages’ in seventeenth century England, when the multiplicity of languages of political discourse equalled the multiplicity of political concepts. The article written by K. Doliwa *State for individuals and community in the philosophy of Thomas Hobbes* is devoted to Hobbes’ concept of statehood, according to which a state, along with the institution of a sovereign, appears to be a natural consequence of rational human nature.

Both of the above-mentioned texts refer to the times of civil war – the period particularly dangerous for a state or even the very idea of statehood. The article by Ł. Niewiński *Andersonville POW camp as an example of a Civil War time polis* is also related to this issue, it describes certain episodes from the American Civil War when coalition operation of law was suspended to citizens’ horror.

The relationship of the concept of a state and ideology is visible in the text *New state, new law? An unknown draft of the Polish Labour Code from 1949* by A. Giedrewicz-Niewińska. The author describes the evolution to which, along with the change of political form of the state, the understanding of fundamental concepts of the Polish Labour Code was subject.

The presence of utopian elements in liberal thought throughout the centuries is explored by K. Kuźmicz in another article *Liberalism and utopia*, proving that liberalism, a doctrine present in the majority of democratic states, acknowledged as based on common sense, is not free from ideal elements.

The text of P. Niczyporuk *‘Mensarii’, bankers acting for public and private benefit* is focused on a particular legal solution being a specific reaction of the state, Rome in the fourth century B.C., to exceptional crisis situations and especially periods of sudden impoverishment of its citizens. The problem of the fight with election corruption in ancient Rome is taken up in the text by P. Kołodko *‘Lex Poetelia de ambitu’ of 358 B.C. as an example of legislation against corruption in elections*. Both articles show that the problems of the state as an institution are of timeless and universal character. The quest of a remedy to economic crisis and fight with corruption belong to main tasks of contemporary states.

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## ENGLISH POLITICS CONTRA LANGUAGE: THE BABEL OF 1621

*History never looks like history  
when you are living through it...*

John W. Gardner

*In Sung there was a keeper of monkeys.  
Bad times came and he was obliged to tell them  
that he must reduce their rations of nuts.*

*"It will be three in the morning and four in the evening," he said.*

*The monkeys were furious. "Very well then," he said,  
"you shall have four in the morning and three in the evening."  
The monkeys accepted with delight.*

Waley

### 1. English politics: behind the scenes...

A political situation in England during the first half of the seventeenth century was in sharp contrast to the political situations of other European countries of the same period. While continental European states were developing absolute and centralized monarchies, England, in a chaotic and violent way, aimed at a radical reduction of the monarchical power and the development of an alternative state in which the powers of the monarch were to become subsidiary to the power of governmental branches.<sup>1</sup> Although the seventeenth-century England managed to stay away from the European military problems from the thirties to the fifties of the discussed century, the situation of England was generally framed in what has come to be called "the crisis of the seventeenth century."<sup>2</sup> The dramatic experiments inside the English politics starting from absolutist tendencies at the beginning of

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<sup>1</sup> T. Munck, *Seventeenth-Century Europe: State, Conflict, and the Social Order in Europe, 1598–1700*, The Macmillan Press Ltd, New York and London, 1990, pp. 80–84.

<sup>2</sup> *Ibid.*

the century to the overthrow of the monarch in the middle of the century and the development of the English Republic did not correspond directly to any other European cases. Rooted in the growing conflict between the crown and the House of Commons, they consequently led to significant limitations of monarchical powers in the second half of the seventeenth century.<sup>3</sup>

The death of Elizabeth I in 1603, after nearly forty-five years of reign, was seen as a national relief. After the era of “Elizabethan Eden” what was left to the new monarch was the country with huge debts and the atmosphere of common dissatisfaction.<sup>4</sup> Excited, Sir Robert Cecil rode through London proclaiming the new ruler: “James the First, King of England, Scotland, France and Ireland, Defender of the Faith...”<sup>5</sup> Hence, when James I (1603–1625) succeeded Elizabeth I in 1603, he was already, as he told the English Parliament, “an old and experienced king” with the clearly defined principles of royal government.<sup>6</sup>

James became king at a very difficult point in history: the government was deeply in debt, the English church was divided with a growing radical Protestant minority and Parliament was gradually getting out of control. Though an experienced ruler, initially James did not realize the size of the conflict he was to handle. The English, in turn, put all their zeal into the belief that James, a highly educated man, was the right person to lead the country out of the general crisis the country was sinking in. The very first days of James I’s reign were marked by religious disagreements in the country. On his arrival in England James was presented with the Millenary Petition – a formal plea for the immediate accommodation of Puritans within the established church in England.<sup>7</sup> However, at the Hampton Court

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<sup>3</sup> Historians highlight the unprecedented character of the background of the English Revolution pointing out that no European revolution before had the same causes and effects. It was the English Revolution that would become the model to study during the revolutions in France and Russia. See P. Johnson, *A History of the English People*, Perennial Library, USA, 1985, pp. 198–202.

<sup>4</sup> The term “Elizabethan paradise” was first employed by Catherine Drinker Bowen in the book “Francis Bacon The Temper of a Man”, An Atlantic Monthly Press Book Little, Brown & Company, Boston, Toronto, 1963, p. 21.

<sup>5</sup> See C. D. Bowen, *Francis Bacon The Temper of a Man*, Ibid., p. 97.

<sup>6</sup> Having successfully ruled Scotland for years before he succeeded to the throne of the King of England, James had all rights to call himself as he did on his inauguration. See L. B. Smith, *Internal Discontent*, in “Elizabethan and Jacobean England”, <http://search.eb.com/shakespeare/macro/5009/49.htm>. Accessed February 21, 2005.

<sup>7</sup> The petition received its name from the fact that it had been signed by 1000 signers, who stood for one tenth of the English clergy. The petition requested the removal of all remaining popish elements from the church and adoption of Calvinistic articles of faith. See <http://learnthebible.org/preservation-king-james.htm>. Accessed February 21, 2005.

Conference in 1604<sup>8</sup> James expressed his hostility towards Catholics in order to please Puritans whose demands he nevertheless could not fully satisfy. Consequently, within days all priests and Jesuits were expelled and recusancy fines were reintroduced. James's ignorance towards the aim of the conference angered both English Roman Catholics and Protestants.<sup>9</sup>

James's succession to the English throne brought him another huge problem which marked all his reign. The problem concerned a constant lack of money, partly due to the debts left after Elizabeth's reign and partly caused by his extravagant lifestyle.<sup>10</sup> By 1608 the royal debt was more than £600,000.<sup>11</sup> The situation was more than serious and James forced the crown's financial ministers to turn their attention to other possible sources of income such as wardships, purveyance and the discovery of crown lands on which rents and dues were not being paid. The revival of that practice resulted in a public outcry. Negotiations had begun for the Great Contract between the king and his taxpaying subjects that aimed to rise £200,000 a year.<sup>12</sup> However, both royal officials and the leaders of Commons backed away from the deal, the government believing that the sum was too low, the leaders of the Commons that a land tax was too unpopular.<sup>13</sup> The events that followed marked the inevitability of the crisis concerning the relationships between the king and his Parliament. In despair after the failure of the Great Contract, James decided to squeeze even more revenue due to his feudal rights including the sale of titles.<sup>14</sup> Being the last straw, the desperate policy of James violated what the Commons recognized as the spirit of their principles regarding property and personal liberty and in reply they decla-

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<sup>8</sup> The conference only commissioned the translation of the Bible which resulted in the Authorized, or King James, Version.

<sup>9</sup> See <http://www.ccel.org/s/schaff/encyc/encyc05/htm/ii.iv.iii.htm>. Accessed February 21, 2005.

<sup>10</sup> T. Munck in *Seventeenth-Century Europe: State, Conflict, and the Social Order in Europe, 1598–1700*, p. 83. describes James's habit of sponsoring his numerous male lovers and their families. P. Johnson, in turn, sees James's homosexual preferences as one of the main sources of the conflict with the English who could not tolerate such a disgusting quality in so high a persona of the Kingdom. See P. Johnson, *A History of the English People*, op. cit., pp. 187–192; See also J. P. Kenyon, *The Stuarts*, London, 1967.

<sup>11</sup> Ibid., [html://search.eb.com/shakespeare/macro/5009/49.htm](http://search.eb.com/shakespeare/macro/5009/49.htm). Accessed February 21, 2005.

<sup>12</sup> The Great Contract envisaged a compromise between James and the Commons' reluctance as to the royal taxation. In exchange for an annual income of & 600,000 James was ready to give up impositions, purveyance and wardship as a source of revenue. See <http://history.wisc.edu/sommerville/361/361-21.htm>. Accessed February 21, 2005.

<sup>13</sup> C. D. Bowen, *Francis Bacon The Temper of a Man*, op. cit., pp. 111–131.

<sup>14</sup> Practically James did something which certainly would have shocked Elizabeth for the majority of the nobleman aristocratic titles were a matter of honour, not sale.

red that the Scottish king did not understand the procedures and privileges of the English Parliament.<sup>15</sup>

In 1610 James, once again appealing to the divine rights of kings, addressed a pompous speech to his Parliament:

The state of monarchy is the supremest thing upon earth; for kings are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods... Kings are justly called Gods, for that they exercise a manner or resemble the divine power on earth (...) And the like power have Kings: they make and unmake their subjects: they have power of raising and casting down: of life and of death: judges over all their subjects, and in all causes, and yet accountable to none but to God only...<sup>16</sup>

With apparent signs of an open war in the atmosphere, the first Parliament of James I was dismissed on 9 February, 1611. The second Parliament, commonly known as the Addled Parliament<sup>17</sup>, took place between 5 April – 7 June, 1614. During that Parliament the king sat with the Commons only once and due to the lack of mutual understanding they did not pass a single bill. Significant is the fact that this time James, on dissolving the Parliament, articulated his attitude towards the very institution of it. He was surprised that his “ancestors should have permitted such an institution to come into existence... It is sedition in subjects to dispute to what a king may do in the height of his power...”<sup>18</sup>

Apparently poor, the harvest of the Parliament of 1614 was nevertheless prophetic: the Commons made an undoubtedly considerable step towards the limitation of the power of the royal prerogative showing that the English Parliament had to be regarded as a national institution which had its own rights. Therefore, the Parliament of 1614 certainly provided the foundations for the anti-absolutist movement as exercised by the king in the next Parliament of 1621 for “there was thus an important shift in constitutional orthodoxy in the early 17th century as the natural site of electoral jurisdiction shifted from Chancery to Parliament.”<sup>19</sup>

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<sup>15</sup> By this time most Englishman regretted their faith put in the persona of James on the day of his election. The majority was recollecting the queen Elizabeth who had become to be seen almost as the English Saint who was given to the English by the grace of God. See P. Johnson, *A History of the English People*, op. cit, pp. 193–195.

<sup>16</sup> James I's speech before Parliament March 21, 1610 in J. P. Kenyon, *The Stuart Constitution*, Cambridge University Press, Cambridge, 1966, p. 13.

<sup>17</sup> The name alludes to its utter ineffectiveness.

<sup>18</sup> James I in *The Early Stuarts and the English Civil War*: [http://www.britainexpress.com/History/Early\\_Stuarts\\_and\\_the\\_Civil\\_War.htm](http://www.britainexpress.com/History/Early_Stuarts_and_the_Civil_War.htm) as Accessed February 21, 2005.

<sup>19</sup> G. Orr & G. Williams, *Electoral Challenges: Judicial Review of Parliamentary Elections in Australia*, p. 58: <http://www.law.usyd.edu.au>. Accessed February 21, 2005.

By excluding the executive influence of the crown this resolution was “a significant step in democratic evolution.”<sup>20</sup> On the other hand, apart from a considerable step forward towards the freedom of rights and speech made by the Commons, they did not triumph long. The direct consequence of the Commons’ triumph was the fact that James, on the lack of good communication with the Commons, quickly dissolved Parliament. As a result, the English Parliament was not to be summoned again for seven long years. During the next seven years to come the conflict between James I and the Commons was getting ripe to finally explode in 1621, the year of the last but one Parliamentary session James was to take part in during his reign in England.

## **2. Storming the Jacobean fortress of divine prerogative**

In 1621, after eighteen years of James I’s reign, England was in its most severe political and economic crisis.<sup>21</sup> The incompetence of James’s policy had reached its climax. The country was in a deep economic depression: due to the error in setting the ratio of gold to silver, which led to silver leaving the country, the English were forced to resort to barter.<sup>22</sup> The Thirty Years War additionally reinforced the drain of silver and increased the price of English goods on the Continent which resulted in the English trade quickly getting into the state of serious economic stagnation. Never before had the streets of London been filled with so numerous wage-labourers, mostly cloth-workers, almost dying from starvation.<sup>23</sup>

The reason for the English crisis was, above all, James’s private failure as an English monarch and his disability to rule the country in cooperation with Parliament. Norman Jones suggests that the primary causes of the 1621 crisis in England were numerous religious and ideological disagreements between the king and the Commons resulting from James I’s belief in his royal authority over Parliament, his disability to manage the royal treasure, and finally, James’s idea-fix of integrating Scotland and England

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<sup>20</sup> Ibid.

<sup>21</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, London: Associated University Press, London, 1995, p. 55.

<sup>22</sup> See *James & Buckingham*, <http://history.wisc.edu/sommerville/361/361-23.htm>, Accessed February 21, 2005,

<sup>23</sup> See *Economic Crisis*, <http://history.wisc.edu/sommerville/361/361-23.htm>. Accessed February 21, 2005.

into one state.<sup>24</sup> It was clear both for James and the English Parliament that something was to be done to stop the country from sinking in a further economic and political stagnation.

The success of the Catholic League in the Thirty Years War brought an additional impulse for the king and Parliament to gather together in order to take a clearly defined political stand of England: the Spanish troops had invaded the Palatinate and after the decisive battle at the White Mountain, Frederick Elector Palatine, James's son-in-law, and his English wife Elizabeth<sup>25</sup>, James's daughter, were put under imperial ban and totally deprived of all remaining territories. It is no wonder that the English, with their Protestant preferences, showed much sympathy for James's son-in-law. As James I sadly put it, his children "had lost their ancient and lawful patrimony."<sup>26</sup> Comenius, a figure much beloved by the English, went into exile, too.<sup>27</sup>

Therefore, James, on summoning Parliament after a seven-year break in January, 1621, had a clearly defined plan. On the one hand, he sympathized with his son-in-law; on the other, he intended to finalize his plans regarding the marriage of his son Charles to a Spanish princess. So far Philip IV of Spain had been reluctant to take any steps into the possible project of that marriage. James deeply hoped that his intention to raise money to support the Protestant in the Palatinate would bully Philip into concluding the marriage plans and into using his influence to put an end to the German war.<sup>28</sup> During parliamentary sessions James in the first place meant to discuss financial matters of the crown with a view to getting a subsidy to support the Protestants in their fight against the Catholics. That view was certainly in accordance with the Commons' intentions for they also expected a dialogue as to the prevention of the potential threats brought by the Catholic League. What is more, they also wished to discuss the possible

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<sup>24</sup> N. Jones, *The Politics of Renaissance England*, p. 19, [http://www.blackwellpublishing.com/content/BPL/Images/Content\\_store/Stamp\\_chapter/0631219501/001.pdf](http://www.blackwellpublishing.com/content/BPL/Images/Content_store/Stamp_chapter/0631219501/001.pdf). Accessed February 21, 2005.

<sup>25</sup> In 1613 James had married Elizabeth to the Elector Palatine of the Rhine, the leader of the Calvinist Protestants in Germany. This match was as popular among the English as unpopular was the possible match of Charles and the Spanish Infanta.

<sup>26</sup> J. R. Tanner, *Constitutional Documents of the Reign of James I, 1603–1625*, Cambridge University Press, Cambridge, 1952, p. 290.

<sup>27</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 55. See also J. Velinger, *Jan Amos Comenius – the teacher of nations*, a lecture presented 06–07–2004 <http://radio.cz/en/article/55618>. Accessed February 21, 2005.

<sup>28</sup> See *James IV/I and the Union of Crowns 1603–1625*, in "Tremors 1517–1625", <http://www.open2.net/civilwar/1.4.tremors.html>. Accessed February 21, 2005.

Spanish marriage project of which the majority in the Commons did not think highly. The new Parliament included John Pym and John Hampden who joined Sir Thomas Wentworth and Sir Edward Coke. It is necessary to add here that the newcomers were a matter of considerable nervousness for the King for their presence meant, above all, a critique of the Howard fiscal policy beyond which lay James's passive acceptance of their ruining fiscal system of the crown.<sup>29</sup>

Although impositions, the main cause of the previous conflict between the crown and the former Parliament, were still being collected, the Commons wanted to present a united front in the face of an international crisis. Therefore, they did not at once turn to their financial grievances. To encourage King's sense of cooperation, the Commons, although not eagerly, at once granted the King two nominal subsidies totally of £160,000.<sup>30</sup> That generous sum was meant to give financial support to the Protestants in the war against the Catholic League, something widely expected from the king. James, pleased with that Parliament's unexpected will to cooperate, on 2 March addressed to the Commons his grateful speech:

In former Parliament there was not true understanding betwix my subjects and me. Wee were like the builders of Babel, where one called for Morter, another for Stones, whereby we could not receive contentment and satisfaccion from eache other. But hereafter I hope all things wilbe soe cleare betwixt us That without any Orations our hearts shall speake for us.<sup>31</sup>

However, the apparent harmony was not meant to stay long in the Houses of Parliament and it soon turned out that James's desire that their "hearts shall speake for {them}"<sup>32</sup> was not meant to fulfill when in November 1621 James called Parliament again. Again, the crown needed money but this time the Commons played their cards openly. Offended by the lack of a definite stand of the King as to giving decent support to the Protestants

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<sup>29</sup> The presence of the new members, devoted anti-royalists, meant their open attack against the Howard family whom James had promoted in his government: Henry Howard, Earl of Northampton, Thomas Howard, Earl of Suffolk, and Thomas Howard, Earl of Arundel. In a short time they managed to corrupt the financial system of the crown and enrich themselves at the cost of James whose debts reached £900,000 by 1618. See M. A. Kishlansky, *Factions and Favourites*, in "Elizabethan and Jacobean England", <http://search.eb.com/shakespeare/macro/5009/49.htm>. Accessed February 21, 2005

<sup>30</sup> See S. Reed Brett, *The Stuart Century, 1603–1714*, George G. Harp, London, 1961, p. 51.

<sup>31</sup> *Common Debates, 1621*, (ed.) W. Notestein, F. Relf, and H. Simpson, Yale University Press, New Haven, 1935, 4: 207–9.

<sup>32</sup> *Ibid.*

in the Palatinate and the real possibility of the Spanish marriage project for James's son, Charles, the Commons took a united front against the king. During their first meeting they at once turned to the country's economic problems which many members of the Lower House blamed on the monopolies – as it was mentioned in the previous section, James had long been using monopoly rights as a cheap way of rewarding his servants.<sup>33</sup> The Lower House was highly dissatisfied with Buckingham, who had not only clashed with the Commons over political matters many times but was also hated because of James's open declaration of sexual allure towards him.<sup>34</sup> Above all, the Commons were dissatisfied with James's lack of definite stand in the case of the Palatine Protestants' support but before they could openly object to it, they aimed at examining the monopolies for which Buckingham was responsible.

The atmosphere in the Parliament of 1621 was tense and this time the king could do nothing to stop the procedure: the Lower House had already started the committee for inquiring into abuses in the courts of justice and that was the beginning of Bacon's fiasco – since he was a servant of justice, the investigation was conducted to examine his role in the abuses. The Commons turned to attacking James's favourites: Buckingham and his relatives were commanded to be examined by the Parliamentary commission. One of the monopolists impeached by Parliament was Sir Giles Mompesson.<sup>35</sup> Sir Edward Coke went further and persuaded Parliament to investigate royal advisors. Next it made an attack upon the corruption of the courts of law, and as its victim they chose Lord Chancellor Francis Bacon. He was found guilty of receiving bribes from suitors and was dismissed from his office and heavily fined.

Therefore, the seeds of the comparative peace of the first half of the 1621 Parliament had gone for good when the House of Commons began attacks against the possibility of the Spanish marriage project for Charles. Indeed,

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<sup>33</sup> Due to the monopolies Buckingham and his family benefitted heavily.

<sup>34</sup> The story of Buckingham throws an additional light on the background of the conflict of 1621. The majority of the members of the Commons belonged to the anti-Spanish group. Aware of the power of the Howards' influence over James (they were pro-Spanish in their views hoping for better treatment of English Catholics), they searched for the way to influence James. Playing on James's homosexual likes, they introduced the king with George Villiers, apparently one of the handsomest men in Europe. Villiers was nobody's fool and after he gained the aristocratic title of duke of Buckingham, he joined the royalist fraction. See P. Johnson, *A History of the English People*, op. cit., pp. 190–193.

<sup>35</sup> Parliament began to attack the monopolists to impeach and punish in their opinion, the worst offender, Sir Giles Mompesson (a close relative of Buckingham) See *James I*, <http://www.angelfire.com/ok3/chester/maindir/onejames.htm>. Accessed February 21, 2005.

James did want Parliament to bring pressure to bear on Spain, but he was outraged by the open critique of his plans regarding the Spanish marriage for his son. Shocked, James addressed an angry letter to the Commons:

Some fiery and popular spirits of some of the House of Commons {...} argue and debate publicly of {...} matters far above their reach and capacity, tending to our high dishonour and breach of prerogative royal {...} These are therefore to command you to make known in our name unto the House, that none therein shall presume henceforth to meddle with anything concerning our government or deep matters of State, and namely not to deal with our dearest son's match with the daughter of Spain, nor to touch the honour of that King or any other our friends and confederates...<sup>36</sup>

James's letter provoked a major row with the House of Commons, which regarded it as an infringement of the right of free speech. James was forced to fire angrier letters back and the Commons finally passed the Protestation of the House of Commons:

The Commons now assembled in Parliament, being justly accessioned thereunto concerning sundry liberties, franchises, and privileges of Parliament, amongst other here mentioned, do make this Protestation following, that the liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and at the arduous and urgent affairs concerning the King, State, and defense of the realm and of the Church of England, and the maintance and making of laws, and redress of mischiefs and grievances, which daily happen in this realm, and proper subjects and matters of counsel and debate in Parliament; and that in the handling and proceeding of those businesses every member of the House of Parliament hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; and the Commons in Parliament have like liberty and freedom to treat of these matters in such order as in their judgments shall seem fittest; and that every member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the House itself) for or concerning any speaking, reasoning, or declaring of any matter or matters touching Parliament or Parliament-business; and that if any of the said members be complained of and questioned for anything done or said in Parliament, the same is to be showed to the King by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information.<sup>37</sup>

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<sup>36</sup> *James I's letter to the Speaker of the Commons, 3 December 1621*, <http://history.wisc.edu/sommerville/361/361-23.htm>. Accessed February 21, 2005.

<sup>37</sup> *The Commons Protestation, 18 December, 1621*, [http://history.wisc.edu/sommerville/363/commons-protestation\\_1621.htm](http://history.wisc.edu/sommerville/363/commons-protestation_1621.htm). Accessed February 21, 2005.

With nothing left to be said and done, James, in a reply, dissolved Parliament in February 8, 1622 desperately tearing the Protestation letter out of the Commons journal.<sup>38</sup> Sir Edward Coke who, in James's opinion, was the main provocateur of the affair, was sacked from the Privy Council. Mark A. Kishlansky summarizes the poor harvest of the Parliament of 1621 in the following way: "The Parliament of 1621 was a failure at all levels. No legislation other than the subsidy was passed; a simple misunderstanding among the members had led to a dramatic confrontation with the king; and judicial impeachments were revived, costing the king the services of Lord Chancellor Bacon. James, moreover, was unable to make any progress with the Spaniards, and supporting the European Protestants drained his revenue".<sup>39</sup> Therefore, the agreement the king and the Commons had hoped for was out of reach giving way to the dramatic events to follow. The period covered by the reign of James I and especially the first three Parliaments he summoned have been widely discussed by parliamentary and political historians for they brought the first seeds for the Civil War marking the conflict between the Commons and the Crown and tackling such issues as liberties of speech, personal freedom and reformation of the legal system.

### 3. Towards freedom of speech: divine rhetoric contra legalistic discourse

A closer look at the parliamentary sessions of 1621 reveals much more than a mere disagreement between the king and the House of Commons as to the foreign policy of England regarding the Catholic threat and the liberties of the Commons as seen by both sides. Undoubtedly, the disagreement between the king and the Commons was provoked in the first place by the lack of James's clear stand regarding the situation in the Palatinate and his apparent ignorance of the Commons's views as to their role in the English Parliament. However, what had started as a political debate over current affairs of the state unexpectedly turned into a political debate which was "centered wholly on the issue of free speech."<sup>40</sup>

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<sup>38</sup> See *James & Buckingham*, <http://history.wisc.edu/sommerville/361/361-23.htm>. Accessed February 21, 2005.

<sup>39</sup> M. A. Kishlansky, *Factions and favourites*, in "Elizabethan and Jacobean England", [html://search.eb.com/shakespeare/macro/5009/49.htm](http://search.eb.com/shakespeare/macro/5009/49.htm). Accessed February 21, 2005.

<sup>40</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 58.

Indeed, a thorough study of the journal documents illustrating the run of the Parliament of 1621 shows the source of that conflict which, according to R. E. Stillman, was an extreme polarization of languages employed by James and the Commons.<sup>41</sup> According to J. G. A. Pocock, “the language of politics is obviously not the language of a single disciplined mode of intellectual inquiry; it is rhetoric, the language in which men speak for all the purposes and in all the ways in which men be found articulating and communicating as part of the activity and the culture of politics.”<sup>42</sup> The above definition about the nature of political language throws some light on the nature of the conflict taking place during the Parliament of 1621. The different political languages and vocabularies used by both sides represented by James and the Commons to articulate their mutual dissatisfaction seem to have derived from what Derek Hirst has called the Jacobean England’s “double majesty.”<sup>43</sup> Being rooted in history, they were a natural outcome of the political circumstances in the country:

On the one hand stood a fairly coherent theory of kingship and authority, guaranteed in the last resort by the king’s “absolute prerogative”; and on the other an equally powerful theory of law, rights and custom, articulated and defined not just in the law courts but also in parliament. Both demanded respect and allegiance, yet political circumstances – especially the crown’s repeated requests for money – seemed to be drawing them apart.<sup>44</sup>

Moreover, the mutually exclusive vocabularies of both sides “had at their origin equally exclusive assumptions about language.”<sup>45</sup> The both sides represented a different political group and spoke its specific language: “the political member is assumed to be thinking as a member, and in the context, of the political community itself, and therefore to be speaking a specialized variation of its public language.”<sup>46</sup> The case of the Parliament of 1621 represent a perfect example of such variations of the political language. R. E. Stillman describes James’s divine rhetoric as “a motivated theory of

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<sup>41</sup> *Ibid.*, p. 59.

<sup>42</sup> J. G. A. Pocock, *Politics, Language and Time Essays on Political thought and History*, op. cit., p. 17.

<sup>43</sup> D. Hirst, *Authority and Conflict: England, 1603–58*, Harvard University Press, Cambridge, 1986, p. 42.

<sup>44</sup> *Ibid.*

<sup>45</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 60.

<sup>46</sup> J. G. A. Pocock, *Politics, Language and Time Essays on Political thought and History*, op. cit., p. 16.

languages” whereas the Commons possesses “a legalistic discourse, issuing from conventional assumptions about language.”<sup>47</sup>

As it was already mentioned, from the very beginning of his reign James was appealing to the old doctrine of the divine rights of kings according to which kings were equipped with the divine and absolute power of Word. Undoubtedly, such a theory was comfortable to James for it aimed at an unrestricted prerogative enabling him to hold unlimited power over the Commons. It goes without saying that James’s vision of the divine doctrine of the kings with its absolute power of Word did not coincide with that of the Commons’ who had always cherished the very institution of the English Parliament where they had always had a say.

As early as 1604 the two variations of the political language clashed when the Commons expressed their right to free speech in Parliament stating that “the prerogatives of princes may easily and do daily grow” but “the privileges of the subject are for the most part at an everlasting stand.”<sup>48</sup> Indeed, freedom of speech was what had marked the institution of the English Parliament. It is no wonder, then, that the very event of gathering together with the Commons in 1621 was a matter of considerable nervousness to James. The scale of James’s nervousness is well illustrated by Bacon’s letter regarding the opening session of the Parliament of 1621. Bacon, James’s faithful supporter and adviser, was fully aware of the growing power of the Commons and their determination to fight for their rights. Therefore, before the opening session of Parliament he warned James against possible disputes summarizing his anxieties in the following words: “The prognostics are not so good as I expected, occasioned by late occurrences abroad, and the general licentious speaking of state matters.”<sup>49</sup> At the end of the letter Bacon promised to represent James’s interests “with the secrecy appertaineth.”<sup>50</sup> Significant in the letter is the use of what Bacon named “licentious speaking of state matters.”<sup>51</sup> The note implies that possible and, what is more, highly probable Commons’ critique of the state matters is not welcome. According to Stillman, “free speech” becomes for Bacon “licentious” speech, whereas “unlawful Babel” of the forthcoming Parliament

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<sup>47</sup> Ibid., pp. 60–61.

<sup>48</sup> *The Letter of the Commons’ Apology of 1604*, in M. Fulbrook, *Piety and Politics: Religion and the Rise of Absolutism in England, Wurttemberg, and Prussia*, Cambridge University Press, Cambridge, 1983, p. 45.

<sup>49</sup> F. Bacon in J. Marwil, *The trials of Counsel: Francis Bacon in 1621*, Wayne State University Press, Detroit, 1976, p. 23.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

becomes a threatening event which may even cause “the fall of Jacobean order.”<sup>52</sup>

Indeed, even without Bacon’s warning James was well aware of the tense situation he was to handle. To play on time, in his speech on opening the Parliamentary sessions delivered on 27 March, 1621, James turned to his favourite trick – he employed what Stillman calls the “Biblical mythology”.<sup>53</sup> Equipped with his right to “divine” art of oration, James played on words trying to explain a state of misunderstanding during the previous parliamentary meetings by calling the gathering “the Builders of Babel,” who could not arrive at any agreement for “one called for Morter” and “another for Stones.”<sup>54</sup>

Surely, it was a deliberate enterprise for it suggested that the tense situation was the result of mere linguistic misunderstanding between the sides rather than an extreme polarization of interests: “In former Parliaments there was *not true understanding* betwixt my subjects and me”.<sup>55</sup> Now, after he had been given two subsidies, James was quick to express his hope that Babel had left the English Parliament forever and from that moment on a *true understanding* would enter the meetings so that “without any Orations {their} hearts shall speake for {them}.”<sup>56</sup>

In other words, James wished for the parliamentary language to become transparent so that its members could understand each other without words. The model of political success is, therefore, seen as an “Adamic language, clear and unencumbered by the ambiguities of words.”<sup>57</sup> Thus, James becomes a new “Adam” who sees the success of language as the principle condition for good communication between the two sides.<sup>58</sup> In accordance with that perception of language remains the faithful royalist Bacon who, as we have seen from his letter to James, also sees Adamic language as transparent and deprived of any “licentious speech” which could be a real danger to the Jacobean reign.<sup>59</sup>

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<sup>52</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 56.

<sup>53</sup> Ibid.

<sup>54</sup> *Common Debates, 1621*, (ed.) W. Notestein, F. Relf, and H. Simpson, op. cit., 4: 207–9.

<sup>55</sup> *Italics – mine*, Ibid., 4: 207.

<sup>56</sup> Ibid.

<sup>57</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 57.

<sup>58</sup> Ibid., p. 56.

<sup>59</sup> See J. Marwil, *The trials of Counsel: Francis Bacon in 1621*, op. cit., p. 23.

As the course of events showed, James's dream of purification of the Parliament of 1621 from the earlier "Babel" was not fulfilled. As it was mentioned before, the two quick subsidies given by the Commons and interpreted by James as "true understanding" were in the first place to encourage James to discuss his plans to support the Protestants in the Palatinate and negotiate Charles's Spanish marriage. The polarization of interests broke up with an unexpected power after James's talk of a limited campaign against the Catholic League which seemed to the Commons inept. Consequently, it finished as a constitutional conflict about freedom of speech.<sup>60</sup> R. E. Stillman summarizes the Parliament of 1621 as "a conflict over particulars of policy" which "turned for good into a debate about words."<sup>61</sup>

Shortly, the Commons articulated their stand in the Petition of Rights which, in Stillman's opinion, "reads like a medical diagnosis".<sup>62</sup> Indeed, the illness is recognized (the cancer of the English Parliament), the reason mentioned (failure of king's understanding of the institution of the English Parliament) and the treatment is prescribed (a list of commands to be exercised by the King). This time it was clear that James would do with no more oration games – an undoubted domain of James's rhetoric. What the Commons did was draw up a petition demanding immediate war with Spain ("take your sword into your hand"), fighting the Catholic threat in England ("act against Popish recusants") and suggested a Protestant marriage for Charles ("marry one of our own religion").<sup>63</sup>

Outraged, James's addressed an angry letter provoked by a great measure by Charles's dissatisfaction on his learning that the issue of his marriage had become a point of the Parliamentary discourse.<sup>64</sup> In the letter James warned the Commons "not to meddle henceforth with any thing concerning our government or deep matters of state" and when the Commons claimed a right to do so, James replied: "we cannot allow of the style, calling in your *ancient and undoubted right and inheritance*; but could rather have wished that ye had said, That your privileges were derived from the grace and permissions of our ancestors and us, for most

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<sup>60</sup> See R. Zaller, *The Parliament of 1621: A Study in Constitutional Conflict*, University California Press, Berkeley and Los Angeles, 1971, p. 149.

