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God and the Constitution.

Polish constitutional confusion

It was in the eighteenth century that constitutions in their modern meaning were worked out. One of them was written in Poland in 1791. It was so-called 3d May Constitution. The constitution process was initiated by Enlightenment circles, but conservative groups, mainly from around the Catholic church, were active enough in formulating the articles of the principal law. For example, they invented and wrote into the text of the constitution the term „ruling religion” and stipulated a penalty for departure (apostasy) from Catholicism.

In spite of that, the document was founded just partly on traditional legal values, and power was only partly traditionally legitimised. In particular, the government promised to protect adherents of other religions; but, in the context of the constitutional confusion, more important was the fact that the constitution itself was established „in the name of God” by The King and by „confederated estates”, which means the united people, divided into estates in the late feudal manner, like nobility, townspeople, clergy and so on¹. The „confederated estates” were authorized to proceed with the constitution by themselves, and The King – and this is the most interesting thing – was just partly authorized by God (by God’s mercy), as in the normal despotic political order, and partly by the people (by the will of the Nation). Applying a rather primitive, arithmetic calculation, we may say, that the people and the people’s agreement, social agreement, is the source of constitution of the year 1791, and of law in general in three quarters, and God, the only source of despotic power – just in one quarter. It is not, of course, enough, in light of the modern political standard, coming from John Locke, Jean Jacques Rousseau and three revolutions – English, French and American, declaring that the state and

¹ See *Ustawa Rządowa. Prawo uchwalone Dnia 3 Maia, Roku 1791 w Warszawie, w Drukarni Uprzywileiowanej M. Groella, Księgarza Nadwornego J. K. Mci.*

law are founded on the agreement of the people only, but it is quite enough. Especially, if we remember that in central and eastern Europe the *ancient regime* was not much disturbed, as well as Catholicism, the layer of Enlightenment being rather thin.

I don't stress it to underline any national pride or, on the contrary, to explain and excuse the first Polish constitution. I want just to show the beginning of Polish constitutional history as the background for the solution of the same question in the newest Polish constitution of April 1997. In the light of European, American and, generally, democratic constitutional tradition, and even in comparison to the Polish constitution of 1791 the solution of the question of fundamental values, the source of law and power and the foundation of political order is rather astonishing.

We may say, that God, reduced in the first Polish constitution to the modest size of one quarter (and fully eliminated, for example, from the American constitution) in 1997 regained the position that it had in the pre-constitutional era. I will try to show you now how it happened and what it looks like in the constitution of 1997.

It is not necessary to explain in Mexico the role of the catholic church in „conquista”. I may just say that the „conquista” of Poland began a thousand years ago. Modern times brought to Poland some modern tendencies, but not very much in this field, the field of church and religion, except the -called communist period, which strongly introduced democratic slogans and some democratic practice, especially with reference to religion. But in Poland it never went as far as in Mexico, and, even more, as in Bolshevik Russia. The church was never deeply persecuted, it was rather pushed back from the power. Although, especially in the provinces, the church participated in an informal triangle of power, consisting of the secretary of the ruling communist party, the commanding officer of the militia and the parish-priest.

After the fall of communism the catholic bishops used to say – and I heard it myself – that they must fill up the place left by communism. They were planning the reconquista. The communists helped them do it, establishing a special law about the relationship between the state and the church, developed afterwards into the concordat 1993 – the special agreement between the Vatican and the Republic of Poland, and in the constitution.

Notice the bishops' expression about filling up the communist's place. Maybe it is obvious for Mexican people, but not so much for Polish people, including Polish political science students: the place occupied by the communists was the place of authoritarian, despotic power; to fill up the place of authoritarian power means to replace people and groups in the same authoritarian system. The more so as the bishops' organization is as far from democracy as the communist party was. The authors of the Mexican constitution understood that better than the Polish ones.

There were some democratic groups in Poland at the end of the 80s and the beginning of the 90s of the twentieth century, and it would have been possible to write a kind of democratic constitution.

But not fully democratic. And this is the subject of the present brief lecture.

Let's begin with the democratic attributes of the Polish constitution.

What are the main democratic criteria of such a document?

The Polish constitution consists of two main parts: The Preamble and the main text. Normally the preamble is not just formally, but also substantially the introduction to everything else, to the main text in particular. In this case, in the case of the Polish constitution, the preamble is rather strange element, although it has an important equivalent in the main text. But more about that – later.

The Polish constitution of 1997 is, generally speaking, a democratic constitution. Its main values and principles are democratic. Although – as we will see – not all of them.

I am not going to present here the full list of democratic principles, even those contained in this constitution. It is enough to point to the sovereignty of the people, named here the sovereignty of the nation, the principle of law state, representation, freedom and human rights, political pluralism, independence of the judiciary and, above all, the division of power and the balance of power. The sovereignty of nation means that the people are the source of law and power. For our subject it is the most important principle: the people decide about the fundamental values that are the foundation of political order, and decide in full dimension, not just in three quarters, like in the constitution of 1791.

Let us come back for a moment to the words „nation” and „people”. According to democratic political philosophy they are synonyms. This is probably the reason why the Mexican constitution uses rather a word „nation” than „people”. Not in the Polish case. In the Polish case it is not so evident that people and nation are the same. It is not seen in the main text of the constitution, but it will be better seen when we look more closely at the preamble. But let’s continue now with the main text. The thesis is that the main text is generally democratic, but at least with one significant exception. What is the exception? The question of the catholic church.

One of the prominent handbooks dedicated to the Polish political system even invents a principle: ‘mutual independence and cooperation of the state and churches and other denominational unions’². The quoted handbook does not even define constitutional principles as democratic, although on the list of 15 principles the author quotes democratic principles, technical principles (like a two chamber parliament) and just one principle, questionable as democratic – the state-church relationship, formulated as above.

What is the democratic principle in this sphere? Arising from the principle of principles, the sovereignty of nation, we may say, that in the democratic order there is no organization which doesn’t observe this principle, including the democratic state (a government and so on). Something independent of the state may be only a citizens’ organization. In some sense all citizen’s organizations are independ-

2 W. Skrzydło, *Ustrój polityczny RP w świetle Konstytucji z 1997 roku*, Zakamycze 2002, s. 58, 71-73. It is rather surprising, that another authoritative study overlooks entirely that fundamental question. See J.Kuciński, *Konstytucyjny ustrój państwowy Rzeczypospolitej Polskiej*, Warszawa 2003.

ent of the state (they are just dependent on law); in the same sense the state is not independent of citizens – the nation or people contain citizens and the citizens are the sovereign power over the state as their representation. In addition, churches are not, principally, citizens' organizations: citizens are not the initiators of self organization here, but they are rather objects of the organizing activity of someone else. In conclusion, to allow the existence of organizations independent of the democratic state and functioning on the territory of the state and independent of its juridical order limits the principle of the sovereignty of the citizens. It is obvious that limited principle is not any more a fundamental principle. If the sovereignty of the nation is not the fundamental principle of the political order, the political order is not a democratic one.

This has been about underlying the principle. And now about the constitution itself. Article 25 of the Polish constitution of 1997 says that 'the state and churches relationship shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere'. We may say that respect for autonomy is a general principle of the relationship between a democratic state and any organization of citizens, and it is not necessary to underline it with respect to one of them (one type of them, formally), but, as we know, the catholic church (as well as any church in general) is not an organization of citizens. Let's repeat the general conclusion: a state that does not realise in full the nation's sovereignty over every organization on its territory cannot be defined as a democratic one. Another conclusion about the main text of the constitution of 1997 is that it is not a democratic constitution, because the sovereignty is 'limited sovereignty', as in the communist Poland (and other countries being under Soviet Union influence) before 1989. Everyone remember well the famous Leonid Brezhnev doctrine about 'limited sovereignty', introduced in relation to the Soviet tanks in Czechoslovakia in 1969. The difference is that at that time the sovereignty of the people was limited by the dependence on the certain state-superpower, whereas this time the sovereignty of people is limited by another superpower, church-superpower, also very well known – the catholic church.

The special position of this church in the Polish system endow it with the decisive influence on law order and the education system, and with special privileges in relation to real estate and other profits from the state budget. Exactly this special position is underlined in Article 25 of the Polish constitution of 1997 and, more generally, in its Preamble.