<sup>61</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 57.

<sup>62</sup> Ibid.

<sup>63</sup> See Tanner, *Constitutional Documents*, op. cit., p. 277–78.

<sup>64</sup> See C. Russel, *Parliament and English Politics, 1621–1629*, Clarendon Press, Oxford, 1979, p. 137.

of them grow from precedents, which show rather a toleration than inheritance.”<sup>65</sup>

This time the tone of the letter differed much from the previous “oration” in praise for the transparent, “Adamic” model of communication in Parliament. Here James clearly articulates his supreme position over anybody daring to interfere with his matters and envisages no chance of getting into the “matters far above {the Commons’} reach and capacity tending to our high dishonour and breach of prerogative royal...”<sup>66</sup> Thus, Charles’s possible marriage became a private matter so that the Commons were “not to deal with {his} dearest son’s match with the daughter of Spain” nor “to touch the honour of that King or any other our friends and by confederates.”<sup>67</sup> The use of the phrase “friends and confederates” in that context implies the apparent and real inequality in the circles loyal to James. The logic of the divine rhetoric was evidently what mostly shocked the Commons and consequently led to the processes of impeachments of James’s supporters.<sup>68</sup>

The petition of 3 December, 1621 was soon followed by the second petition issued on 9 December, 1621. The second petition shows a considerable shift of the Commons’ tone. Regarding James’s angry letter, they expressed their “grief and unspeakable sorrow,” blaming a failure in understanding on “partial and uncertain reports.”<sup>69</sup> Such a quick enterprise was, according to Stillman, “borrowing a trick from the king”<sup>70</sup> and aimed at urging the king to reconsider the petition of 3 December in the name of “the ancient liberty of Parliament for freedom of speech..., the same being our ancient and undoubted right, and an inheritance received from our ancestors.”<sup>71</sup> In

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<sup>65</sup> James I, dated 10 December 1621 in answer to the Petition of the House of Commons of 9 December 1621, in John Rushworth, *Historical Collections of Private Passages of State, Weighty Matters of Law, Remarkable Proceedings in Five parliaments: 1618–29*, London, 1659–1701, 1: 46.

<sup>66</sup> *James I’s letter to the Speaker of the Commons, 3 December 1621* <http://history.wisc.edu/sommerville/361/361–23.htm>. Accessed February 21, 2005.

<sup>67</sup> *Ibid.*

<sup>68</sup> According to James’s vision of the state, on the one hand, there stood the king who was above all citizens; on the other hand, he highlighted the superior position of some individuals who benefited from his absolute and unlimited power. The phrase outraged the Commons who hardly tolerated the supreme position of Buckingham and eventually led to numerous impeachments. The background of Bacon’s impeachment was analyzed in the previous chapter.

<sup>69</sup> Tanner, *Constitutional Documents*, op. cit., p. 280.

<sup>70</sup> R. E. Stilman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 58.

<sup>71</sup> Tanner, *Constitutional Documents*, op. cit., p. 283.

his response James named the freedom of speech as seen by the Commons “anti-monarchical wishes” and mentioned that the Commons’ “privileges were derived from the grace and permission of our ancestors and *us*”.<sup>72</sup> Firing back, the Commons formulated the Protestation of Rights issued on 18 December where they expressed the essence of what they regarded as the institution of the English Parliament:

~ the liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England

~ urgent affairs concerning the King, State, and defense of the realm and of the Church of England

~ every member of the House of Parliament hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same;

~ the Commons in Parliament have like liberty and freedom (...) in such order as in their judgments shall seem fittest;

~ every member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the House itself) for or concerning any speaking, reasoning, or declaring of any matter or matters touching Parliament or Parliament-business;

~ and that if any of the said members be complained of and questioned for anything done or said in Parliament, the same is to be showed to the King by the advice and assent of all the Commons assembled in Parliament, before the King give credence to any private information.<sup>73</sup>

The Commons’ Protestation centred around the issue of freedom of speech was evidently what awoke the lion: theatrically tearing the Protestation letter away from the journal, once again James showed what he was thinking about the Commons’ vision of understanding based on clear principles of “legalistic discourse” exercised by both sides. James’s gesture reveals the unexpected depth and the character of the conflict. The divine rhetoric was indeed the only thing James was to stick to bearing in mind the circumstances: being in a weak financial position, with no army to rely on and with a strong tradition of common law in the country he ruled, James was unlikely to reintroduce a strong reign of absolutism.<sup>74</sup> Interesting is the fact that the issue of speech occurred spontaneously: the Commons had not

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<sup>72</sup> Ibid., p 287.

<sup>73</sup> See *The Commons Protestation, 18 December, 1621*, op. cit; [http://history.wisc.edu/sommerville/363/commons\\_protestation\\_1621.htm](http://history.wisc.edu/sommerville/363/commons_protestation_1621.htm). Accessed February 21, 2005.

<sup>74</sup> See J. P. Sommerville’s “Introduction” in *Politics and Ideology in England, 1603–1640*, Longman, New York and London, 1986, pp. 176–183.

intended to discuss it before the gathering and it seems to have occurred as their immediate reaction to James's letter. R. Zaller claims that if the Commons had had a decent shadow of certainty that James would have followed their advice as to the foreign policy, they would have never offered their petition.<sup>75</sup> In other words, the whole muddle about the freedom of speech appeared somehow on the margins of the political affairs discussed at the meetings of the Parliament of 1621. Undoubtedly, the members of the House of Commons hardly saw themselves as "marching firmly to the historic goal of revolution" acting rather as "last-ditch conservatives, desperately defending embattled freedoms".<sup>76</sup>

The harvest of the Parliament of 1621 was therefore revealing. Starting as a dispute over the outer and inner English policies, it soon got out of control for both sides and turned into a debate about freedom of speech. The debate was soon to result in dramatic consequences which would also prove to be unique. To echo R. E. Stillman's words, "the effort to master language is, once again, an effort to master history."<sup>77</sup> If it is "in the nature of rhetoric and above all political rhetoric {...} to reconcile and coordinate different groups pursuing different values,"<sup>78</sup> it may be equally so that the political rhetoric may act as a catharsis showing the inadequacy of the royal language in the given circumstances and aiming at purifying the mutual understanding of the sides. The Parliament of 1621 was obviously the case illustrating and exploiting the political language's "inherent ambiguity and its cryptic content."<sup>79</sup>

Indeed, for the first time in their history Englishmen had the opportunity to employ the political rhetoric to conduct a political argument on a grand scale, and for the first time they were in the position to choose between political visions for their country. For the success of governing lies in that golden piece of advice that "governors must learn and speak the language of the governed."<sup>80</sup> In 1625 Sir Robert Phelips – a worried member of Parliament – challenged the other members to exploit the unlimited possibilities of the new reality: "We are the last monarchy in Christen-

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<sup>75</sup> See R. Zaller, *The Parliament of 1621: A Study in Constitutional Conflict*, University California Press, Berkeley and Los Angeles, 1971, p. 153.

<sup>76</sup> *Ibid.*, p. 179.

<sup>77</sup> R. E. Stillman, *The New Philosophy and Universal Languages in Seventeenth-Century England Bacon, Hobbes, and Wilkins*, op. cit., p. 56.

<sup>78</sup> J. G. A. Pocock, *Politics, Language and Time Essays on Political thought and History*, op. cit., p. 17.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, p. 21.

dom that retain our original rights and constitutions. Therefore, let us not perish now!”<sup>81</sup>

S U M M A R Y

This paper aims at a thorough analysis of the English Parliamentary session of 1621 which turned out to be one of the most dramatic moments in the history of the European parliamentarism. England, in a chaotic and violent way, aimed at a radical reduction of the monarchical power and the development of an alternative state in which the powers of the monarch were subsidiary to the power of governmental branches. Discussing the underlying causes of the conflict between the king and the Commons and emphasizing its unprecedented character, the author approaches the problem from the political, historical and linguistic perspectives for the parliamentary session of 1621 reveals much more than a mere disagreement between the king and the House of Commons as to the foreign policy of England regarding the Catholic threat and the liberties of the Commons. What had started as a political debate over current affairs of the state unexpectedly turned into a grand political debate centered on the issue of free speech. For the first time in the British history of parliamentarism divine rhetoric, which had always been the domain of kings, failed to confront the legalistic discourse of the members of the Commons confidently marching towards the establishment of the Parliamentary institution of free speech which was to become their trademark.

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<sup>81</sup> Sir Robert Phelps, cited in C. Drinker Bowen, *The Lion and the Throne: The life and Time of Sir Edward Coke*, Boston, 1956, p. 470.

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**THE WORLD OF CULTURE AND THE WORLD OF NATURE.  
CONFRONTING CHOSEN ASPECTS OF G. W. LEIBNIZ'S  
POLITICAL THOUGHT WITH HIS PHILOSOPHICAL SYSTEM**

In his philosophical system G. W. Leibniz distinguished two distinct worlds: the world of nature, which is God's creation, and the world of culture, constituting the work of man. The former is a perfect republic, the latter is its mere imitation. Since Leibniz establishes such a distinction in his philosophy, can we, consequently, find the same train of thought in his non-philosophical works? In this article I pose two research questions which have significance for this issue. The first: does Leibniz's political reflection contain references to the abovementioned distinction, and, therefore, the thinker's conscious allusion to the rules of his own philosophical system? The second: can Leibniz's philosophical system constitute a tool one can use to explain the difficulties involved in harmonizing the many Leibnizian concepts posed in his political journalism, the concepts which can, when seen from a general perspective, appear inconsistent and contradictory? A confrontation of the chosen aspects of G. W. Leibniz's political thought and his philosophical system constitutes the basis of this analysis.

An interest in Leibniz is, in most cases, concerned with his philosophy. His work, however, dealt also with the issues of world politics. His main occupation, the main source of his steady income, consisted in holding offices in the courts of European monarchs, and engaged him in numerous enterprises of political nature. Leibniz worked not only for the patrons of the house of Hanover, but was also devoted to the interests of German emperors, electors of Mainz, the elector of Brandenburg (later on the king of Prussia), and the Czar of Moscow. Due to the variety of Leibniz's political concepts, resulting partially from his analysis of the political situation in the countries governed by the abovementioned rulers, critical literature presents him from different angles – as a German patriot, at times as a supporter of imperial politics,

and even as an internationalist<sup>1</sup>. Such an approach does not favour incisive analysis of his political thought and enable further comparative research. It is difficult to separate internationalism from patriotism, and devotion to the interests of the Empire from supporting the concept of German nations' sovereignty. Therefore, establishing Leibniz's political orientation constitutes a starting point for further reflections.

Leibnizian patriotism is an identification with the cultural group which used the German language and, simultaneously, the philosopher's appeal to traditional values on which the Empire was based – an organism that not only united the lands within its borders, but also guarded European order. The philosopher thought that there is an earthly order, exemplified by the medieval hierarchy of importance of European nations, headed by the secular imperial power and the spiritual power of the Pope. Although the Empire in the 17<sup>th</sup> and at the beginning of the 18<sup>th</sup> century did not constitute a reference point for any group identification, did not form a single nation state but, mainly, a Reich of German commonwealth, Leibniz thought that his philosophical idea of “oneness in plurality” – many states united within the structure of the Empire – made feasible a federation concept of the Empire. Leibnizian defense of the sovereignty of the German states as voiced in front of the Empire's internal and external forums should be considered as an appeal to observe the established law, which was not common in diplomatic practice. When the philosopher points to the existence of the so called *territorial primacy*, sanctioned by the Peace of Westphalia in the year 1648, he allows the German states to form their international sovereignty.<sup>2</sup> For Leibniz, the reasons behind the collapse of the Empire's unity did not lay in its structure, as claimed by Samuel Pufendorf,<sup>3</sup> but in the French policy of subsidizing German princes. What is important, identifying Louis XIV as an enemy of the Empire, as a supporter of expansive French culture, aiming, according to Leibniz, at a unification of Europe in a single spirit, is

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<sup>1</sup> See É. Neart, *La Pensée Politique de Leibniz*, Presses Universitaires de la France, Paris 1964; A. Robinet, *G. W. Leibniz, Le meilleur des mondes par la balance de l'Europe*, Presses Universitaires de la France, Paris 1994.

<sup>2</sup> See G. W. Leibniz, *Entretien de Philarete et d'Eugene sur la question du temps agitée à Nimewegue touchant le droit de Souveraineté et d'Ambassade des electeurs et Princes de l'Empire*, ed. 2, 1682, p. 289–338, in: *Sämtliche Schriften und Briefe*, Berlin: Akademie Verlag, the number of the Series IV, vol. 2, 1923–; J. Sitniewska, *Prawo do suwerenności władców niemieckich według Gottfrieda Wilhelma Leibniza*, p. 39–49, in: *Szkice o państwie i polityce*, Studenckie Zeszyty Naukowe Uniwersytetu Śląskiego, vol. VI, Katowice 2004.

<sup>3</sup> See S. Pufendorf, *O stanie Rzeszy niemieckiej*, p. 69–83, in: *Państwo a społeczeństwo. Wizje wspólnot niemieckich od oświecenia do okresu restauracji*, wybór i opracowanie T. Namowicz, Wydawnictwo Poznańskie, Poznań 2001.

an example of the nascent defence of political identity via a sense of cultural separation.<sup>4</sup> Leibniz became an advocate not only of the crumbling idea of the Empire, but also of the beginnings of the nascent commonwealth based not on the territory, historical experience, or a common state, but on the language<sup>5</sup>. The universal institution of an Emperor, which was, according to the philosopher, to guard European order, was not, as is shown by world history, able to uphold it. As it seems, Leibniz would not have aimed his criticism against the actions of Louis XIV and his faction if the power of France had not opposed the status of the Empire. According to Leibniz, badly located aspirations of the French king were detrimental to European order. The ruler's politics of laying claims to the Habsburg succession in Spain, the Empire's estates, as well as to Holland, influenced the creation by Leibniz of his plans aimed at drawing Louis XIV's attention away from European territories and directing his military power at the African dominions of the Ottoman Empire,<sup>6</sup> and at engaging in involved journalism in favour of defending the rights of the Empire. The remarks concerning Leibniz's internationalism, however – building in the future a shared political and cultural platform between Europe, Asia and Africa – were, I believe, entirely visionary in character. The proposal was based on an exchange of information, and on the development of knowledge that allowed the creation of information society, characterised by an ordered, unlimited access to any and all knowledge. Leibniz's political journalism, oftentimes full of opposing claims, constitutes a reflection on the reality seen by the thinker who attempted to unite the state's private interests with a broadly understood interest of humanity. The undoubtedly visionary character of Leibniz's thought was not contradict the creation of national identity.

In Leibniz's philosophical system we encounter an idea of the most perfect republic, the Kingdom of God, ruled by the most perfect monad which is God. "...and the government of God is the best State possible."<sup>7</sup> For Leibniz, it is an orderly world, despite the multiplicity of the monads which form it. It constitutes a system which is full of harmony. The philoso-

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<sup>4</sup> See G. W. Leibniz, *Manifesto for the Defense of the Right of Charles III*, p. 146–163, in: P. Riley, *Leibniz. Political Writings*, ed. 2, Cambridge University Press 1998.

<sup>5</sup> See G. W. Leibniz, *Unvorgreiffliche Gedancken, betreffend die Ausübung und Verbesserung der Deutschen Sprache*, p. 65–84, translation: Caryn and Bernhard Wunderlich, in: Calinger R., *Gottfried Wilhelm Leibniz*, Troy New York Resslerer Polytechnic Institute, 1976.

<sup>6</sup> See A. Youssef, *La fascination de l'Égypte, du rêve au projet*, L'Harmattan, Paris 1998.

<sup>7</sup> G. W. Leibniz, *Theodicy: Essays on the Goodness of God, the Freedom of Man and the Origin of Evil*, Cover Copyright, Cosimo Inc. 2009, part II § 128.XIII.

pher named this order of coordination a *preestablished harmony*. The order was also called *the best of all possible worlds*. To Leibniz, the Kingdom of God is a moral world contained within the natural world. God is its constructor, but also the monarch of the Kingdom of Souls. On Earth there is an order of this Kingdom, “But the human kind, so far as it is known to us, is only a fragment, only a small portion of the City of God of the republic of Spirits...<sup>8</sup>”. The citizens of this kingdom of souls belong among rational beings, most perfect and, above all, capable of getting to know the system of the world of nature, because they possess not only a basic degree of cognition – a perception which is an internal state of a monad reflecting the phenomena outside it – but also its higher level – a perception constituting consciousness. The philosopher connected the origin of substance with self-awareness. It is the souls exactly which are capable of reasoning: that is, they can fathom their own perceptions and analyse them.<sup>9</sup> Thus, Leibniz opposed Locke’s idea of *tabula rasa*, claiming that the ability to perceive substances results in the necessity of the existence of the subject of this perception. Each spirit is an individual, constituting the precept and the source of its actions, constituting therefore an active element, expressed in the Leibnizian “appetition” of a substance towards its own development, rising in the hierarchy of monads to ever higher levels of cognition, treated as a consistent fulfillment of its possibilities, culminating in its attaining its perfect development.<sup>10</sup> Leibniz’s metaphysics advocates the idea of man’s constant drive towards discovering the rules that govern the world created by God. Attaining a holistic perception of reality and fathoming the rules that govern the universe are, according to Leibniz’s philosophical system, reserved for God alone.

Leibniz assumes that “les âmes en général sont des miroirs vivants ou images de l’univers de creatures, mais que l’esprits sont encore images de la Divinité meme, ou de l’Auteur même de la nature capable de connaître le système de l’universe et d’en imiter quelque chose par des échantillons architectoniques, chaque esprit étant comme une petit divinité dans son department.”<sup>11</sup> Thus, Leibniz assigns to the outside world a phenomenal status which is the work of God. Beside this world there exists another, whose

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<sup>8</sup> Ibidem, part II, § 146.

<sup>9</sup> See H. Świączkowska, *Harmonia linguarum – język i jego funkcje w filozofii Leibniza*, Wydawnictwo Uniwersytetu w Białymstoku, Białystok 1998, p. 26.

<sup>10</sup> See F. Copleston, *A History of Philosophy: Modern Philosophy from Descartes to Leibniz*, Image Book, New York 1994, vol. 4, s. 309.

<sup>11</sup> G. W. Leibniz, *La Monadologie*, § 83, in: *Oeuvres philosophiques de Leibniz*. T. 1 / avec une introd. et des notes par Paul Janet., F. Alcan, Paris 1900.

creator is Man himself. The human being is after all a tiny god, who tries to imitate the works of the Creator. Leibniz differentiates between divine machines (natural automata) “dans leurs moindres partis jusqu’à l’infini<sup>12</sup>”, and machines as products of human activity, devoid of the qualities possessed by natural machines. The world of nature, God’s creation, is the world of phenomena well founded (*phaenomena bene fundata*). The works of Man, however, lack substantial unity, they are only aggregates of substance, constituting a contingent unity instead. That is the basic difference between the nature of the works of God, and culture, the works of Man.<sup>13</sup> Culture, the result of Man’s creative activity, is characterised, according to Leibniz, by a defect – that is, evil-resulting from a lack of substantial unity of this world, guaranteed only by Divine deeds. Culture results from the freedom given to Man, which, however, does not mean that Man’s works possesses Divine unity. That is why Man’s attempts at creating some political and social order, if they are to attain an ideal, cannot match the work of God. Since no ruler is the Creator, his actions are imperfect. His choices are, similarly, imperfect. They can, of course, aim at perfection, but they will not attain it. In *Theodicy* Leibniz presented directly the qualitative difference between human and Divine government, accusing the former of an imperfection of actions: “A king should generally have nothing so much at heart as to keep his subjects free from oppression. One of his greatest interest is to bring good order into his finances. Nevertheless there are times when he is obliged to tolerate vice and disorders. He has a great war on his hands, he is in a state of exhaustion, he has no choice of generals, it is necessary to humour those he has, those posses of great authority with the soldiers: a Braccio, a Sforza, a Wallenstein. He lacks money for the most pressing needs, it is necessary to turn to great financiers, who have an established credit, and he must at the same time connive at their malversations. It is true that this unfortunate necessity arise most often from previous errors. It is not the same with God: he has need of no man, he commits no error, he always does the best. One cannot even wish that things may go better, when one understands them: and it would be a vice in the Author of things if he wished to change anything whatsoever in them, if he wished to exclude the vice that was found there. Is this Sate with perfect government, where good is willed and performed as far as it is possible, where evil even serves the greatest good, comparable with the State of a prince whose affairs are

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<sup>12</sup> Ibidem, § 64.

<sup>13</sup> See H. Świączkowska, op. cit., p. 105.

in run and who escapes as the best he can? Or with that of a prince who encourages oppression in order to punish it, and who delights to see the little men with begging bowls and the great on scaffolds?<sup>14</sup>” The conclusion of the above analysis is that Leibniz clearly differentiates between the Divine and human kingdom. One must remember, however, that Leibnizian metaphysics shows human actions as free, even if in advance known to God. The events that are to befall each substance are contained within itself. God, then, when He created *the best of all possible* worlds, chose this and not that train of events in an awareness of their *sufficient reason*. When we regress in order to find the original reason of all actions, we reach the boundary of *sufficient reason*, which constitutes God’s free decree. However, Leibniz clearly opposed the perception of events that happen to Man as necessary. He claimed that they were necessary *ex hypothesi*, contingent in themselves. Despite the existence of *sufficient reason*, Man’s action should be treated as free. In St. Augustine’s *Civitas Dei*, which is an idea of an order of interpersonal relations, considered the norm by the 17<sup>th</sup> century thinkers<sup>15</sup> also, one can seek shared analogies between the construction of this organism and the Leibnizian Kingdom of God. In the case of Augustine’s *Civitas terrena*, however, the above claim is not valid. For Leibniz there is no struggle between the state as the work of Satan, and the state as Divine creation. In earthly states, described by the philosopher, we deal with the action of human beings, the citizens of the Kingdom of God and the results of their actions in the form of, for example, political systems that they create. What both orders, Divine and human, share, is the link of human being. It is difficult, however, in political journalism, to grasp this subtle web of interdependencies, as Leibniz focuses on a description and analysis of human world alone, whose reason is known to its Creator alone.

It seems that the Leibnizian metaphysics deals only with the world of nature as resulting from God’s free activity. On the other hand, the world of culture, the result of Man’s free activity, although a part of Divine plan, is extremely difficult to locate within the metaphysical order. The political reality of the 17<sup>th</sup> and 18<sup>th</sup> century is, in this argumentation, an incidental entity, made up of equally incidental and fragmentary events, constituting, from an optimistic perspective, the result of actions aimed at a realization of God’s perfect State. This effort at achieving perfection is, however, doomed

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<sup>14</sup> G. W. Leibniz, *Theodicy*, op. cit., part. II § 125. X.

<sup>15</sup> See L. E. Loemker, *Struggle for Synthesis: the seventeenth century background of Leibniz synthesis of order and freedom*, Harvard University Press 1972, p. 55–58.

to failure. Man, although capable of learning the system of the universe<sup>16</sup> and of its partial imitation, is only a tiny god.<sup>17</sup>

There is another reason for pessimism. Leibniz focuses his political reflection on an analysis of extant, directly accessible world. Not only does he acknowledge the existing order but, more – he tries to justify it. But what constitutes his epistemological perspective are only contingent truths and the limitations resulting from the nature of the mind itself. The mind can, as claimed by Leibniz, access true propositions only if it activates the instruction for the internal order of ideas to be deciphered. True propositions do not belong to the above category. One must differentiate between truths of reason and factual truths. Truths of reason constitute necessary propositions, that is the propositions which are obvious or reducible to primary truths<sup>18</sup>. To Leibniz, primary truths were those which did not have to be justified, because they were self-evident, based on the precept of identity.<sup>19</sup> Truths of reason cannot be negated, thus, their negations cannot be true. Leibniz claimed that all of science is concerned with the sphere of the possible.<sup>20</sup> Anything that is possible is defined as consistent. God, according to Leibniz, is a possible being; therefore, He exists.<sup>21</sup> This proposition is just the only one among truths of reason which contain a justification of the existence of any one being, since those truths, with this sole exception, do not substantiate the existence of any one subject – “C’est une vérité nécessaire que Dieux existe, que tous les angles droit sont égaux entr eux etc., mais c’est une vérité contingente que j’existe moi, et qu’il y a des corps dans la nature, qui font voir une angle effectivement droit.”<sup>22</sup> Leibnizian truths of reason are analytical, we can show that their predicate is contained within their subjects<sup>23</sup>. Factual truths, however, also referred to as contingent, do not constitute necessary propositions. They do not lend themselves to analysis.<sup>24</sup> They can, however, be considered as such on condition that they are known only to God, and not Man. They can

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<sup>16</sup> See G. W. Leibniz, *La Monadologie*, op. cit., § 83.

<sup>17</sup> See *ibid.*

<sup>18</sup> See G. W. Leibniz, *La Monadologie*, op. cit., § 33.

<sup>19</sup> See W. Tatarkiewicz, *Historia filozofii*, ed. 13, Wydawnictwo Naukowe PWN, Warszawa 1993, vol. 2, p. 80.

<sup>20</sup> See F. Copleston, op. cit., vol. 4, p. 276.

<sup>21</sup> See B. Russell, *History of western Philosophy*, Routledge Classics 2004, p. 535.

<sup>22</sup> G. W. Leibniz, *Lettre à Mr. Coste*. 1707, s. 447, in: *God. Guil. Leibnitii Opera philosophica que exstant latina gallica germanica omnia*, ed. J. E. Erdmann, Berlin 1840.

<sup>23</sup> B. Russell, op. cit., 540.

<sup>24</sup> See F. Copleston, op. cit., vol. 4, p. 273–275.

be negated without logical contradiction; their opposites are conceivable. “The true existential statement that John Smith actually exists is a contingent proposition, a truth of fact. We cannot deduce it from any *a priori* self-evident truth: we know its truth *a posteriori*”<sup>25</sup>. Reason enough for John Smith to exist is the existence of *sufficient reason*<sup>26</sup>. In the case of justifying the existence of contingent truths, Leibniz’s argumentation aims to indicate *sufficient reason*. “When A and B are both finite things, the existence of B may be explicable in terms of existence and activity of A. But the existence of A itself requires a sufficient reason.”<sup>27</sup> Therefore, God’s free will has enabled the existence of any given thing.

One must note that as regards contingent truths, Leibniz refers also to the theory of subject-predicate.<sup>28</sup> He cites Caesar’s actions as an example. Caesar’s decision to cross the Rubicon is contained in the notion of the subject – Caesar himself. To achieve a full knowledge of his decision, one should know the whole system in which he played a role. Since Caesar, according to the theory of monads, is an individual, he contains within himself an infinity. To conduct an analysis of infinity is not feasible to Man; consequently, a human being, capable only of getting to know the propositions which are analytic, can only reach their primary elements. S/he cannot achieve such knowledge via an analysis of that which is contingent and, therefore, existential. Therefore, pondering Caesar’s existence as possible, without references to his existence, his notion contains all its predicates, with the exception of his existence. The existence itself is not contained within the notion of any one finite being, which is created by Man, devoid of substantial form. We are thus faced once again with the problem of discovering the truth about all Man’s works. If Leibniz attempts to comprehend the reality which surrounds him, to give it some deeper meaning, to justify political actions or decisions, one should also remember that his scrutiny is concerned solely with contingent truths. While he can speculate about events and try to discover the sources of certain truths in his analysis, he will never experience them to their full depths.

Leibnizian metaphysics presents the human world as lacking consistency, because it was created by Man. It is therefore burdened with a certain lack, constitutes a unity which is contingent and whose reason is known only to God. As emphasised by Leibniz, this concept does not doom all Man’s

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<sup>25</sup> Ibidem, p. 274.

<sup>26</sup> See G. W. Leibniz, *La Monadologie*, op. cit., § 36.

<sup>27</sup> F. Copleston, op. cit., vol. 4, p. 215.

<sup>28</sup> See *ibid*, p. 216.

attempts at even a partial comprehension of the above order to failure. Cognitive optimism is, in this case, seen in the Leibnizian concept of substance's "appetition", expressed in its rising towards ever higher levels of cognition. Discovering the rules that govern natural order can enable an insight into the rules that govern the order of culture, since Man is the element that unites the two worlds. Full knowledge of the human being would, undoubtedly, allow, if not a discovery of the reasons behind human actions, at least a rub against its borders. Leibniz was aware, at least on the level of metaphysical investigation, that no ruler can equal the acts of God, and no form of government will be as ideal as the one fulfilled in the Kingdom of God. No political order created by Man, then, no results of his political activity, will bring happiness to his subjects, since those qualities are only constitutive of the ideal Kingdom of God.

In the field of Leibniz's political journalism we find, however, thoughts that lead to quite different conclusions. Leibniz was certain that there existed on Earth a perfect political order. He thought that it was realised in the medieval hierarchy of importance of European states, headed by the Empire. That was an order which could not be subject to revising. The portrait of emperor Leopold I shows that ruler to be exemplary as a ruler. What of it, though, when, even if Leibniz presents him as a political ideal, the ruler so described proved unable to create and maintain political harmony in his contemporary world. Leibniz equips the world of culture with the characteristics of the world of nature. All we are dealing with here is human imitation. The philosopher tried to find in this imitation elements which would match the works of God, but he forgot his own ignorance of the reason that could explain why this chosen order deserved to be called an order. In the course of centuries, the many political orders realised by Man are confronted with each other, as shown in Leibniz's description of the actions of Louis XIV and Leopold I. Although the thinker favored the existence of an order in the world, he did not, however, consider the fact that the disharmony, as represented by the person of Louis XIV, is also an element of *the best of all possible worlds*. Without it, the world would not be so called. While it is human activity that allowed the French king's accession to the throne, it was God who called him into the order of the world's harmony. The dilemmas, revealed by Leibniz's political journalism, become less manifest, when they are interpreted through the lens of his metaphysics and epistemology. It is a pity, though, that, in this important part of his work, the author himself never appealed to the fundamentals of his own philosophical system, placing the burden, instead, the commentator.

S U M M A R Y

The main goal of this article is to answer the question whether Leibniz's philosophy, distinguishing two worlds: of culture and of nature, has its reflection on his political thought. It turns out that in Leibniz's political papers existed on Earth a perfect political order. He thought that it was realised in the medieval hierarchy of importance of European states, headed by the Empire. Leibniz equips the world of culture with the characteristics of the world of nature. The key to explain such a vision becomes philosopher's metaphysics and epistemology. What is interesting in this matter, Leibniz in his political papers does not refer to these criteria of description.

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## LINGUISTIC FOUNDATION OF LEIBNIZIAN PROJECT OF MODERNISATION OF THE COUNTRY

On September 26<sup>th</sup> 2005 in the German media started a social patriotic campaign. In best air time TV stations broadcasted first advertising spot with the slogan 'Germany is you'. The campaign was to make citizens of this country, tormented by depression and medicine and the fear about the future, regain the sense of identity and believe in their possibilities building new quality of patriotism and national pride. Disputes over the campaign revealed that in Germany it is still difficult to administer pride of own country and it is hard to talk about that openly, even though organizers of the campaign while summing up the enterprise<sup>1</sup> in February 2006 proved its spectacular success.

This is not the first time that the issue of reconstruction of confidence in power and creative potential of the nation occurs in the long German history. Contemporary crisis of identity, lack of trust in the elites in power is, as underlined by commentators, a result of stagnation of economy and also the demons of the past still present in collective memory, makes it difficult to speak at the top of one's voice about the glory and power and give in to the wave of optimistic propaganda of success. It is worth mentioning that the memory of inglorious past cannot shade bright cards of German history and that pride of certain achievements cannot always be understood as nationalism. Germans are only just learning internal balance and great media machine succours them reminding 'You are Beethoven!', 'You are Einstein!' 'You are Porsche!'. This is a pity that any of the slogans reminds 'You are Leibniz!', which would pay off a debt that the organisers of the campaign owe Wilhelm Gottfried Leibniz, the originator of a similar enterprise who at the turn of the 17<sup>th</sup> and 18<sup>th</sup> centuries using incomparably

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<sup>1</sup> "Gazeta Wyborcza", No. 225, 4928, September 27<sup>th</sup> 2005, "Polityka", No. 6 (2541), February 11<sup>th</sup> 2006.

more modest means engaged in struggle for cultural rebirth of the nation by presenting a program of repair of the country in his treatise *Unvorgreifliche Gedancken, betreffend di Ausübung und Verbesserung der Teutschen Sprache* – which might mislead an unprepared reader.

The treatise is, similarly to many other texts about the German language, situated in philological and etymological trend of research undertaken by Leibniz, and by tradition it became mainly a subject of interest of the representatives of German philology. First Leibniz's publisher, Johann Georg Eckhart contributed to this by including the treatise into a book entitled *Leibnitii Collectanea Etymologica*, published after Leibniz's death in 1717<sup>2</sup>. It is worth mentioning that this collection of works comprises, apart from the above mentioned treatise, only few texts by Leibniz himself, even though it might be assumed that the remaining texts were inspired by his ideas. A detailed editorial and philological analysis of the *Unvorgreifliche Gedancken* text is presented by Paul Pietsch in the introduction to and conclusion of a canonical edition of the treatise in *Wissenschaftliche Beihefte zur Zeitschrift des Allgemeinen Deutschen Sprachvereins*<sup>3</sup>, which is slightly different from the text published by Eckhart, not only because it was transcribed but mainly because it contains 5 more points ending the treatise which were not included in its first edition. This is not entirely clear as far as the circumstances of creation of this text are concerned, researchers assume that it was written at the end of the 17<sup>th</sup> century, after 1697.<sup>4</sup>

The work appreciated by philologists did not live to see recognition in the circles of researchers engaged in Leibnizian language philosophy. Certain reference to its content might be found in the works of Marcello Dascal<sup>5</sup> and Hans Aarsleff, the authors of contemporary and most frequently cited monographs; Hide Ishiguro and Benson Mates pass over it in silence. Moreover, the treatise has never become the subject of critical analysis of researchers interested in Leibniz's political philosophy although it might be treated as sort of a political manifest of the philosopher who throughout his life was above all a professional diplomat. It is not mentioned either in an extremely

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<sup>2</sup> G. W. Leibnitii, *Collectanea Etymologica, illustrationi linguarum, veteri celticae, germanicae, gallicae, aliarum inservientia, cum praefatione Hohannis Georgii Eccardi, Hannoverae 1717*.

<sup>3</sup> Heft 30, April 1908, pp. 313–356.

<sup>4</sup> See H. Aarsleff, *The Study and Use of Etymology in Leibniz*, in: H. Aarsleff, *From Locke to Saussure*, Athlone, London 1982, p. 95.

<sup>5</sup> This is a book, among others mentioned in the above footnote, by Aarsleff and also a book by M. Dascal, *Leibniz, Language, Signs and Thought*, John Benjamins Publishing Company, Amsterdam–Philadelphia 1987.

detailed biography of the philosopher by E. J. Aiton, British researcher and expert in Leibnitz.

It is sure that *Unvorgreiffliche Gedancken* is a text which reflects comprehensiveness of research interests of the author and is also the expression of his philosophical convictions in the field of theoretical reflection on language, expression of his etymological passion, great methodological awareness in the domain of arrangement of material data and above all his political attitude, which is brought to light through concern for intellectual and cultural condition of the German nation.

The treatise similarly to *Monadologie* and *Principles of Nature and Grace* was formulated in points during few days as Leibniz writes in the last 114 point. Written hurriedly under the influence of a moment the treatise is however, characterised by maturity of thought and great condensation of content not free of emotional, persuasive arguments.

It might be speculated that the inspiration for this project was awareness of participation in a crisis period in history of the nation. The history of the 17<sup>th</sup> century Germany is the history of a struggle for survival. It was both survival in the political sense and also, or maybe above all, cultural survival and rebirth. It seems that the assertion that people living in the 17<sup>th</sup> century in Europe treated war rather than peace as a normal state, is not false. However, all wars were inferior in their reach and consequences to a phenomenon known as the 'Thirty Years' War'. This war in which all the Great European Powers were involved was waged on the lands of the great German Empire. It resulted in enormous material losses, loss of population, collapse of crafts and commerce, it also impressed its stamp on cultural life of the 17<sup>th</sup> century Germany.

The period of war and the following years tend to be called, with a certain exaggeration, a time of deepest cultural crisis of this nation.<sup>6</sup>

The Peace of Westfalia which ended the Thirty years' War signed in Munster in 1648 was – according to historians – the beginning of disintegration of the Reich and opened to France the way to 40 years domination in Europe manifested not only by political but also cultural supremacy.

Latin which remained the language of university circles was the official language of German science, whereas French became the language of enlightened intellectual elites, courtly circles and influential art milieus. Germans alike other European nations succumbed to French replacing the Latin, which created a bond connecting the European community, with the langu-

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<sup>6</sup> See A. Mączak (ed.), *Europa i świat w początkach nauki epoki nowożytnej*, part II, Publisher cited, pp. 98–135.

age of their enemy. 'If our ancestors returned to this world, – wrote Christian Thomasius in his dissertation *Von Nachahmung der Franzosen* (*Dissertation on the Imitation of the French*, 1667) – they would no longer recognize us. We have become degenerates and bastards. Today everything here must be French. French clothes, dishes, language; French customs and French vices'.<sup>7</sup>

Leibniz's text meets halfway the general feeling of depression and decadence and is a carefully thought out project of restoration of the country which starts with repair and improvement of the German language.

First come the arguments of political character. According to Leibniz, the German nation as the German Empire is at the head of all Christian nations and its dignity and privileges rest with its leader. Protection of the true faith, jurisdiction of the Catholic Church and propagation of the good of the whole Christianity is the responsibility of Habsburg Emperor. That is why he is the unquestionable leader of other great nations.<sup>8</sup> He stated also that since science became a power and military discipline was instituted in Germany, German courage in great victories over the Eastern and Western enemies, given by the God was noticed. The majority of these victories were won by Germans.<sup>9</sup> Leibniz refers here to great tradition created by heroic heroes present in historical memory of the nation, he says openly: we were great, we are great and we will be great, we are obliged to be as such by historic secular mission of the Holy Roman Empire of the German Nation. He also adds that it would be shameful and scandalous if German, the language of heroes, died as a consequence of omission. Acceptance of a foreign language carries with it inevitable shackles and loss of freedom.<sup>10</sup>

However, it is worth noticing that Leibniz's arguments, even though highly emotional, are built on a rational foundation and only seemingly sound with a note of nationalist demagogy. One of the most important assumptions of Leibnizian argumentation is the first sentence of the treatise in which appears a metaphor of a language as a mirror of the mind. Leibniz uses this metaphor repeatedly in his works, and one that is most frequently quoted is present in *New Essays on Human Understanding* written a few years later. Probably for the first time Leibniz had expressed his conviction that language is the clearest mirror of understanding, in his work entitled *Ermahnung an die Teutsche ihren Verstand und Sprache besser zu üben*, of the early eighties of the 17<sup>th</sup> century.

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<sup>7</sup> Ch. Thomasius, *Von Nachahmung der Francosen, Nach den Ausgaben von 1687 und 1701*, Stuttgart 1894.

<sup>8</sup> *Unförgreifliche Gedanken*, point 3, from now on cited as UG and the point.

<sup>9</sup> UG, 4.

<sup>10</sup> UG, 21.

It is a fact that Leibnizian attitude towards language is most accurately described by this metaphor on which Leibnizian language philosophy is built, and it might be without hesitation assumed, his cognition theory. If language is the best mirror of the mind it means that analysis of language matter should lead to recognizing the mechanisms of thinking. Language skill just as skill of thinking are functions of the same powers, the same tendency (endeavor, appetition, conatus), which distinguishes humans from other creatures. Such an assumption permits to think that any natural language system might be the subject of analysis. This results from the fact that every language may 'reflect' the natural order of ideas which potentially belong to intellectual equipment of all substance which is able to call oneself 'Me'.<sup>11</sup>

Indeed this conclusion is confirmed in several Leibniz's statements which concern the relation between language and thinking and knowledge accumulated in the language. Let us quote here an excerpt of *Analysis linguarum* of September 11<sup>th</sup> 1678 where Leibniz writes that since there are many languages and each is suitable for transmitting knowledge, it suffices to consider one language: each nation in reality is able to discover and cultivate sciences.<sup>12</sup> Thus, independently from on which level of development is a given language community it is able to make discoveries and to record the intellectual process in the language. Such a thesis actually constitutes the basis of classical social anthropology.<sup>13</sup> Admittedly, language when analysed from historical perspective, records – as Leibniz admits – the history of our discoveries, the evidence of which is the example of people opting for Copernicus who keep on saying that the sun rises and sets, it does not, however weaken his conviction that languages are the best mirror of human mind and that precise analysis of the meaning of words would allow, more than anything else, to know the activity of the reason.<sup>14</sup>

The role which Leibniz attributes to linguistic signs in the process of cognition is absolutely fundamental. In fact, the summary of Leibnizian semiotics is found in points 5, 6, 7, and 8 of the treatise. Firstly, he assumes

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<sup>11</sup> See H. Świączkowska, *Harmonia Linguarum. Język i jego funkcje w filozofii Leibniza*, Białystok 1998, p. 58.

<sup>12</sup> Leibniz, *Opusculum et Fragments Inédits de Leibniz*, extraits des manuscrits de la Bibliothèque royale de Hanovre par Louis Couturat, Paris 1903 (repr. Hildesheim 1961, p. 352).

<sup>13</sup> Compare B. Malinowski, "Kultura", in: A. Paluch, *Malinowski*, Wiedza Powszechna, Warszawa 1981, pp. 153–154.

<sup>14</sup> G. W. Leibniz, *New Essays on Human Understanding*, trans. P. Remnant, J. Bennet, 1969, Cambridge University Press, BK III, § 5. UG, § 1.

that words are not only symbols of thoughts but also of objects, thus we need symbols not only to transmit our opinions to others but also to improve our own thinking. Secondly, he notices that we frequently use words as if they were tokens instead of using images or objects, we gradually approach the result through deduction to get to the heart of the matter. Thus, word as a model or a promissory note of the mind should be well designed, well isolated, sufficient, frequent, fluent and acceptable. Thirdly, he proves that these well designed signs become the basis for exclusively symbolic process of thinking, similar to mathematical calculation. Application of signs gives new possibilities to cognition and what is more they become the characteristic trait of the ability to understand. It might be said, with no hesitation, that Leibniz, more than his contemporaries, perceived a human as *animal symbolicum* and even though he never defined human as such it might be assumed that, despite disagreement, Leibniz shared, to a certain extent, Hobbes's opinion that without language (speech) something which is purely a human attribute, namely intellect, does not exist.

In point 59 of Leibniz's treatise returns the motif present in *Analysis linguarum*, where he writes that every language no matter how poor is able to express everything; even though there existed barbarian people to which it was not possible to explain the Word of God. Even though everything might be expressed through periphrasis or description, all pleasure and significance escape when an utterance is lengthened. He compares it to showing around a palace and discussing every corner or to counting, like people which according to Weigelian treatise, could only count to three and did not have the words and symbols to express 4, 5, 6, 7, 8, 9, etc.

It might be therefore assumed that Leibniz, the author of genealogical classification of languages, aware of differences between languages especially on historical grounds attributed to them identical cognitive functions not dividing them into 'better' or 'worse'. This view is at variance with other statements of the philosopher, for it is easy to prove that he was not different from Goropius Becantus whom he criticized repeatedly when propagating the superiority of the German language over other languages both as far as it concerned their cognitive and historical-cultural aspects and proving that German was the closest to the primary language in its perfect form, and that it was particularly adapted to philosophy.<sup>15</sup> It seems that this inconsistency is most revealed between the general language theory which origins are especially present in the text related to cognition and representation theory,

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<sup>15</sup> See. G. W. Leibniz, *Die Philosophischen Schriften von G. W. Leibniz*, vol. VII, ed. C. I. Gerhardt, Halle 1849–1863 (repr. Hildesheim 1960), vol. IV, p. 144.

and his views related to language, formulated on the basis of his historical and comparative research. Historians of language claim that Leibniz in his hypothesis about the beginnings of the German language was under the same illusion which deluded researchers he used to criticise. It is worth emphasizing that the argument of ‘superiority’ does not appear in any of the points of the discussed text. Moreover, while presenting the program of repairing and rebuilding of the language, first of all the philosopher highlights the insufficiency and defects which should be eliminated from the German language. He points out the lack of adequate terminology in many specialistic disciplines. Latin, the official language of science, is to blame in this case. However, Leibniz notices that it is not the lack of abilities of Germans but the lack of their goodwill that prevents them from perfecting the language. For if, as he writes, “everything that a plain man does can be expressed in German, undoubtedly, the things that are more suitable for remarkable and educated people, if they only wanted, could be expressed very well or even better in the pure German.”<sup>16</sup>

Perfecting the nomenclature and the process of enrichment of a language, apart from already mentioned disciplines, concerns also morality, psychology, manners, management, service, and state and internal politics as well as the law. Leibniz notices the need for protecting and rebuilding German being not only the language of everyday communication (he draws attention of his fellow-citizens to avoid indecent words and expressions<sup>17</sup>), but above all as state language, official language of power and administration.

Leibniz treats language as a sick living organism. He gives the causes of the illness, he diagnoses and prescribes a treatment. Institutional activities are an important element of the therapy, they engage influential and educated representatives of the superior social strata. Leibniz appreciates the contribution of German language associations in the protection and rebuilding of the German language. He reminds that elementary slogans of their activity were richness, purity and clarity of language. However, even though he agrees with the general idea of work of associations, he criticises the methods, claiming that their members went too far in their zeal to clean the language from every foreign influence.

Program of repairing should include all applications of a language. Leibniz, ardent partisan of common education, appealed to scholars to present their research in their native language and to translate the texts of prominent authors. The nation, according to his opinion, was kept from education

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<sup>16</sup> UG, 10.

<sup>17</sup> UG, 81.

for too long. Real scholars should not be afraid of their national language, especially because the more their knowledge is accessible the more there are witnesses of their greatness. A well developed language resembles to a well polished glass, raises the acuity of thought, and gives a transparent lucidity to mind. It is worth adding, by the way, that we find in this text extremely interesting observations concerning translatability of languages which would require a separate and detailed discussion.

Realisation of the programme should be supported by well-organised institutional activity. Leibniz, enthusiast of the idea of research associations, academic movement which overwhelmed the 17<sup>th</sup> century Europe, led in 1700 to creation of the Berlin Academy of Science. One of the statutory goals of the Academy was consolidation of the renown, prosperity and significance of the German nation, learning and language. Despite the fact that creation of the Academy was Leibniz's personal success, his aspirations went far beyond that. General access to education according to him could be guaranteed only by scientific associations – modern centres of research and popularising activity which should be created in various cities of the Empire and the coordinator of which would be the Academy of Science.

It is difficult to overestimate Leibniz's contribution to rebirth of cultural unity of German nation the source of which became the language reflecting both its power and collapse. Paul Hazard wrote that 'the theory of racial superiority had not yet come to the fore. The profound significance of the expressions "native land" had not been fully gauged. No nation had been formed as yet of the dynamic potentialities of the idea of nationality',<sup>18</sup> but the importance of the most significant binder which for people forming a certain community is language. If the arguments about an extraordinary philosophical mission of the German language and its almost paradisiacal origins are left aside, *Unvorgreiffliche Gedancken...* appears to be a universal treatise on history and culture of a nation. Leibniz, when writing about intellectual potential of his nation makes the readers aware that it is activated through language since language is a sine qua non of any knowledge.

Leibniz was not privileged to enjoy the range of influence of his thought. The treatise similarly to *New Essays*, was published posthumously but one did not have to wait a century for Kant, Goethe and Schiller to prove this wonderful force hidden in their language. Johann Gottfried Herder, one of the most prominent representatives of the German Enlightenment, argued, referring to Leibnizian legacy, that most beautiful attempt to explore the

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<sup>18</sup> P. Hazard, *The European mind 1680–1717*, trans. By J. Lewis May, Penguin books, 1964, p. 443.

history or characterise the diversity of human intellect and heart would be philosophical comparison of languages, since it reflects intellect and character of a nation. Finally, an architectonics of human concepts would emerge from that, the best logics and metaphysics of common sense. The laurel is still available and in due time it will be won by another Leibniz.<sup>19</sup>

#### S U M M A R Y

The article describes Leibnizian project of modernisation of the country based on a reform of the language and intellectual reconstruction of German society. The project results directly from Leibnizian epistemology and philosophy of language. His vision of the state is tightly connected to the concept of society based on knowledge. Knowledge is above all archived in a language and language is the best mirror of the mind for a philosopher. The subject of analysis is a short Leibniz's treatise *Unvorgreifliche Gedancken*, interpreted by the author in the context of the philosopher's political thought.

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<sup>19</sup> <http://www.textlog.de/herder-menschheit.html>. <http://www.odysseetheatet.comgothe/herder/idee.html>.



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## STATE FOR INDIVIDUALS AND COMMUNITIES IN THE PHILOSOPHY OF THOMAS HOBBS

The name of Thomas Hobbes, one of the most controversial political thinkers, is often referred to in the comments containing a diagnosis of the current geopolitical situation in the world.<sup>1</sup> Recently, the following statement has become popular: “*Americans are from Hobbes, Europeans are from Rousseau*”,<sup>2</sup> which briefly characterizes the differences between the positions of the Old and New World in the issued regarding handling global conflicts. In situations in which the Europeans, in the spirit of Jean-Jacques Rousseau, are counting on the success of prognosis and negotiations, America, with its Hobbesian soul, prefers a sword and military solutions. A growing American concern for ensuring the security of the American citizens since September 11, 2001 results in the civil rights catalogue reduced in the name of safety, which resembles the thought of the thinker from Malmesbury. Until recently, it was clear that Americans above all valued their privacy, and each violation was clearly branded as an assault on individual freedom. However, in the face of terrorism, Americans need to revise their existing hierarchy of values. In the near future when the U.S. weapon in the fight against terrorism will be a computer, knowing all about the inhabitants of America, it will be necessary to answer the Hobbesian question: what is more important – *a sense of security or freedom and privacy?*

It is significant that today like three hundred years ago the evaluation of the English thinker’s socio-political philosophy is extremely different. Some call Hobbes “the servant of Leviathan” or an apologist for totalitarianism, others represent him as a precursor of liberalism, emphasizing his contribution to the formulation of the canon of the inalienable rights of individuals.

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<sup>1</sup> See for example R. Kagan, *Potęga i raj. Ameryka i Europa w nowym porządku świata*, Warszawa 2003.

<sup>2</sup> See for example J. Żakowski “Polityka” No. 18 (2399) dated 03.05.2003, *Ameryka marzy, Europa kłamie*, pp. 48–50.

Thomas Hobbes' philosophical reflection on the state and law is largely conditioned by the traumatic events which Hobbes directly witnessed. He lived in a very turbulent period in the history of England. Years of the reign of James I and Charles resulted in constant conflicts in the monarch – the parliament line, which finally turned into a bloody civil war. Hobbes's fame as a social philosopher coincides with the period of the Cromwell dictatorship whereas in his late years of life Hobbes saw the Restoration times and the establishment of a parliamentary monarchy.

Hobbes's system of views on the state was based on the statement that a domestic war is the worst time for an individual; the time when the highest value, life, is constantly in danger. The philosopher was forced to accept such views not only as a result of his direct observation, but also because of his personal experience. Feeling that his life was endangered, several times he had to escape abroad. What is more, he escaped being burnt at the stake only through the intercession of his influential friends. In the seventeenth century searching for a prescription how to restore order and governance in the state became the aim of the majority of socially engaged philosophers, not only English ones.

Hobbes also shared a fascination with mathematics and geometry with other prominent thinkers of his time. Hobbes's characteristic method of making philosophy, that is deductive method, was taken from geometry. In his opinion, the method was valid in all types of sciences, including social sciences. This method relies on deriving incontrovertible conclusions from the previously established assumptions which are clear and explicit – axioms. For Hobbes, the idea of the state is based on the rational human nature assumption, both the state and positive law appear to be directly deduced from the primary principles of his philosophy. The emergence of the state is a consequence of people's acceptance of one language and their establishment of a social agreement. It is undoubtedly based on the convention and has a conventional character itself.<sup>3</sup> The idea of the state, *Leviathan*, most fully represented in the work written in 1651, is an inevitable consequence of the initial assumptions of the English thinker's socio-political philosophy.

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<sup>3</sup> For Hobbes, language, adopted thanks to the convention, is a factor which conditions the creation of the institution of state, law and morality. A discovery of language placed human beings above the state of nature and contributed to the emergence of another invention – the state. The invention of speech, which permanently differentiated people from the animal world, enabled the development of knowledge and science. Law and the state, artificial creations of man making people rational and moral beings, are direct consequences of the adoption of language. See K. Doliwa, *The role of language in the philosophical system of Thomas Hobbes*, in: *Studies in Logic, Grammar and Rhetoric*, 6 (19)/2003, ed. H. Świączkowska.

Usually the title of Hobbes's most popular – *Leviathan* – is explained by making references to the Biblical Book of Job, pointing to the sea monster: a powerful animal – a whale, a snake or a dragon, destroying everything around. Such an image of Leviathan is associated with a number of interpretations of a mythical, kabbalistic and theological character.<sup>4</sup> Such interpretations were frequent in the Middle Ages, but in the seventeenth century the symbol of Leviathan abandoned them starting functioning in terms of non-mythical and non-demonic symbols: Leviathan has become a humorous term referring to all possible huge and powerful people and things, houses and ships.<sup>5</sup> The thesis that the word “Leviathan” for Hobbes was a synonym of power and incredible strength, able to stop everything seems reasonable. What is more, for him it was rather free from any demonic-diabolical connotations.<sup>6</sup> A drawing presented in the book strengthens the thesis that Hobbes referred to a symbol of omnipotence, rather than a personification of all evil while giving the book that particular title. The picture which illustrated the first English edition of *Leviathan*, which enjoyed the popularity similar to that of the text and made it even more popular, did not present a monster. There appears a huge human being, full of dignity and majesty, consisting of many small beings, holding a sword in one hand and a pastoral in the other, being the symbols of secular and spiritual power.<sup>7</sup>

The Hobbesian Leviathan is a “mortal god”<sup>8</sup> (*deus mortalis*), the image combining “god, human, machine and animal”. C. Schmitt notes that calling the state “god” does not result in granting it a special meaning, and has a clear polemical edge. Leading fierce polemics against the papacy, puritans and presbyterians, Hobbes could not resist employing the concept of “divinity” in his argumentation, he could not leave it to his adversaries. In the text Hobbes calls Leviathan only three times, for the first time when the author calls a commonwealth *great Leviathan*,<sup>9</sup> for the second time when he describes the establishment of the state – the birth of Leviathan.<sup>10</sup> In chapter XXVIII Hobbes compares the Old Testament Leviathan to the sovereign, justifying the comparison by mentioning the animal's great power,

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<sup>4</sup> C. Schmitt, *Lewiatan w teorii państwa Thomasa Hobbesa*, Warszawa 2008, p. 14.

<sup>5</sup> *Ibid.*, p. 37.

<sup>6</sup> *Ibid.*, pp. 30–32.

<sup>7</sup> *Ibid.*, pp. 25–26.

<sup>8</sup> *Leviathan* – the state is a “mortal” god because there are a number of reasons that may kill him, one of which is being defeated by a foreign sovereign state, another reason is the lack of control over the internal situation of the ruler. See T. Hobbes, *Leviathan*, Oxford 1909, p. 170.

<sup>9</sup> T. Hobbes, *Leviathan*, op. cit., p. 8.

<sup>10</sup> *Ibid.*, p. 132.

with which nothing can compare.<sup>11</sup> The Leviathan is a state, specifically the personification of his power, or the sovereign. One of the most important prerogatives of the sovereign is to create the state law by using externalized acts of his will, or orders.

For the above reason, Hobbes is a thinker, who is commonly referred to as a precursor of legal positivism,<sup>12</sup> although there are numerous statements bidding his concepts with the natural law mainstream.<sup>13</sup> (Zygmunt Ziemiński notes that Hobbes is one of the philosophers of law whose concepts are classified differently. He is considered to be a supporter of jusnaturalism or a positivist depending on which fragments of his work under analysis are more exposed by classifiers<sup>14</sup>).

Hobbes's most important observation about the positive law nature is: law is an order. *Civil law is to every subject, those rules, which the Commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right and wrong; that is to say, of what is contrary and what is not contrary to the rule*<sup>15</sup> – the philosopher writes in *Leviathan*. In the light of the above-mentioned statement Hobbes appears as a pioneer of the ordering theory of law and legal positivism although it is necessary to highlight that the concept proposed by him differs from later theories in many details.<sup>16</sup>

Associating the philosopher with the doctrine of jusnaturalism results in a highly specific understanding of the term “natural law”. According to Hobbes, the appearance of law is tightly connected with the creation of the state. He searched for the sources of law in the sovereign's unstable and variable will. He deprived those sources of their eternal and stable character. In the state of nature there was no law; there were only natural rights which were not protected. In turn, in the state people abandoned most of their rights while accepting duties expressed in the form of the positive law, and did so at the cost of their security being indispensable for a happy life, which, according to Hobbes, was the primary goal of every human being. The sense of security offered by the state is a prerequisite for any human

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<sup>11</sup> Ibid., p. 246.

<sup>12</sup> The ancient Sophists, who were the first to separate positive law (nomos) bidding regardless of its moral value, were precursors of legal positivism. See J. Woleński, *Wprowadzenie* in: H. L. A. Hart, *Pojęcie prawa*, trans. J. Woleński, Warszawa 1998, p. XX.

<sup>13</sup> Compare L. Strauss, *Natural Right and History*, Walgreen Foundation Lectures 1953, and N. Bobbio, *Thomas Hobbes and the Natural Law Tradition*, Chicago 1993.

<sup>14</sup> Z. Ziemiński, *O pojmowaniu pozytywizmu oraz prawa natury*, Poznań 1993, p. 7.

<sup>15</sup> T. Hobbes, *Leviathan*, op. cit., p. 203.

<sup>16</sup> See M. M. Goldsmith, *Hobbes on law*, in: T. Sorrel, *The Cambridge Companion to Hobbes*, Cambridge 1996, pp. 275–298.

activity – the threat of an unexpected death is the greatest curse of man. The state power protects citizens from civil war and provides a defense against external attacks.

Discussing the essence of the natural laws, Hobbes concludes that a natural law is a general rule that makes a reference to the reason, and which forbids a man to do things contrary to his self-preservation instinct. The laws of nature dictate themselves to the reason clearly, so they are widely known, and their nature is immutable and eternal. Although obvious, the laws of nature require their inclusion in the legal system by the sovereign. Significant is the fact that, according to Hobbes, who was a nominalist, the law of nature is not a separate entity, whose “chipping” or reflexes would be the state laws; the law of nature is the ability of intelligence involving a skill to recognize the principles which are crucial for the survival of the individual.

For the citizen, the state law constitutes the rules of conduct that have been imposed by the sovereign command. Thanks to them, the citizen is able to distinguish good from evil, what is right from what is wrong. The rules are valid only on the date of their proclamation and for their understanding the interpretation made by the sovereign himself is required. They should necessarily be clear and understandable. The natural laws and the state law are two types of law recognized by Hobbes. These are not two separate or conflicting legal systems. Simply they are two different parts of the law.<sup>17</sup> Laws of nature, after they join the legal system of the state, become the law of the state, being given a legal force by the state. Therefore, the role of the state law is significant in the Hobbesian philosophy.

Natural laws, or “laws” dictated to man by reason, that is orders of natural reason, are current in both states – in the preceding state of nature as well as in the state artificially created by man. Nevertheless, only the state constitutionalization and integrating the laws into a legal system allow for the regulations to be obeyed and become the law in the strict sense.

The initial period in which laws of nature “exist” is a natural human state, the state of nature, the war of all against all. The description of this state resembles apocalyptic visions of hell on earth. This is a period of total anarchy, where everyone, by *ius naturale*, or *inherent powers*, is entitled to everything, including things and other people’s bodies. For the realization of this power one can use all available means – including depriving other people of their lives.<sup>18</sup> This is the state characterized by a total contra-

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<sup>17</sup> T. Hobbes, *Leviathan*, op. cit., p. 205.

<sup>18</sup> *Ibid.*, p. 96–97.

diction. Staying in it and benefiting from the freedom of almost unlimited natural power is associated with a constant threat of one's life which, in the philosopher's opinion, is a fundamental value. In the state of nature an individual is not encouraged to respect natural laws. After all, one cannot expect other individuals to respect them. Following the laws of nature in the state of nature would be contrary to the basic rule of self-preservation.<sup>19</sup>

The reason postulates that the state of nature should be abandoned and a social agreement should be established, which results in the formation of the state. The transition from the state of nature to the government state is not a painless process. It is a result of a difficult choice between two values: the implementation of people's natural rights to everything and the desire to leave the state which creates a constant threat of sudden death. Difficult as it is, the choice is made – only the power of the state guarantees preservation of peace, and peace is a sine qua non condition for a peaceful life allowing one to be happy. Although the state of nature is connected with absolute and unrestricted freedom, the overall profit and loss account requires an individual to leave it and constitutionalize a new state. He is also expected to abandon the majority of his rights for the benefit of the sovereign.

The role of the sovereign, who is a representative of all citizens, is to provide them with safety and protection. The sovereign, who can be either a single person or a team of people or congregation, constitutes a soul of the artificial creature – Leviathan – established by individuals in the name of their interest. A Biblical metaphor of the monster seems to be accurate – the state is a figure equipped with enormous power, irrevocably absorbing the power of individuals. The state power is the sovereign power equipped with the apparatus of enforcement, setting fear among citizens. However, it should be remembered that the state – Leviathan – is a deliberate creation. Fear resulting from it is a necessary condition for the citizens (parties of the agreement constitutionalized into the state) to respect the laws established by the sovereign, the laws which finish a period of the destructive anarchy.

For Hobbes establishment of peace meant following the laws of nature which the sovereign has included into the state laws and whose respect is realized through sanction. The sovereign, accepted by the power of the social agreement which results into the state establishment – the Leviathan – creates a social reality with common laws bidding every citizen. The new reality is free from numerous dangers present in the natural state. The term *Defensor Pacis* taken from the works of Marsilius of Padua does not fit into it. It is not a defender of peace coming from God. Instead, he is a creator

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<sup>19</sup> Ibid., p. 94–95.

of peace on this earth; he is a *Creator Pacis*, freeing the individual from the horror of the frightened state of nature and the risk of sudden death.<sup>20</sup>

Along with the law morality is born because in the state of nature *the notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law, where no law, no injustice.*<sup>21</sup> The integration of the natural laws into the legal system has allowed for the constitutionalization of morality. It has also guaranteed a universal validity of moral norms.

The first law of nature on which the sovereign has based moral norms is the principle ordering one *to strive for peace and sustain it*. The second law involves a social agreement, that is the willingness to give up one's natural rights, provided that others are also ready to do so. The third law of nature regarding the obligation of completing agreements is very significant for it is the source for the Hobbesian definition of justice stating that "justice" means as much as "completing agreements".<sup>22</sup> (Original in the seventeenth century,<sup>23</sup> nowadays the definition seems to be too narrow). The fourth law of nature requires to show one's gratitude; the fifth one relates to one's effort to adapt to the rest of society. The laws mentioned later concern as follows: not showing one's hatred, contempt or disdain towards other people; a necessity of treating other people as equal and granting them equal rights, and finally, being impartial in judging disputes.<sup>24</sup>

By incorporating the laws of nature into the legal system and introducing their interpretation made by the sovereign, primary values are protected: life and health, conjugal love and private property (Hobbes introduced such a hierarchy basing it on the analysis of the unchanging human nature and observation of his contemporaries' behavior).<sup>25</sup>

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<sup>20</sup> C. Schmitt, *Lewiatan w teorii państwa Thomasa Hobbesa*, op. cit., p. 44.

<sup>21</sup> T. Hobbes, *Leviathan*, op. cit., p. 98.

<sup>22</sup> Ibid, p. 111.

<sup>23</sup> See D. D. Raphael, *Hobbes on Justice*, (in:) *Perspectives on Thomas Hobbes* Oxford 1988, pp. 153–155.

<sup>24</sup> T. Hobbes, *Leviathan*, op. cit., p. 110–120.

<sup>25</sup> Hobbes highlights that the hierarchy of values cherished in the state is not consistent with the hierarchy of values in themselves, see B. Suchodolski, *Antropologia Hobbesa*, "Studia Filozoficzne" 1967, vol. 2, p. 209. He pointed out a dichotomous division of virtues: he distinguished virtues of people as citizens (which can be defined as social virtues) and the virtues of human beings as such (personal virtues or decorating virtues). The first of the above-mentioned virtues allowed for a peaceful coexistence of citizens in the state and included, among others, the responsibility for the word, the ability of forgetting harmful experiences, not allowing someone who did something good for us to suffer through it. These virtues can be ultimately reduced to two basic ones – *justice* and *common benevolence*. The virtues of people as such do not bring profit to the state, but to those who possess them. They are a confirmation of their power. Hobbes mentions here

Hence, attempts to situate Hobbes in the jusnaturalism mainstream seem to be irrelevant. Any ideas advocating the primacy of nature over the order of the state law are based on the *lex iniusta non est lex* principle and proclaim the thesis that natural law serves a validation function as referred to the state rights. Hobbes, a strong opponent of the existence of common things, does not assume that the laws of nature (as he defined them) bide the sovereign in an absolute way. For the sovereign, aiming at the establishing and maintaining peace, they are a significant clue while deciding on the state laws. Nonetheless, they do not have an absolutely imperative character. In theory, the sovereign could as well resign from their incorporation into the legal system. The Hobbesian sovereign is like Ockham's God, omnipotent and rich in unlimited creative power. The positive law establishment constitutes morality in a given community. On the other hand, there is no necessity to define it precisely. Significant is the fact that it is relative; it may be subjected to changes. The sovereign's command may modify or even erase it any time.

What seems to be troublesome in Hobbes's moral philosophy is the following statement: norms dictated by natural laws including moral norms are bidding an individual only when his partner respects them as well.<sup>26</sup> Although it is certain that the English philosopher's proposed rules of moral norms cannot be accepted in current circumstances, they remain in perfect harmony with the Hobbesian thought. When the state apparatus is affected by the anarchy disease, when it is too weak to provide citizens with protection, the agreement whereby the state was created stops operating. The state laws are no longer bidding, and thus, the laws of nature, being part of the state, stop being obligatory whereas the previous definition of justice becomes irrelevant. After all, the state, Leviathan, which is an artificial structure built by man, is not an end in itself. It is merely a means to an end. The end, in turn, is to ensure the protection of what has the highest value – the life of an individual.

Hobbes proves that sovereign power should be indivisible. That power is the sum of all future citizens' power<sup>27</sup> who join a social agreement. What

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fortitude, prudence, moderation and dignity. For Hobbes, dignity is an expression of one's power, specifically understood – a general tendency of all people, is, according to him, a stable and neverending desire for more and more power, which ceases only with one's death. This desire results from the inherent human desire to live the best life, filled with sensual pleasures or in a blaze of glory, depending on one's disposition. Therefore, dignity is of a particular value from the standpoint of an individual, see M. Ossowska, *Normy moralne*, Warszawa 2000, p. 63.