Therefore Article 25 is not just an exception to the generally democratic character of the main text of the Polish constitution of 1997; it does more – it negates the fundamental character of the people's sovereignty and at the same time cancels the democratic character of the text and, finally, of the political order.

The Preamble does it more generally, but at the same time more decisively. The Preamble contains authoritarian principles only - the sovereignty of God being among them.

In the title of this lecture I used the word „confusion”. I mean the confusion connected with the contradiction between the formal democratic pretence of the constitu-

tion of 1997 and its substantially authoritarian character, connected with the privileged position of a strongly authoritarian organization in the Polish political system – roman catholic church. But there is another confusion, connected specifically with the material of my lecture – this is the confusion connected with the official translation of the Polish constitution of 1997 into English.

This translation is printed in the official government journal ‘Dziennik Ustaw’ (78/483; <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>).

The confusion arises the inadequacy of the meaning of the original text to its equivalent in the English translation of the respective fragment.

Let’s begin, however, with the definition of „nation”. ‘We, the Polish Nation’, the Preamble says. It’s OK, because it may mean the people living in Poland. The extension is even better – ‘all citizens of the Republic’. We have here the fully democratic, ‘political’ definition of ‘nation’. To be a citizen – it is the main, it is even the only characteristic of an individual in the context of the source of values, law and power, in the political, constitutional context, of course in connection with other citizens. For example, black, yellow as well as blue citizens are simply citizens, so it is not needed to underline their blackness, yellowness or the like, nor their belief or not belief, for example, in extraterrestrial beings. Imagine that: ‘both those who believe that intelligent life came from space...’. The Polish constitution Preamble propagates differently, and similarly at once; the text continues (the English translation of the text continues): ‘both those who believe in God *as* the source of truth, justice, good and beauty..., as well as those...’. We should stop here, because it is exactly the place where the confusion appears: the proper translation should be ‘who believe in God *being* the source...’ or ‘who believe in God *who is* the source’ (‘wierzący w Boga będącego źródłem...’). It is a rather important difference. If we had the text like in the official translation, we should say, given the lack of precision of the language itself (I mean the word ‘as’), that the constitution gives us a sociological description of inhabitants of the Polish territory: some of them believe in God as the source, some of them do not. But we get something else; we have got the thesis: God is the source of fundamental, ‘universal’ values (truth, justice and so on), and some of the Polish citizens believe in that. If God is the source of the fundamental values, it is indirectly the source of law, power and political order, at least the constitutional order, founded on certain general and political values.

It is not so important then, what other citizens believe in, because the source is already defined and it is not the will of the nation and people’s agreement in particular. Perhaps at least ‘other people’ believe in that, although, as we know now, it won’t be the „truth” about the source, but simply the ‘belief’? Not at all, or better to say – even less.

First of all, ‘other people’ do not share such faith (that God is the source)– and that’s all that we find out about their ‘faith’ (that they don’t believe the truth about the source) – nothing about a social contract and so on, just a general notion about ‘other sources’. Instead we get to know that they respect ‘those universal values’, and nothing about the

fact that they respect in this case also such a universal value as freedom, for example, or that they can understand justice, good or truth differently, the more so if those 'universal values' are not defined by God and in the name of God, but by the people and in the name of the people. So, the picture is as follows: God is the source of values, there are 'citizens' who believe in that and there are other citizens, who share respect for the same values, but it is not of any interest what they 'believe' the source of those values to be, the more so, that the proper source (according to the preamble) is initially revealed and that it is God itself – exactly as in the case of John Lock's opponent Filmer's apology of patriarchal, authoritarian order. Here is the text: 'all citizens of the Republic, both those who believe in God *as* (or rather God *being*) the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources..'

Everything else is just a consequence of that general statement – 'culture, rooted in the Christian heritage of the Nation'³, 'the best traditions' which should be interpreted in the light of the 'Christian heritage', 'Human Family' ('aware of the need for cooperation with all countries for the good of the Human Family'), which is an openly patriarchal equivalent of the 'global citizen society' – the strictly democratic category, 'responsibility before God or our own consciences' instead of before the nation, people, citizens or Polish democratic tradition at least. Just at the end of the Preamble 'freedom' appears at last, 'respect for freedom' strictly speaking, not freedom itself as the fundamental value. There is also a place here for the evidently authoritarian value 'cooperation between the public powers'; the latter should be accepted as the democratic one, if it had completed the division of power as the technical principle of the effective work of the governmental institutions. At the same time 'the cooperation between the public powers', out of these contexts, is just a soft variant of the unity of power, the open authoritarian principle. We may say the same about the famous principle of subsidiarity, coming from Roman law as technical principle, but the preamble of the constitution is rather not a place for technical principles. As a constitutional principle it comes evidently from catholic political doctrine and means so much competence for the lower level of organization of power as is convenient from the point of view of the higher level of power, and replaces the sovereignty of nation itself.