<sup>26</sup> T. Hobbes, *De Cive* at <http://www.constitution.org/th/decive03.htm>.

<sup>27</sup> B. Hindess, *Filozofie władzy od Hobbesa do Foucaulta*, Warszawa – Wrocław 1999, p. 48.

is crucial is that the sovereign himself is not the agreement's party. The sovereign authority can neither be criticized by the citizens, nor undermined. If the sovereign acts as a representative of the citizens and takes decisions on their behalf, any criticism coming from the citizens would, in fact, be self-criticism. The philosopher clearly highlights that the moment a social agreement is signed, its parties, that is, all future citizens agree to accept all future actions of the sovereign, trusting that all his actions will aim to strengthen the power of the state.

The duty of the sovereign is to punish citizens for exceeding a public measure of good and evil for the sake of the state consistency. But when the sovereign comes to the conclusion that the implementation of civil liberties threatens the state security, he is entitled to introduce some restriction. What is more, he has the right to use repression and violence against people whose views he considers to be subversive. Highly controversial nowadays, such a thesis left Hobbes with numerous enemies and resulted in his unflattering nickname – *Leviathan's servant*.

One of the most important and controversial questions that arises while reading Hobbes's texts concerns a scope of the citizens' liberty. Undoubtedly, they enjoy liberty in cases in which the state does not interfere: *The Liberty of a Subject, lyeth therefore only in those things, which in regulating their actions, the Sovereign hath praetermitted; such as is the Liberty to buy, and sell, and otherwise contract with one another; to choose their own aboad, their own diet, their own trade of life, and institute their children as they themselves think fit; & the like.*<sup>28</sup> Significant is Hobbes's position regarding the widely famous freedom of the ancient times. He proves that freedom of the ancient times is the freedom of the states, not individuals.<sup>29</sup> Only representatives of the ancient Greece and Rome were free; the sovereign was free *to invade other people*.<sup>30</sup>

Hobbes's reflections on the state and law fit perfectly in the mainstream of the seventeenth-century utilitarian thought.<sup>31</sup> According to the philosopher, his political works reveal the solution which is the only right solution to restore a social order in the seventeenth-century England which was in the state of a revolutionary chaos. His works also provide model solutions for the future. Benefits resulting from the practical use of the Hobbesian clues should not be doubted. The sovereign, holding the power of the state,

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<sup>28</sup> T. Hobbes, *Leviathan*, op. cit., p. 163.

<sup>29</sup> Ibid., p. 164–165.

<sup>30</sup> Ibid., p. 165.

<sup>31</sup> W. Voisé, *Myśl społeczna siedemnastego wieku*, Warszawa 1970, p. 320.

should rule so that fundamental interests of the citizens are not violated and, if possible, he should try to fully satisfy their more sophisticated needs. To understand Hobbes's thought fully, it is necessary to add that he presumes convergence of the interests of the sovereign and all his citizens; he assumes that the sovereign identifies the good of the citizens with his own good, and that the interpretation of the laws of nature made by the sovereign is perfectly rational.

Using modern concepts, one can say in the Hobbesian way that the time of peace funded by the state, that is the time in which there is no threat of war (if it appears, it is immediately dealt with) is a period in which societies and citizens develop and enrich. In such periods culture flourishes and everybody enjoys prosperity. Still preserving the spirit of Hobbes, it is possible to say that that military force is an inalienable attribute of the state, the only true measure of its power. It is obvious that Hobbes's diagnosis concerning international relations is false. A lack of international governing between the states would result in the state of nature, permanent war, or its threat. Today it is obvious that in international relations multi – and bilateral agreements play a crucial role. However, one can certainly argue that the states which possess the greatest power have a real and genuine impact on the world politics.

#### S U M M A R Y

This paper aims at identifying the implications which in the Hobbesian system are the consequences of people's acceptance of the social agreement and constitution in the state. This is an important moment both for the community, which expresses its agreement for the state, and for each individual, the signatories of the contract. The state establishment connected with the resignation from the individuals' inherent freedom of individuals, which is the price to be paid for the state, results in the birth of the legal system, and is also linked to the rise of morality. In the state of nature, preceding the state establishment, law could not act and there was no space for moral behavior. According to Hobbes, the state birth is a natural consequence of man's rational nature; the state, because of the qualities humans have, was predestined to exist. For Hobbes, the state – Leviathan – is the embodiment of virtue, which as the only one allows for the operation of law, and thus enables man to be protected against the danger of violent death. The state status is the only state in which the individual is able to develop natural virtues, in which societies develop and enrich, and cultures enjoy their flowering time and prosperity.

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**NEW STATE, NEW LAW?  
AN UNKNOWN DRAFT OF THE POLISH  
LABOUR CODE FROM 1949**

1. The state, as it is currently understood, comes from the Greek polis. The word, depending on the context, is translated into “city” or “state”. The state, for entire centuries in Greece, was nearly synonymous with polis. The classical era seems to be the most interesting, during which the polis becomes the foremost center around which the life of the era is organized.<sup>1</sup> In its mature form the polis is viewed as an independent community of citizens who govern themselves without forming state structures separated from the community (lack of political representation).<sup>2</sup> This community inhabited a specific area (usually consisting of an urban center and neighbouring rural areas), was connected by language, religious cults it fostered and moral values it professed. It was a place where a person was seen through the prism of the quality of his citizenship and his political activity. The Greek polis was not a flawless state. However, some ideals which guided and formed the nation’s character can also become useful today. This article is an attempt to present these values using as an example a certain state and its law.

2. The territorial shape of the Polish state reborn after the Second World War and the ruling authority actually did not depend on Polish military input. Poland, despite the fact that it took an active part in the coalition against Hitler, could not exercise the right of self-determination of nations. Therefore, the statement that the Polish citizens were actually stripped of their right to form their own polis would not be groundless. In view of the facts presented further it would be difficult to ascertain that

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<sup>1</sup> W. Jaeger, *Paideia*, Warszawa 2001, p. 14–141.

<sup>2</sup> B. Bravo, E. Wipszycka, *Historia starożytnych Greków*, vol. 1, Warszawa 1988, p. 133–134.

the post-war Polish state was really an independent community of citizens who governed themselves. Great powers, especially the Soviet Union, were the ones who decided about the borders and the government of the nation. The entering of the Polish territory by the Soviet Army along with the 1st Polish Army, in order to liberate it from German occupation, allowed Stalin to impose on the Polish people political leadership which was not in accordance with the will of the majority. On the 21<sup>st</sup> of July of 1944 the Polish National Liberation Committee (PKWN) was formed in Moscow, de facto performing the role of a government subordinate to the Soviet Union.<sup>3</sup> Ignoring the role of the Polish government in London and the underground structures functioning within the Polish territory and subordinate to that government Stalin, in a telegram sent to W. Churchill, pointed out that the formation of PKWN was necessary since no other powers which could create Polish government in the liberated territories existed.<sup>4</sup> The Soviet government in an agreement with PKWN on the 26<sup>th</sup> of July 1944 recognized PKWN as an only agent empowered to create state structures within Polish territories, completely denying this right to the London government. In December of 1944 PKWN was transformed by the Soviet authority into an Interim Government of the Republic of Poland and in June of 1945 the Interim Government of the National Unity in turn took its place. This government was shortly accepted on the international arena as the legal authority in Poland.

Territorial shape was similarly forced onto Poland. The allied powers, along with the growth of military significance of the Soviet Union, were inclined to accept the ethnic criteria as a basis to establish the future Polish-Soviet border.<sup>5</sup> During subsequent conferences of the heads of the great powers (the Soviet Union, Great Britain and the USA) it was agreed that the eastern border will run along the Curzon line, which meant stripping Poland of such pre-war voivodships as for example Wilno, Nowogrodek, Tarnopol, Stanislawow, and Lwow. At the same time the western border was to be moved to the Oder River and the Baltic Sea, including Gdansk and the southern part of Eastern Prussia.<sup>6</sup> Thanks to this Stalin was planning to further extend his sphere of influence.<sup>7</sup> As an answer to these decisions,

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<sup>3</sup> P. Wiczorkiewicz, *Historia polityczna Polski 1935–1945*, Warszawa 2006, p. 381.

<sup>4</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warszawa 1996, p. 623.

<sup>5</sup> M. Kallas, A. Lityński, *Historia ustroju i prawa Polski Ludowej*, Warszawa 2000, p. 18–19.

<sup>6</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, as above, p. 633.

<sup>7</sup> P. Wiczorkiewicz, *Historia...*, op. cit., p. 461.

made without the knowledge of the legal authority of the Republic of Poland, the Polish government in London stated that “the Polish people see the stripping away from eastern Poland half of its territory as a new partitioning of Poland.”<sup>8</sup>

**3.** The new political power which took over governing Poland wanted its activities to be seen as legitimate. The appearance of legitimacy was to be kept by upholding the continuance of the legal order from the Second Polish Republic. This legitimizing power of tradition was long ago noticed by Max Weber. It seems obvious that there exist many connections between tradition and authority. It has been noticed that no nation has ever reached a condition which would allow it to ignore referring to the past as a source of legitimacy.<sup>9</sup> It has been discovered that controlling the reference of the populace to time is not only a source of authority but also one of more important ways of its execution. Furthermore, there is no doubt that exercising authority relies upon manipulating values, which can also be applied in the political exploitation of law.

The partial and selective continuation of the between-war law resulted from the PKWN manifesto from the 22<sup>nd</sup> of July 1944.<sup>10</sup> Only thing negated by this document was the legality of the April Constitution but basically any other legal documents, dated before September 1939, were not questioned. The change of authority in Poland was supposed to look like an evolution not a revolution.<sup>11</sup> The new authority wanted to keep up this appearance at least until the 1947 elections. At that time, however, the legal status had been in a certain way defined through the partially preserved pre-war solutions and new legislative acts inspired by the authorities’ vision. Thus it seemed unnecessary to completely discard the solutions from the Second Polish Republic period.

The formal continuity of law, at least in the beginning stages of the People’s Republic of Poland, was ensured especially in civil law and labour law. However, regarding criminal law, despite the formal preservation of pre-war regulations, new legislative acts were issued which not only unified but also altered the pre-war laws. Moreover, right from the beginning of the existence of the People’s Republic of Poland, all military law of the Second

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<sup>8</sup> M. Kallas, A. Lityński, as above, p. 19.

<sup>9</sup> B. Szacka, *Polis i pamięć zbiorowa* [in:] *Filozof w polis*, ed. M. Kowalska, Białystok 2004, p. 76.

<sup>10</sup> A. Lityński, *O prawie i sądach początków Polski Ludowej*, Białystok 1999, p. 11.

<sup>11</sup> *Ibid.*, p. 269.

Republic of Poland was derogated.<sup>12</sup> In its place a penal military law was created, saturated with Soviet standards and solutions, all of which later on appeared also in common law.<sup>13</sup>

The law which was in force in the People's Republic of Poland had two main goals to meet: support the regime and combat political opposition. This role was especially obvious in criminal law. Adaptation of legislative acts to the new political situation was visible in the decrees issued between 1944 and 1946 which intensified legal responsibility for acts directed against the state. The legal basis of these repressions was, among others, the PKWN decree from the 31<sup>st</sup> of August 1944, dealing with penalties for Nazi war criminals found guilty of murder and abuse of civilian population and prisoners, and for traitors of the Polish people,<sup>14</sup> which, despite the fact that it only established penal responsibility against only one occupier, in practice was used to sentence soldiers of the National Army and civilian activists of the Underground Polish Nation.<sup>15</sup>

In civil law, after the unification which occurred during 1945-46, the Minister of Justice in 1947 called into existence a commission which was to design a draft of a uniform civil code.<sup>16</sup> The commission worked until 1948 at which time the authorities decided that the created "draft, was in style of a modern bourgeoisie code", which canceled any further work of the commission.

4. During the Second Polish Republic there existed numerous legal acts on a high legislative level dealing with labour law. In connection to this after World War II work was undertaken to, foremost, unify existing regulations. This task was taken on by a commission created in April of 1947 by the Labour Department of the Labour Ministry and Social Welfare.<sup>17</sup> The first meeting of the commission took place on July 1<sup>st</sup> of 1947.<sup>18</sup> Work to compile labour law regulations continued until September of that year. As a result of these meetings the content and layout of labour law was es-

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<sup>12</sup> Ibid, p. 24.

<sup>13</sup> Ibid, p. 18.

<sup>14</sup> Dz. U. No 4, pos. 16.

<sup>15</sup> M. Kallas, A. Lityński, *Historia...*, op. cit., p. 295–296.

<sup>16</sup> P. Fiedorczyk, *O początkach prac nad kodyfikacją prawa cywilnego w 1947 r.*, "Miscellanea Historico-Iuridica" 2006, vol. IV, p. 109–110.

<sup>17</sup> New Act Archives, Justice Ministry, 3500, k. 29.

<sup>18</sup> *Report from 20.09.1947 on the progress of the commission gathering labour law regulations between 1 July and 20 September of 1947*, AAN, Min. of Labour and Social Welfare, 837, k. 1.

tablished, materials dealing with all the basic sections of labour law were compiled, and a number of technical and executive tasks were performed. Initiating the work on creating a unified labour code was the next stage of the task. On the 26<sup>th</sup> of May, 1948 by order of the Minister of Labour and Social Welfare, a Commission for the Codification of Labour Law was called into existence.<sup>19</sup> It operated under the Labour and Social Welfare Ministry. The first meeting of the Commission took place shortly thereafter (June 1<sup>st</sup> 1948).<sup>20</sup> Doubts, starting right at the beginning of the Commission's meetings, were caused because of the inability to solve a very basic issue, the subject matter of the labour code. During discussion the contended issues turned out to be, for example, regulation by the code of public employees, cottage industry, worker cooperatives and vocational teaching contracts. Soviet solutions surfaced during these disputes.

The Commission's work resulted in the preparation of the labour code draft of 1949.<sup>21</sup> It seems that it was never published.<sup>22</sup> The labour code draft included the following chapters:<sup>23</sup>

1. Preliminary regulations (labour code entity scope, concepts of employer, employee, the workplace, workplace manager);
2. The responsibilities of employers and employees;
3. Employment contract;
4. Remuneration for work;
5. Work regulations;
6. Work safety and hygiene;
7. Labour inspection;
8. Time of work;
9. Women labour protection;
10. Teen labour protection;
11. Introductory regulations (repealing and transitional regulations).

This article, brief out of necessity, will be limited to present the most important regulations of the labour code, ones which safeguarded the interests of the workers. Granting numerous guarantees in favor of the workers

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<sup>19</sup> *Decree No 60/48 of the Minister of Labour and Social Welfare from 26 May 1948 for the creation of the Commission for the Codification of Labour Law*, AAN, Min. of Labour and Social Welfare, 838, k. 2.

<sup>20</sup> First Minutes of the meeting of the Commission for the Codification of Labour Law from 1 June 1948, AAN, Min. of Labour and Social Welfare, 839, k. 8–10.

<sup>21</sup> *Labour Code Draft*, AAN, Min. of Labour and Social Welfare, 841, k. 1–80.

<sup>22</sup> Among others this thesis can be confirmed through the confidentiality clause covering the project. See *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 26.

<sup>23</sup> The sequence of the chapters presented is in accordance of their sequence in the draft.

was one of the main ways of changing labour law after the Second World War. In this manner it diverged from regulations introduced by Sanation during the economic crisis of 1932 and 33. This amendment especially concerned the expansion of regulations dealing with work safety and hygiene, vacation law, time of work, and the protection of women. As part of detailed deliberations we will attempt to ascertain how much the regulations of the labour law draft retained the legal status in effect at the beginning of the post-war period.<sup>24</sup>

The protective function of the labour code was ensured by regulations relating to labour protection. A significant act in this domain was the decree issued in 1946<sup>25</sup> specifying the basic requirements of labour safety and hygiene included in the decree from 1928.<sup>26</sup> The 1949 the labour code draft also anticipated a separate chapter devoted to labour safety and hygiene. Most of the decisions which were included in this contained a referral to the ordinance of the Council of Ministers.<sup>27</sup> This especially concerned the introduction of prohibitions of production, of sale and distribution, of storing and importing from abroad of certain substances, especially those dangerous to life and health of workers (art. 7); establishing of rules concerning the organization of first aid in the event of a sudden illness or an accident during work (art. 8); or defining the behaviour and the responsibly of workers during work, aimed at protecting their lives and health (art. 9). Therefore the basic rules assuring the protection of life and health of workers were set within the draft. These addressed the environment in which the workers laboured. Article 2 of the draft expected that the machines and technical devices should be constructed in such a way as to provide the workers with safe and hygienic working conditions and especially to possess appropriate shielding and safeguards. The conditions of the premises where the workers are to work were detailed to an extraordinary degree. According to article 3

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<sup>24</sup> Beyond discussion is the regulation of the labour code draft regarding the protection of the so called endurance of workers loyalty. Detailed analysis of these regulations can be found in: A. Giedrewicz-Niewińska, *Podstawy nawiązania stosunku pracy w projekcie kodeksu pracy z 1949 r.*, [in:] *O prawie i jego dziejach księgi dwie*, ed. M. Mikołajczyk, Białystok–Katowice 2010, p. 485–496.

<sup>25</sup> A decree of the Ministers of Labour and Social Welfare, Health, Industry, Rebuilding, Public Administration and Reclaimed Lands issued in agreement with Ministers of National Defense, Treasury, Justice, Education, Agriculture and Agricultural Reform, Communication, Post and Telegraph, Forestry and Food Supply and Trade from 6 Nov. 1946 regarding general regulations dealing with labour safety and hygiene, Dz. U. No 62, pos. 344.

<sup>26</sup> A Decree of the President of the Republic of Poland from 16 May 1928 regarding labour safety and hygiene, Dz. U. No 35, pos. 325.

<sup>27</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 47–48.

of the draft, these premises, depending on the type of production, type of plant and number of workers, should be large enough, well ventilated, cleanly maintained, adequately lit and heated and should have appropriate devices to remove dust, gases, harmful vapours and waste created during production. Facilities which were to ensure the workers with healthy living conditions while at work, such as eating rooms, changing rooms, washing rooms and lavatories should fulfill workplace hygiene requirements; in facilities where more than 5 women are employed there should exist separate lavatories, changing rooms and bathing rooms for them and in places with over 100 women – bathing facilities (art. 4). Also stressed within the draft was that the living quarters of the workers attached to production facilities should fulfill hygiene requirements as well (art. 5).

A separate chapter was devoted to the prevention of occupational diseases and their elimination.<sup>28</sup> These regulations had their counterparts in the decree from 1927.<sup>29</sup> According to the definition included in the labour code draft, occupational diseases were those diseases which were acute or chronic and which occurred as a result of practicing a certain occupation, given work or the conditions under which it is performed. Lists of these illnesses and the sanitary and hygiene rules which had the task of preventing and eliminating these occupational diseases were to be established in separate acts. The remaining chapter resolutions were devoted to procedure of conduct in the event of the discovery of occupational diseases which were subject to mandatory reporting. The illnesses listed were subject to mandatory reporting by the following entities: a) a physician who examined the patient and diagnosed or suspected the disease, b) the physician examining the body or performing the autopsy regardless of whether the given disease was diagnosed during the life of the patient, c) a veterinarian who during the performance of his duties obtained information regarding people who became infected with a reportable disease (art. 4 and 5). The report was received by, according to art. 6 of the draft, district (municipal) general administrative authority and the district labour inspector. The entities listed conducted an investigation aimed at establishing the recognition of the disease and its origin, this particularly involved ordering the examination of the patient and his coworkers, an inspection of the place where the occupational disease accident had place and, if necessary, the inspection of

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<sup>28</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 49–52.

<sup>29</sup> Decree of the President of the Republic of Poland from 22 Oct. 1927 regarding occupational disease prevention and elimination, Dz. U. No 78, pos. 676.

the bodies of the victims of occupational disease (art. 7). The investigation concluded with the issuance of an appropriate decree whose aim was to eliminate the causes of the occupational disease. Additionally, the labour code draft provided for further protection for workers employed in jobs subject to occupational poisoning which consisted of moving these workers to different jobs until they were completely healed. Subsequently, in such an event, article 10 of statute 1 guaranteed the receipt of salary no lower than the current one, the average taken from preceding three months. Similar protection was extended to workers already affected by occupational poisoning or disease. The latter article 10 of the 1<sup>st</sup> and 2<sup>nd</sup> statute of the draft also ordered to move to different jobs either until they were completely healed, or permanently if treatment did not prognosticate an improvement of health. However, the guarantee to receive current level salary concerned only those temporarily moved to different jobs.

One of the next sections of the labour code draft regulated working time.<sup>30</sup> At the beginning it is worth mentioning that the regulations included in this section were not numbered. This section has only been divided into: chapter 1 “General regulations”, chapter 2 “Extending working hours”, chapter 3 “Working on Sundays and Holidays”, chapter 4 “Working at night”, chapter 5 “Remuneration for overtime work”, and chapter 6 “Breaks during work”. The above-mentioned division into chapters clearly shows that the issue regarding working time was extensively addressed in the draft. Remembering the limitations of this paper we will present only some of the regulations of the “Working time” section. According to the draft working time was taken as the number of hours the employee is obligated by the contract to stay at the workplace or outside of it at the disposal of the employer.<sup>31</sup> A solution which was beneficial to the workers was provided during defining the norms of basic working time. According to this working time of all workers employed with a contract consisted of, not counting resting breaks, at most 8 hours per 24 hour period, 6 hours per 24 hour period on Saturday and could not exceed 46 hours per week.<sup>32</sup> It seems especially important that the labour code draft repeats the solution adopted in the statute which was amended after the war dated from the 18<sup>th</sup> of December, 1919 regarding working time in industry and sales<sup>33</sup> which re-

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<sup>30</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 60–69.

<sup>31</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 60.

<sup>32</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 60.

<sup>33</sup> Dz. U. from 1933, No 94, pos. 743; amended with a decree from 19 Sep. 1946 changing the statute dealing with working time in industry and trade, Dz. U. No 51, pos. 285.

introduced the so-called “English Saturday”, which meant shortening the maximum weekly working time from 48 to 46 hours.<sup>34</sup> The above-mentioned working time norms could be subject to modification depending on the occupational group they dealt with. Therefore, certain decrees could separately regulate the working time for workers employed in a) industry, b) facilities where work is dependant on the seasons or weather conditions, c) medical facilities, d) coal mining, e) branches of production, occupations or facilities where work is particularly strenuous or harmful to the worker’s health.<sup>35</sup> It is worth stressing that in cases stated above a particular decree could only be issued after consulting the opinion of the labour unions. Undoubtedly this solution shows evidence of the growing influence of the union movement on the regulation of labour relations in post-war Poland. The appearance of the above condition in the labour code draft was one of the elements confirming the democratic character of the solutions planned.

In chapter 2 the creators of the labour code in detail worked out the conditions in which extending working hours would become possible.<sup>36</sup> At the same time the norms limiting employees’ overtime hours were presented. According to the draft extending working time was acceptable in an event when, as a result of past or impending disasters threatening the workplace or unfortunate accidents, it became necessary to preserve the safety of the workers, to preserve the integrity and further operation of the workplace, to perform tasks which if not performed would cause the spoilage of materials or mechanical devices, and in ports in the event of a malfunction of a ship to save the endangered cargo, and where the time can not exceed 12 hours in a 24 hour period, as long as it does not concern a rescue mission. Additionally there existed the possibility, but only after previously notifying or receiving permission from an appropriate labour inspector, in events caused by exceptional proven necessity of the workplace; in sales in order to perform annual inventory; and in sea ports in order to complete loading or unloading of a ship. However, in these circumstances the draft limited the number of overtime hours for each worker to 120 per year and to 4 per a 24 hour period. Two further situations in which it was acceptable to extend working time concerned “national or economic necessity” and making up for hours not worked during the week in which the working time lasted less than 46 hours. The continuous shifts working time was also sepa-

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<sup>34</sup> M. Świącicki, *Prawo pracy*, Warszawa 1968, p. 57.

<sup>35</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 60–62

<sup>36</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 62–64.

rately regulated in the labour code draft, accepting that the regional labour inspector after consulting with the voivode and after hearing the opinion of the labour unions, can allow for the extension of working time of certain groups of workers to an average of 56 hours per week. Additionally it was stipulated that the 8 hour per 24 hour period working time can be extended one day per week for one or two consecutive working shifts.<sup>37</sup> A further guarantee of workers' protection for workers working continuous shifts was the regulation which stated that for those who on average work a 56 hour week, working time must be organized in such a way that every worker could take advantage of minimum 24 hour rest period twice in a 3 week interval.<sup>38</sup>

The labour code draft introduced banned on overtime work for certain types of workers. This concerned pregnant women who reached the fourth month of pregnancy, women with children below the age of eighteen months, and teenage workers.

Compared to the period between wars the regulation dealing with remuneration for overtime work, in the labour code draft was far more advantageous. With a decree from May 16, 1945<sup>39</sup> a regulation was restated which returned the original level of pay for overtime hours: 100% for overtime hours above 2 hours per day at night, Sundays and Holidays and 50% for all other cases.<sup>40</sup> The labour code draft afforded a special guarantee of payment for overtime hours for workers who worked extended hours despite the fact that the employer did not obtain permission for this. At the same time, the right to get paid for overtime hours was not extended to workers in management who arrange their working time themselves and to workers with non standardized working hours.<sup>41</sup>

Regulations of the labour code dealing with women's working rights were also supposed to safeguard those rights.<sup>42</sup> They mainly concentrated on safeguarding maternity. These regulations were in part based on the statutes from the 28<sup>th</sup> of April of 1948<sup>43</sup> which, in a new way, regulated the

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<sup>37</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 63.

<sup>38</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 64.

<sup>39</sup> Decree from 16 May 1945 regarding the change of article 16 of the statute from 18 Dec. 1919 dealing with working time in industry and trade, Dz. U. No 21, pos. 117.

<sup>40</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 68.

<sup>41</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 68.

<sup>42</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 70–71.

<sup>43</sup> Statute from 28 April 1948 regarding the change of the statute from 2 July 1924 on the subject of labour of youth and women, Dz. U. from 1949, No 27, pos. 182; statute from 28 April 1948 regarding the change of the statute from 28 March 1933 dealing with social insurance, Dz. U. from 1948, No 27, pos. 183.

protection for the continuation of the right of pregnant women to work, the rights to change work during pregnancy and the puerperal period. The labour code draft made these changes permanent by stating in §2 that a pregnant woman can stop working for a period of twelve weeks (so called puerperal break<sup>44</sup> or maternity leave,<sup>45</sup> extended in comparison to the regulations of the between wars period) of which at least 2 of those weeks should be before and at least 8 should be after giving birth, while the remaining two weeks the woman may use at will either directly before the two week period before giving birth or directly after the eight week period after giving birth.<sup>46</sup> Another element of pregnant women protection was the §1 of the draft which said that such a woman when employed in a strenuous position should be, if possible, starting with the sixth month of pregnancy, moved to a less strenuous position. At this time the remuneration of this worker can not be lower than her current pay, an average of the last three months.

Extensive regulations dealt with the protection of a woman from employment contract dissolution. A general ban on dismissal or dissolution of an employment contract during pregnancy and during leave after giving birth concerned a woman who has been working at a given place of employment for at least 3 months (§3 of the draft.) An exception from this rule was included in §5 of the draft which allowed the dissolution of such a contract based on very important reasons or through the fault of the worker. However, in order to dissolve such a contract the permission of the workers' council or its delegate and in the event of their lack – the permission of the regional labour inspector was necessary.<sup>47</sup> In the event of dissolution of a contract by the employer for important reasons the draft additionally stipulated that it could not happen during the period of four months before the due date unless the given facility was to be completely dissolved. In accordance to §4 of the draft the employment contract which would end within the period of four months before the due date, if it was entered into for a defined period of time or for a period of completion of a certain job, would be extended until the day of birth.

The next section of the labour code draft dealing with teen workers should also be counted among those protective regulations. It has been di-

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<sup>44</sup> A. Świącicki, *Prawo...*, op. cit., p. 58.

<sup>45</sup> T. Zieliński, *Zarys wykładu prawa pracy. Część I Ogólna*, Katowice 1979, p. 103.

<sup>46</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 70.

<sup>47</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 71.

vided into such chapters as: chapter 1 “General regulations”, chapter 2 “Conditions of employment”, chapter 3 “Medical examinations”, chapter 4 “Additional training”, chapter 5 “Remuneration”, and chapter 6 “Apprenticeship”.<sup>48</sup> An especially interesting solution was forwarded in the labour code draft concerning the time of vocational or additional training.<sup>49</sup> Regulations in the draft maintained the change made in the law currently in force through a decree from the 29<sup>th</sup> of September of 1945<sup>50</sup> which extended the time of the aforementioned training from the pre-war time of 6 hours per week to 18 hours per week while at the same time including them into standing working time. In this manner the creators of the draft preserved the policy started after the war of preparing teens for an occupation. This gave a real shape to the possibility of fulfilling an earlier demand which asked that practical vocational training was combined with theoretical teaching.<sup>51</sup> It was also directly stated in the labour code draft that unpaid employment of teens is prohibited just as receiving payment for vocational training of teens by the employer is prohibited.<sup>52</sup>

There are, however, no other protective regulations in the labour code draft from 1949. This concerns especially the regulation from 1948 which extended workers vacation time including vacation time for the teens.<sup>53</sup> Also, no regulation included in the labour code draft instituted a prominently protective rule in effect today which states that provisions of employment contracts and other acts under which labour relations are formed must be in accordance with the regulations of labour law. Provisions less beneficial for the worker than the regulations of labour law are void and appropriate regulations of labour law are applied instead of them (art. 18 of the current labour code).

5. On the 18<sup>th</sup> of October of 1949 “a motion to suspend the activities of the Commission for the Codification of Labour Law, however retaining the Independent Department for the Codification of Labour Law, whose scope of activity will become defined in the organizational statute of the Ministry

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<sup>48</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 72–75.

<sup>49</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 74.

<sup>50</sup> Decree from 29 September 1945 regarding the change of the statute from 2 July 1924 on the subject of labour of youth and women, Dz. U. No 43, pos. 236.

<sup>51</sup> A. Święcicki, *Prawo...*, op. cit., p. 58.

<sup>52</sup> *Projekt...*, AAN, Min. of Labour and Social Welfare, 841, k. 75.

<sup>53</sup> A decree from 28 July 1948 regarding the change of the statute form 16 May 1922 dealing with time off for workers employed in industry and trade, Dz. U. No 36, pos. 258.

being designed” was sent to the Minister of Labour and Social Welfare.<sup>54</sup> However, we can not find an answer of the minister to this motion in the archives.

As an explanation of the above-mentioned motion it was stated that “the design of the labour code is encountering very serious obstacles of political and technical and legislative nature”.<sup>55</sup> It seems that the political obstacles were initiated with the turn which had place in the second half of 1948 consisting of “the exposing and eliminating of the rightwing-nationalistic lean” during the August-September plenary session of KC PPR in 1948.<sup>56</sup> The goal of complete Sovietization of social and political relations was consistently strived for. This was accompanied by changes of the Polish labour law connected to the realization of the “six year plan.” It instituted the construction of a large industry “at a cost of intense labour of the entire nation, dedication and sacrifice”.<sup>57</sup> The protective function of labour law became weakened. New legal acts, fitted to the needs of economic policy of the time, appeared. This especially concerns the statute from March 7 of 1950 regarding the planned employment of graduates of vocational high schools and universities,<sup>58</sup> as well as the statute from March 7 of 1950 regarding the prevention of the liquidation of working personnel in occupations or specialties particularly important for the nationalized economy.<sup>59</sup> The first introduced an injunction to work according to which the graduates of particular schools had the duty to assume employment at a designated facility and remain employed there for a period stipulated in the referral, not to be longer than three years. The second of these statutes introduced a different means of administratively influencing employee distribution. It provided the possibility of issuing an order to the worker to remain in present employment for a period not exceeding two years. The economic direction chosen by the authorities required a dramatic increase in the number of employees. Hence an effort was made to activate the society’s labour force such as unemployed women and the surplus labour force of the rural areas.<sup>60</sup> With the statute from 26 February of 1951 the ban

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<sup>54</sup> *Application to Suspend the Activities of the Commission for the Codification of Labour Law*, AAN, Min. of Labour and Social Welfare, 838, k. 6.

<sup>55</sup> *Application...*, AAN, Min. of Labour and Social Welfare, 838, k. 6.

<sup>56</sup> M. Kallas, A. Lityński, *Historia...*, op. cit., p. 438.

<sup>57</sup> T. Zieliński, *Zarys...*, op. cit., p. 104.

<sup>58</sup> Dz. U. No 10, pos. 106.

<sup>59</sup> Dz. U. No 10, pos. 107.

<sup>60</sup> A. Świącicki, *Prawo...*, op. cit., p. 63.

prohibiting women from working underground in mines was lifted and the prohibition of employing pregnant women or women with infants at night was reduced.<sup>61</sup> There is no doubt that reaching the goals set by the authorities was only possible by achieving a rise in the number of people employed, but also by ensuring of appropriate performance of work. This was expressed in the passing of the bill from the 19<sup>th</sup> of April of 1950 about ensuring of the socialistic labour discipline<sup>62</sup> in which the necessity to obey labour discipline was underlined. There were serious repercussions, both statutory and criminal, for unexplained absences at work, tardiness, or leaving the place of work prematurely.

During this period the actual role of the labour unions also decreased.<sup>63</sup> Certainly, their administrative functions were expanded (among others they were given tasks regarding labour protection and labour inspection, or social insurance in the event of an illness or pregnancy) but in reality this weakened the main function of the labour unions, especially the representation and protection of workers' interests. In 1950 the process of marginalizing of the significance of collective labour agreements also began.

The legal solutions which appeared in the 50's did not have their counterparts in the regulations of the labour code draft of 1949. Hence, the Codifying Commission did not really know "in which direction the labour law reform must proceed".<sup>64</sup> There were obstacles connected with the loss of power of some of the regulations of labour law in force based on which the labour law draft was created. This concerned, for example, the elimination of the above-mentioned ban on women working underground in mines or the elimination of labour inspection as an independent organ.

**6.** The condition of the Polish state as a polis after World War II is terrible. The policies carried out by the authorities had only as their objective to increase the goods of the authorities and to fulfill its needs. It can be seen in the example of the formation of the borders of the Polish nation, governing or repressions. However, true political activity, as stated by Socrates, should consist of a struggle in which the citizens can become the best.<sup>65</sup> In every other event in such a polis "everyone can meet with an

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<sup>61</sup> Statute from 26 February 1951 regarding the change of the statute on the subject of the labour of youth and women, Dz. U. No 12, pos. 94.

<sup>62</sup> Dz. U. No 24, pos. 168.

<sup>63</sup> A. Świącicki, *Prawo...*, op. cit., p. 66.

<sup>64</sup> Report No 4 from the plenary session of the Commission for the Codification of Labour Law from 22 February 1949, AAN, Min. of Labour and Social Welfare, 839, k. 15.

<sup>65</sup> *Platona Gorgiasz*, trans. W. Witwicki, Warszawa 1958, no 521 a.

uncertain fate”, and “everyone can be put up for judgment by even a great fool and a rascal.”<sup>66</sup>

The authorities of the People’s Republic of Poland kept up the appearance of the continuation of the pre-war polis by partially adopting the law from that period. The idea was to legitimize this authority. In reality this law was adjusted using a foreign model which in Polish law meant the influence of Soviet law.

Indisputable supremacy of a particular political power in the entire Polish nation, gained by victory of World War II, only collapsed after nearly 45 years. This event is reminiscent of Greece which freed itself from the rule of Sparta after nearly 30 years after the Peloponnesian war. This brought hope to both nations that insatiable imperialism can be replaced by old honorable values.

#### S U M M A R Y

The state, as it is currently understood, comes from the Greek polis. It was a place where a person was seen through the prism of the quality of his citizenship and his political activity. The Greek polis was not a flawless state. However, some ideals which guided and formed the nation’s character can also become useful today. The condition of the Polish state as a polis after World War II is terrible. The authorities of the People’s Republic of Poland kept up the appearance of the continuation of the pre-war polis by partially adopting the law from that period. The idea was to legitimize this authority. In reality this law was adjusted using a foreign model which in Polish law meant the influence of Soviet law.

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<sup>66</sup> Ibid, no 521 c.



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## ANDERSONVILLE POW CAMP AS AN EXAMPLE OF A CIVIL WAR TIME POLIS

An interesting example of a 19<sup>th</sup> century war time polis (city) was the Andersonville POW camp. It was established by the Confederate States of America's authorities in February 1864 during the fraternal civil war waged between the Americans of North and South in the years 1861–1865. Over the 14 months of its existence the camp saw close to 45,000 prisoners coming from the army of the United States of America (the Union) of which 13,000 died. At one time in July and August 1864, 33,000 POWs lived in the camp. This made Andersonville the third city (polis) of the Confederacy, after Richmond and Charleston.

Ironically, its population was made of war prisoners whose freedom was taken away, who would have never been allowed to live in the Ancient Greek polis made exclusively for free men – citizens. Although their freedom was taken away, the prisoners were not slaves. It was rather that their freedom was temporarily suspended until the end of war or a prisoner swap. Even in such a gruesome place those federal prisoners were able to create their own city-state with its interior order, police, judicial system, etc. In this so called “city” the prisoners were living (or should we rather say “vegetating”), selling merchandise in its main streets but also participated in the political life of the country from which they had been separated. In this paper I will elaborate on the reasons for founding of the camp, the beginnings of its existence as well as various aspects of the prisoners' lives, like housing, provisions, medical care, policing or escapes.

The Civil War (1861–1865), which broke out in the United States as a result of secession of South Carolina (December 20, 1860) and six other southern states, which later established the Confederate States of America (February 8, 1861). The war began with Confederates bombardment of Fort Sumter, South Carolina (April 12, 1861) and formally ended with the capitulation of the largest army of the South at Appomattox Court House,

Virginia. Almost 620,000 people died in four-year-long struggles. However, not all these deaths resulted directly from military actions. Slightly fewer than 1/10 of them lost their lives in prisoner-of-war camps of the enemy party. 106 such camps were created in the territory of the Union, and 117 in the territory of the Confederacy. Camp Sumter (Andersonville, Georgia) was the biggest camp of the Confederate States. As I mentioned before 13,000 prisoners died there, it is considered to be the most striking example of the Civil War brutalization.<sup>1</sup>

At the beginning of the Civil War there were no legal regulations with reference to prisoners-of-war. The experience of the first military actions led to the establishment of the practice ensuring respectful treatment of prisoners-of-war of the enemy side. President Abraham Lincoln, aware of the fact that restrictions on soldiers of the South might result in retaliation on soldiers of his own army, recognized them as belligerents. He gave them all the rights that prisoners-of-war were entitled to, with special emphasis on the right to life. The majority of issues concerning prisoners-of-war were agreed upon by representatives of the North and the South in an agreement at Haxall's Landing on July 22, 1862. The rights and duties of prisoners-of-war were dealt with on a broad basis by the Union authorities in the so-called Lieber Code of 1863 (General Order No. 100).<sup>2</sup> The Confederate authorities, however, treated the problem of prisoners-of-war only marginally, at least in the legal sense.<sup>3</sup>

### The definition of a “prisoner-of-war”

The definition of a “prisoner-of-war” caused difficulties. It may be observed on the example of the Lieber Code, which in Art. 49 formulated the following definition: *A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation. All soldiers, of whatever species of arms; all*

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<sup>1</sup> L. R. Speer, *Portals to Hell. Military Prisons of the Civil War*, Mechanicsburg, Pa 1997, pp. 323–340; W. B. Hesseltine, *Civil War Prisons. A Study in War Psychology*, New York 1964, pp. 133–158.

<sup>2</sup> *Instructions for the Government of Armies of the United States in the Field*, [in:] *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Washington D.C. 1899, ser. III, vol. III, pp. 148–164 (later O.R.).

<sup>3</sup> *Regulations for the Army of the Confederate States 1863*, (reprint), Harrisburg, Pa 1980, p. 73–74.

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*men who belong to the rising en masse of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.*<sup>4</sup>

The article 56 KL reads: *A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.*<sup>5</sup>

## **The beginnings of the Andersonville Prison Camp**

At the end of 1863 the South authorities decided to build a camp with barracks to accommodate 8,000 to 10,000 prisoners-of-war. It was necessary to create a new camp because of the overcrowding of the camps in Richmond, Virginia (the capital of Confederacy), scarcities in provisions, the threat of mass escape of prisoners and overtaking of the capital by them. The above mentioned difficulties caused earlier cessation of prisoners-of-war exchange by the North.

The location of the Andersonville camp was Captain Sidney Winder's idea. By the terms of the Confederate Secretary of War, James A. Seddon's order of November 24, 1863, Winder was to find a site in the deep South, which would be secure from external attacks, situated close to a railway and abundant in food. Having visited several places, Sidney Winder finally chose a place in central Georgia. It was situated 11 kilometers west of the Flynn river and almost 70 kilometers east of the Chattahoochee river, about 600 meters east of the Anderson station, in Sumter County. Officially the camp was called "*Camp Sumter*" because of the county it was located in. In the North and among the prisoners-of-war the name "*Andersonville*" prevailed, and it became a part of history.<sup>6</sup>

At the end of December 1863 Captain Richard B. Winder (his predecessor's cousin) was given orders to establish a stockade construction (the inner area of the camp and the "wall" of pine trees surrounding it). It was to accommodate 6,000 prisoners-of-war. Around several auxiliary establishments

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<sup>4</sup> O.R., ser. III, vol. III, p. 154.

<sup>5</sup> Ibid.

<sup>6</sup> O. L. Futch, *History of Andersonville Prison*, Gainesville, Fl 1999, p. 3.

were to be built, among others guards' barracks, a bakery, a smokehouse, hospitals – one within the camp, another outside, etc. In January 1864, works consisting in cutting pines began. The trees were tall, their height frequently reached 6 meters. All the local slaves were hired to build the camp. The pines were hewed, barked and set tight one by another in a 1.5 meter deep ditch. The area of almost 7 hectares was surrounded by this pine fence. Along the palisade 52 guard towers, which could be reached by ladders, were raised at regular distances.<sup>7</sup>

Two gates called “*the gates to hell*” led into the camp. Additional transitory gates were built so that when one was open the other stayed closed, which created extra protection preventing mass escapes. In addition to this, it was decided that the camp would be surrounded by a ring of four wooden forts. From each entrance inside the camp led a street on which the prisoners were not allowed to build shelters – in the north the Broadway and in the south the South street. Establishing them eased communication inside the camp.<sup>8</sup>

Due to the lack of funds, time and labor force barracks for prisoners-of-war were not built. The territory of the camp was slit by a creek. The Andersonville camp was constructed as a fortification of both offensive and defensive character. The main stockade was strengthened with another 5-meter-high row of pine logs. The third row of pine logs (4 meters high) was not finished. The second row was to protect guards against unexpected attacks from outside. It was also to serve as an additional obstacle to prisoners-of-war who, trying to escape, would force the first row. Embankments were raised at a geometrical angle in the four corners of the second palisade and rifled guns (taken from the enemy), capable of covering the chosen area of the camp with fire, were placed on them.<sup>9</sup>

On February 17, 1864 Lieutenant-Colonel Alexander W. Persons of the 55<sup>th</sup> Georgia Infantry Regiment became the first camp's Commandant and Quartermaster. He had been in charge till June 17, 1864. Then the supervision over the camp's forces and means was taken over by General John H. Winder. The horrifying living conditions which he found here convinced him that it was crucial to move the prisoners away from Andersonville and to a new camp. He suggested establishing it in Union Springs, Alabama

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<sup>7</sup> *National Archives and Records Administration*, Record Group 109, Entry 464, Box 1, *Papers Relating to Confederate Camps and Other Places Where Federal Prisoners Were Confined during the Period 1861–1865*, p. 1.

<sup>8</sup> R. R. Stevenson, *Andersonville Prison (1876)*, (in:) *Andersonville. The Southern Perspective*, ed. by J. H. Segars, Gretna, La 2001, p. 20.

<sup>9</sup> W. M. Marvel, *Andersonville. The Last Depot*, Chapel Hill, N. C. 1994, pp. 14–22.

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or in Silver Run, Georgia. Additionally he warned that the limited guarding system was not prepared to prevent an uprising: *breaking out of these prisoners of war would be more disastrous than a defeat of the army.*<sup>10</sup>

All matters concerning prisoners-of-war were under a Swiss Captain's – Henry Wirz's – authority. Wirz, who came on March 25, 1864, was Commandant of the prison, yet he was not in charge of the guard garrison. Prisoners-of-war called him "*the death on a grey horse*", as they always saw him dressed in light colors and on a saddle-horse. On October 1864, George C. Gibbs became the last Camp Sumter Commandant (with the exclusion of the prisoners-of-war' camp).

## Lodging

When the first prisoners-of-war arrived at the camp on February 25, 1864, the part of the palisade – in the south-eastern corner – had not been finished yet. Two days later the first of 13,000 Yankees died. Prisoners-of-war built shelters using the remnants of wood that had been left within the stockade. Those who arrived later, used canvas and blankets. They dug ditches and dens and covered them with tents, clothes and litter of conifer needles. Of course after showers the ditches and dens became useless. In summer prisoners-of-war suffered from burning sunshine and in winter from acute cold. Mainly white soldiers – non-commissioned officers and privates – were kept in Andersonville. Until April 1864 prisoners-of-war from other camps had been admitted there. From May 1864, with the development of General Ulysses Simpson Grant's offensive in Virginia, the number of prisoners-of-war considerably increased. Prisoners-of-war from the North were transported to Camp Sumter soon after being captured. In June 1864 the stockade area in the north was enlarged by additional 4 hectares. 130 prisoners-of-war worked on it for almost a month. In July 1864 the main stockade area counted 11 hectares. 29,000 prisoners-of-war were located there, while its capacity was 10,000. In August 1864 there were 34,000 prisoners-of-war in the camp and Andersonville became the biggest and the most known prisoner-of-war camp in the South.<sup>11</sup>

One of the most crucial matters for the federal prisoners was the issue of clothing. They were all clothed in a variety of ways. The earlier prisoners

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<sup>10</sup> O.R., ser. II, vol. VII, p. 546.

<sup>11</sup> O.L. Futch, op. cit., pp. 12–45.

were wearing what was left of their uniforms. Very few received any clothes from the committee of hygiene. In order to get some clothes the prisoners were stealing, swapping with other prisoners, selling and buying. They used duvets, blankets, tent canvas, shawls or shirts. Some of them owned bags, rucksacks, pans, mugs and other things. The Confederate authorities were unable to provide them with clothing as they were lacking it for their own army. At times the camp guards were wearing worse rags than the prisoners.<sup>12</sup> Although the Union was more often providing the prisoners with clothing and blankets, they were usually of very low quality. But even those supplies were under the scrutiny of many rules, quotas and limitations regarding the quantity, quality and timing of their distribution.<sup>13</sup> Possession of clothing was so important feature to facilitate survival: *it was the custom of the mess in which a man died to remove from his person all garments that were of any account, and so many bodies were carried out nearly naked.*<sup>14</sup> The prisoners felt humiliated by their nakedness, particularly during the common viewing of the camp by local people.

The more enterprising prisoners were able to earn a living by offering various services. There was a kind of business district in Andersonville where people were able to buy some items. They were selling water, wood, tobacco, and coffee as well as hairdressing services. Even the ground on which to build shelter was available to sell and buy. Gambling was quite common in the camp, where the Yankees could earn some extra money by betting on variety of things. The prisoners in Andersonville had the opportunity to work in a variety of jobs. In return for their services they usually received extra food rations. There was also a mail box on the Andersonville grounds, but the letters were carefully censored by the camp guards.<sup>15</sup>

### **Prohibition on killing and discipline maintenance in the camp**

In the history of military conflicts numerous instances of killing and tortures of prisoners-of-war can be found and the Civil War was no exception in this respect. It sometimes happened that in the fervor of the battle no prisoners-of-war were taken.

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<sup>12</sup> J. McElroy, *This Was Andersonville*, (reprint), New York 1957, pp. 115–118.

<sup>13</sup> O.R., ser. II, vol. IV, p. 565; vol. VI, pp. 98, 132, 161, 193; vol. VII, pp. 573–574.

<sup>14</sup> J. McElroy, *op. cit.*, p. 38.

<sup>15</sup> E. F. Roberts, *Andersonville Journey. The Civil War's Greatest Tragedy*, Shippensburg, Pa 1998, pp. 37–39.

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Art. 60 of KL allowed not giving pardon (which actually meant killing), but at the same time forbade dispatching the injured.<sup>16</sup> Prisoners-of-war could lose their lives while being transported to the camp, making an attempt to escape from trains or not following their escort's orders. Such situations were often mentioned by prisoners-of-war. Sergeant James H. Dennison of 113<sup>th</sup> Illinois Infantry Regiment remembered that one of them had been shot during the stop in Meridian (Georgia), while he was running away from the train.<sup>17</sup>

On their arrival at the camp, prisoners-of-war remained soldiers. Their were liable to the army discipline, of course, with the alternations resulting from their change of their status. Maintenance of discipline within the camp was to be ensured first of all by non-commissioned officers of the army, but also by supervisors of the camp. Escapes constituted a serious breach of discipline and might result in loss of life. For instance, under Art. 77 of KL, an escaping prisoner-of-war may be shot during the escape, or killed in another manner, yet, no vexations or barbaric methods may be applied in such a situation.<sup>18</sup> There were various kinds of escapes: while working outside the camp, digging tunnels, pretending to be dead, (the dead were carried out of the camp to the nearby cemetery), etc. The camp's guards had dogs specially trained to hunt and search for people, and they frequently used them. In spite of this 329 escapes were noted down, many of which were successful.<sup>19</sup>

John L. Ransom of the 9<sup>th</sup> Michigan Regiment stated in his diary that after an unsuccessful escape he and his comrades had been put in chains with iron balls for two days. He also added that he had expected a more serious punishment.<sup>20</sup> John McElroy from the Company L of the 16<sup>th</sup> Illinois Regiment remembered that the caught escapers had been either chained or stocked.<sup>21</sup>

It often happened that attempts of escapes (e.g. via tunnels) were nipped in the bud, as they had been revealed earlier, as a result of a betrayal. Attempts of escape were punished in a similar manner to unsuccessful escapes. According to me punishment for an attempt should have been applied. It was also confirmed by, among others, the Lieber Code. Discipli-

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<sup>16</sup> O.R., ser. III, vol. III, p. 155.

<sup>17</sup> J. H. Dennison, *Dennison's Andersonville Diary*, (reprint), Kankakee, Il. 1987, p. 38.

<sup>18</sup> O.R., ser. III, vol. III, p. 157.

<sup>19</sup> H. P. Riconda, *Prisoners of War in American Conflicts*, Lanham, Md 2003, p. 121.

<sup>20</sup> J. L. Ransom, *John Ransom's Andersonville Diary*, (reprint), New York, 1994, p. 69.

<sup>21</sup> J. McElroy, op. cit., p. 18.

nary offences should have been punished by e.g. sentencing the person to confinement or any other kind of detention. Smaller food rations were also permissible but chains and stocks were considered by prisoners-of-war to be barbaric.

The prisoners who were caught after an escape described their punishments in the following way. Soon after entering Andersonville John R. Compton stated: *The next morning the fifteen who had got over the stockade were brought in, each chained to a sixty-four pound ball.* Another time, he described the situation: *One time some traitor reported a tunnel when there was none, and the old captain stopped the rations of the entire prison till we would tell them where the tunnel was. In order to save the prisoners, two poor, starved wretches volunteered to start a tunnel, and when they got it started they went to Wirz and told him that they were the men that had started the tunnel, and the prisoners drew rations again. But alas, these two poor wretches were taken and tied up by the thumbs, and when they were cut down, they both fell to the ground. One of them finally got on his feet, but the other one expired.*<sup>22</sup>

Another kind of punishment was experienced by the aforementioned Private Compton. After he was captured he was allegedly addressed by Captain H. Wirtz in the following words: *I makes a hell for you. You shall bury all the prisoners who die.*<sup>23</sup>

After the first escape a deadline was constructed within the camp. It was built by slaves of local planters. It was a kind of a low fence made of poles and pickets stuck in the ground. The line ran within the camp's palisade poles invariably 6 meters from it. Those who transgressed, touched or even approached it were shot at without a warning by the guards who were watching the territory from the nearby towers. It is worth adding that such lines functioned in camps of both sides of the conflict. This fact had been concealed from the public opinion in the North by its own government, and was only revealed after prisoners-of-war from the South came back home, after the war. Because of propaganda the enemy was to be shown in the

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<sup>22</sup> J. R. Compton, *Andersonville. The Story of Man's Inhumanity to Man*, Des Moines, Ia 1887, pp. 45–46.

<sup>23</sup> Compton stated: *This was a hard sentence. The stocks would have caused death in less than ten days, but the fear of death had long departed, death on every hand had become so familiar that he seemed a friend to the poor, wretched shadows that we were. We did not, however, have to endure this long. I wish to state what was meant by "stocks". Two planks made to fit the neck, wrists and ankles, which were keyed up tight; with the apparatus adjusted, a man could not sit down nor lie down* – J. R. Compton, op. cit., pp. 62–63.

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worst possible light. Had this been revealed, it would have balanced the rebels' practice.<sup>24</sup>

The area outside the camp was guarded by front army soldiers from the South, coming from the 55<sup>th</sup> Georgia Infantry Regiment and the 26<sup>th</sup> Alabama Infantry Regiment. From summer of 1864 on, the prisoners-of-war were watched by regiments of so-called "Georgia Reserves", consisting of young boys and elderly men. It was mainly in that period that prisoners-of-war were the most frequently shot at, e.g., Sergeant Dennison noted ten such instances in the period shorter than a month.<sup>25</sup>

Young guards seemed to have had the hardest time while fulfilling their duties. On the other hand, they acted in the most cruel way. Many of them wanted to be able to boast that they had killed a Yankee. According to prisoners-of-war, they even organized competitions in killing. The camp hearsay had it that for each killed prisoner-of-war they were given two weeks off, which, however, could not have been true, as they would soon run out of alive prisoners-of-war. Such guards were usually delegated for a couple of days to fulfill other duties or they were simply detained.<sup>26</sup>

The bad treatment, gruesome quality of life, ever-changing weather, disease, lack of appropriate clothing and hunger caused serious mental problems among many prisoners. It can be seen clearly when reading diaries of those who survived.<sup>27</sup> In close to 13,000 deaths only about 100 (less than 1%) cases resulted from guards shooting. Some of the victims fulfilled their death wish in that way (the notion supported by other prisoners). Mental breakdown pushed many to search for a quick death and a relief from the suffering. The death was not always instant, though. There were cases where prisoners severely injured from a gunshot were dying for hours beyond the death line, and their screams were detrimental to others' mental health.

Often the guards behaved in a cruel way towards the prisoners, verbally abusing them. According to some prisoners, commander of the camp, Captain Henry Wirz in particular excelled in this. When a few prisoners wanted to take one of their companions to an outside hospital, the Rebel guard refused opening the gate for them, saying: *no medical treatment for you, Yankees*.<sup>28</sup> One of the prisoners described a situation, where one of the

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<sup>24</sup> J. McElroy, op. cit., p. 18.

<sup>25</sup> J. H. Dennison, op. cit., pp. 42–54.

<sup>26</sup> J. L. Ransom, op. cit., pp. 108–109.

<sup>27</sup> Ibid, pp. 71, 93; J. McElroy, op. cit., p. 19.

<sup>28</sup> J. L. Ransom, op. cit., p. 76.

young guards threw a piece of bread beyond the death line and proceeded to shooting a man who reached for it.<sup>29</sup>

Another form of cruel treatment was organized by the commander attendance rolls. One can speculate if the rolls were a form of cruelty or a means to keep the order. According to the prisoners who more than once had to stand hours of rolls without any regard for their health, it was a torture. On the other hand, the camp authorities had to account for all present and prevent escapes and uncover their possible preparations. There is no doubt that limiting or even completely denying the prisoners their food rations was not only a form of taunting them but an expression of cruelty as well. In a similar way one should view killing any hope for a swap. In this case the Union authorities carry more responsibility than the Confederate government.

It was very common for the guards to disrupt the prisoners' sleep by very loudly reporting the calm status of each post every half an hour. There were more than fifty posts in the camp, so for a few minutes every hour the prisoners had to listen to those loud calls.<sup>30</sup>

Another serious problem resulting from the way the camp was run was the issue of prisoners' death and burial. According to the calculations of one of the Andersonville prisoners a person was dying every 11 min. As a consequence of such high number of burials it became necessary to organize a big group of people whose only job was to bury the deceased. The Confederates were encouraging joining this group by offering double food rations.<sup>31</sup>

Multiple cases of robbing the gravely ill and dying were noted. The victims were so emaciated and weak that they were unable to defend themselves. The dead were laid into ditches beyond the death line by the southern gate. Every day at 4pm the bodies were collected on a wagon drawn by mules. At all other times the corpses were lying among the living.<sup>32</sup> It was damaging on the prisoners' morale. One of them described that in the following way: *Some of them lay there for twenty hours or more, and by that time are in horrible condition.*<sup>33</sup>

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<sup>29</sup> Ibid, p. 71.

<sup>30</sup> J. R. Compton, op. cit., pp. 49–50.

<sup>31</sup> Ibid, pp. 53, 56; U.S. Congress, House of Representatives, *Treatment of Prisoners of War*, 40th Congress, 3d Session, 1869, Report 45, Washington D.C. 1869, pp. 52, 56, 68, 75, 119, 156, 231; G. S. Henig, E. Niderost, *Civil War Firsts: The Legacies of America's Bloodiest Conflict*, Mechanicsburg, Pa 2001, pp. 335–337. More about it, (in:) D. G. Faust, *This Republic of Suffering. Death and the American Civil War*, New York 2008.

<sup>32</sup> J. L. Ransom, op. cit., p. 117.

<sup>33</sup> Ibid.

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The task of collecting and burying the dead was carried out mainly by black prisoners. This activity was perceived as too drastic and reprehensible for the white prisoners. The only exception was enrolling escapees as a form of a punishment for their failed attempts. This was the reality at least from the moment soldiers of color appeared in the camp. The dead were buried by 100 in each ditch. The almost naked bodies were laid in layers directly in the mass graves. They were not covered with anything. Only in the very beginning, the prisoners were buried in caskets or in makeshift boxes. There was also a requirement of identifying each of the bodies by attaching to it (mostly at the toes) small tags with the soldier's name, military position and the name of a regiment in which he served. This last gesture was carried out by the friends and companions of the deceased. Although the Rebels were careful to follow this rule, many were buried as unknown.<sup>34</sup>

The prisoner J. R. Compton, who, as a captured escapee, was participating in such tasks, remembered: *About 9 a.m. we were sent to dig graves, with a guard of forty men placed over us. We dug trenches about one hundred and sixty feet long and three feet deep, and at the bottom of this we dug a vault of one foot in depth. Jake Helamaker, of Ohio, and myself split slabs and placed one over each of our dead. We also, as far as could be done, placed a board with regiment, company and name. The reader is well aware that it is no small task to bury one hundred and twenty men each day; that was about the number carried out every morning. So badly would they decompose during the interval between death and burial that often we found, when we attempted to lift them, that the skin slipped from the flesh, and often the flesh cleared from the bone, for most of the poor fellows were suffering from scurvy.*<sup>35</sup>

The favorite subject of prisoners' conversations was exchange. Discussing food was next in popularity. J. R. Compton in a very interesting way describes the Confederates' attempts of using the prisoners in order to acquire permission from Union for an exchange: *We held a meeting while at Andersonville, by permission of the rebel authorities, and there appointed five delegates to go to Washington to see if they could not effect an exchange. The terms upon which the rebels agreed to exchange were these: The Union Government was to release all their prisoners held by the North, and the*

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<sup>34</sup> Ibid; *Roll of Honor, Names of Soldiers who died in defense of the American Union, interred in National Cemeteries*, vol. III, Washington D.C. 1868.

<sup>35</sup> J. R. Compton, op. cit., pp. 63-64.

rebels to release all held by them, the excess held by the Union army to be paroled.<sup>36</sup> The federal government could not accept a petition presented in such a way and the mission of the five delegates failed.

In the camp there were plays in which one could win food and both internal and external (with guards) exchange of goods took place. Numerous gangs were created with the aim of gaining food or other useful products which were obtained through extortion, assault or murder. New prisoners-of-war – the so-called *fresh fish* – not yet aware of realities of the Andersonville, were especially liable to suffer a robbery. The scale of this pathology was so big that, eventually, the majority of the prisoners-of-war came together and captured the members of the gangs, with no reaction on the side of the guards.<sup>37</sup> As one of the prisoners-of-war stated: *The raiders are the stronger party now, and do as they please; and we are in nearly as much danger now from our own men as from the rebels.*<sup>38</sup>

As John L. Ransom noted: *The raiders are the stronger party no, and do as they please; and we are in nearly as much danger now from our own men as from the rebels.*<sup>39</sup> Another prisoner of war stated that he and his colleagues: *We were soon armed with clubs, which had been prepared before for their benefit. Crandall marched his men up to the man that got the tobacco and demanded it, and he remarked: "Here is where you get it," and grabbed a club and gave the signal for fight, and in less than three minutes there were seventy five raiders on the spot armed with clubs. The fight opened at once, but we soon found that we had undertaken more than we could accomplish, as they outnumbered us six to one. They rushed around us with a hop as though they were going to have some fun, but we made it hot for them for a short time, that is, until we could get away. Our clubs were about four feet in length and about the right heft to handle well, and we plied them right and left until we had wounded fifteen, and one mortally.*<sup>40</sup>

General J. H. Winder allowed a trial according to the martial law of the Union. A prisoner-of-war could be brought to trial of the state that had captured him, but only for crimes against the army or citizens of this state. Thus, the Andersonville prisoners-of-war could themselves try their

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<sup>36</sup> Ibid, p. 55.

<sup>37</sup> E. F. Roberts, op. cit., pp. 35–54.

<sup>38</sup> J. L. Ransom, op. cit., p. 67.

<sup>39</sup> Ibid.

<sup>40</sup> J. R. Compton, op. cit., p. 47.

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kinsmen, who had acted against them. Six of them were hanged,<sup>41</sup> and three died in consequence of beating.<sup>42</sup>

As one of the prisoners noted: *We arrested him and his gang, and got permission from General Winder to try them for their lives. We chose a judge and jury-several lawyers volunteered for the prosecution; Mosby had some money, and hired the best counsel in the camp for his defense. Each man was tried separately. The court was in session several weeks. The jury found six guilty, and the judge sentenced them to be hung until dead. The papers were then sent to Washington, and came back signed by Abraham Lincoln. The day of execution came, and they were hung.*<sup>43</sup> Compton correctly noted that the approval of the US President was required to confirm a sentence.<sup>44</sup> He was mistaken, though, about the length of the trial – the sentence was executed on July 11<sup>th</sup>, 1864.<sup>45</sup> Personally I doubt if they received such approval or if any documents in this matter were sent to A. Lincoln. W. Marvel believed, and I am willing to agree with him, that the appropriate documentation was sent to Richmond rather than to Washington and the sentence was approved by J. Davis and not A. Lincoln.<sup>46</sup>

## Maintenance

Article 76 of the Union's Lieber Code dealt with providing the prisoners of war with food: *Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.*<sup>47</sup> But the reality in POW camps on both sides was much worse than any accepted legal standards.

Every second sentence in prisoners-of-war's diaries is about food. At the very beginning the food was bearable. As John McElroy put it: *The RATIONS diminished perceptibly day by day. When we first entered we each*

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<sup>41</sup> William Collins („Mosby”), Charles Curtis, John Sullivan, Patrick Delany, John Sarsfield, Andrew Muir. All of them were of Irish origin – W. Marvel, *Andersonville: The Last Depot*, Chapel Hill, N. C. 1994, p. 100.

<sup>42</sup> O.R., ser. II, vol. VII, p. 426; J. H. Dennison, op. cit., p. 47; J. McElroy, op. cit., pp. 73–95; J. L. Ransom, op. cit., pp. 105–127.

<sup>43</sup> J. R. Compton, op. cit., pp. 42, 47.

<sup>44</sup> O.R., ser. II, vol. IV, p. 49.

<sup>45</sup> K. Drew, *Camp Sumter: the Andersonville Chronology, October 28, 1863 – November 21, 1865*, Americus, Ga 1989, p. 23.

<sup>46</sup> W. Marvel, op. cit., p. 100.

<sup>47</sup> O.R., ser. III, vol. III, p. 156.

*received something over a quart of tolerably good meal, a sweet potato, a piece of meat about the size of one's two fingers, and occasionally a spoonful of salt. First the salt disappeared. Then the sweet potato took unto itself wings and flew away never to return... The rations decreased in size, and the number of days that we did not get any kept constantly increasing in proportion to the days that we did, until eventually the meat bade us a final adieu and joined the sweet potatoes in that undiscovered country from whose bourne no ration ever returned.*<sup>48</sup>

With the increasing number of prisoners-of-war, food rations were becoming smaller and smaller and their quality deteriorated. Originally a daily portion consisted of 250 g boiled corn flour, 200 g beef and one spoonful of salt. In the middle of summer it was limited to a piece of bread, occasionally broken meat or a handful of boiled pees. It sometimes happened that no food rations were given out, e.g. after successful escapes – then prisoners-of-war were simply starving. Not infrequently they were given raw products, and they were supposed to prepare them by themselves, which was not easy as there was no wood in the camp. As a retaliation, prisoners-of-war from the South in camps of the North were given smaller portions and temporarily they were even devoid of food. The Confederate authorities did not manage to cope properly with supplying the camp with provisions in a place situated so far away from the front line and with one railroad only.<sup>49</sup>

In their diaries prisoners-of-war described their portions in great detail. They complained about stinking meat and rice full of bugs and worms. The shortage of food gave rise to trading. In the two “main” streets of the camp one could get different kinds of food. Prisoners-of-war traded among themselves and with the guards. The latter was rather risky because of the deadline which was not supposed to be crossed by prisoners-of-war.

The camp was slit by a creek, which was to provide prisoners-of-war with water they needed for different purposes. In no time, however, it had turned into a swampy puddle, so throughout the period of the functioning of the camp there were huge difficulties with obtaining fresh water. This fact made prisoners-of-war complain. Warren Lee Goss of the Company H 2nd Heavy Artillery Regiment from Massachusetts wrote: *There was a portion of the camp, forming a kind of a swamp, on the north side of the branch, as it was termed by the rebels, which ran through the centre of the camp. This swamp was used as a sink by the prisoners, and was putrid with the corruption*

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<sup>48</sup> J. Mc Elroy, op. cit., pp. 27–28.

<sup>49</sup> C. W. Sanders Jr., *While in the Hands of the Enemy. Military Prisons of the Civil War*, Baton Rouge, La 2005, pp. 241–244.