Why is the Preamble of the Polish Constitution of 1997 so tightly packed with authoritarian principles?

The only answer is that the constitutional process was dominated by somehow democratically oriented people. The church people communicated to them openly that they would not accept a democratic constitution and were determined to use their propaganda to possibly stop it and make this constitution non existent.

3 It is obvious, that culture (including political culture), rooted in the christian tradition, cannot be democratic one, the more so as the culture is not rooted in the democratic tradition, which is not noted down - in this case - beside the Christian one.

The authors of the constitution communicated back that they were open for ‘compromise’ and would accept something formally compromised. Formally, but not substantially. Substantially the ‘compromise’ affected the authoritarian solution.

The main text of the Polish constitution of 1997 is ultimately constructed with democratic principles and solutions, *which are rather broken by article 25, constructing a strictly medieval relationship between ‘lay and spiritual power’*; on the other hand the preamble of the constitution declares the authoritarian system openly, consisting of

1. God,
2. values defined in the name of God,
3. christianity,
4. the people divided into believers and non believers,
5. global patriarchal order (named ‘Human Family’),
6. subsidiarity and,
7. so-called ‘solidary’ nation under the direction of the catholic church, the new incarnation of ‘the steering force’ of the *ancient regime*. It is needed to remember, that solidary nation means a nation not divided into left and right wing, into governmental camp and opposition, and, in general, into individuals, as it is in pluralistic societies.

Strictly speaking the church is not present in the preamble. but it is rather impossible to leave out the God’s will interpretation and God’s understanding of truth, justice, good and beauty, as well as freedom and democracy itself, for anybody and just catholic clergy. It is the first; the second – unified, ‘solidary’ nation needs a leader; a person, like Pilsudski or Mussolini, or a party, like Polish United Workers’ Party before 1989, or Jean Paul II and Roman catholic church now.

The Czech people used to name their transition from communism to the new order as ‘revolution’ (‘velvet revolution’⁴). In Poland all of that was more moderately called just ‘transformation’. We may formulate the thesis that the Polish people (the majority of the population as well as the so-called political class) had a much more modest idea of the transition: not to destroy the authoritarian system, but fill it up with easily comprehensible catholic contents⁵.

This is going to be at the time when everything will have been totally absorbed by the global consumer culture manipulated by ubiquitous and invisible corporate power, both invoking the psychological – like churches and mass media - as well as the corporal part of passive human beings.

4 Polish transition was began and developed by the ‘round table’ agreement, something, in the certain meaning, much more revolutionary than any other revolution.

5 A big part of the political class, not understanding the historical meaning of agreement, (or – seeing it as the opposition to the authoritarian order) try to cross out it from the history, trying, in the same time, to erase the participants of agreement from the historical memory (supressing and ommiting the fact that some of them were the participants too). The ‘soft’ variant of this omitting is the interpretation of agreement as a transmitting of power.

Streszczenie

Artykuł poświęcony jest kwestii pochodzenia wartości podstawowych, w tym wartości konstytucyjnych, i wykazaniu, że w konstytucji 1997 r. mamy do czynienia z niezgodnością między zasadniczym tekstem konstytucji, który (z wyjątkiem art. 25) odwołuje się do standardowego zestawu wartości konstytucyjnych (suwerenność narodu, trójpodział władz itd.), a tekstem preambuły, która prezentuje zasadniczo autorytarną listę podstawowych zasad i wartości. Autor zwraca przy okazji uwagę, że oficjalne tłumaczenie na język angielski łagodzi nieco (wbrew polskojęzycznemu oryginałowi) autorytarną wymowę tekstu preambuły, fałszując tym samym tekst konstytucji.