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*of human offal. The stench polluted and pervaded the whole atmosphere of the prison.*<sup>50</sup>

People who were in charge of supplying the camp with provisions had put some efforts into unburdening prisoners-of-war's fate. A bakery was built, and bread was baked in it. Yet, first batches of bread caused various digestive diseases among prisoners-of-war – as the ingredients had not been properly chosen. Still, it is to be admitted that dramatic problems with supplying provisions were widespread in the whole Confederate territory, and its army was sometimes fed as badly as federal prisoners-of-war.<sup>51</sup>

## Healthcare

In the begining of the war both the North and the South had only one short legal statement that dealt with the situation of injured prisoners. It stated that: *and the wounded prisoners of war are to be treated with the same care as the wounded of our own army.*<sup>52</sup>

In April 1863, the Lieber Code in Article 79 further provided that: *Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.*<sup>53</sup> It is necessary to clarify that these possibilities were not yet very good. In cases of severe limb injury the most common procedure was amputation, whose rate of success was, depending on the patient's strength, about 20–30%. Chloroform was, particularly in the Confederate territories, a very scarce commodity. They tried to cope with the simplest methods, prescribing herbs and bigger food rations to the injured.

The climate, undressed wounds, insects, dirt, famine, changeable weather, awful quality of food and water, fast consumption of raw food, lack of fruit and vegetables as well as overcrowding of the camp contributed to fast development of various diseases. The sick and wounded were originally taken to hospital within the camp. It was recalled by John McElroy: *A makeshift of a hospital was established in the northeastern corner of the Stockade. A portion of the ground was divided from the rest of the prison by a railing,*

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<sup>50</sup> W. L. Goss, *The Soldier's Story of His Captivity at Andersonville, Belle Isle, and other Rebel Prisons*, Boston, Ma 1869, p. 89.

<sup>51</sup> J. M. McPherson, *Battle Cry of Freedom: The Civil War Era*, New York 1988, p. 800.

<sup>52</sup> *Revised United States Army Regulations of 1861. With an Appendix containing the Changes and Laws Affecting Army Regulations and Articles of War to June 25, 1863*, Washington D.C. 1863, p. 108; *Regulations for the Army of the Confederate...*, op. cit., pp. 73–74.

<sup>53</sup> O.R., ser. III, vol. III, p. 157.

*a few tents flies were stretched, and in these the long leaves of the pine were made into apologies for beds of about the goodness of the straw on which a northern farmer beds his stock. The sick taken there were no better off than if they had stayed with their comrades. What they needed to bring about their recovery was clean clothing, nutritious food, shelter and freedom from the tortures of the lice. They obtained none of these. Save a few decoctions of roots, there were no medicines; the sick were fed the same coarse corn meal that brought about the malignant dysentery from which they all suffered; they wore and slept in the same vermin-infested clothes. There could be but one result. The official records show that seventy-six per cent of those taken to the hospitals died there.*<sup>54</sup>

Soon the hospital was transferred outside the camp, although a lot of the sick remained in the camp, e.g. in August 1864 in hospital there were 1305 patients looked after by 15 doctors, while over 5000 of the sick were still in the camp. An additional hospital was opened for those suffering from smallpox. 2000–3000 prisoners-of-war were vaccinated, yet it brought about results contradictory to what had been expected. Prisoners-of-war's health deteriorated as they had been suffering from scurvy. Additionally, after the vaccination their wounds developed gangrene.

One prisoner of war wrote: *It was some time in April, – we were not dying off fast enough to suit the Southern Confederacy, – so one morning we were called up in line and “vaccinated” with a deadly virus, which in all probability was poison taken from the decaying corpses, for the material caused symptoms identical with those which follow dissecting wounds... One of our boys who was detailed to bury the dead, said that one day he would receive a great many arms to bury, and the next day he would get the same number of armless bodies... I escaped vaccination, having had the small-pox previous to my admission.*<sup>55</sup>

The main causes of death were: scurvy, diarrhea, dysentery, bronchitis, typhus, smallpox, and hospital gangrene.<sup>56</sup> These were contagious and dige-

<sup>54</sup> J. McElroy, op. cit., p. 39.

<sup>55</sup> J. R. Compton, op. cit., pp. 38–39.

<sup>56</sup> *The chief causes of the deaths were the scurvy and its effects, and bowel affections – chronic and acute diarrhoea and dysentery. The bowel affections appeared to have been due to the diet, the dejected state of the nervous system and moral and intellectual powers, and to the effluvia arising from the filth of the prison. The great disease of scurvy seemed to be prevalent; this disease, without a doubt was also caused, to a great extent, in its origin and course, by the foul animal emanations. From the sameness of the food and from the action of the poisonous gases in the densely crowded and filthy stockade and hospital. The blood was altered in its condition even before the manifestation of actual disease –* J. R. Compton, op. cit., p. 53; U.S. Congress, *Treatment of Prisoners...*, op. cit., p. 110; D. F. Cross, M. D., *Why did the Yankees Die at Andersonville?*, „North & South” 2003 (September), vol. 6, no. 6, pp. 26–32.

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stive system diseases. The highest death rate was in summer months – June through September, also due to considerable overcrowding of the camp. August 1864 turned out to be the most tragic month, as 3000 prisoners-of-war died then. The largest number of people 97 to 127 died on August 23. The last prisoner-of-war lost his life on April 28, 1865. 20 out of 40 Poles kept in Andersonville died.<sup>57</sup>

The prisoners complained about the medical care and accused doctors of inhumane attitude or even contributing to the deaths of their companions: *The rebel doctors claimed, with evident satisfaction, that they were killing more men than Lee's whole army, and this was true. But was this not a cowardly, inhuman depravity? Such depravity as this belongs only to the South; no Northern soldiers could turn themselves into such inhuman fiends.*<sup>58</sup>

In September 1864 the majority of Andersonville prisoners-of-war were transferred to other camps, which were situated further from battlefields – even though there was no direct threat. Above 8,000 prisoners-of-war, the weakest and the injured remained in the camp. From September 1864 to April 1865 5,000 of them died. The rest looked as walking skeletons. After they had been liberated by their own army, they were photographed with full particulars. The pictures were sent to the North for propaganda reasons. Unfortunately, for the majority of those who had managed to live through the hell of the Andersonville camp the horror had not come to an end. Some of them were transported to Vicksburg, Mississippi, from where they were supposed to be sent home, via the Mississippi River. Over 2,000 people were loaded on the USS “*Sultana*” steamer, which was capable of carrying only 400 passengers. On April 27 the largest catastrophe in the history of American water transport took place. After the explosion of two steam boilers on the ship, almost 1,700 former prisoners-of-war ended their lives in the waters of the Mississippi River.<sup>59</sup>

## Resume

In July 1865 the US Congress sent a commission to Andersonville, which was to supply documentary evidence of the crimes in the camp. The report

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<sup>57</sup> O. L. Futch, op. cit., pp. 99–112; *Roll of Honor*, op. cit., vol. III.

<sup>58</sup> J. R. Compton, op. cit., p. 43.

<sup>59</sup> G. E. Salecker, *Disaster on the Mississippi. The Sultana Explosion, April 27, 1865*, Annapolis, Md 1996, p. XII.

caused a great stir among the public opinion of the North. The consequences of the report touched the perpetrators of the tragedy only in the limited scope. General John H. Winder had died on February 1865 – before the war ended. Army commanders were not charged with any allegations. In this situation one might wonder why only Captain Henry Wirz, responsible for the situation the prisoners-of-war had found themselves in, was tried for war crimes (August 21, 1865 – November 6, 1865). Was he believed to be, as a Swiss immigrant and a Catholic, the proper person to function as a scapegoat? He was found guilty of the crime and executed on November 10, 1865. It is to be remembered that this kind of a show trial was demanded by the public opinion, which, to some degree, was influenced by the propaganda of both the authorities and the press of the North. The majority of the Union citizens did not know anything about the crimes committed on the prisoners-of-war from the South. As the perpetrators fought in the winning army, they were never tried.

Andersonville was rightly called by its contemporaries: *“the best example of the hell on the Earth”*. Almost 13,000 graves fill the American society with remorse.

#### S U M M A R Y

An interesting example of a 19<sup>th</sup> century war time polis (city) was the Andersonville POW camp. It was established by the Confederate States of America’s authorities in February 1864 during the fraternal civil war waged between the Americans of North and South in the years 1861–1865. Over the 14 months of its existence the camp saw close to 45,000 prisoners coming from the army of the United States of America (the Union) of which 13,000 died. At one time in July and August 1864, 33,000 POWs lived in the camp. This made Andersonville the third city (polis) of the Confederacy, after Richmond and Charleston. In this paper I will elaborate on the reasons for founding of the camp, the beginnings of its existence as well as various aspects of the prisoners’ lives, like housing, provisions, medical care, policing or escapes.

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## LIBERALISM AND UTOPIA

### Introduction

Political discourse nowadays at the beginning of the 21<sup>st</sup> century adopts less and less frequently unequivocal and even radical stands in problematic social ethnic, legal, economic or world-view questions. Difficulty to precisely define particular views results in decline of distinctness of people expressing them but concerns as well trends, doctrines, ideologies which mutually permeate. Their values in their pure form are only present on theoretical and historical grounds. Reality causes the image of the world become blurred and less comprehensible.

Apart from that, nowadays we perceive certain questions differently simply by being more experienced and capable of arriving at different conclusions than so far. This is significantly visible in democratic systems dominated by liberalism. “And still it isn’t so – as underlines Marcin Król – that all democracies are liberal and all the more that democracy and liberalism are the same or almost the same. Democracy is a form of a political system while liberalism an ideology or rather a loose group of ideas of great variety interpreted in different ways. The aim of democracy is a system in which the whole society governs indirectly, liberalism aims at freedom of individuals – and above all private freedom”.<sup>1</sup> The relationship between democracy and liberalism is not symmetrical which means that accomplishment of liberal values is only possible in democracy and democratic goals might be accomplished without referring to liberal world-view. Thus there is no other way for liberalism and no chance for materialising its postulates than through democracy, and democracy itself without liberalism remains only an empty procedure which might be without hesitation called “tyranny of the majority”.<sup>2</sup>

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<sup>1</sup> M. Król, *Słownik demokracji*, Warszawa 1999, p. 11.

<sup>2</sup> The notion “tyranny of the majority” was first used by a representative of aristo-

The hereby deliberations aim at revealing that liberalism simply as such, as well as its different varieties, contains elements which might be considered utopian. Studies on the definition and essence of liberalism as well as on its different types are to confirm that liberalism, since its beginnings tightly connected to the idea of freedom and to the attempts of empirical definition and next practical application, contains elements typical of social utopia. Secondly, they are to prove the existence in modern political-legal discourse related to the functioning of democracy, the so-called liberal variety of utopia,<sup>3</sup> which is considered more and more frequently as something as a matter of fact unaccomplished or unachievable in practice. Contact of classical assumptions of liberal thought with reality, especially with social-political reality of our time, might lead to such a conclusion. Above all, it is about philosophical-legal analysis of liberal system we have (status quo) in the context of its original doctrinal assumptions expressing what liberalism should be like (postulated state). Therefore, does what liberalism considers its everlasting, national and natural principles organising our social life, still remain in the sphere of our real possibilities? Sharing the opinion of John Grey on when a given project becomes a utopia we can answer that it happens in situation when there is no appropriate condition in which it could be accomplished. According to him all dreams of a society free of compulsion and power – Marxist or anarchist, liberal or technocratic – are utopian in precise sense since they will never be fulfilled, and they are smashed against permanent inconsistency of human needs.<sup>4</sup>

## Freedom is the essence of liberalism

The notion of liberalism comes from a Latin word *libertas*, that is freedom, which constitutes both its starting point and the most important value<sup>5</sup> around which a doctrinal framing has been created comprising the

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cratic liberalism Alexis de Tocqueville (1805–1859) in his two-volume work *Democracy in America*, Publisher in 1835 (volume I) and in 1840 (volume II), and next popularised by John Stuart Mill the representative of democratic liberalism (1806–1873) in his work *On liberty* from 1859. According to them “tyranny of the majority” is a threat to the liberty of individual and does not differ in practice from oppression of already known tyranny and despotism.

<sup>3</sup> Compare: Ph. Booth, *Introduction*, [in:] *Towards a Liberal Utopia?*, (Ed. Ph. Booth), London 2005, p. 3.

<sup>4</sup> See: J. Grey, *Czarna msza. Apokaliptyczna religia i śmierć utopii (Black Mass: Apocalyptic Religion and the Death of Utopia)* translated by A. Puczejda, K. Szymaniak, Kraków 2009, p. 39.

<sup>5</sup> Compare: H. Izdebski, *Historia myśli politycznej i prawnej*, Warszawa 2001, p. 118.

manifestations of freedom in various spheres of human life. For freedom as central idea connects all varieties of liberalism, giving sense to other values which without freedom loose in practice the reason for their application.<sup>6</sup> However, the fact of giving priority to freedom conditions, as far as possible, its precise definition and then its limitations and maximum protection. As far as the above three cases are concerned it is question of legal framework of perception of freedom, firstly its legal definition; secondly legal regulations connected to its limitations in relation to all subjects by which it is used, and thirdly legal range of its protection, guaranteed above all by national and international institutions.

Many normative acts comprise definitions of freedom, one of most famous is contained in the French Declaration of the Rights of Man and the Citizen from 1789 in which in the article 4 it is stated that: "liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law".<sup>7</sup>

In the above text it is the question of individual liberty, which, as its highest good, should dominate over the common good (society, country). Another expression of such an approach is the constitutional principle of liberal country in Polish March Constitution of 1921.<sup>8</sup> The principle was expressed in goals and tasks of the state as well as its relation to citizens.<sup>9</sup> Individual aims were thought to be superior with reference to state interests, which duty was to assure the liberty to benefit from these rights and to protect individual interests. In such a way constitution stood on the grounds of liberal theory of individual rights granting the individual the maximum right and the minimum duty.<sup>10</sup>

Wojciech Sadurski defines liberty as lack of state compulsion and external intervention in relations between individuals.<sup>11</sup> Liberal-democratic

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<sup>6</sup> Compare: K. Kuźmicz, *Pochwała wolności*, [w:] *Człowiek wobec systemów wartości*, T. Kozłowski i K. Kuźmicz (ed.), Białystok 2006, p. 86.

<sup>7</sup> See: Deklarację Praw Człowieka i Obywatela z 26 sierpnia 1789 roku, [w:] *Historia państwa i prawa. Wybór tekstów źródłowych*, B. Lesiński (ed.), Poznań 1995, p. 204.

<sup>8</sup> See: Ustawa z dnia 17 marca 1921 roku (Dz. U. Nr 44, poz. 267); expression of this rule was a wide catalogue of rights and liberties of citizens included in Chapter V. Common rights and obligations of citizens (Rozdział V. Powszechnie prawa i obowiązki obywatelskie) (art. 87–124).

<sup>9</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warszawa 1992, p. 102.

<sup>10</sup> T. Maciejewski, *Historia ustroju i prawa sądowego Polski*, Warszawa 2003, p. 311.

<sup>11</sup> W. Sadurski, *Racje liberala. Eseje o państwie liberalno-demokratycznym*, Warszawa 1992, p. 12.

country is a product of evolution of the country limiting itself to assuring public order and forcing to abide general rules in interpersonal relations. Such a state is not anymore an organization which does not intervene in various spheres of social life but allowing an unconstrained activity. It is a product of evolution of the state limiting itself to assuring public order and forcing to obey general rules in interhuman relation. The state is not anymore an organisation which does not intervene in various domains of social life but a state which permits free activity in the sphere of production and allowed operation.<sup>12</sup> This is by no means the point of a weak country or even lack of it but of a country limited in its role thus not intervening in private sphere of its citizens.<sup>13</sup>

One of the most important assumptions of liberalism is the conviction that the more there is state and its legal regulations the less there is freedom. Is freedom endangered nowadays? Does freedom, which is continuously limited because of being enjoyed equally by all and in the name of protection of other values most frequently security, remain today solely an immanent postulate? A postulate less applicable in external interpersonal relations. Even in democratic systems the authority, on the one hand leaves less and less freedom and choice to its citizens, on the other hand, it wants, above all by using the established law, to regulate the most of manifestations of human life. It demonstrates lack of confidence in individuals and their autonomy. Distrust in citizens is to be expressed by increasing control of individuals on diverse social grounds; like participation in the traffic or use of the Internet.<sup>14</sup>

Therefore, if liberty is the essence of liberalism since its beginnings, limiting it continuously might lead as a consequence to losing it. Such a status quo confirms only that modern liberalism is either in crisis or we observe its progressive death, or maybe liberalism is one of many social utopias not possible to achieve. It has to be always remembered that for liberals “freedom exists only when it can be carried into effect”.<sup>15</sup> However, maybe by a strange coincidence, it turns out that utopia constitutes also a world of materialised values that is “time of fulfilled ideas”.<sup>16</sup> In this regard the

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<sup>12</sup> See: E. Zieliński, *Nauka o państwie mi polityce*, Warszawa 2006, p. 103.

<sup>13</sup> Compare: W. Sadurski, *Racje liberala...*, op. cit., p. 18; See: also, G. Meijer, *The State as Utopia: Some Thoughts on Teocracy* [in:] *The State and Utopia. Continental Approaches*, (Ed. J. G. Backhaus), Springer 2010, p. 19–34.

<sup>14</sup> See: D. G. Green, *Social security in a free society*, [in:] *Towards a Liberal...*, op. cit., pp. 56–63.

<sup>15</sup> M. Król, *Słownik demokracji*, op. cit., p. 145.

<sup>16</sup> S. Treugut, *Napoleon – mit i utopia*, [w:] *Filozofia i utopia. Studia z dziejów ideologii*, “Archiwum Historii Filozofii i Myśli Społecznej” 1964, no 10, p. 116.

most important task of a utopian is “reduction (elimination) of the division between what is there and what should be there”.<sup>17</sup>

## Characteristics of social utopia

Etymological origin of Greek notion of utopia (ουτοπία), used for the first time by Tomas Morus, stands for a place which does not exist (ou-topos), or a good, happy place for its inhabitants (eu-topos).<sup>18</sup> In this context, we talk about utopia from present perspective, a given place and time, that is here and now. It does not mean that such a place did not exist in the past or that such a place cannot exist in the future. Utopia is then a vision of a society which is better than ours, in which we would like to live and which we would be able to fulfil.<sup>19</sup> One should presume that the essence of utopia are some assumptions accepted by all utopians and related in the first place to organisation of social life of humans who by nature are creatures: good, highly “plastic” and easily changeable; and also rational and more and more rational, able to eradicate any contradiction between the prosperity of individual and group life: beings with fair authority, not feeling tired of happiness to which they should aspire in earthly life.<sup>20</sup> According to Irena Pańków, paradigm of utopian thinking comprises the following characteristics: first of all, utopia is a composed theoretical structure, secondly its core is an image of an perfect (ideal) society and thirdly project of an ideal society has a double frame of reference: historical and universal.<sup>21</sup> Additionally utopia is a social reality theory composed of two fundamental elements critical-destructive and positive-projecting.<sup>22</sup>

When we relate the above mentioned traits of utopian thinking to liberal thinking it can be stated that the second one satisfies the requirements of the first one since every variety of liberalism has a theoretical structure possible to be defined referring to the best possible social life. Liberal project of such a life is of historically justified character since formation of

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<sup>17</sup> I. Pańków, *Filozofia utopii*, Warszawa 1990, p. 184.

<sup>18</sup> Compare: J. Szacki, *Spotkania z utopią*, Warszawa 1980, p. 10 in.; See: also, G. Scheurer, *Johann Peter Süßmilch and the Divine Orders*, [in:] *The State and...*, op. cit., p. 185.

<sup>19</sup> Compare: R. Levitas, *The concept of utopia*, Syracuse University Press 1990, p. 1.

<sup>20</sup> See: Ch. Walsh, *From Utopia to Nightmare*, London 1962, p. 71 in., following: J. Szacki, *Spotkania z...*, op. cit., p. 42.

<sup>21</sup> I. Pańków, *Filozofia utopii*, Warszawa 1990, p. 170.

<sup>22</sup> Ibidem, p. 171.

capitalist society<sup>23</sup> dominating in the present world and connected tightly to liberalism – has lasted in principle for several hundred years and has taken on a universal character in the form of globalisation.<sup>24</sup> At the same time liberalism as every utopia, contains both critical-destructive elements visible especially with relation to earlier feudalism or to socialism and totalitarianisms competing with it directly and positive-projecting elements connected to a reality such as it should be.

### Liberalism as social utopia

Classical liberalism from the point of view of its creators and representatives was not a social political or economical doctrine of utopian character.<sup>25</sup> Originally, it was to be a contrasting trend especially opposed to renaissance communist utopias or Enlightenment utopian socialism. Liberalism was to be based on rational and realistic premises related to both individual and group human life. According to its message one has to organise or come back to a life according to reason, that is in accordance with nature and its eternal and invariable laws. These laws are: freedom always mentioned as first, then property, security, resistance to oppression.<sup>26</sup> Additionally freedom understood as a right (natural entitlement) might be manifested in various forms: economic, political freedom, freedom of conscience and faith, freedom of the press, correspondence, scientific research etc. The co-originator of the Napoleonic Code from 1804 Jean-Jacques Régis de Cambacérès wrote about three varieties of freedom needed and sufficient for a human being which should be guaranteed by liberal law that is to be one's own lord and possess property to comply with own needs, to have the possibility to dispose of oneself and one's own property to one's own advantage. That is how according to Jean-Jacques Régis de Cambacérès all civil rights are reduced to: the right of freedom, property and drawing up agreements.<sup>27</sup>

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<sup>23</sup> See: D. Henderson, G. Owen, *Capitalism*, [in:] *Towards a Liberal...*, op. cit., pp. 137–145.

<sup>24</sup> See: *The Handbook of Globalisation*, (Ed. J. Michie), Edward Elgar Publishing 2003; R. Axtmann, *Liberal democracy into the twenty-first century: globalization, integration and the nation-state*, manchester University Press ND 1996; M. Rupert, *Ideologies of Globalisation: Contending Visions of a New World Order*, Routledge 2000, pp. 42–64.

<sup>25</sup> See: D. Johnson, *Foreword*, [in:] *Towards a Liberal...*, op. cit., pp. XVII–XIX.

<sup>26</sup> Compare: J. Oniszczyk, *Filozofia i teoria prawa*, Warszawa 2008, pp. 248–251.

<sup>27</sup> See: J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa...*, op. cit., p. 417.

From the very beginning of liberalism one of its core issues was the conviction about the possibility of autonomous use of freedom in different spheres of human life. In this regard weakness of liberalism consists in the fact that it separates so easily and quickly economic freedom (based on capital and property right) from other freedoms which in practice cannot be benefited from independently from the first one. If practically one does not own a property they do not enjoy their rights to the same extent as those who own it. In this way all remaining freedoms are pure illusion like beautiful, surreal (utopian) idea, in the world governed by ruthless market laws, and the sole possibility to fully use the freedom and its benefits is economic power. As a result the value of profit related to it becomes more important than the declared freedom of the individual, human rights and citizen rights. In more and more frequent conflicts with economic values their position is obviously weaker, thus they are not observed.

It is especially visible in economic liberalism which fundamental assumption is absolute neutrality of the state in view of market processes. Assuming that a human being is guided by material benefit (*homo oeconomicus*) the representatives of this type of liberalism propagated such slogans as 1) full freedom in economic business, 2) assuring free competition and 3) protection and inviolability of private property. In the face of several hundred years of history of capitalism it might be stated that even though the above assumptions were put into practice, they still have never been fully accomplished. What is more interesting in the face of economic crisis, they were limited and even rejected. It is hard to speak nowadays about the lack of involvement of states into economic processes. State interference is still apparent even in most developed free market economies. Popularisation of the so-called limited state or “night watchman state” by liberals was to, in principle, limit its role to assuring external and internal security and taking control over the affairs which could not be handled by private capital. The resulting weakness of economic liberalism gives rise to generating many social problems connected to a state bearing costs which are inconvenient for private capital and taking over the so-called profitable branches of the economy by capital means which ensure quick, certain and long-lasting profit.

Jan Herman draws particular attention to a free market as the basis for a utopia of economic liberalism.<sup>28</sup> Leaving freedom of activity on the economic platform to the so-called invisible market laws being an automatic

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<sup>28</sup> J. Herman, *Utopia liberalna (tragiczne losy czystej ekonomii)*; Idem, *(fanaberia lewaków?)*; <http://blogi.newsweek.pl/Tekst/spoleczenstwo/535474,Ekonomia-polityczna.html> from 21.03.2011.

mechanism, will make it possible to keep a natural balance and the ability to market self-regulation. According to Jan Herman the utopian character of modern liberalism consists of the fact, among others, that economic agreements which should not be of a political character more and more frequently are. The examples of utopian elements of economic liberalism he indicates are embedded in its essential paradigms revealed by the right of opposition, as e.g. on the one hand through a free market postulated by liberals, on the other hand their agreements to limit it etc.

As he continues his considerations he notices in the reality dominated by economic liberalism that: “a) the conspiracy of economic subjects against «the market laws» (namely monopoly) – is good for the market since it becomes predictable, but conspiracy of social groups in the form of self-government created to become protected against the effects of business conspiracy – is yet utopian socialism; b) using the employer’s dominating position towards employee – is the implementation of its rights within the framework of time-honoured property right but employee’s reaction in the form of trades union, strikes, committees or other regulations (rules of social coexistence) – is dangerously leftist; c) «market» frauds against consumer for profit – is the freedom of enterprise, but regulations aimed at such frauds spoil the market, since consumers know what they buy; d) involvement of local authorities or central authorities in the field of business affairs – is an acceptable market game since everybody is allowed to do so but regulations concerning competition bidding and business bans for officials – is a far too exaggerated intervention; e) causing dramatic market situations through cumulating antisocial affairs – results in a «temporary indisposition» of the market but pumping billions coming from taxes to the loosing manipulators – is an obvious state support for a free market(!)”.<sup>29</sup>

All main slogans of economic liberalism turn out utopian in contact with reality namely: unrestricted freedom of activity of transactors, free competition or even protection of private property. In fact business is more and more limited by the state and certainly it is more and more controlled. More and more frequently public opinion is informed about breeches in rules of free competition or employment of dishonest competition methods in practice. Private property is at present one of possible forms of property the more so as next to it other forms may function in the economy. As a result not necessarily private property, as assumed by economic liberalism, appears to be the best form of property in a given place and time.

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<sup>29</sup> Ibidem.

According to Karl Mannheim liberal-humanitarian utopia as the so-called second figure of utopian consciousness grew as other utopias from a fight against the existing situation.<sup>30</sup> Criticism of reality has constructive character in utopias leading at least to some thought about a desired situation understood as better than the present one. And for instance the idea of freedom in the time of French revolution was “a partial utopia of ascendant bourgeoisie” since it included elements which aiming at new order, blew out the previous form of reality and which after forcing the idea through became in part reality.<sup>31</sup> Freedom of that time in the sense of bursting asunder the bonds of the static, guild order, in the sense of freedom of thought and opinion, “in the sense of political freedom and freedom of the unhampered development of personality became to a large extent, or at least to a greater extent than in the preceding status-bound, feudal society, a realizable possibility”.<sup>32</sup>

Liberalism as ideological heritage of Enlightenment is in the opinion of Jerzy Wawro a utopia of freedom, similarly to socialism being a utopia of justice. Only conservatism is opposed to utopian thinking by rejecting it completely.<sup>33</sup> According to him “conservatism treats a human being as a subject. That is why he cannot be an object of scientific experiments and theories may only be a collection of reflexions and recommendations (...). The appearance of distinction between scientific communism and real socialism was not accidental. Utopia is quite naturally unrealisable. The same relates to liberalism. That is why in my opinion distinction between theoretical (classical) and real (neoliberalism) liberalism is justifiable”.<sup>34</sup> John Shepard takes a similar stand on this subject, he exposes manifestations of liberal utopia from the conservative point of view. He includes into it, for example state social service to poor and needy, political correctness as new manifestation of censorship, abortion, euthanasia, biotechnology development rights, gay rights, animal rights, sexual permissivism and restriction of parental rights to educate and raise their children.<sup>35</sup>

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<sup>30</sup> K. Mannheim, *Ideologia i utopia*, (Ideology and Utopia) transl. J. Miziński, Lublin 1992, p. 179; Three other figures of utopian consciousness are in his opinion: orgiastic millenarism of anabaptists, conservative idea and socialist-communist utopia.

<sup>31</sup> Ibidem, p. 168.

<sup>32</sup> Ibidem, p. 168.

<sup>33</sup> J. Wawro, *Liberalizm – socjalizm – konserwatyzm*; <http://www.konserwatyzm.org/manifest/item/15-liberalizm-socjalizm-konserwatyzm> from 22.03.2011.

<sup>34</sup> Ibidem.

<sup>35</sup> J. Shepard, *Liberal Utopia*; <http://www.northforest.org/SocialCulturalTopics/LiberalUtopia.html> from 22.03.2011.

In the above context conservatism appears to be a “golden mean” for utopian concepts of liberalism and socialism extreme in their assumptions. Could utopia be an intellectual illness of humanity in need of a cure being a remedy for the evil which it causes? Nevertheless Karl Mannheim mentioned above, ranks the idea of conservatism among utopian consciousness since it mitigates the utopia of the so-called “internal freedom” which has to, according to conservatists, subordinate to objectivised ethics in the form of “objective freedom”. He says that metaphysically this may be interpreted as stabilised harmony between internal subjective freedom, and external objective one.<sup>36</sup>

At this stage it is worthwhile drawing attention on the meaning and the role played by the rule of utility as the greatest happiness formulated by Jeremy Bentham (1748–1832), which is connected to the concept of the greatest happiness of the greatest number of people.<sup>37</sup> According to him “by the principle of utility is meant that principle which approves or disapproves of every action whatsoever according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words to promote or to oppose that happiness. I say of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of government. By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual”.<sup>38</sup> John Stuart Mill (1806–1873) stated additionally that: “according to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (...), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality”.<sup>39</sup> Since

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<sup>36</sup> See: K. Mannheim, *Ideologia i...* (*Ideology and Utopia*), op. cit., p. 193; See also R. Levitas, *The concept of...*, op. cit., pp. 72–74.

<sup>37</sup> Compare: M. Szyszkowska, *Teoria i filozofia prawa*, Warszawa 2008, pp. 168–171; See: also H. Olszewski, *Historia doktryn politycznych i prawnych*, Warszawa 1986, pp. 260–265; Idem, *Słownik twórców idei*, Poznań 1998, pp. 30–34 and 26–263.

<sup>38</sup> J. Bentham, *Wprowadzenie do zasad moralności i prawodawstwa*, (*An Introduction to the Principles of Morals and Legislation*) translated by B. Nawroczyński, Warszawa 1958, pp. 18–19.

<sup>39</sup> J. S. Mill, *Utylitaryzm (Utilitarianism)* translated by M. Ossowska, *O wolności (On Liberty)* translated by A. Kurlandzka, Warszawa 2006, p. 16–17, see also M. R. Montgomery, *John Stuart Mill and the Utopian Tradition*, [in:] *The State as...*, op. cit., pp. 19–34.

it is not possible to assure happiness to everybody (and it is not question of differences in understanding it) utilitarianism as a variety of liberalism at least suggests that greater number of people considers themselves happy and less unhappy.

Since then the adherents of utilitarianism attach importance to maximising happiness (pleasure) and at the same time minimizing unhappiness (suffering).<sup>40</sup> That is why, among other reasons, contemporary liberalism recognises that what is socially useful (beneficial, profitable) should above all be directly connected to improvement of economic living conditions of people.<sup>41</sup> For this very purpose Martin J. Bailey suggests to liberal governments to set up such laws which would effectively increase well-being (welfare, wealth) of the society.<sup>42</sup> Zbigniew Rau thinks that when introducing the above rule government should first of all concentrate on assuring such goods as health, life, dignity, property etc. the loss of which is most bothersome. Secondly they should concentrate on fighting poverty especially by ensuring financial help (to those who are not able to earn their living), thirdly on “avoiding legal and social chaos which lays responsibility upon government to extort keeping arrangements”.<sup>43</sup>

Richard Rorty (1931–2007) took similar direction, although in a minimalist way, by tracing his own vision of liberal utopia in his work *Contingency, irony, and solidarity* from 1989. Referring to Immanuel Kant’s imperatives he created a slogan: “we have obligations to human beings simply as such”,<sup>44</sup> which constitutes an effective method of reminding ourselves to make attempts to develop understanding of «ourselves» as simultaneous perception of both ourselves and other people. One should then think «we» about those of whom we thought «them» before instilling the sense of solidarity related to both development of democratic institutions and also desire to avoid cruelty and suffering.<sup>45</sup> In the above context the best way

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<sup>40</sup> Compare: H. Maślińska, *Bentham i jego system etyczny*, Warszawa 1964, p. 26.

<sup>41</sup> Compare: N. Tideman, *Demand-Revealing Utopia*, [in:] *The State as...*, op. cit., pp. 3–6.

<sup>42</sup> See: M. J. Bailey, *Constitution for a Future Country*, Palgrave 2001.

<sup>43</sup> Z. Rau, *Liberalizm. Zarys myśli politycznej XIX i XX wieku*, Warszawa 2000, p. 28.

<sup>44</sup> Compare: R. Rorty entry with Kant practical imperative: “Act to treat humanity, whether yourself or another, as an end-in-itself and never as a means”; I. Kant, *Uzasadnienie metafizyki moralności (Grounding for the Metaphysics of Morals)* translated by M. Wartenberg, Warszawa 1981, 1984, p. 62; See: R. Rorty, *Przygodność, ironia i solidarność (Contingency, Irony, and Solidarity)*, translated by W. J. Popowski, Warszawa 1996, p. 299.

<sup>45</sup> Ibidem, p. 301; idem, *Etyka zasad a etyka wrażliwości*, translated by D. Abriszewska, “Teksty Nowe” 2002, nb 1–2 (73/74), p. 61.

to limit them, according to R. Rorty, is tightening social solidarity by simultaneously increasing the sphere of individual freedom.<sup>46</sup> This is the only way to achieve harmony of social life of people demonstrating solidarity with those who suffer by attempts to soothe their pain and keep them from causing pain to each other.

## Conclusion

Zbigniew Rau claims that “liberalism constitutes one of the numerous elements of dynamic, moral and political experience of humanity”.<sup>47</sup> The experience has always been of real character since specific desires and needs are and were revealed in it as well as moral and political skills of people aspiring to diverse liberal values, that is transforming the public sphere in a liberal fashion. One has to bear in mind that even when liberal experience dominates, it does not eliminate, in his opinion, other experiences including non-liberal ones. In the above context, Z. Rau thinks that the aim of the philosopher’s study is to recognise distinctively liberal values as well as individual and group experiences related to aspirations for these values.<sup>48</sup> In his opinion the historical basis of liberalism is to be found in the notion of freedom or more precisely in the triad of freedom, firstly internal freedom, secondly freedom of autonomous activity, thirdly freedom in a civil society.<sup>49</sup> His statement that contemporary liberal political thought is neither ideologically nor politically ready or conceptually prepared to recognising or expressing the triad is why contemporary liberal political thought is apart from the liberal experience of the past and also from present day social reality<sup>50</sup> which is rather pessimistic and confirming the utopian character of liberalism. Today’s liberalism corresponds then to a utopian place which does not exist, for its freedom premises have never been realised anywhere. Moreover it also corresponds to postulates for facilitating human life. Liberalism is therefore a vision of a good world, a world which can be better than it is. In fact there were times in the history and there are even

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<sup>46</sup> See: M. Witek, *Retoryka i utopia*; book review: R. Rorty, *Przygodność, ironia i solidarność* (*Contingency, Irony, and Solidarity*) translated by W. J. Popowski, Warszawa 1996, [http://www.opoka.org.pl/biblioteka/F/FG/rec\\_retoryka.html](http://www.opoka.org.pl/biblioteka/F/FG/rec_retoryka.html) from 22.03.2011.

<sup>47</sup> Idem, *Zapomniana wolność. W poszukiwaniu historycznych podstaw liberalizmu*, Warszawa 2008, pp. 9–10.

<sup>48</sup> Compare: ibidem, p. 11.

<sup>49</sup> Ibidem, p. 12.

<sup>50</sup> See: Ibidem, p. 12.

places where attempts have been made to materialize liberal assumptions and values in various domains of human social life. It does not matter that we may never succeed, still it is worth setting goals which are good by assumption. It is better to pursue them than to recognise them as utopian, than not to do anything which could at least somewhat improve human living conditions.<sup>51</sup>

On this basis it is possible to arrive at the following conclusion: the more the actual (empirical) state of social relations diverges from the postulated one in a given social concept, the closer it is to utopian or anti-utopian assumptions. At the same time such social concepts correspond to the utopian assumptions which, according to their creators, are states of which they approve, namely intentional, right and even desirable. On the other hand, social concepts corresponding to anti-utopian assumptions are disapproved of by their authors as improper and undesirable, and even warn against them.

Therefore in practice all types of liberalism: social, political, and economic assessed according to their theoretical assumption, have traits on the basis of which we can recognise them as utopian. Recognising liberal concepts as utopian should be conditioned by the amount of freedom given to particular people which is the relation of freedom expected by individuals and freedom guaranteed.

#### S U M M A R Y

The paper presents the phenomenon of the liberalism as a political and legal doctrine, in connection with the social utopia.

Firstly he tries to show that liberalism simply as such, as well as its different varieties, contains elements which might be considered utopian. Studies on the definition and essence of liberalism as well as on its different types are to confirm that liberalism, since its beginnings is tightly connected with the idea of freedom and with the attempts of empirical definition and next practical application, contains elements typical of social utopia.

Secondly, they are to prove the existence in modern political-legal discourse related to the functioning of democracy, the so-called liberal variety of utopia, which is considered more and more frequently as something as a matter of fact unaccomplished or unachievable in practice.

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<sup>51</sup> See: M. Bosak, *Liberalna utopia. Nadzieja czy obawa kultury europejskiej?*, "Nowa Okolica Poetów" 2000, nr 1 (5), pp. 187–195.



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## MENSARII, BANKERS ACTING FOR PUBLIC AND PRIVATE BENEFIT

In ancient Rome, during the period from the 3<sup>rd</sup> century BC until the 3<sup>rd</sup> century AD, the heyday of the period of commerce, a significant role was played by banking activity.<sup>1</sup> The expansion in the Mediterranean Sea Basin opened new remote markets to Roman commerce and influenced this heyday of trade, enterprise and other types of institutions as well as financial transactions which resulted in the development of a new stratum of entrepreneurs, a distinct state of equities.<sup>2</sup> To this state belonged *publicani*, and thus entrepreneurs who were large scale<sup>3</sup> leaseholders; then *faeneratores* or

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<sup>1</sup> J. Marquardt, *De l'organisation financière chez les Romains*, [in:] *Manuel des antiquités romaines*, vol. 10, Paris 1888, p. 78 and next.; T. Frank, *Storia economica di Roma* (trad. it.), Firenze 1924, p. 211 and next.; idem, *An Economic Survey of Ancient Rome*, Paterson New York 1959; M. Rostovzeff, *Storia economica e sociale dell'impero romano* (trad. it.), Firenze 1946, p. 214 and next.; 216 and next.; R. H. Chico, *Funcion y origen de los argentarii*, «Anuario de estudios sociales y jurídicos» 6 (1977), p. 105 and next.; G. Maselli, *Argentaria. Banche e banchieri nella Roma repubblicana. Organizzazione prosopografia terminologia*, Bari 1986; J. Andreau, *La vie financière dans le monde romain. Les métiers des maniers d'argent (IVe siècle au J.C. – IIIe siècle ap. J.C.)*, Roma 1987, p. 5 and next.; idem, *Les comtes bancaires en nature*, «Index» 15 (1987), p. 413 and next.; A. Bürge, *Fiktion und Wirklichkeit: Soziale und rechtliche Strukturen des römischen Bankwesens*, «ZSS» 104 (1987), p. 463 and next.; M. A. Peñalver Rodríguez, *La banca en Roma*, [in:] *Estudios en Homenaje al Profesor Juan Igliesias*, vol. III, Madrid 1988, p. 1531 and next.; A. Petrucci, *Mensam exercere. Studi sull'impresa finanziaria romana (II sec. a. C. – metà del III sec. d.C.)*, Napoli 1991, p. 6 and next.; idem *Qualche riflessione sulla possibile configurazione di un "diritto bancario" romano nell'età commerciale (età del III secolo a.C. – età del III secolo d.C.)*, Studi Senesi 15 (2005), pp. 71–85.

<sup>2</sup> T. Łoposzko, *Historia społeczna republikańskiego Rzymu*, Warsaw 1987, p. 82 and next.; M. Cary i H. H. Sculland, *Dzieje Rzymu*, transl. J. Schwarckopfa, vol. I, Warsaw 1992, p. 372; W. Morawski, *Zarys powszechnej historii pieniądza i bankowości*, Warsaw 2002, p. 28 and next.

<sup>3</sup> Liv. 23, 49, 1 and next.; Liv. 24, 18, 10; Liv. 45, 18, 3. See Z. Służewska, *D. 17, 2, 82 a zasady odpowiedzialności wobec osób trzecich wspólników konsensualnej rzymskiej societatis*, [in:] *Honeste vivere... Księga pamiątkowa ku czci Profesora Władysława Bojarskiego*, ed. Andrzej Sokala and Ewa Gajda, Toruń 2001, p. 222 and next.

*argentarii*, namely usurers and bankers,<sup>4</sup> in addition to *negotiatores*, that is merchants, and above all *agricolae*, land owners, many of whom came from Italian colonies and municipia or *mercatores* i.e. wholesale merchants.<sup>5</sup> Many of these entrepreneurs originated from lower social strata.<sup>6</sup> These were *publicani*,<sup>7</sup> rich merchants, usurers and bankers<sup>8</sup>.

At first, two types of names were used to denominate bankers: from Greek, they were called *trapezites*,<sup>9</sup> while in Latin, *argentarii*. There also exists other terms used to describe subjects involved in banking activity, namely *mensarii*, *mensularii*, *nummularii*, *coactores*, *coactores argentarii*, *stipulatores argentarii*, *collectarii*.<sup>10</sup>

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<sup>4</sup> A. Bürge, *Vertrag und personale Abhängigkeiten in Rom der späten Republik und den früher Keiserzeit*, «ZSS» 97 (1980), p. 114 and next.; idem, *Fiktion und Wirklichkeit*, *op. cit.*, p. 495 and next.; A. Pikulska-Robaszekiewicz, *Lichwa w państwie i prawie republikańskiego Rzymu*, Łódź 1999, p. 21 and next.

<sup>5</sup> T. Łoposzko, *op. cit.*, p. 83 and next. Por. K. Verboven, *Faeneratores, negotiatores and Financial Intermediation in the Roman World (Late Republic and Early Empire)*, [in:] K. Verboven, K. Vandorpe and V. Chankowski-Sable (edd.), *‘Pistoi dia tèn technèn’. Bankers, loans and archives in the Ancient World. Studies in honour of Raymond Bogaert*, *Studia Hellenistica* 44 (2008), p. 211 and next.

<sup>6</sup> T. Łoposzko, *op. cit.*, p. 83 and next.; G. Alföldy, *Historia społeczna starożytnego Rzymu*, transl. A. Gierlińska, Poznań 1998, p. 79.

<sup>7</sup> Polib. 6, 17, 2 and next.

<sup>8</sup> *Wielka Historia Powszechna*, ed. J. Dąbrowski, O. Halecki, M. Kukiel and S. Lama, vol. III (1), L. Piotrowicz, *Dzieje Rzymskie*, Kraków 1934, p. 315; T. Wałek-Czernecki, *Historia Gospodarcza Świata Starożytnego*, vol. II, *Grecja – Rzym*, Warsaw 1948, p. 195 and next.; M. Cary H. H. Scullard, *op. cit.*, p. 372; J. Krzynówek claims that bankers occupied in social hierarchy a lower position than a small group of equites finance, see *Odpowiedzialność przedsiębiorcy (exercitor) w prawie rzymskim*, Warsaw 2000, p. 184.

<sup>9</sup> The name of banker profession – *trapezites* proves that this profession was in foreign hands. see. Plautus, *Curculio* 480. Establishing magistrate’s courts for foreigners (*peregre*) in the 3<sup>rd</sup> century BC was undoubtedly a fact encouraging foreigners to settle in the capital. See M. Voigt, *Über die Bankiers die Buchführung und die Litteralobligation der Römer*, *Abhandlungen der philologisch – historischen Klasse d. k. Gesellschaft der Wissenschaften* 1 (1887), No. 7, p. 3; R. Beigel, *Rechnungswesen und Buchführung der Römer*, lack of place of publication 1904, p. 207; W. Morawski, *op. cit.*, p. 28 and next. see. Also J. Andreau, *Banking and Business in the Roman World*, translation J. Lolyd, Cambridge 2004, p. 30 and next.

<sup>10</sup> See. G. Maselli, *op. cit.*, p. 138 and next.; S. Balbini De Caro, *La banca a Roma*, Roma 1989, p. 55 and next.; A. Földi, *Dubbi e ipotesi in tema della terminologia relativa ai banchieri romani*, [in:] *Au-delà des frontières. Mélanges de droit romain offerts à Witold Wołodkiewicz*, vol. I, Warsaw 2000, p. 207 and next.; A. Petrucci, *Profili giuridici delle attività e dell’organizzazione delle banche romane*, Torino 2002, p. 15 and next.; idem *Per una storia della protezione dei contraenti con gli imprenditori I*, Torino 2007, p. 155 and next.; P. Cerami, A. Petrucci, *Diritto commerciale romano. Profilo storico*, Torino 2010, p. 100. Compare also L. Schmitz, *Mensarii, Mensularii, or Nummularii*, [in:] *A Dictionary of Greek and Roman Antiquities*, John Murray (ed.), London 1875, p. 750; idem, *Argentarii*, [in:] *A Dictionary of Greek and Roman Antiquities, cit.*, p. 130; J. Oehler, *Argentarii*, (1), «RE» 2 (1895), columns 706–710; P. Habel, *Argentarii* (2), «RE» 2 (1895), columns 710–711; M. Talamanca, *Argentarii*, «NNDI» 1. 2 (1957), p. 940 and next.

*Mensarius*, as one of the terms defining Roman bankers, may be a Latin equivalent of the Greek *trapezites*.<sup>11</sup> The first bank transactions were done in counting houses owned by Greeks and consequently the Greek term was used to describe bankers. The etymological origin of this word is composed of *trapeza*, table or counter, with the suffix *itas*, which is related to functions; it is used for professions and indicates activities done at a table by a person making transactions in a banking sense.<sup>12</sup>

The term *mensarius* was used by Titus Livius<sup>13</sup> and the first mention of *mensarii* comes from *Ab Urbe condita*.

Liv. 7, 21: *Inclinatis semel in concordiam animis novi consules fenestram quoque rem, quae distingere una animos videbatur, levare adgressi solutionem alieni aeris in publicam curam verterunt quinqueviris creatis quos mensarios ab dispensatione pecuniae appellarunt. Meriti aequitate curaque sunt, ut per omnium annalium monumenta celebres nominibus essent; fuere autem C. Duillius, P. Decius Mus, M. Papirius, Q. Publilius et T. Aemilius. Qui rem difficillimam tractatu et plerumque parti utriusque, semper certe alteri gravem cum alia moderatione tum impendio magis publico quam iactura sustinuerunt. Tarda enim nomina et impedimenta inertia debitorum quam facultatibus aut aerarium mensis cum aere in foro positus dissolvit, ut populo prius caveretur, aut aestimatio aequis rerum pretiis liberavit, ut non modo sine iniuria sed etiam sine querimoniis partis utriusque exhausta vis ingens aeris alieni sit.*

According to Livy's account, during the fights between patricians and plebeians, citizens' debt was a problem of significant importance to the state.

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<sup>11</sup> L. Nadjo, *L'argent et les affaires à Rome des origines au IIe siècle avant J.-C. Étude d'un vocabulaire technique*, Paris 1989, p. 211.

<sup>12</sup> R. Bogaert, *Banques et banquiers dans les cités grecques*, Leiden 1968, p. 40 and next.; idem, *Les origines antiques de la banque des dépôts: une mise au point accompagnée d'une esquisse des opérations de banque en Mésopotamie*, Leyden 1966, p. 142 and next. M. Mielczarek with the term *trapedzitas* described a banker checking coins, making exchanges, giving loans or accepting a deposit. He describes the bank with the word *trapedza*, which in his opinion related to the table at which transactions were made – Compare M. Mielczarek, *O teorii pieniądza i praktyce instytucji banku w starożytnej Grecji doby klasycznej*, [in:] *Pieniądz i banki – wspólnota dziejów. Białoruś – Litwa – Łotwa – Łotwa – Ukraina. Materiały z V Międzynarodowej Konferencji Numizmatycznej*, PTN, Warsaw 2002, p. 12.

<sup>13</sup> E. Nadjo suggested that the term *mensarius* was unknown and not used in practice by the majority of authors except Titus Livius (L. Nadjo, *op. cit.*, p. 211). Similarly V. M. Кравець, O. B. Кравець, who thought that this term may replace *trapezites* borrowed from Greek – por. *Західноєвропейський банківський бізнес: Становлення і сучасність*, Київ 2003, p. 57 and next. See also M. Сайко, *Аргентарії, менсарії, нуммуларії... (банкери античного Риму і їхні основні операції)*, [in:] *Питання стародавньої та середньовічної історії, археології й етнології (Збірник наукових праць)* 2 (26), Чернівці 2008, p. 47.

In 352 BC consuls appointed a *quinqueviris mensarios* commission, which was to help plebeians in overcoming economic difficulties. As noted by Pikulska, this was possible by virtue of a plebiscite *de quinqueviris mensariis creandis*.<sup>14</sup> Thus, a kind of public bank was established.<sup>15</sup> This five-man commission of citizens was set up to solve the problem of citizens' debt. It should be mentioned that frequent wars contributed to significant impoverishment of the lower social strata. Masses of citizens incurred debts – *nexum*.<sup>16</sup> Many of them were exposed to slavery, not being able to repay their debt. This social debt must have been considerable since consuls started to work on it at the beginning of their term. It was a nationwide problem which could lead to social unrest.<sup>17</sup> Even in relation to overwhelming debt, the people had little interest in political life.<sup>18</sup> The debt in republican Rome caused the same havoc as plagues and was one of the social problems raised by plebeian agitation. It probably happened due to the fact that Roman loan, which to tell the truth, was created as free of charge, became a convenient source of income by supplementing it with interest stipulation.<sup>19</sup> The Roman loan was undoubtedly of consumer character and was used to complement resources, paying taxes, or paying off other loans.<sup>20</sup> Such use of borrowed amounts caused the debt to grow.

Thus *mensarii* had a very difficult task to fulfil. They had to do it with reserves, so as not to risk misappropriation of public funds with which they

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<sup>14</sup> The plebiscite *de quinqueviris mensariis creandis* is called in the literature a debt relief act—compare A. Pikulska-Robaszkievicz, *op. cit.*, p. 31 and next. See also A. Storchi Marino, *Quinqueviri mensarii: censo e debiti nel IV secolo*, «Atheneum» 81 (1993), p. 213–250. It does not result from the context (Liv. 7, 21) that this was a *lex* obligatory to all citizens. It may be concluded that the plebiscite was passed during a very tense political situation. The consul Publius Valerius was accompanied by the plebeian Gaius Marcius Rutilus (Liv. 7, 21) and a plebeian was for the first time elected censor (Liv. 7, 22). We are not sure if the plebiscite *de quinqueviris mensariis creandis* was binding on all citizens. It was probably not necessary. It was addressed to plebeians and was to be a panacea to their financial problems. Л. Кофанов proved that a great deal of plebiscite were called acts which might mean they obtained approval of the Senate – *autoritas patrum* (*Lex u Ius. Возникновение и развитие римского права в VIII–III вв. до н.э.*, Москва 2006, p. 318).

<sup>15</sup> See considerations of J. Marquardt about *mensa publica* – *op. cit.*, p. 79.

<sup>16</sup> Por. Л. Кофанов, *Nexum u mancipium XII Таблиц*, «Вестник древней истории» 3 (1992), p. 68 and next.; idem, *Lex u Ius., cit.*, p. 399 and next.

<sup>17</sup> S. Śnieżewski, *Koncepcja historii rzymskiej w Ab Urbe Condita Liwiusza*, Kraków 2000, p. 144 and next.

<sup>18</sup> A. Pikulska-Robaszkievicz, *op. cit.*, p. 31 and next. see also A. Storchi Marino, *op. cit.*, p. 213–250.

<sup>19</sup> Compare the considerations of M. Zabłocka, *Realny charakter mutuum w rzymskim prawie klasycznym*, «СРН» 31.2 (1979), p. 1–30.

<sup>20</sup> A. Pikulska-Robaszkievicz, *op. cit.*, p. 28.

were equipped, and not to cause further social unrest with their activity. Livy claimed that despite the difficulties the result of *mensarii* activity was excellent. They regulated citizens’ money issues and did not expose the treasury to unjustified waste. They became noted after the positive outcome of their mission and their names were widely known: Gaius Duilius, Publius Decius Mus, Marcus Papirius, Quintus Publius and Titus Emilius.<sup>21</sup> The result of their activity was a success since by using public funds they covered the debt of those who could provide a good guarantee. The debtors who could not provide such guarantee transferred their property to creditors as debt repayment. This results, from the description provided by Livy, that seizure of property and forced sale were conducted after a reliable evaluation of officials.

The debt which became a nationwide problem was the subject of earlier legislative regulation which had not been related to debt but had established the maximum value of the rate collected. Livy mentioned this legal regulation in another fragment of his seventh book.

Liv. 7, 16: *Haud aequae laeta patribus insequenti anno C. Marcio Cn. Manlio consulibus de unciario fenore a M. Duillio L. Menenio tribunis plebis rogatio est perlata; et plebs aliquanto eam cupidius sciuit.*

The first regulation within the sphere of the maximum value of the collected rate was established by the Twelve Tables Law,<sup>22</sup> which did not however prevent the practice which consisted of adding the interest unpaid in due time to the amount of the basic loan. Moreover, low capital accessibility and the weakness of the machinery of state were not conducive to observing the limitations provided for by the Twelve Tables Law and became an unquestionable reason for issuing the next legal regulation. In 357 BC, during the consulate of Gaius Macius and Gnaeus Manlius, the plebeian tribune Marcus Duilius and Lucius Menenius carried out a plebiscite *lex Duillia Menenia de unciario fenore*. According to its provisions, regulations

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<sup>21</sup> Decius Mus a consul of 340 BC, Marcus Papirius, whether Quintus Publius and Titus Emilius – consuls of 339 BC Compare T. R. S. Broughton, *The Magistrates of the Roman Republic*, vol. I, New York 1951, p. 126.

<sup>22</sup> Tab. 7, 18 a. = Tacitus, *ann.*, 6, 16: ) *Nam primo XII tabulis sanctum, ne quis unciario fenore amplius exerceret.* – b. Cato, *de r. r. praef.*, *Maiores – in legibus posiverunt furem dupli condemnari, generatorem quadrupli.* – Tacitus, *ann.*, 6, 16: Since in the Twelve Tables it was decided for the first time that nobody collected more than one twelfth percentage [capital]– b. Cato, *de r. r. praef.*, *Ancestors – decided in laws to punish thieves for double value [of the stolen object], [whether] usurers for the quadruple [of excessively collected percentage]* – polish translation after: M. and J. Zabłoccy, *Ustawa XII tablic. Tekst – tłumaczenie – objaśnienia*<sup>2</sup>, Warsaw 2003, p. 59.

were instituted concerning the rate which was to amount to one-twelfth of the capital. The plebiscite also introduced the *quadruplum* penalty which consisted of an obligation to pay the value four-fold of unduly collected interest.<sup>23</sup>

As a result of these regulations being introduced, usury softened but poor people still fell into slavery for their debts since they were not able to repay them. This occurred because even if in reality the interest rate collected by the usurers did not cross the statutory interest rate, the situation of the debtor was worsened by the practice of collecting rates from outstanding compound interest.<sup>24</sup> This generated social unrest and forced the necessity of debt reduction in the form of the next *tabulae novae*, the same as the plebiscite *de quinqueviris mensariis creandis* already described.

*Mensarii* (*quinqueviri mensarii*) acted as bankers on behalf of and for the benefit of the state. They could therefore, in the name of the state, carry out financial transactions especially with the lenders. They analysed the debt of the poor and to ensure security measures against social unrest offered them financial aid.<sup>25</sup>

Another mention about *mensarii* also comes from Livy.

Liv. 23, 21: *Et Romae quoque propter penuriam argenti triumviri mensarii rogatione M. Minucii tribuni plebis facti, L. Aemilius Papus, qui consul censorque fuerat, et M. Atilius Regulus, qui bis consul fuerat, et L. Scribonius Libo, qui tum tribunus plebis erat. Et duumviri creati M. et C. Atilii aedem Concordiae, quam L. Manlius praetor voverat, dedicaverunt; et tres pontifices creati, Q. Caecilius Metellus et Q. Fabius Maximus et Q. Fulvius Flaccus, in locum P. Scantini demortui et L. Aemili Pauli consulis et Q. Aeli Paeti, qui ceciderant pugna Cannensi.*

The *Lex Minucia de triumviris mensariis* was passed in 216 BC by an application of the plebeian tribune Marcus Minutius Rufus.<sup>26</sup> It provided for the appointment of three exceptional officials to contain the crisis

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<sup>23</sup> A. Pikulska-Robaszkiewicz, *op. cit.*, p. 31 and next.

<sup>24</sup> Compare A. Pikulska-Robaszkiewicz, *op. cit.*, p. 30.

<sup>25</sup> Compare A. Pollera, *Un intervento di politica economica nel IV sec. a C.: «lex de creandis quinqueviris mensariis»*, «Index» 12 (1983), p. 445 and next.

<sup>26</sup> A. Pikulska-Robaszkiewicz, *op. cit.*, p. 34. It was probably a plebiscite binding all citizens according to *lex Hortensia* of 287 BC. About equalization *leges* with *plebiscita* see J. Zabłocki, *Leges de plebiscitis*, «PK» 35. 1–2 (1992), pp. 235–246 and J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie*, Warsaw 2005, p. 62 and next. Compare also F. Serrao, *Classi partiti e legge nella Repubblica Romana*, Pisa 1974, p. 61 and next.; S. Tondo, *Profilo di storia costituzionale romana*, vol. I, Milano 1981, p. 202 and next.

caused by lack of money in circulation (*propter penuriam argenti*). This commission probably had vast power. It is however difficult to determine these due to the incompleteness of Livy’s account. The competences of the commission might be guessed on the basis of its composition. If, as *triumviri mensarii* – the former censor and consul Lucius Emilius Papus,<sup>27</sup> the former twice appointed consul Marcus Atilius Regulus<sup>28</sup> and the plebeian tribune of that time Lucius Scribonius Libo were appointed, they were also equipped with important prerogatives. This commission probably had similar competences as the *quinqueviris mensarios*<sup>29</sup> created in 352 BC. Thus, it could regulate the citizens’ debt towards the state. However, *triumviri mensarii*, as opposed to the preceding five-man commission, were not appointed just once, but it was the case of an office which existed at least until 210 BC,<sup>30</sup> since Livy in several fragments of the story mentioned certain of their competences.

Liv. 24, 18: *Convenere deinde domini eorum quos Ti. Sempronius ad Beneventum manu emiserat arcessitosque se ab triumviris mensariis esse dixerunt ut pretia servorum acciperent; ceterum non antequam bello confecto accepturos esse. Cum haec inclinatio animorum plebis ad sustinendam inopiam aerarii fieret, pecuniae quoque pupillares primo, deinde viduarum coeptae conferri, nusquam eas tutius sanctiusque deponere credentibus qui deferebant quam in publica fide; inde si quid emptum paratumque pupillis ac viduis foret, a quaestore perscribebatur. Manavit ea privatorum benignitas ex urbe etiam in castra, ut non eques, non centurio stipendium acciperet, mercennariumque increpantes vocarent qui accepisset.*

In 214 and 210 BC the *triumviri mensarii* registered amounts due in favour of the state and what is more, they made payments instead of bursars.<sup>31</sup> They also placed citizens’ money on irregular deposit,<sup>32</sup> which

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<sup>27</sup> Consul of 225 BC, censor of 220 BC – after: Tytus Liwiusz, *Dzieje Rzymu od założenia miasta. Księgi XXI–XXVII*, translated and laborated by M. Brożek, commentary of J. Wolski, M. Brożek, Kraków 1974, p. 150, footnote 45. Compare T. R. S. Broughton, *op. cit.*, p. 230, 235 and next., 252; A. Lippold, *Consules. Untersuchungen zur Geschichte des römischen Konsulates von 264 bis 201 v. Chr.* Bonn 1963, pp. 95–97.

<sup>28</sup> Consul of 227 and 217 BC – after: Tytus Liwiusz, *op. cit.*, p. 150, footnote 45.

<sup>29</sup> A. Storchi Marino, *op. cit.*, p. 221 and next.

<sup>30</sup> C. Nicolet, *A Rome pendant deuxième guerre punique: techniques financières et manipulations monétaires*, «*Annales ESC*» 18 (1963), p. 417 and next.

<sup>31</sup> Compare A. Pikulska-Robaszkiewicz, *op. cit.*, p. 34.

<sup>32</sup> See R. Bogaert *Ursprung und Entwicklung der Depositenbank im Altertum und Mittelalter*, [in:] *Essay zur historischen Entwicklung des Bankensystems*, Mannheim-Wien-Zürich

was used for supporting small funds of the state. Such charges as soldiers' pay were also left in the hands of *triumviri mensarii*. It was a safe and sure form of a deposit since resources entrusted to the state were easily reclaimable. However, it is only a hypothesis, considering the fragmentary character of the source.

Another mention about *mensarii* also comes from Livy.

Liv. 26, 36: *Cum in hac difficultate rerum consilium haereret ac prope torpor quidam occupasset hominum mentes, tum Laevinus consul: magistratus senatui et senatum populo, sicut honore praestet, ita ad omnia quae dura atque aspera essent subeunda ducem debere esse. 'si quid iniungere inferiori velis, id prius in te ac tuos si ipse iuris statueris, facilius omnes obedientes habeas; nec impensa gravis est, cum (ex) ea plus quam pro virili parte sibi quemque capere principum vident. Itaque (si) classes habere atque ornare volumus populum Romanum, privatos sine recusatione remiges dare, nobismet ipsis primum imperemus. Aurum argentum (aes) signatum omne senatores crastino die in publicum conferamus, ita ut anulos sibi quisque et coniugi et liberis, et filio bullam et quibus uxor filiaeve sunt singulas uncias pondo auri relinquunt: argenti qui curuli sella sederunt equi ornamenta et libras pondo, ut salinum patellamque deorum causa habere possint: ceteri senatores libram argenti tantum: aeris signati quina milia in singulos patres familiae relinquamus: ceterum omne aurum argentum aes signatum ad triumviros mensarios extemplo deferamus nullo ante senatus consulto facto, ut voluntaria conlatio et certamen adiuvandae rei publicae excitet ad aemulandum animos primum equestris ordinis, dein reliquae plebis. Hanc unam viam multa inter nos conlocuti consules invenimus; ingredimini dis bene iuvantibus. res publica incolumis et privatas res facile salvas praestat: publica prodendo tua nequiquam serves. 'In haec tanto animo consensum est ut gratiae ultro consulibus agerentur. Senatu inde*

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rich 1980, pp. 9–26. About irregular deposit see also T. Niemeyer, *Depositum irregulare*, Hale 1889; J. Najber, *Observatiunculae de iure Romano*, [in:] *Mnemosyne – Bibliotheca Philologica Batava* 34 (1906), pp. 59–64; C. Longo, *Appunti sul deposito irregolare*, «BIDR» 18 (1906), pp. 121–156; idem, *Il deposito (Corso)*, Milano 1933; F. Bonifacio, *Ricerche sul deposito irregolare in diritto romano*, «BIDR NS» 8–9 (1948), pp. 80–152; E. Seidl, *Der Eingentumsübergang beim Darlehen und Depositum irregulare*, [in:] *Festschrift Fritz Schulz*, vol. I, Weimar 1951, pp. 373–379; B. Adams, *Haben die Römer "depositum irregulare" und Darlehen unterschieden?*, «SDHI» 28 (1962), pp. 360–371; w. M. Gordon, *Observations on "depositum irregulare"*, *Studi Biscardi*, vol. III, Milano 1982, pp. 363–373; K. Geiger, *Das depositum irregulare als Kreditgeschäft*, München 1962, p. 6. Compare also W. Litewski, *Studien zur Verwahrung im Römischen Recht*, Warsaw–Crakow 1978, p. 5 and next; J. Sondel, *Szczególne rodzaje depozytu w prawie rzymskim*, Crakow 1967, p. 34.

*misso pro se quisque aurum argentum et aes in publicum conferunt, tanto certamine iniecto ut prima aut inter primos nomina sua vellent in publicis tabulis esse ut nec triumviri accipiundo nec scribae referendo sufficerent. Hunc consensum senatus equester ordo est secutus, equestris ordinis plebs. ita sine edicto, sine coercitione magistratus nec remige in supplementum nec stipendio res publica eguit; paratisque omnibus ad bellum consules in provincias profecti sunt.*

Moreover, *triumviri mensariis* accepted and registered all voluntary contributions for the benefit of the state. They collected gold and silver as well as bronze mint coins. The officials were accompanied by writers while collecting contributions. The events described by Livy (26, 36), initiated by the consuls, the aim of which was to collect funds for the army, demanded a great amount of labour from the *triumviri mensariis*. All social strata took part in the collection of public funds. Each citizen brought considerable amounts of gold, silver or bronze coins so as to be sure their name appeared as first on the list. That is why *triumviri mensariis* could hardly manage to accept and the writers to register the contributions.

Therefore, Livy places *triumviri mensariis* among the officials who participated in three-man boards appointed to deal with various issues.<sup>33</sup> Their activity was realised on behalf and for the benefit of the state. The expression *triumviri mensarii* deserves attention since the word *triumvirii* may suggest an official character of actions undertaken by them, while *mensarii* indicates the scope of their duties. There is no doubt that since the 4<sup>th</sup> century BC *mensarii* were bank officials. However, with time, they became regular bankers making transactions at the Forum. We should not, however, confuse *mensarii* with *argentarii*.<sup>34</sup> The latter were private bankers who made transactions on behalf of their clients at the tables or in shops prepared for them at the Forum.

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<sup>33</sup> Collegia composed of three officials known as *tresviri nocturni*, *tresviri capitales* See M. Kuryłowicz, ‘*Tresviri capitales*’ oraz edytlowie rzymscy jako magistratury policyjne, «*Annales UMCS*» Sec. G, Ius 40 (1993), p. 71 and next.; C. Cascione, *Tresviri capitales. Storia di una magistratura minore*, Napoli 1999, p. 1 and next., or recently B. Sitek, *Apud vestiores incendiis arcendis triumviri praeerant – organy orzekające w sprawach incendium podpaleń w starożytnym Rzymie*, *Journal of Modern Science* 1 (2008), *Administracja i Bezpieczeństwo*, p. 54 and next.

<sup>34</sup> For more on financial transactions undertaken by *argentarii* See P. Niczyporuk A. Talecka, *Czynności bankowe w starożytnym Rzymie a współczesne polskie prawo bankowe* [in:] *Pieniądz i banki – wspólnota dziejów...*, cit., p. 17 and next. and further quoted literature.

There is also a mention about *mensarii* in Suetonius.

Suet. Aug 4.4: .... *Cassius quidem Parmensis quadam epistola non tantum ut pistoris, sed etiam ut nummulari nepotem sic taxat Augustum: Materna tibi farinast ex crudissimo Ariciae pistrino: hanc finxit manibus collybo decoloratis Nerulonensis mensarius.*

The historian quotes a letter of Cassius of Parma in which he insulted the ancestors of August. The author of the letter claimed that the grandfather of the Princeps was a money-changer of Nerulum who married a daughter of a baker of Aricia. From this marriage August's father was born. The excerpt by Suetonius may suggest that *mensarii* from the public became private bankers. What is more, there appeared the term *nummularius*, which might suggest several hypotheses. It is probable that both words were used interchangeably, since both *nummularii*<sup>35</sup> and *mensarii* were involved in banking activity on behalf and for the benefit of the state. Presumably, during the period described by Suetonius, a decline of specialised fields of banking activity might have occurred and all those involved in such activity were described by terminology which treated them as identical. In the cited excerpt a slight mistake might have appeared and its author meant another term related to people involved in banking, namely *mensularius*. *Nummularii* were at first involved in banking on the behalf and for the benefit of the state and were next engaged in other activity, being part of *mensa argentaria*.<sup>36</sup> From public they became private bankers and that is why the usage of both terms *nummularius* and *mensularius* may be justified. Whereas *mensarii* were respectable state officials, and comparing them to despicable professions or calling them disdainfully money-changers or usurers, does not harmonise with the dignity of their distinction.

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<sup>35</sup> Compare P. Niczyporuk, A. Talecka, *Nummularii jako strażnicy jakości monety w starożytnym Rzymie*, [in:] *Psucie pieniądza europie środkowo wschodniej od antyku po czasy współczesne. Białoruś – Litwa – Łotwa – Łotwa – Ukraina. Materiały z VI Międzynarodowej Konferencji Numizmatycznej*, Warsaw 2006, pp. 23–30.

<sup>36</sup> According to M. Talamanca *nummularii* never took part in organising public auctions which was one of the Basic functions of bankers. Compare M. Talamanca, *Argentarii*, *cit.*, p. 940 and next. See also A. Bürge, *Vertrag und personale Abhängigkeiten in Rom der späten Republik und den früher Keiserzeit*, *op. cit.*, p. 114 and next; idem, *Fiktion und Wirklichkeit*, *op. cit.*, p. 495 and next.; J. Andreau, *Patrimoines, échanges et prêts d'argent: l'économie romaine*, Roma 1997, p. 137 and next.; J. F. Rodríguez Neila, C. González Román, J. Mangas, Almudena Orejas, *El Trabajo en la Hispania Romana*, Madrid 1999, p. 96; H.-J. Drexhage, H. Konen, K. Ruffing, *Die Wirtschaft des römischen Reiches (1.–3. Jahrhundert): eine Einführung*, Berlin 2002, p. 151; S. B. MacDonald, A. L. Gastmann, *A History of Credit and Power in the Western World*, New Brunswick, New Jersey 2004, p. 27; D. F. Jones, *The Bankers of Puteoli: finance, trade and industry in the Roman world*, Tempus 2006, p. 82.

To sum up, *mensarii* were bank officials appointed and chosen by the state in exceptional situations and especially during the periods of general poverty. *Mensarii* were held in high esteem as far as the field of their activity was concerned. They appeared in Rome in the 4<sup>th</sup> century BC and precisely in 352 BC. *Quinqueviri mensarii* were appointed then and as a consequence a kind of public bank was created which consisted of 5 citizens.

Subsequent *lex Minucia de triumviris mensariis* passed in 216 BC appointed *triumviri mensariis*, that is officials having similar competences as *quinqueviri mensarii*. However, unlike the commission of five, they were not appointed once. In this case, a new kind of office was created, which was operating at least until 210 BC.

#### S U M M A R Y

*Mensarii* were bank officials appointed or chosen by the state in some circumstances especially in the periods of general poverty. They appeared in Rome in the 4<sup>th</sup> century, in 352 BC. *Quinqueviri mensarii* were appointed then to solve the problem of citizens' indebtedness. The commission was established by the virtue of *de quinqueviris mensariis creandis* plebiscite. As a consequence a kind of public bank was created, in which there were five citizens. Debt of those citizens who could provide a good security were covered from public resources by *quinqueviri mensarii*. The debtors who could not do so, transmitted their property to creditors as debt repayment. Seizure of property and forced sales were done after a reliable pricing by officials.

The subsequent *lex Minucia de triumviris mensariis*, passed in 216 BC appointed *triumviri mensariis*, namely officials who had similar competences as *quinqueviri mensarii*. However, unlike the preceding five-man commission they were not appointed once, in this case we can speak about a certain type of office which operated at least until 210 BC. This commission had probably wide competences. In 214 and 210 BC it registered citizens' debts and made payments in place of bursars. Probably it also accepted money from the citizens on irregular deposit which was used to support scarce financial resources of the state. Even such charges as soldier's pay were left in the hands of *triumviri mensariis*. It was a safe and sure form of deposit since financial resources entrusted to the state were easily reclaimable. *Triumviri mensariis*, accepted and registered every voluntary contribution for the benefit of the state. They collected gold, silver as well as the bronze mint coins. *Mensarii* arouse general respect and esteem as far as their activity was concerned.



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**LEX POETELIA DE AMBITU OF 358 B.C.  
AS AN EXAMPLE OF LEGISLATION AGAINST  
CORRUPTION IN ELECTIONS\***

Elections of the supreme state authorities weather in antiquity or in contemporary times have always given a temptation to unlawful practices aiming at election of one specific candidate. It is not then surprising that in Republican Rome attempts were made to fight the phenomenon of election corruption. It should be pointed out that holding an office in the times of the republic was considered an honour which meant that those performing the function of *magistratus* were not paid. Therefore, it could seem that this situation would forejudge low interest in election campaign or lack of willingness to perform such a function. In practice it was not so – competition for supreme office and dignities would take a very turbulent course. It is not surprising then, that since the 5<sup>th</sup> century B.C.<sup>1</sup> attempts were made to counteract the disadvantageous election practices favouring specific candidates.

It should be emphasised that defining particular crimes was similar to private law grounds where Romans were reluctant to define particular legal institutions.<sup>2</sup> Defining a prohibited act was a long lasting process preceded by issuing several legal regulations devoted to a given legal prob-

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<sup>1</sup> See P. Kołodko, *Ambitus w ustawodawstwie rzymskim w V–IV w. p.n.e.*, [in:] *Społeczeństwo a władza. Ustrój, prawo, idee*, (ed.) J. Przygodzki, M. J. Ptak, Wrocław 2010, pp. 131–143.

<sup>2</sup> D. 50, 17, 202 (*Iavolenus libro undecimo epistularum*): *Omnis definitio in iure civili periculosa est: parum est enim, ut non subverti posset*. The Maxim among many other decorates the courthouse of the Supreme Court in Warsaw– See A. Kacprzak, J. Krzy-nówek, W. Wołodkiewicz, *Teksty 86 inskrypcji wraz z komentarzem*, [in:] *Regulae iurip. Lacińskie inskrypcje na kolumnach Sądu Najwyższego*<sup>2</sup>, (ed.) W. Wołodkiewicz, Warsaw 2006, pp. 47–49.

lem.<sup>3</sup> The same concerned precise definition of election corruption (*crimen ambitus*) features of which evolved practically throughout the history of the *Imperium Romanum*<sup>4</sup> with changing social-political realities.

It seems that the most concise definition of *crimen ambitus* was presented by Sextus Pompeius Festus,<sup>5</sup> Roman grammarian living in the second century A.D.

**Fest., s.v. *ambitus* 5L:** *proprie dicitur circuitus aedificiorum patens in latitudinem pedes duos et semissem, in longitudinem idem quod aedificium: sed et eodem vocabulo crimen avaritiae vel affectati honoris appellatur.*

**Fest., s.v. *ambitus* 15L:** *proprie dicitur inter vicinorum aedificia locus duorum pedum et semipedis ad circumvendi facultatem relictus. Ex quo etiam honoris ambitus dici coeptus est a circumvendo supplicandoque. Ambitio est ipsa actio ambientis.*

In the greater part of the quoted excerpts Festus concentrated his attention on explaining the notion of *ambitus* as a strip of ground 2,5 foot large separating two neighbouring properties. Only in the background the grammarian explained that *ambitus* is a term which relates also to illegal election practice. It is worth underlining that, according to Festus, *ambitus* should be understood as a crime of greed (*crimen avaritiae*) or thirst for holding an office (*affectatio honoris*). Next, in the second excerpt, the Roman grammarian explained his point of view adding that *ambitus* originated from going around places (where potential voters gathered) and asking (for intercession in support of a candidature during the election). Festus remark will have support in the account of Livy concerning *lex Poetelia*.

The only preserved information on *lex Poetelia de ambitu* originates from Livy *ab Urbe condita*. The chronicler presented the origin of this legal regulation as follows:

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<sup>3</sup> Crime of political corruption (*crimen ambitus*) was subject of regulations of 15 laws (both in form of *lex* and *plebiscitum*) the majority of which (14) dates back to the times of the Republic – See G. Rotondi, *Leges publicae populi Romani. Elenco cronologico con una introduzione sull'attività legislativa dei comizi romani*, Milano 1912 (Nachdruck Hildesheim 1966), pp. 105–106, 211, 221, 277, 288, 361, 369–370, 374, 378–379, 407–408, 411, 443.

<sup>4</sup> Concerning the understanding of *crimen ambitus* in the times of the Empire See H. Kowalski, *Przekupstwa wyborcze w Rzymie w okresie cesarstwa*, [in:] *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*, (ed.) M. Kuryłowicz, Lublin 2001, pp. 57–72 (= *Die Wahlbestechungen im kaiserzeitlichen Rom*, *Pomoerium* 6, 2007–2008, pp. 29–45).

<sup>5</sup> Before Festus Varro attempted to seize the essence of *ambitus* – See Varro, *Ling.* 5.4.8: *Qui populum candidatus circum it, ambit, et qui aliter facit, indagabili ex ambitu causam dicit.*

**Liv. 7, 15, 12–13:** *Eodem anno duae tribus, Pomptina et Publilia, additae; ludi votivi, quos M. Furius dictator voverat, facti; et de ambitu ab C. Poetelio tribuno plebis auctoribus patribus tum primum ad populum latum est; eaque rogatione novorum maxime hominum ambitionem, qui nundinas et conciliabula obire soliti erant, compressam credebant.*

Livy starts the description by indicating that that year (*eodem anno*), that is in 358 B.C., two new *tribus* were created – Pomptina and Publilia. This information will influence the concept of *ambitus*.<sup>6</sup> Next, the chronicler mentions the Olympic games which the dictator Marcus Furius pledged to organise (*M. Furius*).<sup>7</sup> However, from the point of view of the issue of *ambitus* the most interesting is the information about the plebeian tribune Gaius Poetelius (*C. Poetelius*) and his activity.<sup>8</sup> The chronicler noted that in 358 B.C. *tribunus plebis* lodged a project *plebiscitum*,<sup>9</sup> which received *auctoritas patrum*, and crucial content of which was to prevent *homines novi* from canvassing on fairs and market places (*nundinae*)<sup>10</sup> and places of

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<sup>6</sup> L. Fascione, *Alle origini della legislazione de ambitu*, [in:] *Legge e società nella repubblica romana*, (ed.) F. Serrao, vol. I, Napoli 1981, p. 269.

<sup>7</sup> Little is known what pledge of the dictator Livy meant. Maybe the chronicler overlooked something or made a mistake – See J. Wolski, [in:] T. Liwiusz, *Dzieje Rzymu od założenia miasta, ks. VI–X. Streszczenie ksiąg XI–XX*, Wrocław–Warsaw–Kraków–Gdańsk 1971, p. 69, footnote 55.

<sup>8</sup> G. Niccolini, *I fasti dei tribuni della plebe*, Milano 1934, p. 63–64. It is extremely difficult to establish if G. Poetelius mentioned by Livy held previously (in 346 B.C. and in 326 B.C.) twice the office of consulate or we should assume that there were two Romans with such *cognomen* ([http://imperiumromanum.com/geschichte/zeittafeln/konsularlisten\\_05.htm](http://imperiumromanum.com/geschichte/zeittafeln/konsularlisten_05.htm) from 21.11.2011 r.) – See M. Elster, *Die Gesetze der mittleren römischen Republik. Text und Kommentar*, Darmstadt 2003, p. 21. T. R. S. Broughton (*The Magistrates of the Roman Republic*, vol. I: *509 B.C.–100 B.C.*, New York 1951–1952, p. 122) suggests that G. Poetelius held the office of consulate three times in 360 B.C. at the earliest.

<sup>9</sup> W. Rein, *Das Kriminalrecht der Römer von Romulus bis auf Justinian*, Leipzig 1844, p. 706; G. Humbert, s.v. *ambitus*, DS, vol. I.1 (1873), p. 223; M. Isler, *Ueber das Poetelische Gesetz de ambitu*, RhM 28, 1873, p. 473; Th. Mommsen, *Römisches Strafrecht*, Leipzig 1899 (Nachdruck: Darmstadt 1955), p. 866; R. W. Husband, *The Law of Poetelius on Corrupt Practices at Elections*, CJ 10, 1915, p. 376; A. Berger, p.v. *lex Poetelia de ambitu*, RE, vol. XII (1925), szp. 2402–2403; G. Rotondi, *op. cit.*, p. 221; G. Carnazza-Rametta, *Studio sul diritto penale dei romani*, Roma 1972, p. 178; K.-J. Hölkesskamp, *Die Entstehung der Nobilität. Studien zur sozialen und politischen Geschichte der römischen Republik im 4. Jhd. v. Chr.*, Stuttgart 1987, p. 84; V. Giuffré, *La 'repressione criminale' nell'esperienza Romana. Profili*<sup>3</sup>, Napoli 1993, p. 79; H. Mouritsen, *Plebs and Politics in the late Roman Republic*, Cambridge 2001, p. 35; C. Rosillo López, *La corruption a la fin de la republique romaine (Ile-Ier s. av. J.-C.): Aspects politiques et financiers*, Neuchâtel 2005, p. 40, 48. Compare A. Dębiński, J. Misztal-Konecka, M. Wójcik, *Prawo rzymskie publiczne*, Warsaw 2010, p. 180.

<sup>10</sup> Fest., s.v. *conciliabulum* 33L: *locus, ubi (in) concilium convenitur*. Compare Forcellini, s.v. *conciliabulum*, vol. I, p. 534.

public assemblies (*conciliabulum*)<sup>11</sup> to solicit votes of electors.<sup>12</sup>

It is possible to understand the norm *de ambitu* when social-political context of the 5<sup>th</sup> and 4<sup>th</sup> centuries B.C. is taken into account. If in the 5<sup>th</sup> century B.C. the struggle between patricians and plebeians had progressed with variable intensity and its effect was measurable benefit (e.g. *lex duodecim tabularum* or *lex Canuleia de conubio patrum et plebis*<sup>13</sup>), in the 4<sup>th</sup> century B.C. the fundamental questions at issue were already regulated.<sup>14</sup> Its meaningful example was the fact of enacting *leges Liciniae Sextiae*<sup>15</sup> in 367 B.C. the most important of which seems *lex de consule plebeo*<sup>16</sup> admitting plebeians to the consulship initially reserved for patricians. Thus new social stratum was composed both of patricians and plebeians,<sup>17</sup> who coming to power attempted to ensure its consolidation through enacting legal norms.<sup>18</sup>

Livy noted in his account that the fundamental guiding principle of plebeian tribune G. Poetelius was to stop the ambitions of *homines novi*, who during election campaign would canvass on fairs (markets) and other

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<sup>11</sup> Fest. s.v. *nundinas* 176L: *feriatum diem esse voluerunt antiqui, ut rustici convenirent mercandi, vendique causa, eumque nefastum, ne (si) liceret cum populo agi, interperlarentur nundinatores*; idem, s.v. *nundinas* 177L: *feriatum diem esse voluerunt antiqui, quo mercandi gratia Urbem rustici convenirent*; Forcellini, s.v. *nundinae*, vol. III, p. 194.

<sup>12</sup> Such behaviour was practiced particularly by *homines novi* – See T. Wallinga, ‘Ambitus’ in *the Roman Republic*, RIDA 41, 1994, p. 416.

<sup>13</sup> See G. Rotondi, *op. cit.*, p. 207. D. Flach has recently carried out an analysis of this *lex* (which was in fact a *plebiscitum*), *Die Gesetze der frühen römischen Republik. Text und Kommentar*. In Zusammenarbeit mit P. von der Laehr, Darmstadt 1994, pp. 230–231, there are also further bibliographic indications.

<sup>14</sup> For more information see R. F. Mitchell, *The Definiton of the patres and plebs. An End to the Struggle of Orders*, [in:] *Social Struggles in archaic Rome: New perspectives on the conflict of the orders*<sup>2</sup>, (ed.) K. A. Raaflaub, Oxford 2005, pp. 128–167; J. von Ungern-Sternberg, *The End of the Conflict of the Orders*, [in:] *Social Struggles...*, pp. 312–332. See also E. Ferenczy, *From the Patrician State to the Patricio-Plebeian State*, Amsterdam 1976, pp. 47–72.

<sup>15</sup> G. Rotondi, *op. cit.*, pp. 218–220; G. Longo, s.v. *leges Liciniae Sextiae*, NNDI, t. IX (1961), p. 629, S. Tondo, *Profilo di storia costituzionale romana*, vol. II, Milano 1993, p. 8. More broadly *leges Liciniae Sextiae* presented D. Flach, *op. cit.*, pp. 280–297.

<sup>16</sup> The law is analyzed in detail by D. Flach, *op. cit.*, pp. 294–297 together with quoted literature.

<sup>17</sup> The genesis of formation of this social stratum might already be situated in 432 B.C. that is when *lex de ambitu* was enacted, since Livy explained that in houses of plebeian tribunes gathered not accidental plebeians but *principes plebis* dissatisfied with election failure – Compare L. Fascione, *Alle origini...*, p. 269. See idem, *Crimen e quaestio ambitus nell’età repubblicana. Contributo allo studio del diritto criminale repubblicano*, Milano 1984, p. 24.

<sup>18</sup> L. Fascione, *Alle origini della...*, p. 269.

places of public assemblies to collect votes.<sup>19</sup> Information about creation of new *tribus*, which accompanies this account, seems to be of importance in the context of this *de ambitu* norm. Two additional units of territorial<sup>20</sup> division of the country allowed *homines novi* to campaign by going around public places to collect votes in favour of their candidature.<sup>21</sup>

The determinant qualifying a potential candidate for an office as *homo novus* was the impossibility to check if they held any curule office or if such an office was held by any member of their families.<sup>22</sup> Therefore *plebiscitum* enacted by a plebeian tribune was to, above all, strike the plebeians to which, after passing *lex Licinia Sextia de consule plebeo*, a possibility was given to aspire to the supreme curule office in the Republican Rome. Symptomatic is the fact that the proponent of this legal regulation was plebeian

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<sup>19</sup> Ibidem, p. 270. Compare F. Serrao, *Classi partiti e legge nella Roma repubblicana*, Pisa 1974, p. 167; A. Lintott, *Electoral Bribery in the Roman Republic*, JRS 80, 1990, p. 4.

<sup>20</sup> P. Nadig (*Ardet ambitus. Untersuchungen zum Phänomen der Wahlbestechungen in der römischen Republik*, Frankfurt am Main 1997, p. 22) questioning the point of view of Th. Mommsen, who found that the scope of the binding force was limited only to Rome justifies it with the fact that Livy in his account about *ambitus* mentioned two new *tribus*, and this information seems not insignificant. L. Fascione (*Crimen e quaestio...*, p. 27) points out that behaviour defined as *ambitus* in this *lex* might have also been committed outside Rome. The analysis of the whole excerpt of Livy permits to declare for observation of both researchers. Moreover two new *tribus* – Pomptina and Publilia (established in the same year 358 B.C.) gave plebeians a possibility to threaten the electoral system in force in which patricians dominated – See T. Walling, *op. cit.*, p. 416.

<sup>21</sup> This way of campaigning was characteristic of *homines novi*, and patricians had never used it having a great support of country *tribus* and that is why they had never been forced to influence the decisions of electors – See P. Nadig, *op. cit.*, p. 23. It is worth quoting an unusually pertinent remark of F. Millar (*The Political Character of the Classical Roman Republic 200–151 B.C.*, JRS 78, 1984, p. 9): [...] *not programmes or political attitudes, but persons – or even membership of a particular familia or gens – decided the results; it is a sign of this that the candidates did not make election speeches to the people [...]*.

<sup>22</sup> L. Fascione, *Alle origini della...*, p. 274; idem, *Crimen e quaestio...*, p. 26. M. Elster (*op. cit.*, p. 12) states that Livy used the term *homines novi* in anachronistic sense. P. Nadig had already expressed the same view on this subject (*op. cit.*, p. 23). More broadly on *homo novus* See M. Gelzer, *Die Nobilität der römischen Republik*, Leipzig 1912; J. Vogt, *Homo novus*, Stuttgart 1926; H. Strasburger, s.v *homo novus*, RE, t. XVII (1936–1937), column 1223–1228; P.A. Brunt, “*Nobilitas*” and “*Novitas*”, JRS 72, 1982, pp. 1–17; R. T. Ridley, *The Genesis of Turning-Point: Gelzer's Nobilität*, Historia 35, 1986, pp. 474–502; D. R. Shackleton Bailey, “*Nobiles*” and “*novi*”. *Reconsidered*, AJPh 107, 1986, pp. 255–260; J. J. Vanderbroeck, *Homo novus again*, Chiron 16, 1986, pp. 239–242; K.-J. Hölkeskamp, *Die Entstehung der Nobilität...*, p. 9 and next; idem, *Conquest, Competition and Consensus: Roman Expansion in Italy and the Rise of the Nobilitat*, Historia 42, 1993, pp. 12–39; Ch. Simson, *Gelzers “Nobilität” der römischen Republik als “Wendepunkt”. Anmerkungen zu einem Aufsatz von R. T. Ridley*, Historia 37, 1988, pp. 222–240; L. A. Burckhardt, *The Political Elite of the Roman Republic. Comments on Recent Discussion on the Concepts of “Nobilitas” and “Homo novus”*, Historia 39, 1990, pp. 77–99; T. Aleksandrowicz, *Kultura intelektualna rzymskich konsulów w schłkowym okresie republiki rzymskiej*, Katowice 2002, p. 17 and next.

himself.<sup>23</sup> It seems strange though, that *tribunus plebis* whose major task was to support the interests of plebeians and protect them against abuse by magistrates, enacted *plebiscitum* himself hampering political aspirations of *homines novi*. This phenomenon might be explained by a thesis telling that G. Poetelius advocated the interests of a narrow group of wealthy plebeians<sup>24</sup> who wanted to hinder election campaign of *homines novi* which consisted in presenting their candidature in public places. However, if this was the case, sufficient measure to hamper this form of *ambitus* would be enacting the *plebiscitum* itself. On the other hand, it does not seem that *homo novus* was solely a synonym of plebeian.<sup>25</sup> Probably that is why the chronicler in his account mentioned *auctoritas patrum*<sup>26</sup> and consequently raised *plebiscitum*<sup>27</sup> to the dignity of *lex*.

The approval of this *plebiscitum* by *patres* not only gave it legal force but also manifested that the menace of *ambitus* in the form practiced by *homines novi* had been noticed. It seems that *tertium gens*<sup>28</sup> could feel threatened by *homines novi* candidates. Specificity of election campaign reduced to direct presentation of a candidature in public places would probably enable to collect the necessary amount of votes ensuring electoral success. Hampering through *lex Poetelia* practices which consisted in circulating around markets, fairs and places of public assemblies, made it possible to continue to maintain complete power by *tertium gens*. The idea of this plebiscite was not directed against plebeians but merely against those candidates who did not have any tradition in exercising a republican

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<sup>23</sup> See M. Isler, *op. cit.*, p. 476.

<sup>24</sup> M. Elster, *op. cit.*, p. 13. Compare T. Walling (*op. cit.*, p. 417) who stated that [...] although Poetelius was himself a plebeian, he was undoubtedly siding with senate [...].

<sup>25</sup> L. Fascione, *Crimen e quaestio...*, p. 26.

<sup>26</sup> See M. Isler, *op. cit.*, p. 476–477. In German Roman studies a statement is encountered that indicating by Livy on *auctoritas patrum* a plebiscite in the 4<sup>th</sup> century B.C. was an anticipation of events from 3<sup>rd</sup> century B.C. and exactly *lex Hortensia* – See *ibidem*. Compare P. Nadig, *op. cit.*, p. 19, footnote 26. Whereas Italian Romanists take a stand on the issue that already in the 4<sup>th</sup> century B.C. plebiscites which were granted *auctoritas partum* were commonly valid – Compare L. Fascione, *Alle origini della...*, p. 272, footnote 28, p. 273.

<sup>27</sup> Only M. Elster (*op. cit.*, p. 12) uses the term *plebiscitum Poetelium de ambitu*. In literature prevails *lex* – See e.g. G. Rotondi, *op. cit.*, p. 105, 221; G. Longo, p.v. *lex...*, p. 794; P. Nadig, *op. cit.*, p. 22.

<sup>28</sup> Term used by L. Fascione (*Alle origini della...*, p. 275) seems to define accurately plebeians and patricians stratum which was interested in not allowing *homines novi* to hold offices in Republican Rome. Compare C. Venturini, *Quaestiones ex senatus consulto*, [in:] *Legge e società nella repubblica Romana*, vol. II, (ed.) F. Serrao, Napoli 1984, p. 39 (= *Processo penale e società nella Roma repubblicana*<sup>2</sup>, Pisa 2003, p. 115).

office.<sup>29</sup> Hence, the inspirers of this *lex* were not only patricians, as it might have seemed, but *tertium gens* aspiring after consolidation of power in their hands, which they received completely after *leges Liciniae Sextiae*<sup>30</sup> had been passed. Striking is the fact why *plebiscitum* was enacted first, and only on the course of *auctoritas patrum* its effective bidding force was extended to the whole *populus Romanus*. It has to be remembered that patricians were of great majority in the *comitia centuriata*,<sup>31</sup> where they could, with no obstacles, force the *de ambitu* norm through. However, it was the role of plebeian tribune to propose a *rogatio* in the *concilia plebis*. Unfortunately, insufficient reference makes it impossible to establish what reasoning G. Poetelius used to persuade plebeians to enact *plebiscitum* in the established form. It is also difficult to explain why patricians used plebeians at first and then using *auctoritas patrum* extended the bidding force of the *de ambitu* norm. Maybe the involvement of *tribunus plebis* was to reflect the influence of plebeians on the form of this *de ambitu* norm and the participation of patricians reduced to *auctoritas patrum* of the senate, which in its composition reflected the involvement of this social stratum in legislating this *lex de ambitu*. It seems that this is the only way to explain why such a legislative course was adopted during *lex Poetelia de ambitu* proceedings.

Concerning *lex Poetelia* Livy explained that it was the first (*tum primum*) law devoted to this issue.<sup>32</sup> This statement contrasts with the previous account related to *lex de ambitu* of 432 B.C.<sup>33</sup> and it is difficult to explain why the chronicler presented the information on *lex Poetelia* in such a light. Furthermore, placing the phrase *tum primum* in the centre of the account does not refer to the previous *auctoritas patrum*.<sup>34</sup> Probably these reservations were the basis for analytical reconstruction of the whole excerpt concerning the *de ambitu* norm (*de ambitu ab C. Poetelio tribuno*

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<sup>29</sup> Idem, *Crimen e quaestio...*, p. 26. Compare D. Cloud, *The Constitution and Public Criminal Law*, [in:] CAH<sup>2</sup>, t. IX, *The Last Age of the Roman Republic 146–43 BC*, (ed.) J. A. Crook, A. Lintott, E. Rawson, Cambridge 1994, p. 517. See also R. W. Husband, *op. cit.*, p. 377.

<sup>30</sup> L. Fascione, *Alle origini della...*, p. 274.

<sup>31</sup> Ibidem, 266 footnote 18. Compare J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie*, Warsaw 2011, p. 32; A. Dębiński, J. Misztal-Konecka, M. Wójcik, *op. cit.*, p. 33.

<sup>32</sup> See R. Rilinger, *Humiliores-honestiorep. Zu einer sozialen Dichotomie im Strafrecht der römischen Kaiserzeit*, München 1988, p. 239; P. Nadig, *op. cit.*, p. 22; M. Elster, *op. cit.*, p. 14. Compare H. Mouritsen, *op. cit.*, p. 35.

<sup>33</sup> See Liv, 4, 25, 9–14. Compare L. Fascione, *Alle origini della...*, 258; idem, *Crimen e quaestio...*, p. 20, D. Flach, *op. cit.*, pp. 246–246; P. Kołodko, *op. cit.*, p. 133 and next.

<sup>34</sup> L. Fascione, *Alle origini della...*, p. 273.

*plebis auctoribus patribus tum primum ad populum latum est*) undertaken by L. Fascione.<sup>35</sup> The first of hypothesis proposes the following arrangement of the text: 1) *tum primum*, 2) *auctoribus patribus*, 3) *ad populum latum est*, 4) *de ambitu*, 5) *ab C. Poetelio tr. pl.*, from which it would result that *patres* would grant *auctoritas* for the first time to the *de ambitu* norm or *patres* would be for the first time the inspirers of the very same norm. Second arrangement of the text starting also with 1) *tum primum* 2) *ad populum latum est* 3) *de ambitu* 4) *ab C. Poetelio tr. pl* 5) *auctoribus patribus* would indicate that the *de ambitu* norm was for the first time presented to the people which would be contrary to the account about the plebiscite in 432 B.C.<sup>36</sup> However, the last reconstruction of this excerpt 1) *tum primum* 2) *de ambitu* 3) *ad populum latum est* etc. would indicate that the *de ambitu* norm the first in the chronological configuration was enacted by the people and this would constitute grounds for asserting that the 432 B.C. plebiscite could not have been qualified as *de ambitu* being solely a project of an *ambitus* undetermined in its basic elements.<sup>37</sup> It is difficult to indicate which of the above interpretations is correct. It seems however, that compilation of all of three hypothesis is justifiable and the chronicler emphasized with the phrase *tum primum* that *lex Poetelia* was the first legal regulation proclaimed without contrast between plebeians and patricians.<sup>38</sup> The social-legal background which accompanied passing the plebiscite was decidedly more favourable than plebeian-patrician relations from the end of the 5<sup>th</sup> century B.C. Even if both *plebiscita* (that is the one of 432 B.C. and 358 B.C.) attained *auctoritas partum*, the way of attaining it was different. In case of *lex Poetelia* Livy did not mention anything about a battle which plebeian tribune G. Poetelius<sup>39</sup> had to fight. Thus, it seems that both social strata were equally interested in enacting this norm *de ambitu* on the understanding that patricians wanted by the force of this regulation, to impede the ambitions of *homines novi*, the majority of which originated from the wealthier plebs.

Livy did not mention the sanction threatening *homines novi* for an activity *contra legem*. It might seem that it was *lex imperfecta*. This is therefore little convincing since it is hard to accept that *homines novi* would

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<sup>35</sup> Ibidem. Compare also M. Isler, *op. cit.*, pp. 474–475.

<sup>36</sup> L. Fascione, *Alle origini della...*, p. 273.

<sup>37</sup> Ibidem.

<sup>38</sup> Ibidem.

<sup>39</sup> See ibidem.

avoid this form of *ambitus* without fear of bearing penal responsibility.<sup>40</sup> The possibility to hold a curule office only just granted to plebeians would constitute a great temptation to profit from probably effective canvassing on fairs (markets) and other public spaces. On one hand, lack of sanctions would leave this form of *ambitus* unpunished which would contradict the idea of this *lex*. It seems therefore that some kind of sanction should have been included in this legal regulation even though it could not have been significant since the chronicler did not devote a word on this issue in his account. On the other hand, the entire Livy's message is laconic and does not fully reflect the contents of *lex Poetelia*.<sup>41</sup> And thereby it is difficult to interpret it and not possible to confront with any other source material since Livy's account is the only one to present *lex de ambitu*. Despite all these reservations the genesis of this plebiscite remains legible – to hamper or simply to limit aspirations of *homines novi* for holding offices of the Roman magistrate.

#### S U M M A R Y

Presented considerations concerning *lex Poetelia de ambitu* permit to prove that yet in the first half of the 4<sup>th</sup> century B.C. Romans started to notice the need to limit activities related to electoral campaign. Direct meetings of the candidate (and his supporters) with potential electors on markets and places of public assembly gave opportunity for active agitation in favour of a specific candidate for a distinction. It is worthwhile mentioning that this particular form of election campaign was conducted by *homines novi* who probably wanted to manifest their political aspirations. It seems this was an effective means of campaigning, otherwise it would be difficult to explain why it was decided to enact *lex Poetelia de ambitu*.

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<sup>40</sup> *Lex Poetelia* should introduce some repressive measures for infringing its content and Livy completely failed to mention this issue – see M. Elster, *op. cit.*, p. 13.

<sup>41</sup> *Ibidem*, pp. 13–14.



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